



NEBRASKA
DEPARTMENT OF EDUCATION

SPED
SPECIAL EDUCATION

GUIDANCE DOCUMENT

Developing Local Policies & Procedures Required for Implementation of Special Education Part B Regulations in Nebraska's Public Schools

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I. Introduction

This document provides guidance to school districts on the requirements found in state and Federal law regarding the development and approval of policy, procedures, and forms related to special education. It is recommended district leadership develop a team to review current versions of each, catalog existing documentation, and determine what additional items are needed. The team can then meet annually to review all, identify any updates needed, and revise accordingly. It is further recommended that a district consult with its board attorney for final policy review.

To assist districts in the formation of such documents, the following chapters provide a comparison of state and Federal regulations, templates, and example items.

Part B Federal requirements can be found in the [Individuals with Disabilities Education Act, 2004 \(IDEA\)](#). Additional policy guidance provided by the Federal Office of Special Education Programs (OSEP) is included. State regulations can be found in [Nebraska Rule 51: Regulations and Standards for Special Education Programs](#).

II. State Approval and Reviews

Policies, procedures, and forms will be reviewed during monitoring, at least once every 5 years, to ensure compliance with Federal and state regulations. This is required to meet state education agency (SEA) responsibilities for general supervision of state special education services.

Additionally, if a district is identified with equity issues by the state, a review of the district's policies, procedures, and practices is also required. Possible equity issues are disproportionate representation in identification, significant discrepancy in discipline, and significant disproportionality in identification, placement, or discipline. For more information, see [Nebraska Department of Education's \(NDE\) Equity Guidance document](#).

Any areas of noncompliance will require a corrective action plan as determined by NDE.

III. District Development of Policy, Procedures, and Forms

Recommended Leadership Team

It is recommended that districts create and use a well-rounded leadership team to help develop, review, and revise policy and procedures. Having representation across disciplines and roles is important to gain needed perspective and buy-in for staff who will be accountable for procedural implementation, to address any liability concerns for staff, and to make sure that procedures are thorough and consider all relevant roles. There may be times when members divide tasks based on specialty areas, but the whole team could still be involved in the general overview and process. Subgroups may also be tasked with the development of needed forms.

Possible team members

- Special education director and leadership (e.g., associated special educator coordinators)
- General education leadership representative
- Lead assessment specialists (e.g., school psychologists, speech language pathologists)
- District leads associated with discipline, school administrators, and Student Assistant Team (SAT)
- Grade band special education and general education teacher representative

Consider ways to obtain parent feedback on policy, procedures, and relevant forms which impact them or forms which are meant to be used for communication to parents.

What is Meant by Policy and Procedures?

For the purposes of this document, “policy and procedures” for a school district may include

- Policies adopted by the board of a school district
- Administrative procedures adopted and implemented by the administration of a school district including
 - » District-wide procedures
 - » Procedures specific to one program such as special education

State rules cannot require less than Federal law and regulations. Local education agency (LEA) or school districts policy, in the same way, should not require less than Federal or state rules and regulations. The district policy should help identify the ways in which the state rules (and more encompassing Federal regulations) will be implemented, applied, and understood at local level.

Having appropriate policies in place is a way of providing guidance to educators in their work, ensuring appropriate practices in schools and increasing the safety of everyone in schools. Moreover, they provide a measure of protection to the school system from liability related to these practices.

As a reminder: Usually school board policies and procedures are public information and are available on request at the district office. Some schools also post these policies and procedures on their district or school websites. Individual districts may have their own methods for disseminating their policies.

Many school districts use a “Student Handbook” as a way to inform students and parents about pertinent policies related to student behavior. As a result, when school policies or procedures are implemented, consideration should be given to also modify the student handbook to reflect these policies and to inform students and parents. These handbooks are distributed to all students and parents once per year.

What Types of Things May Be Included in a Policy for Special Education?

District leaders should consult with their board attorneys when developing district policy to gain legal input. Below are some things to consider when drafting district-level policies.

Considerations

- Does the policy have a clear purpose and focus?
- Does the policy clearly state what the district is responsible for implementing or establishing?
- Is the wording clear and understandable (or plain) to all stakeholder groups and those who will be expected to follow it?
 - » Is it transparent?
 - » Does it contain jargon that may not be easily understood by all?
- Are all legal regulations addressed adequately?
 - » Is it consistent with state and Federal regulations?
 - » Are they cited within the policy?
- Are any definitions or additional wording needed to prevent misunderstandings or confusion?
- Is the policy too broad?
 - » If there is only one all-encompassing policy for special education, does it provide at least a brief summary of district responsibility for each component (e.g., evaluation and identification [child find], procedural safeguards, professional development, etc.)?
- Would a team be able to identify what procedures are needed to implement the policy (-ies)?
 - » Is it action oriented?
- How does policy assist with management and accountability of staff?
 - » Is it clear what is required and what is discretionary?

Additionally, leaders should consider if there have been problems or concerns within the district with the implementation or associated outcome of a policy. If so, consider if the wording of existing policy needs revision or additional policy should be drafted based on the considerations listed above. If existing policies are adequate, additional written procedures to implement the policy may be warranted.

What Types of Things Should Be Included in Procedures?

Procedures are often considered to be a form of district-level policy. Procedures should outline needed tasks and contain enough detail that someone unfamiliar with the task could follow the steps easily to accomplish the desired outcome. They provide a measure of structure and include task instructions for coherency and consistency. To increase staff buy-in, consider obtaining feedback (e.g., formatting of procedures for efficient use, input on current challenges, input on what is currently working, etc.) from those who will be expected to follow and manage procedures.

Identifying Needed Procedures

As leadership teams work to identify needed procedures, consider the following reasons a procedure may be needed:

- Effective policy implementation
- Prevention of problematic or negligent practices
- Corrective actions based on monitoring or administrative complaints

Developing Procedures

As procedures are developed, the team should work toward completing the following items:

- Determine the desired outcome(s).
- Create breakdown of steps it will take to reach outcome (from initial step to final step).
- Develop an outline of action needed, who is responsible, timeframes and frequency, documentation needed.
- Determine how they are stored and cataloged to be accessed easily by all relevant staff.
- Identify onboarding and refresher training needs to make sure all staff are familiar with and use procedures.
- Determine how they will be monitored and the accountability of staff (any supervision needs).
- Ensure procedures meet a stranger test.

A template of a tool that may be used for procedure development and documentation can be found in chapters [XXIII](#) and [XXIV](#).

Minimum Suggested Procedures for Policy Implementation

- District-level and school-level child find procedures
 - » District level—to include methods of information dissemination (who is responsible, types, frequency, etc.)
 - » School level—to include referral process, evaluation tasks, eligibility meeting tasks
- Disciplinary policy for all students
- Disciplinary procedures for students with disabilities
- Procedures for the provision of procedural safeguards to parents
- Professional development needs and scheduling and documentation

- Individualized education program (IEP) meeting procedures for tasks (from invitation, drafting, meeting tasks, etc.) to address placement, least restrictive environment (LRE), and free appropriate public education (FAPE)
- Surrogate parent training procedures (who will schedule, training content to be used, etc.)
- Transition from Part C to B procedures (who will meet as part of transition team, tasks needed, timing, documentation, etc.)
- Special transportation procedures (notification of team decisions to transportation department, etc.)
- Evaluation, verification, and identification procedures
- Confidentiality policy and procedures
- Personnel standards policy
- Performance goals and indicators policy and any associated procedures
- Participation in assessment decision-making procedures
- Assessment result reporting procedures

Forms

Per Nebraska Rule 51 (**92 NAC 51-004.08A**), districts are also required to have on file the forms they use to implement special education policies and procedures.

Tips for form development

- Avoid
 - » Language that appears to be a predetermination of decisions
 - » Language that appears to delay processes
- Do
 - » Review relevant regulations before developing associated forms to make sure all language is consistent with law.
 - » Make sure forms meet Family Educational Rights and Privacy Act (FERPA) requirements when applicable.
 - » Consider if the language is parent friendly, especially if the form is used to communicate information to the parent.
 - » Have a plan for translation needs when appropriate.

IV. General Policy, Practices, and Procedural Requirements

It is important that district leadership and staff have knowledge regarding special education Federal regulations and guidance related to [IDEA Part B Section 300](#) as well as state regulations ([Nebraska Rule 51](#)). A side-by-side comparison of key areas is provided below to assist districts in their development of policy, procedures, and associated forms. After each side-by-side regulation comparison are relevant policy and procedure considerations. **As a reminder, each district should consult with its board attorney on its policy development as this is guidance and does not represent legal advice.**

IDEA Regulations	Nebraska Rule 51
<p>Section 300.201 Consistency with State policies.</p> <p>The LEA, in providing for the education of children with disabilities within its jurisdiction, must have in effect policies, procedures, and programs that are consistent with the State policies and procedures established under §§300.101 through 300.163, and §§300.165 through 300.174.</p> <p>Section 300.646 Disproportionality</p> <p>(c) Review and revision of policies, practices, and procedures. In the case of a determination of significant disproportionality with respect to the identification of children as children with disabilities or the placement in particular educational settings, including disciplinary removals of such children, in accordance with paragraphs (a) and (b) of this section, the State or the Secretary of the Interior must —</p> <ol style="list-style-type: none">1. Provide for the annual review and, if appropriate, revision of the policies, practices, and procedures used in identification or placement in particular education settings, including disciplinary removals, to ensure that the policies, practices, and procedures comply with the requirements of the Act.	<p>92 NAC 51-004.08A</p> <p>School districts and approved cooperatives are required to 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, reporting related to assessment results, and suspension and expulsion.</p>

IDEA Regulations	Nebraska Rule 51
<p>2. Require the LEA to publicly report on the revision of policies, practices, and procedures described under paragraph (c)(1) of this section consistent with the requirements of the Family Educational Rights and Privacy Act, its implementing regulations in 34 CFR part 99, and Section 618(b)(1) of the Act.</p>	

District Considerations for Policy and Procedure Development

District considerations

- What board policies are needed to ensure compliance with state and Federal law? Identify current special education policy and make sure it addresses all components of law. Review the following sections to determine additional areas needed.
- What additional district policies (policies not requiring board decisions to inform staff responsibilities) may be needed? For example, what is needed for staff accountability and to ensure procedural safeguards in order to implement board policy?
- Identify needed policy and procedures to address
 - » Child find
 - » Transition from Part C to B
 - » Identification
 - » Evaluation and verification
 - » Placement and LRE
 - » Confidentiality
 - » Procedural safeguards
 - » Comprehensive system for personnel development
 - » Transportation
 - » Surrogate parents
 - » FAPE
 - » Personnel standards
 - » Performance goals and indicators
 - » Participation in Assessments
 - » Reporting related to assessment results
 - » Suspension and expulsion or other disciplinary removals

V. Child Find

IDEA Regulation: Child Find

Section 300.111: Child Find

(a) General.

1. The State must have in effect policies and procedures to ensure that—
 - i. All children with disabilities residing in the State, including children with disabilities who are homeless children or are wards of the State, and children with disabilities attending private 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
 - ii. A practical method is developed and implemented to determine which children are currently receiving needed special education and related services.

(b) Use of term developmental delay. The following provisions apply with respect to implementing the child find requirements of this section:

1. A State that adopts a definition of developmental delay under §300.8(b) determines whether the term applies to children aged three through nine, or to a subset of that age range (e.g., ages three through five).
2. A State may not require an LEA to adopt and use the term developmental delay for any children within its jurisdiction.
3. If an LEA uses the term developmental delay for children described in §300.8(b), the LEA must conform to both the State's definition of that term and to the age range that has been adopted by the State.

Nebraska Rule 51: 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.

006.01A1. The child find requirements apply to highly mobile children including migrant children.

006.01A2. The child find requirements also apply to a child who is suspected of being a child with a disability under 92 NAC 51-003.08 and in need of special education, even though the child is advancing from grade to grade.

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 child find process must be designed to ensure:

IDEA Regulation: Child Find

4. If a State does not adopt the term developmental delay, an LEA may not independently use that term as a basis for establishing a child's eligibility under this part.

(c) Other children in child find. Child find also must include—

1. Children who are suspected of being a child with a disability under §300.8 and in need of special education, even though they are advancing from grade to grade; and
2. Highly mobile children, including migrant children.

(d) Construction. Nothing in the Act requires that children be classified by their disability so long as each child who has a disability that is listed in §300.8 and who, by reason of that disability, needs special education and related services is regarded as a child with a disability under Part B of the Act.

Section 300.131:Child find for parentally-placed private school children with disabilities

(a) General. Each LEA must locate, identify, and evaluate all children with disabilities who are enrolled by their parents in private, including religious, elementary schools and secondary schools located in the school district served by the LEA, in accordance with paragraphs (b) through (e) of this section, and §§300.111 and 300.201.

(b) Child find design. The child find process must be designed to ensure—

1. The equitable participation of parentally-placed private school children; and

Nebraska Rule 51: Child Find

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 child find 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 child find 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 child find process must be completed in a time period comparable to that for children 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 child find requirements in this subsection, include parentally-placed nonpublic school children who reside in a State other than Nebraska.

92 NAC 51-006.01B

006.021B1. 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.

006.01B2. 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.

IDEA Regulation: Child Find

2. An accurate count of those children.
- (c) Activities.** In carrying out the requirements of this section, the LEA, or, if applicable, the SEA, must undertake activities similar to the activities undertaken for the agency’s public school children.
- (d) Cost.** The cost of carrying out the child find requirements in this section, including individual evaluations, may not be considered in determining if an LEA has met its obligation under §300.133.
- (e) Completion period.** The child find process must be completed in a time period comparable to that for students attending public schools in the LEA consistent with §300.301.
- (f) Out-of-State children.** Each LEA in which private, including religious, elementary schools and secondary schools are located must, in carrying out the child find requirements in this section, include parentally-placed private school children who reside in a State other than the State in which the private schools that they attend are located.

Nebraska Rule 51: Child Find

006.01B3. 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 51-006.01B and a listing of the members of the SAT or comparable problem solving team.

District Considerations for Policy and Procedure Development

Sample district policy statement

[Xyz school district] will develop procedures to ensure all children within the district have access to the child find process. The district will provide multiple methods to provide parents, guardians, and community members with information regarding how to refer a child for an evaluation and the identification process. Each school building will have a designated contact person who is knowledgeable about the district procedures, and the district will designate a contact person to oversee the child find process. The child find process will be consistent with Federal and state regulations (i.e., 34 CFR § 300.111 and 300.131; 92 NAC 51-006 and 92 NAC 51-015.03).

Procedural considerations

- Indicate who is responsible for the different steps of child find (e.g., district level, school level, etc.).
- Determine resources that need to be developed or updated for parents and community members and the frequency these will be reviewed for revisions (e.g., annually).
- What are the procedures for annual dissemination of child find activities (for example, information is disseminated annually using news media, brochures to public and private childcare facilities, school websites, etc.)?
- Outline the referral process (include in each step who is responsible, timelines, where documents can be accessed or stored).
 - » Indicate if there is a separate or different process for prekindergarten, private school and home school students, and referrals for juvenile facilities.
 - » Indicate any needed steps for students who are homeless or wards of the state.
 - » Include any school-level and district tracking systems including disaggregation of data to determine equitable access.
- General education student assistance team (SAT) or other problem-solving team decision-making procedures and meeting logistics.
 - » Who is responsible for developing district practices and ensuring staff are trained appropriately?
 - » Is there a district-level manual?
 - » Who determines the school-level person responsible for organizing teams (e.g., is this determined by the principal or is it a role determined by the district lead?)?
 - » How frequent are meetings?
 - » How are students referred? What information is collected as part of the referral to the team?
 - » How are meetings and decisions documented?
 - » Who is included on the teams?
 - » Where are records stored?
 - » What is the transition procedures for students who are in the SAT process and move on to higher grades or schools?
 - » How are parents informed of the SAT or problem-solving process?

Guidance resources

- [Nebraska ChildFind](#)

VI. Transition from Part C to Part B

IDEA Regulations: Transition from Part C to Part B

Section 300.124: Transition of children from the Part C program to preschool programs.

The State must have in effect policies and procedures to ensure that—

(a) Children participating in early intervention programs assisted under Part C of the Act, and who will participate in preschool programs assisted under Part B of the Act, experience a smooth and effective transition to those preschool programs in a manner consistent with section 637(a)(9) of the Act;

(b) By the third birthday of a child described in paragraph (a) of this section, an IEP or, if consistent with §300.323(b) and section 636(d) of the Act, an IFSP, has been developed and is being implemented for the child consistent with §300.101(b); and

(c) Each affected LEA will participate in transition planning conferences arranged by the designated lead agency under section 635(a)(10) of the Act.

Section 300.323 When IEPs must be in effect

(b) IEP or IFSP for children aged three through five.

1. In the case of a child with a disability aged three through five (or, at the discretion of the SEA, a two-year-old child with a disability who will turn age three during the school year), the IEP Team must consider an IFSP that contains the IFSP content (including the natural environments statement) described in section 636(d) of the Act and its implementing regulations (including an educational component that promotes school readiness and

Nebraska Rule 51: Transition from Part C to Part B

92 NAC 51-005.03

005.03A. The school district or approved cooperative shall have in effect policies and procedures to ensure that:

005.03A1. Children participating in early intervention programs assisted under Part C of the IDEA, and who will participate in preschool programs assisted under Part B of the IDEA, shall experience a smooth and effective transition to those preschool programs in a manner consistent with section 1437(a)(9) of the IDEA

005.03A2. By the third birthday of a child described in 92 NAC 51-005.03A1, an IEP or an IFSP, has been developed and is being implemented for the child; and

005.03A3. The school district or approved cooperative will participate in transition planning conferences.

92 NAC 51-007 Individualized Education Program (IEP)

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 52. 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

IDEA Regulations: Transition from Part C to Part B

incorporates pre-literacy, language, and numeracy skills for children with IFSPs under this section who are at least three years of age), and that is developed in accordance with the IEP procedures under this part. The IFSP may serve as the IEP of the child, if using the IFSP as the IEP is—

- i. Consistent with State policy; and
 - ii. Agreed to by the agency and the child's parents.
 2. In implementing the requirements of paragraph (b)(1) of this section, the public agency must—
 - i. Provide to the child's parents a detailed explanation of the differences between an IFSP and an IEP; and
 - ii. If the parents choose an IFSP, obtain written informed consent from the parents
- (c) Initial IEPs; provision of services.** Each public agency must ensure that—
1. A meeting to develop an IEP for a child is conducted within 30 days of a determination that the child needs special education and related services; and
 2. As soon as possible following development of the IEP, special education and related services are made available to the child in accordance with the child's IEP.

Nebraska Rule 51: Transition from Part C to Part B

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.

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 From the end of the school year in which a child reaches age 3, until the child's sixth birthday, the IEP team must consider an IFSP that contains the IFSP content (including the natural environments statement) described in 92 NAC 52 (including an educational component that promotes school readiness and incorporates preliteracy, 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.

007.02B 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.

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

IDEA Regulations: Transition from Part C to Part B

Nebraska Rule 51: Transition from Part C to Part B

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.

District Considerations for Policy and Procedure Development

Sample district policy statement

[Xyz school district] will create procedures to ensure staff participate in transition planning with early intervention programs to ensure participating children are appropriately evaluated, identified, and have services in place by age 3 consistent with Federal regulations (34 CFR § 1.24, 34 CFR § 300.323) and state law (92 NAC 51-005.03).

Procedural considerations

When developing procedures, consider the following questions as you break down responsibilities:

- District-level coordination with Part C Early intervention services
 - » Who will be responsible for coordinating and communicating with early intervention programs associated with Part C to build district-level procedures?
 - » Who is the Part C contact? Where will the contact information be kept?
 - » Which staff are assigned on the school level to attend meetings and facilitate discussions?
 - » What professional development is needed for those school-level staff (onboarding and refreshers)?
- Staff you may need to plan for include
 - Preschool service providers
 - LEA designees or administrators
 - Assessment team members
 - » What parent information needs to be developed?
 - » Will meetings occur at the district or at the preschool building level?
 - » How frequently will procedures be reviewed to identify problem areas and any needed revisions, updates, or areas of training?
- School and preschool level procedures for transition meetings; consider documenting
 - » Which role is responsible for scheduling and facilitating meetings?
 - » Which role is responsible for needed documentation?
 - » What are the pre-, during, post- meeting steps?
 - » How are Part C referrals tracked?

Guidance resources

- [ECTA Center: OSEP Resources on Transition](#)

VII. Evaluation

IDEA Regulations: Evaluations	Nebraska Rule 51: Evaluations
<p>Section 300.15 Evaluation</p> <p>Evaluation means procedures used in accordance with §§300.304 through 300.311 to determine whether a child has a disability and the nature and extent of the special education and related services that the child needs.</p> <p>Section 300.301: Initial Evaluations</p> <p>(a) General. Each public agency must conduct a full and individual initial evaluation, in accordance with §§300.304 through 300.306, before the initial provision of special education and related services to a child with a disability under this part.</p> <p>(b) Request for initial evaluation. Consistent with the consent requirements in §300.300, either a parent of a child or a public agency may initiate a request for an initial evaluation to determine if the child is a child with a disability.</p> <p>(c) Procedures for initial evaluation.</p> <ol style="list-style-type: none">1. The initial evaluation—<ol style="list-style-type: none">i. Must be conducted within 60 days of receiving parental consent for the evaluation; orii. If the State establishes a timeframe within which the evaluation must be conducted, within that timeframe; and2. Must consist of procedures—<ol style="list-style-type: none">i. To determine if the child is a child with a disability under §300.8; andii. To determine the educational needs of the child.	<p>92 NAC 51-006.02</p> <p>006.02A. 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.</p> <p>006.02B1a. In implementing the requirements of 92 NAC 51-006.02B the school district or approved cooperative shall ensure that:</p> <p>006.02B1a(1). The evaluation is conducted in accordance with the procedures described in Section 006 of this Chapter.</p> <p>006.02B1a(2). The results of the evaluation are used by the child’s IEP team in meeting the requirements of Section 007 of this Chapter.</p> <p>92 NAC 51-006.02C</p> <p>006.02C1. School districts and approved cooperatives must ensure assessments and other evaluation materials used to assess a child under this Chapter;</p> <p>006.02C1a. Are selected and administered so as not to be discriminatory on a racial or cultural basis; and</p> <p>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;</p>

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(d) Exception. The timeframe described in paragraph (c)(1) of this section does not apply to a public agency if—

1. The parent of a child repeatedly fails or refuses to produce the child for the evaluation; or
2. A child enrolls in a school of another public agency after the relevant timeframe in paragraph (c)(1) of this section has begun, and prior to a determination by the child's previous public agency as to whether the child is a child with a disability under §300.8.

(e) The exception in paragraph (d)(2) of this section applies only if the subsequent public agency is making sufficient progress to ensure a prompt completion of the evaluation, and the parent and subsequent public agency agree to a specific time when the evaluation will be completed.

Section 300.302 Screening for instructional purposes is not evaluation.

The screening of a student 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.

Section 300.304 Evaluation procedures

(a) Notice. The public agency must provide notice to the parents of a child with a disability, in accordance with §300.503, that describes any evaluation procedures the agency proposes to conduct.

(b) Conduct of evaluation. In conducting the evaluation, the public agency must—

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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 51-003.08; and

006.02C5b. The content of the child's IEP.

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1. Use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including information provided by the parent, that may assist in determining—
 - i. Whether the child is a child with a disability under §300.8; and
 - ii. The content of the child’s IEP, including 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);
 2. Not use any single measure or assessment 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; and
 3. Use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.
- (c) Other evaluation procedures.** Each public agency must ensure that—
1. Assessments and other evaluation materials used to assess a child under this part—
 - i. Are selected and administered so as not to be discriminatory on a racial or cultural basis;
 - ii. 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

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- 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).

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- on what the child knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to so provide or administer;
- iii. Are used for the purposes for which the assessments or measures are valid and reliable;
 - iv. Are administered by trained and knowledgeable personnel; and
 - v. Are administered in accordance with any instructions provided by the producer of the assessments.
2. Assessments 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.
 3. Assessments are selected and administered so as best to ensure that if an assessment is administered to a child with impaired sensory, manual, or speaking skills, the assessment 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).
 4. 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;

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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:

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5. Assessments of children with disabilities who transfer from one public agency to another public agency in the same school year are coordinated with those children's prior and subsequent schools, as necessary and as expeditiously as possible, consistent with §300.301(d)(2) and (e), to ensure prompt completion of full evaluations.
6. In evaluating each child with a disability under §§300.304 through 300.306, 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.
7. Assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child are provided.

Section 300.305 Additional requirements for evaluations and reevaluations

(a) Review of existing evaluation data. As part of an initial evaluation (if appropriate) and as part of any reevaluation under this part, the IEP Team and other qualified professionals, as appropriate, must—

1. Review existing evaluation data on the child, including—
 - i. Evaluations and information provided by the parents of the child;
 - ii. Current classroom-based, local, or State assessments, and classroom-based observations; and
 - iii. Observations by teachers and related services providers; and

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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.

92 NAC 51-006.06

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

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

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

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

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

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2. On the basis of that review, and input from the child’s parents, identify what additional data, if any, are needed to determine—

i.

A. Whether the child is a child with a disability, as defined in §300.8, and the educational needs of the child.

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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.

92 NAC 51-009.04*

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:

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	<p>009.04A1a(1). A child enrolls in a school served by the school district or approved cooperative after the relevant timeline in 92 AC 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</p> <p>009.04A1a(2). The parent of a child repeatedly fails or refuses to produce the child for the evaluation.</p> <p>*See NDE Memo below regarding timeline clarifications</p>

District Considerations for Policy and Procedure Development

Sample district policy statements

When a child is suspected of having a disability, [xyz school district] will complete a comprehensive initial evaluation within 45 school days or 60 calendar days (whichever comes first) from the date of parental consent to determine eligibility for special education services. All evaluations (both initial evaluations and reevaluations) will be completed by multidisciplinary qualified professionals and will follow Federal and state regulations. The documented results of the evaluation will be provided to parents and included in student files. The district will purchase a variety of assessment instruments to ensure district teams have access to appropriate measures to complete evaluations. The district will follow publisher guidelines for assessments (professional qualifications, use of materials, interpretations) and will not use outdated or culturally inappropriate tools. The district will identify procedures to audit a sampling of evaluations to ensure regulations are followed. All evaluation components will be at district expense.

Procedure considerations

Consider breaking down tasks and identifying who is responsible, timeframes, and forms needed for initial evaluations and reevaluations.

Areas to include

- Referral team or reevaluation decisionmaking
 - » Who are the team members?
 - » Who should be considered on an as needed case-by-case basis? And what is the process for involving them? (e.g., English as a Second Language [ESL] teacher, Speech language pathologist (SLP), etc.)
- Timelines
 - » When a request for an evaluation or reevaluation is received, how long does the district have to respond to the request?
 - » Districts should define “must make reasonable efforts to obtain from parent informed consent” (9.08a3).
- Assessment planning (including vision and hearing screening if needed)
 - » Consider forms to use as a checklist to meet regulations.
- Parental notice—who is responsible for sending the parental notice?
- Parental consent—what are the steps needed in gaining consent for evaluation?
- Selection of assessment instruments
 - » Forms needed to document individual differences
 - » Considerations to help with selection
 - » Consideration of cultural and linguistic differences when selecting assessments
- English Learner (EL) considerations in assessment planning and instrument selection
 - » Use of interpreters
 - » Collaboration with ESL teachers
- Documentation of evaluation results: how are results communicated, who is responsible, etc.
- Parental notification of meeting
- What to do if a parent does not respond to a meeting invitation
- Meeting
 - » Identify any needed roles such as who acts as interpreter of results (any training needed and how they will receive it)
 - » Eligibility decisions
- Transfer students—what procedures are needed for students (including wards of the state) who transfer to schools within the district, from a different district within the state, from out of state?

Guidance resources

- [Dear Colleague Letter and Resource Guide on Students with ADHD \(ed.gov\)](#)
- [Other Health Impairment | Center for Parent Information and Resources \(parentcenterhub.org\)](#)
- [OSEP Policy Letter—OSEP 17-05—Eligibility Determinations for Children Suspected of Having a Visual Impairment Including Blindness under the Individuals with Disabilities Education Act. \(PDF\)](#)
- [NDE Evaluation Timeline Memo: Clarification on guidance for 92 NAC 51—009.04 and IDEA 60 Day Timeline for School Age Children](#)

VIII. Additional Evaluation Requirements for Specific Learning Disabilities (SLD)

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<p>Section 300.307 Specific learning disabilities</p> <p>(a) General. A State must adopt, consistent with §300.309, criteria for determining whether a child has a specific learning disability as defined in §300.8(c)(10). In addition, the criteria adopted by the State—</p> <ol style="list-style-type: none">1. Must not require the use of a severe discrepancy between intellectual ability and achievement for determining whether a child has a specific learning disability, as defined in §300.8(c)(10);2. Must permit the use of a process based on the child’s response to scientific, research-based intervention; and3. May permit the use of other alternative research-based procedures for determining whether a child has a specific learning disability, as defined in §300.8(c)(10). <p>(b) Consistency with State criteria. A public agency must use the State criteria adopted pursuant to paragraph (a) of this section in determining whether a child has a specific learning disability.</p> <p>Section 300.308 Additional group members</p> <p>The determination of whether a child suspected of having a specific learning disability is a child with a disability as defined in §300.8, must be made by the child’s parents and a team of qualified professionals, which must include—</p> <p>(a)</p> <ol style="list-style-type: none">1. The child’s regular teacher; or2. If the child does not have a regular teacher, a regular classroom teacher qualified to teach a child of his or her age; or	<p>006.04K2 The MDT of a child suspected of having a specific learning disability shall include at least:</p> <p>006.04K2a The child’s parents;</p> <p>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;</p> <p>006.04K2c For a child below age 5, a teacher qualified to teach a child below age 5;</p> <p>006.04K2d Special educator with knowledge in the area of specific learning disabilities;</p> <p>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</p> <p>006.04K2f A school district administrator, or a designated representative.</p> <p>006.04K3 The MDT may determine that a child has a specific learning disability if:</p> <p>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.</p> <p>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-</p>

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3. For a child of less than school age, an individual qualified by the SEA to teach a child of his or her age; and

(b) At least one person qualified to conduct individual diagnostic examinations of children, such as a school psychologist, speech-language pathologist, or remedial reading teacher.

Section 300.309 Determining the existence of a specific learning disability

(a) The group described in §300.306 may determine that a child has a specific learning disability, as defined in §300.8(c)(10), if—

1. 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:
 - i. Oral expression.
 - ii. Listening comprehension.
 - iii. Written expression.
 - iv. Basic reading skill.
 - v. Reading fluency skills.
 - vi. Reading comprehension.
 - vii. Mathematics calculation.
 - viii. Mathematics problem solving.
2.
 - i. The child does not make sufficient progress to meet age or State-approved grade-level standards in one or more of

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006.04K3a when using a process based on the child's response to scientific, research-based intervention; or 006.04K3b(1) 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 Intellectual disability;

006.04K4c Emotional disturbance;

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

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the areas identified in paragraph (a)(1) of this section when using a process based on the child's response to scientific, research-based intervention; or

- ii. 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 group to be relevant to the identification of a specific learning disability, using appropriate assessments, consistent with §§300.304 and 300.305; and

3. The group determines that its findings under paragraphs (a)(1) and (2) of this section are not primarily the result of—

- i. A visual, hearing, or motor disability;
- ii. An intellectual disability;
- iii. Emotional disturbance;
- iv. Cultural factors;
- v. Environmental or economic disadvantage; or
- vi. Limited English proficiency.

(b) 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 §§300.304 through 300.306—

- 1. Data that demonstrate that prior to, or as a part of, the referral process, the child was

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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

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provided appropriate instruction in regular education settings, delivered by qualified personnel; and

2. 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.

(c) The public agency 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 §§300.301 and 300.303, unless extended by mutual written agreement of the child's parents and a group of qualified professionals, as described in §300.306(a)(1)—

1. If, prior to a referral, a child has not made adequate progress after an appropriate period of time when provided instruction, as described in paragraphs (b)(1) and (b)(2) of this section; and
2. Whenever a child is referred for an evaluation.

Section 300.310 Observation

(a) The public agency 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.

(b) The group described in §300.306(a)(1), in determining whether a child has a specific learning disability, must decide to—

1. Use information from an observation in routine classroom instruction and monitoring of the child's performance that

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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

92 NAC 51-006.03

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

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was done before the child was referred for an evaluation; or

2. Have at least one member of the group described in §300.306(a)(1) 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 §300.300(a), is obtained.

(c) In the case of a child of less than school age or out of school, a group member must observe the child in an environment appropriate for a child of that age.

Section 300.311 Specific documentation for the eligibility determination

(a) For a child suspected of having a specific learning disability, the documentation of the determination of eligibility, as required in §300.306(a)(2), must contain a statement of—

1. Whether the child has a specific learning disability;
2. The basis for making the determination, including an assurance that the determination has been made in accordance with §300.306(c)(1);
3. The relevant behavior, if any, noted during the observation of the child and the relationship of that behavior to the child's academic functioning;
4. The educationally relevant medical findings, if any;
5. Whether—
 - i. The child does not achieve adequately for the child's age or to meet State-

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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(1);

006.03F2g. The determination of the team concerning the effects of a visual, hearing, or motor disability; intellectual disability; emotional disturbance; 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

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approved grade-level standards consistent with §300.309(a)(1); and

ii.

A. The child does not make sufficient progress to meet age or State-approved grade-level standards consistent with §300.309(a)(2)(i); or

B. 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 §300.309(a)(2)(ii);

6. The determination of the group concerning the effects of a visual, hearing, motor disability, or an intellectual disability; emotional disturbance; cultural factors; environmental or economic disadvantage; or limited English proficiency on the child's achievement level; and

7. If the child has participated in a process that assesses the child's response to scientific, research-based intervention—

i. The instructional strategies used and the student-centered data collected; and

ii. The documentation that the child's parents were notified about—

A. The State's policies regarding the amount and nature of student performance data that would be collected and the general education services that would be provided;

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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.

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<p>B. Strategies for increasing the child’s rate of learning; and</p> <p>C. The parents’ right to request an evaluation.</p> <p>(b) Each group member must certify in writing whether the report reflects the member’s conclusion. If it does not reflect the member’s conclusion, the group member must submit a separate statement presenting the member’s conclusions.</p>	

District Considerations for Policy and Procedure Development

Sample district policy statements

[Xyz school district] will collect students’ reading, math, and writing performance data [X] times a year. School teams will make data-based decisions to determine who is in need of general education interventions. Interventions will include evidenced-based practices. The students’ progress will be monitored in the area of the deficit at least twice a month. School teams will review all collected data, and if it is suspected that a student has a specific learning disability, the student will be referred for an evaluation. The parent has a right to request an evaluation at any time. The district will develop procedures to ensure compliance with all Federal and state regulations concerning evaluations. [Cite applicable regulations]. District education and assessment staff will be trained annually on procedures and district-level policies.

Another sample policy

[Xyz school district] will develop and implement a general education intervention manual and SLD evaluation procedures consistent with Federal and state regulations. The manual and procedures will be posted on the district site and will be submitted to the Nebraska Department of Education for approval when developed and when there are substantive revisions.

Procedural considerations

Consider breaking down tasks and identifying who is responsible, timeframes, and forms needed for initial evaluations and reevaluations.

- General intervention decision-making process and team members (including data collection, intervention planning, progress monitoring methods and review)
- Parent request for evaluations
- Evaluation team members and their roles

- Evaluation components
- Written evaluation results and signatures
- Meeting planning (notice, facilitation, etc.)
- Meeting facilitation

Guidance resources

- [OSEP Memo 11-07](#)
- OSEP Letter for SLD and gifted question: [Delisle letter dated 12/20/13 re high cognition \(PDF\)](#)

IX. Reevaluation

IDEA Regulations: Reevaluations

Section 300.303 Reevaluations

(a) General. A public agency must ensure that a reevaluation of each child with a disability is conducted in accordance with §§300.304 through 300.311 —

1. If the public agency determines that the educational or related services needs, including improved academic achievement and functional performance, of the child warrant a reevaluation; or
2. If the child's parent or teacher requests a reevaluation.

(b) Limitation. A reevaluation conducted under paragraph (a) of this section —

1. May occur not more than once a year, unless the parent and the public agency agree otherwise; and
2. Must occur at least once every 3 years, unless the parent and the public agency agree that a reevaluation is unnecessary.

Section 300.305 Additional requirements for evaluations and reevaluations

In case of a reevaluation of a child, whether the child continues to have such a disability, and the educational needs of the child;

- i. The present levels of academic achievement and related developmental needs of the child;
- ii.
 - A. Whether the child needs special education and related services; or
 - B. In the case of a reevaluation of a child, whether the child continues to

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92 NAC 51-006.05

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.

92 NAC 51-006.03

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.

006.06 Review of Existing Evaluation Data

006.06A As part of an initial evaluation (if appropriate) and as part of any reevaluation,

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need special education and related services; and

- iii. 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 IEP of the child and to participate, as appropriate, in the general education curriculum.

(b) Conduct of review. The group described in paragraph (a) of this section may conduct its review without a meeting.

(c) Source of data. The public agency must administer such assessments and other evaluation measures as may be needed to produce the data identified under paragraph (a) of this section.

(d) Requirements if additional data are not needed.

1. 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 public agency must notify the child's parents of—
 - i. That determination and the reasons for the determination; and
 - ii. 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.
2. The public agency is not required to conduct the assessment described in paragraph (d)(1)(ii) of this section unless requested to do so by the child's parents.

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the IEP team and other qualified professionals as appropriate, shall:

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

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

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

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

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

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

IDEA Regulations: Reevaluations	Nebraska Rule 51: Reevaluations
<p>(e) Evaluations before change in eligibility.</p> <ol style="list-style-type: none"> 1. Except as provided in paragraph (e)(2) of this section, a public agency must evaluate a child with a disability in accordance with §§300.304 through 300.311 before determining that the child is no longer a child with a disability. 2. The evaluation described in paragraph (e) (1) of this section is not required before the termination of a child’s eligibility under this part due to graduation from secondary school with a regular diploma, or due to exceeding the age eligibility for FAPE under State law. 3. For a child whose eligibility terminates under circumstances described in paragraph (e)(2) of this section, a public agency must 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. 	<p>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.</p> <p>006.06C The IEP team and other qualified professionals may conduct its review without a meeting</p>

District Considerations for Policy and Procedure Development

Sample district policy statements

All evaluations (initial evaluations and reevaluations will be completed by multidisciplinary qualified professionals and will follow Federal and state regulations. The documented results of the evaluation will be provided to parents and included in student files. The district will purchase a variety of assessment instruments to ensure district teams have access to appropriate measures to complete evaluations. The district will follow publisher guidelines for assessments (professional qualifications, use of materials, interpretations) and will not use outdated tools. All past evaluations will be reviewed before making decisions regarding current evaluation or reevaluation needs. The district will identify procedures to audit a sampling of evaluations to ensure regulations are followed.

Procedural considerations

Consider breaking down tasks and identifying who is responsible, timeframes, and forms needed for initial evaluations and reevaluations.

- Reevaluation planning and completion
 - » When should reevaluations be completed? (e.g., every 3 years, when a parent or team suspects a different disability or change in eligibility, transfer student from out of state, or transfer student with questionable eligibility, etc.)
 - » What are the procedures for students who transfer into a school from within district, state, and out of state?
 - » How and when are file reviews conducted? What forms are used and who completes them?
 - » Who is responsible for communicating reevaluation needs to parent?
 - » How are team decisions documented?
 - » How are consents for evaluation documented?
 - » What are the steps for assessment planning if applicable?
 - » What are the steps if a parent refuses assessment as part of the reevaluation?
 - » How are results documented and reported to the team?
 - » Who acts as the interpreter of test results?
 - » Who is responsible for the notices and meeting documents? (e.g., invitation, verification document, prior written notice, etc.)

X. Independent Education Evaluations

IDEA Regulations: Independent Education Evaluations

Section 300.502 Independent educational evaluation

(a) General.

1. The parents of a child with a disability have the right under this part to obtain an independent educational evaluation of the child, subject to paragraphs (b) through (e) of this section.
2. Each public agency must provide to parents, upon request for an independent educational evaluation, information about where an independent educational evaluation may be obtained, and the agency criteria applicable for independent educational evaluations as set forth in paragraph (e) of this section.
3. For the purposes of this subpart —
 - i. Independent educational evaluation means an evaluation conducted by a qualified examiner who is not employed by the public agency responsible for the education of the child in question; and
 - ii. Public expense means that the public agency either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parent, consistent with §300.103.

(b) Parent right to evaluation at public expense.

1. A parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the public agency, subject to the conditions in paragraphs (b)(2) through (4) of this section.

Nebraska Rule 51: Independent Education Evaluations

92 NAC 51-006.07

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

IDEA Regulations: Independent Education Evaluations

2. If a parent requests an independent educational evaluation at public expense, the public agency must, without unnecessary delay, either—
 - i. File a due process complaint to request a hearing to show that its evaluation is appropriate; or
 - ii. Ensure that an independent educational evaluation is provided at public expense, unless the agency demonstrates in a hearing pursuant to §§300.507 through 300.513 that the evaluation obtained by the parent did not meet agency criteria.
3. If the public agency files a due process complaint notice to request a hearing and the final decision is that the agency's evaluation is appropriate, the parent still has the right to an independent educational evaluation, but not at public expense.
4. If a parent requests an independent educational evaluation, the public agency may ask for the parent's reason why he or she objects to the public evaluation. However, the public 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 filing a due process complaint to request a due process hearing to defend the public evaluation.
5. A parent is entitled to only one independent educational evaluation at public expense each time the public agency conducts an evaluation with which the parent disagrees.

Nebraska Rule 51: Independent Education Evaluations

- 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.

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(c) Parent-initiated evaluations. If the parent obtains an independent educational evaluation at public expense or shares with the public agency an evaluation obtained at private expense, the results of the evaluation —

1. Must be considered by the public agency, if it meets agency criteria, in any decision made with respect to the provision of FAPE to the child; and
2. May be presented by any party as evidence at a hearing on a due process complaint under subpart E of this part regarding that child.

(d) Requests for evaluations by hearing officers. If a hearing officer requests an independent educational evaluation as part of a hearing on a due process complaint, the cost of the evaluation must be at public expense.

(e) Agency criteria.

1. 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 public agency uses when it initiates an evaluation, to the extent those criteria are consistent with the parent's right to an independent educational evaluation.
2. Except for the criteria described in paragraph (e)(1) of this section, a public agency may not impose conditions or timelines related to obtaining an independent educational evaluation at public expense.

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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.

District Considerations for Policy and Procedure Development

Sample district policy statement

The parent, guardian, or appointed surrogate will be notified of procedural safeguards consistent with Federal and state regulations (34 CFR § 300.502 and 92 NAC 51-006.07) associated with Individual Education Evaluations (IEEs) at the time of evaluation. When a parent, guardian, or appointed surrogate disagrees with the outcomes of an evaluation and requests an IEE, [xyz school district] will respond to the request within [X] number of days with a decision to move forward with the IEE or initiate a hearing to determine the appropriateness of the evaluation (consistent with 92 NAC 51-006.07D). The parent, guardian, or appointed surrogate will be given written notice of the decision. The district will maintain procedures outlining criteria associated with the evaluation and provide information to the parent upon request. The school team will consider independent evaluations (whether provided at parent or public expense) when making decisions.

Procedural Considerations

Outline steps and information for the following:

- Explanation and definitions
- Request process
- Decisionmaking regarding requests
- Pending IEE impact on services
- Notice of decisions procedures and associated parent options
- Location limits and information regarding evaluation locations
- Cost criteria and steps to complete the IEE
- Examiner qualifications
- School based observations by outside examiner
- Team considerations regarding evaluations

Guidance resources

- (OSEP) [Letter to Jennifer Carroll on independent educational evaluations \(IEE\). \(PDF\)](#)
- [Requesting an Independent Evaluation of Your Child | Center for Parent Information and Resources \(parentcenterhub.org\)](#)
- [Right to Obtain an Independent Educational Evaluation | Center for Parent Information and Resources \(parentcenterhub.org\)](#)

XI. Disability Verification

IDEA Regulations: Disability Definitions

Section 300.8 Child with a disability

(a) General.

1. Child with a disability means a child evaluated in accordance with §§300.304 through 300.311 as having an intellectual disability, a hearing impairment (including deafness), a speech or language impairment, a visual impairment (including blindness), a serious emotional disturbance (referred to in this part as “emotional disturbance”), an orthopedic impairment, autism, traumatic brain injury, an other health impairment, a specific learning disability, deaf-blindness, or multiple disabilities, and who, by reason thereof, needs special education and related services.
2.
 - i. Subject to paragraph (a)(2)(ii) of this section, if it is determined, through an appropriate evaluation under §§300.304 through 300.311, that a child has one of the disabilities identified in paragraph (a)(1) of this section, but only needs a related service and not special education, the child is not a child with a disability under this part.
 - ii. If, consistent with §300.39(a)(2), the related service required by the child is considered special education rather than a related service under State standards, the child would be determined to be a child with a disability under paragraph (a)(1) of this section.

Nebraska Rule 51: Disability Verification

Autism

92 NAC 51-006.04B-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 an emotional disturbance as defined in 92 NAC 51-006.04E.

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.

Deaf-Blindness

92 NAC 51-006.04C

must have concomitant hearing and visual impairments, the combination of which causes:

006.04C1a. Severe communication needs; and

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(b) Children aged three through nine experiencing **developmental delays**. Child with a disability for children aged three through nine (or any subset of that age range, including ages three through five), may, subject to the conditions described in §300.111(b), include a child—

1. Who is experiencing developmental delays, as defined by the State and as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas: Physical development, cognitive development, communication development, social or emotional development, or adaptive development; and
2. Who, by reason thereof, needs special education and related services.

(c) Definitions of disability terms. The terms used in this definition of a child with a disability are defined as follows:

1.
 - i. **Autism** means a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three, that adversely affects a child's educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences.
 - ii. Autism does not apply if a child's educational performance is adversely

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006.04C1b. Other developmental and educational needs.

006.04C1c. The severity of these needs is such that they cannot be accommodated in special education programs solely for children with deafness or blindness.

Developmental Delay **92 NAC 51-006.04D**

006.04D1. 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:

006.04D1a. Cognitive development,

006.04D1b. Physical development,

006.04D1c. Communication development,

006.04D1d. Social or emotional development,

006.04D1e. Adaptive behavior or skills development, or

006.04D1f. A diagnosed physical or mental condition that has a high probability of resulting in a substantial delay in function in one or more of such areas.

006.04D2. Developmental delay may be considered as one possible eligibility category for children age three through the school year in which the child reaches age eight.

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affected primarily because the child has an emotional disturbance, as defined in paragraph (c)(4) of this section.

iii. A child who manifests the characteristics of autism after age three could be identified as having autism if the criteria in paragraph (c)(1)(i) of this section are satisfied.

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

3. **Deafness** means a hearing impairment that is so severe that the child is impaired in processing linguistic information through hearing, with or without amplification, that adversely affects a child's educational performance.

4.

i. **Emotional disturbance** means a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a child's educational performance:

- A. An inability to learn that cannot be explained by intellectual, sensory, or health factors.
- B. An inability to build or maintain satisfactory interpersonal relationships with peers and teachers.

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Emotional Disturbance

92 NAC 51-006.04E

006.04E1. To qualify for special education services in the category of emotional disturbance, 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:

006.04E1a. An inability to learn that cannot be explained by intellectual, sensory, or health factors;

006.04E1b. An inability to build or maintain satisfactory interpersonal relationships with peers and teachers;

006.04E1c. Inappropriate types of behavior or feelings under normal circumstances;

006.04E1d. A general pervasive mood of unhappiness or depression; or

006.04E1e. A tendency to develop physical symptoms or fears associated with personal or school problems.

006.04E2. The term includes schizophrenia. The term does not apply to children with social maladjustments, unless it is determined that they have an emotional disturbance.

Hearing Impairment

92 NAC 51-006.04F

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

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- C. Inappropriate types of behavior or feelings under normal circumstances.
 - D. A general pervasive mood of unhappiness or depression.
 - E. A tendency to develop physical symptoms or fears associated with personal or school problems.
- ii. Emotional disturbance includes schizophrenia. The term does not apply to children who are socially maladjusted, unless it is determined that they have an emotional disturbance under paragraph (c)(4)(i) of this section.
5. **Hearing impairment** means an impairment in hearing, whether permanent or fluctuating, that adversely affects a child's educational performance but that is not included under the definition of deafness in this section.
6. **Intellectual disability** means 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 performance. The term "intellectual disability" was formerly termed "mental retardation."
7. **Multiple disabilities** means concomitant impairments (such as intellectual disability-blindness or intellectual disability-orthopedic impairment), the combination of which causes such severe educational needs that they cannot be accommodated in special education programs solely for one of the impairments. Multiple disabilities does not include deaf-blindness.

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006.04F1b. Is permanent or fluctuating, and

006.04F1c. Adversely affects the child's 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 Neb. Rev. Stat. §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).

Intellectual Disability **92 NAC 51-006.04G**

006.04G1. To qualify for special education services in the category of Intellectual Disability, 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 performance.

Multiple Impairments **92 NAC 51-006.04H**

006.04H1. To qualify for special education services in the category of Multiple Impairments, the child must have concomitant impairments (such as intellectual disability-visual impairment, intellectual disability-orthopedic impairment), the combination of which causes such severe educational needs that they cannot be accommodated in special education programs solely for one of the impairments.

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- 8. Orthopedic impairment** means a severe orthopedic impairment that adversely affects a child’s educational performance. The term includes impairments caused by a congenital anomaly, impairments caused by disease (e.g., poliomyelitis, bone tuberculosis), and impairments from other causes (e.g., cerebral palsy, amputations, and fractures or burns that cause contractures).
- 9. Other health impairment** means having limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that—
- i. Is due to chronic or acute health problems such as asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, and Tourette syndrome; and
 - ii. Adversely affects a child’s educational performance.
- 10. Specific learning disability—**
- i. General. Specific learning disability means 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 the imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations, including conditions such

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

Orthopedic Impairment

92 NAC 51-006.04I

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 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).

Other Health Impairment

92 NAC 51-006.04J

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 performance such as:

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

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as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia.

- ii. Disorders not included. Specific learning disability does not include learning problems that are primarily the result of visual, hearing, or motor disabilities, of intellectual disability, of emotional disturbance, or of environmental, cultural, or economic disadvantage.

11. **Speech or language impairment**

means a communication disorder, such as stuttering, impaired articulation, a language impairment, or a voice impairment, that adversely affects a child's educational performance.

- 12. Traumatic brain injury** means an acquired injury to the brain caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects a child's educational performance. Traumatic brain injury applies to open or closed head injuries resulting in impairments in one or more areas, such as cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem-solving; sensory, perceptual, and motor abilities; psychosocial behavior; physical functions; information processing; and speech. Traumatic brain injury does not apply to brain injuries that are congenital or degenerative, or to brain injuries induced by birth trauma.

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Specific Learning Disability

92 NAC 51-006.04K

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 intellectual disabilities; of emotional disturbance; 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

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13. Visual impairment including blindness means an impairment in vision that, even with correction, adversely affects a child's educational performance. The term includes both partial sight and blindness.

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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(1). 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:

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Nebraska Rule 51: Disability Verification

006.04K4a. A visual, hearing, or motor disability;

006.04K4b. Intellectual disability;

006.04K4c. Emotional disturbance;

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.

IDEA Regulations: Disability Definitions

Nebraska Rule 51: Disability Verification

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.

Speech-Language Impairment**92 NAC 51-006.04L**

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 performance.

Traumatic Brain Injury**92 NAC 51-006.04M**

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.

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;

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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.

Visual Impairment Including Blindness

92 NAC 51-006.04N

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 performance.

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

District Considerations for Policy and Procedure Development

Sample district policy statement

A multidisciplinary team will identify whether a child is eligible for special education services after the completion of a comprehensive evaluation based on disability categories identified by state and Federal regulations (34 CFR §300.8; 92 NAC 51-006.04). The district [does/does not] include the category of developmental delay.

Procedural considerations

- What professional development is provided on disability definitions to staff designated as interpreter of test results as well as LEA designees to help them adequately represent their role?
- What professional development is needed for other special education staff and other team members regarding disability definition?
- What procedures are needed to ensure all areas of a disability are included in evaluations before eligibility decisions are made?
- Which assessment specialists are needed (at minimum) as part of the different disability assessment teams?
- What processes are in place to include all team members in the decision on eligibility?
- How does the district handle when team members do not agree?

Guidance resource

- [Eligibility Guidelines – Nebraska Department of Education](#)

XII. Eligibility

IDEA Regulations: Eligibility	Nebraska Rule 51: Eligibility
<p data-bbox="100 382 724 411">Section 300.306 Determination of eligibility</p> <p data-bbox="126 441 683 554">(a) General. Upon completion of the administration of assessments and other evaluation measures—</p> <ol data-bbox="136 583 773 995" style="list-style-type: none"><li data-bbox="136 583 773 814">1. A group of qualified professionals and the parent of the child determines whether the child is a child with a disability, as defined in §300.8, in accordance with paragraph (c) of this section and the educational needs of the child; and<li data-bbox="136 844 740 995">2. The public agency provides a copy of the evaluation report and the documentation of determination of eligibility at no cost to the parent. <p data-bbox="126 1016 769 1129">(b) Special rule for eligibility determination. A child must not be determined to be a child with a disability under this part—</p> <ol data-bbox="136 1159 760 1843" style="list-style-type: none"><li data-bbox="136 1159 760 1759">1. If the determinant factor for that determination is—<ol data-bbox="178 1264 760 1705" style="list-style-type: none"><li data-bbox="178 1264 760 1579">i. Lack of appropriate instruction in reading, including the essential components of reading instruction (as defined in section 1208(3) of the ESEA as such section was in effect on the day before the date of enactment of the Every Student Succeeds Act (December 9, 2015));<li data-bbox="178 1608 760 1675">ii. Lack of appropriate instruction in math; or<li data-bbox="178 1705 760 1759">iii. Limited English proficiency; and<li data-bbox="136 1768 717 1843">2. If the child does not otherwise meet the eligibility criteria under §300.8(a).	<p data-bbox="821 382 1081 411">92 NAC 51-006.03</p> <p data-bbox="841 441 1481 1029">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 IEP.</p> <p data-bbox="841 1058 1432 1239">006.03B. For children attending nonpublic schools, an administrator of the nonpublic school or a designated representative of the nonpublic school shall be a member of the MDT.</p> <p data-bbox="841 1268 1458 1659">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.</p> <p data-bbox="841 1688 1471 1869">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.</p>

IDEA Regulations: Eligibility

(c) Procedures for determining eligibility and educational need.

1. In interpreting evaluation data for the purpose of determining if a child is a child with a disability under §300.8, and the educational needs of the child, each public agency must—
 - i. Draw upon information from a variety of sources, including aptitude and achievement tests, parent input, and teacher recommendations, as well as information about the child’s physical condition, social or cultural background, and adaptive behavior; and
 - ii. Ensure that information obtained from all of these sources is documented and carefully considered.
2. 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 §§300.320 through 300.324.

Nebraska Rule 51: Eligibility

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.

006.03G. 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.

District Considerations for Policy and Procedure Development

Sample district policy statement

Eligibility for services will be determined by a multidisciplinary team based on the results of a comprehensive evaluation. The team is responsible for ruling out the determinant factor is due to a lack of appropriate instruction in reading or math or due to lack of English proficiency. The team will prepare a written report documenting all evaluation findings in accordance with state and Federal requirements. The district will develop procedures determining who is responsible for providing the parent with written report and the documentation of such actions. When a student is not eligible for services, the school multidisciplinary team will determine if general education interventions or strategies are needed.

Policy considerations

- Indicate that all decisions are made by a team of qualified professionals and include the parent, guardian, or appointed surrogate. Procedures will be developed to ensure required team members are present, documentation reflects decisions, and all needed tasks are completed.

Procedural consideration

- How will the team document that they considered and ruled out lack of instruction as the determining factor?
- How will the results of the evaluation be communicated to the team, including the parent, guardian, or appointed surrogate?
- Who will ensure that the evaluation draws upon a variety of sources as outlined in Federal and state regulations before decisions are made?
- Are there any forms created or needed to confirm verification of criteria?
- Do procedures use language that sounds like predetermination of decisions? If so, revise them to prevent predetermination of outcomes.
- How will the district or school ensure there is no disproportionality due to inappropriate identification? What data should be reviewed annually?

Guidance resources

- [Eligibility Guidelines – Nebraska Department of Education](#)

XIII. Consent (Evaluation and Placement)

IDEA Regulations: Parent Consent	Nebraska Rule 51: Parent Consent
<p>Section 300.9 Consent.</p> <p>Consent means that—</p> <p>(a) 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 through another mode of communication;</p> <p>(b) The parent understands and agrees in writing to the carrying out of the activity for which his or her consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom; and</p> <p>(c)</p> <ol style="list-style-type: none">1. The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time.2. 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).3. 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 public agency 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.	<p>92 NAC 51-003.09</p> <p>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.</p> <p>Parental Consent 92 NAC 51-009.08</p> <p>009.08A. Parental Consent for Initial Evaluations</p> <p>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 51-003.08 must obtain informed consent, consistent with 92 NAC 51-003.09, from the parent of the child before conducting the evaluation.</p>

IDEA Regulations: Parent Consent

Section 300.300 Parental consent

(a) Parental consent for initial evaluation.

1.
 - i. The public agency proposing to conduct an initial evaluation to determine if a child qualifies as a child with a disability under §300.8 must, after providing notice consistent with §§300.503 and 300.504, obtain informed consent, consistent with §300.9, from the parent of the child before conducting the evaluation.
 - ii. Parental consent for initial evaluation must not be construed as consent for initial provision of special education and related services.
 - iii. The public agency 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.
2. For initial evaluations only, if the child is a ward of the State and is not residing with the child's parent, the public agency 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—
 - i. Despite reasonable efforts to do so, the public agency cannot discover the whereabouts of the parent of the child;
 - ii. The rights of the parents of the child have been terminated in accordance with State law; or

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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

IDEA Regulations: Parent Consent

- iii. 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.
- 3.**
- i. 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 paragraph (a) (1) of this section, or the parent fails to respond to a request to provide consent, the public agency may, but is not required to, pursue the initial evaluation of the child by utilizing the procedural safeguards in subpart E of this part (including the mediation procedures under §300.506 or the due process procedures under §§300.507 through 300.516), if appropriate, except to the extent inconsistent with State law relating to such parental consent.
 - ii. The public agency does not violate its obligation under §300.111 and §§300.301 through 300.311 if it declines to pursue the evaluation.
- (b) Parental consent for services.**
- 1. A public agency 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.
 - 2. The public agency must make reasonable efforts to obtain informed consent from the

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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.

009.08B1a. 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.

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

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parent for the initial provision of special education and related services to the child.

3. 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 public agency—
 - i. May not use the procedures in subpart E of this part (including the mediation procedures under §300.506 or the due process procedures under §§300.507 through 300.516) in order to obtain agreement or a ruling that the services may be provided to the child;
 - ii. Will not be considered to be in violation of the requirement to make 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
 - iii. Is not required to convene an IEP Team meeting or develop an IEP under §§300.320 and 300.324 for the child.
4. 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 public agency—
 - i. May not continue to provide special education and related services to the child, but must provide prior written notice in accordance with §300.503 before ceasing the provision of special education and related services;

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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

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- ii. May not use the procedures in subpart E of this part (including the mediation procedures under §300.506 or the due process procedures under §§300.507 through 300.516) in order to obtain agreement or a ruling that the services may be provided to the child;
- iii. Will not be considered to be in violation of the requirement to make FAPE available to the child because of the failure to provide the child with further special education and related services; and
- iv. Is not required to convene an IEP Team meeting or develop an IEP under §§300.320 and 300.324 for the child for further provision of special education and related services.

(c) Parental consent for reevaluations.

- 1. Subject to paragraph (c)(2) of this section, each public agency—
 - i. Must obtain informed parental consent, in accordance with §300.300(a)(1), prior to conducting any reevaluation of a child with a disability.
 - ii. If the parent refuses to consent to the reevaluation, the public agency may, but is not required to, pursue the reevaluation by using the consent override procedures described in paragraph (a)(3) of this section.
 - iii. The public agency does not violate its obligation under §300.111 and §§300.301 through 300.311 if it declines to pursue the evaluation or reevaluation.

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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

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2. The informed parental consent described in paragraph (c)(1) of this section need not be obtained if the public agency can demonstrate that—
 - i. It made reasonable efforts to obtain such consent; and
 - ii. The child’s parent has failed to respond.
- (d) Other consent requirements.**
1. Parental consent is not required before—
 - i. Reviewing existing data as part of an evaluation or a reevaluation; or
 - ii. 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.
 2. In addition to the parental consent requirements described in paragraphs (a), (b), and (c) of this section, a State may require parental consent for other services and activities under this part if it ensures that each public agency in the State establishes and implements effective procedures to ensure that a parent’s refusal to consent does not result in a failure to provide the child with FAPE.
 3. A public agency may not use a parent’s refusal to consent to one service or activity under paragraphs (a), (b), (c), or (d)(2) of this section to deny the parent or child any other service, benefit, or activity of the public agency, except as required by this part.

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child any other service, benefit, or activity of the school district or approved cooperative, except as required by this Chapter.

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.

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4.
 - i. If a parent of a child who is home schooled or placed in a private 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 public agency may not use the consent override procedures (described in paragraphs (a)(3) and (c)(1) of this section); and
 - ii. The public agency is not required to consider the child as eligible for services under §§300.132 through 300.144.
5. To meet the reasonable efforts requirement in paragraphs (a)(1)(iii), (a)(2)(i), (b)(2), and (c)(2)(i) of this section, the public agency must document its attempts to obtain parental consent using the procedures in §300.322(d).

District Considerations for Policy and Procedure Development

Sample district policy statements

[Xyz school district] staff will provide the parent, guardian, or appointed surrogate (when applicable) with information regarding decisions to evaluate (what they are proposing or rejecting, reasons for decisions, all options considered, why other options were rejected, what information was used to make decisions, and any other relevant information). Staff will review evaluation assessment plans with parents and will seek written permission for evaluation on the district consent form which will provide state and Federal requirements consistent with 300.9 and 92 51-009.08. Informed consent for special education placement will be obtained on the IEP form before services are initiated. Revocation of consent for evaluation or services must be documented by the parent in writing. (Consider adding in a statement regarding “reasonable efforts” [see Federal and state rule above] and if you do so, define what the district will consider as “reasonable efforts” within the policy).

Procedural considerations

- Who is responsible for explaining and providing the parent, guardian, or appointed surrogate with a copy of their procedural safeguards at the time of consent?
- What are the needed steps if the parent, guardian, or appointed surrogate is not native English speaker or his or her primary language is not English?
- What are the needed steps if the parent, guardian, or appointed surrogate does not come in person to meetings in order to obtain informed consent and maintain FERPA?
- What steps should teams follow if the parent, guardian, or appointed surrogate is nonresponsive?
- Are the procedures different for students who are in private school or home school?
- What is needed for a consent override situation? Who needs to be involved?
 - » For consent for evaluation?
 - » For consent for initial provision of special education and related services

Guidance resources

- [Center for Parent Information and Resources: Parent Consent in Special Education](#)
- [OSEP Policy Documents Regarding the Education of Infants, Toddlers, Children and Youth with Disabilities: Evaluations, Parental Consent, and Reevaluations](#)

XIV. Free Appropriate Public Education (FAPE)

IDEA Regulations: FAPE

Section 300.17 Free appropriate public education

Free appropriate public education or FAPE means special education and related services that—

- (a) Are provided at public expense, under public supervision and direction, and without charge;
- (b) Meet the standards of the SEA, including the requirements of this part;
- (c) Include an appropriate preschool, elementary school, or secondary school education in the State involved; and
- (d) Are provided in conformity with an individualized education program (IEP) that meets the requirements of [§§300.320 through 300.324](#) [Exception for prior local plans, Notification of LEA or State agency in case of ineligibility, LEA and State agency compliance, Joint establishment of eligibility, & requirements for establishing eligibility].

Section 300.101 Free appropriate public education (FAPE).

(a) General. A free appropriate public education must be available to all children residing in the State between the ages of 3 and 21, inclusive, including children with disabilities who have been suspended or expelled from school, as provided for in §300.530(d).

(b) FAPE for children beginning at age 3.

1. Each State must ensure that—
 - i. The obligation to make FAPE available to each eligible child residing in the State begins no later than the child's third birthday; and

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003.24 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

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 child 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 children 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,

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ii. An IEP or an IFSP is in effect for the child by that date, in accordance with §300.323(b).

2. If a child's third birthday occurs during the summer, the child's IEP Team shall determine the date when services under the IEP or IFSP will begin.

(c) Children advancing from grade to grade.

1. Each State must 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.

2. The determination that a child described in paragraph (a) of this section is eligible under this part, must be made on an individual basis by the group responsible within the child's LEA for making eligibility determinations.

300.102 Limitation—exception to FAPE for certain ages.

(a) General. The obligation to make FAPE available to all children with disabilities does not apply with respect to the following:

1. Children aged 3, 4, 5, 18, 19, 20, or 21 in a State to the extent that its application to those children would be inconsistent with State law or practice, or the order of any court, respecting the provision of public education to children of those ages.

2.

i. Children aged 18 through 21 to the extent that State law does not require that special education and related services under Part B of the Act be

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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 children 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).

007.07C Services

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

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provided to students with disabilities who, in the last educational placement prior to their incarceration in an adult correctional facility—

A. Were not actually identified as being a child with a disability under §300.8; and

B. Did not have an IEP under Part B of the Act.

ii. The exception in paragraph (a)(2)(i) of this section does not apply to children with disabilities, aged 18 through 21, who—

A. Had been identified as a child with a disability under §300.8 and had received services in accordance with an IEP, but who left school prior to their incarceration; or

B. Did not have an IEP in their last educational setting, but who had actually been identified as a child with a disability under §300.8.

3.

i. Children with disabilities who have graduated from high school with a regular high school diploma.

ii. The exception in paragraph (a)(3)(i) of this section does not apply to children who have graduated from high school but have not been awarded a regular high school diploma.

iii. Graduation from high school with a regular high school diploma constitutes a change in placement, requiring written prior notice in accordance with §300.503.

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007.07C2a(1) The child is enrolled full time in a separate facility; or

007.07C2a(2) 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.

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

007.07C3 Each school district or approved cooperative shall ensure assistive technology devices or assistive technology services, or both, as defined in 92 NAC 51-003.02 and 003.03 are made available to any child with a disability if required, as part of the child's:

007.07C3a Special education under 92 NAC 51-003.56;

007.07C3b Related services under 92 NAC 51-003.49; or **007.07C3c** Supplementary aids and services under 92 NAC 51-003.59 and 008.01A.

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iv. As used in paragraphs (a)(3)(i) through (iii) of this section, the term regular high school diploma means the standard high school diploma awarded to the preponderance of students in the State that is fully aligned with State standards, or a higher diploma, except that a regular high school diploma shall not be aligned to the alternate academic achievement standards described in section 1111(b)(1)(E) of the ESEA. A regular high school diploma does not include a recognized equivalent of a diploma, such as a general equivalency diploma, certificate of completion, certificate of attendance, or similar lesser credential.

4. Children with disabilities who are eligible under subpart H of this part, but who receive early intervention services under Part C of the Act.

(b) Documents relating to exceptions. The State must assure that the information it has provided to the Secretary regarding the exceptions in paragraph (a) of this section, as required by §300.700 (for purposes of making grants to States under this part), is current and accurate.

300.103 FAPE—methods and payments.

(a) Each State may use whatever State, local, Federal, and private sources of support that are available in the State to meet the requirements of this part. For example, if it is necessary to place a child with a disability in a residential facility, a State could use joint agreements between the agencies involved for sharing the cost of that placement.

(b) Nothing in this part relieves an insurer or similar third party from an otherwise valid obligation to provide or to pay for services provided to a child with a disability.

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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.

007.08 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

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(c) Consistent with §300.323(c), the State must ensure that there is no delay in implementing a child's IEP, including any case in which the payment source for providing or paying for special education and related services to the child is being determined.

Section 300.104 Residential placement

If placement in a public or private residential program is necessary to provide special education and related services to a child with a disability, the program, including non-medical care and room and board, must be at no cost to the parents of the child.

Section 300.105 Assistive technology.

(a) Each public agency must ensure that assistive technology devices or assistive technology services, or both, as those terms are defined in §§300.5 and 300.6, respectively, are made available to a child with a disability if required as a part of the child's—

1. Special education under §300.39;
2. Related services under §300.34; or
3. Supplementary aids and services under §§300.42 and 300.114(a)(2)(ii).

(b) 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 FAPE.

Section 300.106 Extended school year services.

(a) General.

1. Each public agency must ensure that extended school year services are available

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child's IEP from the previous school district or approved

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:

012.09 Children with Disabilities Who Are Covered by Public Benefits or Insurance

012.09B With regard to services required to provide FAPE to an eligible child under Part B, the school district or approved cooperative:

012.09B1 May not require parents to sign up for or enroll in public benefits or insurance programs in order for their child to receive FAPE under this Chapter.

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

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as necessary to provide FAPE, consistent with paragraph (a)(2) of this section.

2. Extended school year services must be provided only if a child's IEP Team determines, on an individual basis, in accordance with §§300.320 through 300.324, that the services are necessary for the provision of FAPE to the child.
3. In implementing the requirements of this section, a public agency may not—
 - i. Limit extended school year services to particular categories of disability; or
 - ii. Unilaterally limit the type, amount, or duration of those services.

(b) Definition. As used in this section, the term extended school year services means special education and related services that—

1. Are provided to a child with a disability—
 - i. Beyond the normal school year of the public agency;
 - ii. In accordance with the child's IEP; and
 - iii. At no cost to the parents of the child; and
2. Meet the standards of the SEA.

Section 300.107 Nonacademic services.

The State must ensure the following:

(a) Each public agency must 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 children with disabilities an equal opportunity for participation in those services and activities.

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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.

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

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(1) 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.

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(b) Nonacademic and extracurricular services and activities may include counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the public agency, referrals to agencies that provide assistance to individuals with disabilities, and employment of students, including both employment by the public agency and assistance in making outside employment available.

Section 300.108 Physical education.

The State must ensure that public agencies in the State comply with the following:

(a) General. Physical education services, specially designed if necessary, must be made available to every child with a disability receiving FAPE, unless the public agency enrolls children without disabilities and does not provide physical education to children without disabilities in the same grades.

(b) Regular physical education. Each child with a disability must be afforded the opportunity to participate in the regular physical education program available to nondisabled children unless—

1. The child is enrolled full time in a separate facility; or
2. The child needs specially designed physical education, as prescribed in the child's IEP.

(c) Special physical education. If specially designed physical education is prescribed in a child's IEP, the public agency responsible for the education of that child must provide the services directly or make arrangements for those services to be provided through other public or private programs.

(d) Education in separate facilities. The public agency responsible for the education of a child

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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:

015.03C3 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.

003.23 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.

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.

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with a disability who is enrolled in a separate facility must ensure that the child receives appropriate physical education services in compliance with this section.

Section 300.110 Program options.

The State must ensure that each public agency takes steps to ensure that its children with disabilities have available to them the variety of educational programs and services available to nondisabled children in the area served by the agency, including art, music, industrial arts, consumer and homemaking education, and vocational education.

Section 300.113 Routine checking of hearing aids and external components of surgically implanted medical devices.

(a) Hearing aids. Each public agency must ensure that hearing aids worn in school by children with hearing impairments, including deafness, are functioning properly.

(b) External components of surgically implanted medical devices.

1. Subject to paragraph (b)(2) of this section, each public agency must ensure that the external components of surgically implanted medical devices are functioning properly.
2. For a child with a surgically implanted medical device who is receiving special education and related services under this part, a public agency 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).

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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 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.

District Considerations for Policy and Procedure Development

Sample district policy statements

[Xyz school district] will provide a free appropriate public education to children with disabilities eligible for special education services in accordance with state and Federal regulations. An IEP outlines each student's individual education plan and will be reasonably designed to meet the unique educational needs of the student.

Procedural considerations

- What procedures are needed to ensure goals and services are individualized and reasonably calculated? For example, during IEP development procedures, identify steps for goal building and service decisionmaking. Example steps include the following:
 - » Summarize multiple sources of data reflecting the student's strengths and weaknesses (e.g., evaluation and assessments results, observation, progress toward annual goals, etc.), that is, present levels of performance.
- What procedures are needed to ensure accommodation/modifications and assistive technology needs are considered by the team and are tailored to appropriately meet the student's needs?
- Determine a reasonably measurable goal based on the student's current data. Review the [Questions and Answers \(Q&A\): IDEA Funding & U.S. Supreme Court Case Decision Endrew F. v. Douglas County School District Re-1. – December 2017](#). The guidance includes the following statement:

“. . . the standard for determining whether an IEP is sufficient to provide FAPE is whether the child is offered an IEP reasonably calculated to enable the child to make progress that is appropriate in light of the child's circumstances. At least once a year, IEP Teams must review the child's IEP to determine whether the annual goals for the child are being achieved. The IEP Team also may meet periodically throughout the course of the school year, if circumstances warrant it. For example, if a child is not making expected progress toward his or her annual goals, the IEP Team must revise, as appropriate, the IEP to address the lack of progress.”
- Consider embedding FAPE reviews as part of district self-monitoring procedures of IEP. For example, are the IEPs individualized (e.g., not all students in the same class or grade have the same IEP)?
- What procedures are needed to ensure FAPE for transfer students and students attending nonpublic schools?
- What procedures are needed to ensure access to nonacademic and extracurricular services with the appropriate accommodations/modifications?

Guidance resources

- [Shortened Days Guidance Document](#)
- [Guidelines for Educational Interpreters](#)
- [Dear Colleague Letter on the Inclusion of Behavioral Supports in Individualized Education Programs \(PDF\)](#)
- [Questions and Answers \(Q&A\): IDEA Funding & U.S. Supreme Court Case Decision Endrew F. v. Douglas County School District Re-1. – December 2017 \(PDF\)](#)

XV. Placement and LRE

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Section 300.327 Educational placements.

Consistent with §300.501(c), each public agency must ensure that the parents of each child with a disability are members of any group that makes decisions on the educational placement of their child.

Section 300.114 LRE requirements

General.

1. Except as provided in §300.324(d)(2) (regarding children with disabilities in adult prisons), the State must have in effect policies and procedures to ensure that public agencies in the State meet the LRE requirements of this section and §§300.115 through 300.120.
 2. Each public agency must ensure that—
 - i. To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are nondisabled; and
 - ii. Special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only if 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.
- (b) Additional requirement—State funding mechanism—**
1. General.
 - i. A State funding mechanism must not result in placements that violate the

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Least Restrictive Environment (LRE) Requirements

92 NAC 51-008.01

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.

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

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requirements of paragraph (a) of this section; and

- ii. A State must not use a funding mechanism by which the State distributes funds on the basis of the type of setting in which a child is served that will result in the failure to provide a child with a disability FAPE according to the unique needs of the child, as described in the child's IEP.

2. Assurance. If the State does not have policies and procedures to ensure compliance with paragraph (b)(1) of this section, the State must provide the Secretary an assurance that the State will revise the funding mechanism as soon as feasible to ensure that the mechanism does not result in placements that violate that paragraph.

Section 300.115 Continuum of alternative placements.

(a) Each public agency must ensure that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services.

(b) The continuum required in paragraph (a) of this section must—

1. Include the alternative placements listed in the definition of special education under §300.39 (instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions); and
2. Make provision for supplementary services (such as resource room or itinerant

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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 requires some other arrangement, the child must be

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instruction) to be provided in conjunction with regular class placement.

Section 300.116 Placements.

In determining the educational placement of a child with a disability, including a preschool child with a disability, each public agency must ensure that—

(a) The placement decision—

1. 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
2. Is made in conformity with the LRE provisions of this subpart, including §§300.114 through 300.118;

(b) The child's placement—

1. Is determined at least annually;
2. Is based on the child's IEP; and
3. Is as close as possible to the child's home;

(c) Unless the IEP of a child with a disability requires some other arrangement, the child is educated in the school that he or she would attend if nondisabled;

(d) In selecting the LRE, consideration is given to any potential harmful effect on the child or on the quality of services that he or she needs; and

(e) A child with a disability is not removed from education in age-appropriate regular classrooms solely because of needed modifications in the general education curriculum.

Section 300.117 Nonacademic settings

In providing or arranging for the provision of nonacademic and extracurricular services

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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.

Definition of individualized education program

003.31 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

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

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and activities, including meals, recess periods, and the services and activities set forth in §300.107, each public agency must ensure that each child with a disability participates with nondisabled children in the extracurricular services and activities to the maximum extent appropriate to the needs of that child. The public agency must ensure that each child with a disability has the supplementary aids and services determined by the child's IEP Team to be appropriate and necessary for the child to participate in nonacademic settings.

Section 300.118 Children in public or private institutions

Except as provided in §300.149(d) (regarding agency responsibility for general supervision of some individuals in adult prisons), an SEA must ensure that §300.114 is effectively implemented, including, if necessary, making arrangements with public and private institutions (such as a memorandum of agreement or special implementation procedures).

Section 300.119 Technical assistance and training activities.

Each SEA must carry out activities to ensure that teachers and administrators in all public agencies—

- (a) Are fully informed about their responsibilities for implementing §300.114; and
- (b) Are provided with technical assistance and training necessary to assist them in this effort.

Section 300.320 Definition of individualized education program

General. As used in this part, the term individualized education program or IEP

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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(1) 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

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means a written statement for each child with a disability that is developed, reviewed, and revised in a meeting in accordance with §§300.320 through 300.324, and that must include—

1. A statement of the child’s present levels of academic achievement and functional performance, including—
 - i. How the child’s disability affects the child’s involvement and progress in the general education curriculum (i.e., the same curriculum as for nondisabled children); or
 - ii. For preschool children, as appropriate, how the disability affects the child’s participation in appropriate activities;
2.
 - i. A statement of measurable annual goals, including academic and functional goals designed to—
 - A. 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; and
 - B. Meet each of the child’s other educational needs that result from the child’s disability;
 - ii. For children with disabilities who take alternate assessments aligned to alternate academic achievement standards, a description of benchmarks or short-term objectives;
3. A description of—
 - i. How the child’s progress toward meeting the annual goals described

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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(1) 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.

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in paragraph (2) of this section will be measured; and

- ii. 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;
4. 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—
 - i. To advance appropriately toward attaining the annual goals;
 - ii. To be involved in and make progress in the general education curriculum in accordance with paragraph (a)(1) of this section, and to participate in extracurricular and other nonacademic activities; and
 - iii. To be educated and participate with other children with disabilities and nondisabled children in the activities described in this section;
5. 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 paragraph (a)(4) of this section;
6.
 - i. A statement of any individual appropriate accommodations

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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.

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that are necessary to measure the academic achievement and functional performance of the child on State and districtwide assessments consistent with section 612(a)(16) of the Act; and

ii. If the IEP Team determines that the child must take an alternate assessment instead of a particular regular State or districtwide assessment of student achievement, a statement of why—

- A. The child cannot participate in the regular assessment; and
- B. The particular alternate assessment selected is appropriate for the child; and

7. The projected date for the beginning of the services and modifications described in paragraph (a)(4) of this section, and the anticipated frequency, location, and duration of those services and modifications.

(b) Transition services. 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, and updated annually, thereafter, the IEP must include—

1. Appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills; and
2. The transition services (including courses of study) needed to assist the child in reaching those goals.

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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:

07.06A1 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

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(c) Transfer of rights at age of majority. Beginning not later than one year before the child reaches the age of majority under State law, the IEP must include a statement that the child has been informed of the child's rights under Part B of the Act, if any, that will transfer to the child on reaching the age of majority under §300.520.

(d) Construction. Nothing in this section shall be construed to require—

1. That additional information be included in a child's IEP beyond what is explicitly required in section 614 of the Act; or
2. The IEP Team to include information under one component of a child's IEP that is already contained under another component of the child's IEP.

Section 300.321 IEP Team

(a) General. The public agency must ensure that the IEP Team for each child with a disability includes—

1. The parents of the child;
2. Not less than one regular education teacher of the child (if the child is, or may be, participating in the regular education environment);
3. Not less than one special education teacher of the child, or where appropriate, not less than one special education provider of the child;
4. A representative of the public agency who—
 - i. Is qualified to provide, or supervise the provision of, specially designed

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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 school 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

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instruction to meet the unique needs of children with disabilities;

- ii. Is knowledgeable about the general education curriculum; and
- iii. Is knowledgeable about the availability of resources of the public agency.

5. An individual who can interpret the instructional implications of evaluation results, who may be a member of the team described in paragraphs (a)(2) through (a)(6) of this section;

6. At the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate; and

7. Whenever appropriate, the child with a disability.

(b) Transition services participants.

1. In accordance with paragraph (a)(7) of this section, the public agency must invite a child with a disability to attend the child's IEP Team meeting if a purpose of the meeting will be the consideration of the postsecondary goals for the child and the transition services needed to assist the child in reaching those goals under §300.320(b).
2. If the child does not attend the IEP Team meeting, the public agency must take other steps to ensure that the child's preferences and interests are considered.
3. To the extent appropriate, with the consent of the parents or a child who has reached the age of majority, in implementing the

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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:

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requirements of paragraph (b)(1) of this section, the public agency must invite a representative of any participating agency that is likely to be responsible for providing or paying for transition services.

(c) Determination of knowledge and special expertise. The determination of the knowledge or special expertise of any individual described in paragraph (a)(6) of this section must be made by the party (parents or public agency) who invited the individual to be a member of the IEP Team.

(d) Designating a public agency representative. A public agency may designate a public agency member of the IEP Team to also serve as the agency representative, if the criteria in paragraph (a) (4) of this section are satisfied.

(c) IEP Team attendance.

1. A member of the IEP Team described in paragraphs (a)(2) through (a)(5) of this section is not required to attend an IEP Team meeting, in whole or in part, if the parent of a child with a disability and the public agency agree, in writing, that the attendance of the member is not necessary because the member's area of the curriculum or related services is not being modified or discussed in the meeting.
2. A member of the IEP Team described in paragraph (c)(1) of this section may be excused from attending an IEP Team meeting, in whole or in part, when the meeting involves a modification to or

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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;

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discussion of the member's area of the curriculum or related services, if—

- i. The parent, in writing, and the public agency consent to the excusal; and
- ii. The member submits, in writing to the parent and the IEP Team, input into the development of the IEP prior to the meeting.

(f) Initial IEP Team meeting for child under Part C. In the case of a child who was previously served under Part C of the Act, an invitation to the initial IEP Team meeting must, at the request of the parent, be sent to the Part C service coordinator or other representatives of the Part C system to assist with the smooth transition of services.

Section 300.322 Parent participation

(a) Public agency responsibility—general. Each public agency must take steps to ensure that one or both of the parents of a child with a disability are present at each IEP Team meeting or are afforded the opportunity to participate, including—

1. Notifying parents of the meeting early enough to ensure that they will have an opportunity to attend; and
2. Scheduling the meeting at a mutually agreed on time and place.

(b) Information provided to parents.

1. The notice required under paragraph (a)(1) of this section must—
 - i. Indicate the purpose, time, and location of the meeting and who will be in attendance; and

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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 92 NAC 51-007.07A, 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:

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- ii. Inform the parents of the provisions in §300.321(a)(6) and (c) (relating to the participation of other individuals on the IEP Team who have knowledge or special expertise about the child), and §300.321(f) (relating to the participation of the Part C service coordinator or other representatives of the Part C system at the initial IEP Team meeting for a child previously served under Part C of the Act).
2. 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—
- i. Indicate—
 - A. That a purpose of the meeting will be the consideration of the postsecondary goals and transition services for the child, in accordance with §300.320(b); and
 - B. That the agency will invite the student; and
 - ii. Identify any other agency that will be invited to send a representative.
- (c) Other methods to ensure parent participation. If neither parent can attend an IEP Team meeting, the public agency must use other methods to ensure parent participation, including individual or conference telephone calls, consistent with §300.328 (related to alternative means of meeting participation).
- (d) Conducting an IEP Team meeting without a parent in attendance. A meeting may be conducted without a parent in attendance if

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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

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the public agency is unable to convince the parents that they should attend. In this case, the public agency must keep a record of its attempts to arrange a mutually agreed on time and place, such as—

1. Detailed records of telephone calls made or attempted and the results of those calls;
2. Copies of correspondence sent to the parents and any responses received; and
3. Detailed records of visits made to the parent's home or place of employment and the results of those visits.

(c) Use of interpreters or other action, as appropriate. The public agency must take whatever action is necessary to ensure that the parent understands the proceedings of the IEP Team meeting, including arranging for an interpreter for parents with deafness or whose native language is other than English.

(f) Parent copy of child's IEP. The public agency must give the parent a copy of the child's IEP at no cost to the parent.

Section 300.323 When IEPs must be in effect

(a) General. At the beginning of each school year, each public agency must have in effect, for each child with a disability within its jurisdiction, an IEP, as defined in §300.320.

(b) IEP or IFSP for children aged three through five.

1. In the case of a child with a disability aged three through five (or, at the discretion of the SEA, a two-year-old child with a disability who will turn age three during the

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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.

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 51-003.62; 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.

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school year), the IEP Team must consider an IFSP that contains the IFSP content (including the natural environments statement) described in section 636(d) of the Act and its implementing regulations (including an educational component that promotes school readiness and incorporates pre-literacy, language, and numeracy skills for children with IFSPs under this section who are at least three years of age), and that is developed in accordance with the IEP procedures under this part. The IFSP may serve as the IEP of the child, if using the IFSP as the IEP is—

- i. Consistent with State policy; and
- ii. Agreed to by the agency and the child's parents.

2. In implementing the requirements of paragraph (b)(1) of this section, the public agency must—

- i. Provide to the child's parents a detailed explanation of the differences between an IFSP and an IEP; and
- ii. If the parents choose an IFSP, obtain written informed consent from the parents

(c) Initial IEPs; provision of services. Each public agency must ensure that—

1. A meeting to develop an IEP for a child is conducted within 30 days of a determination that the child needs special education and related services; and
2. As soon as possible following development of the IEP, special education

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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 ensure 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.

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and related services are made available to the child in accordance with the child's IEP.

(d) Accessibility of child's IEP to teachers and others. Each public agency must ensure that—

1. The child's IEP is accessible to each regular education teacher, special education teacher, related services provider, and any other service provider who is responsible for its implementation; and
2. Each teacher and provider described in paragraph (d)(1) of this section is informed of—
 - i. His or her specific responsibilities related to implementing the child's IEP; and
 - ii. The specific accommodations, modifications, and supports that must be provided for the child in accordance with the IEP.

(c) IEPs for children who transfer public agencies in the same State. If a child with a disability (who had an IEP that was in effect in a previous public agency in the same State) transfers to a new public agency in the same State, and enrolls in a new school within the same school year, the new public agency (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 public agency), until the new public agency either—

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1. Adopts the child's IEP from the previous public agency; or
 2. Develops, adopts, and implements a new IEP that meets the applicable requirements in §§300.320 through 300.324.
- (f)** IEPs for children who transfer from another 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 public agency in a new State, and enrolls in a new school within the same school year, the new public agency (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 public agency), until the new public agency—
1. Conducts an evaluation pursuant to §§300.304 through 300.306 (if determined to be necessary by the new public agency); and
 2. Develops, adopts, and implements a new IEP, if appropriate, that meets the applicable requirements in §§300.320 through 300.324.
- (g)** Transmittal of records. To facilitate the transition for a child described in paragraphs (c) and (f) of this section—
1. The new public agency in which the child enrolls must 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 public agency in which the child

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was enrolled, pursuant to 34 CFR 99.31(a)(2); and

2. The previous public agency in which the child was enrolled must take reasonable steps to promptly respond to the request from the new public agency.

Section 300.324 Development, review, and revision of IEP

(a) Development of IEP—

1. General. In developing each child's IEP, the IEP Team must consider—
 - i. The strengths of the child;
 - ii. The concerns of the parents for enhancing the education of their child;
 - iii. The results of the initial or most recent evaluation of the child; and
 - iv. The academic, developmental, and functional needs of the child.
2. Consideration of special factors. The IEP Team must—
 - i. In the case of a child whose behavior impedes the child's learning or that of others, consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior;
 - ii. In the case of a child with limited English proficiency, consider the language needs of the child as those needs relate to the child's IEP;
 - iii. In the case of a child who is blind or visually impaired, provide for instruction

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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;

- iv.** Consider the communication needs of the child, and in the case of a child who is deaf or hard of hearing, 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; and
- v.** Consider whether the child needs assistive technology devices and services.

- 3.** Requirement with respect to regular education teacher. A regular education teacher of a child with a disability, as a member of the IEP Team, must, to the extent appropriate, participate in the development of the IEP of the child, including the determination of—
 - i.** Appropriate positive behavioral interventions and supports and other strategies for the child; and
 - ii.** Supplementary aids and services, program modifications, and support

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for school personnel consistent with §300.320(a)(4).

4. Agreement.

- i. In making changes to a child's IEP after the annual IEP Team meeting for a school year, the parent of a child with a disability and the public agency may agree not to convene an IEP Team meeting for the purposes of making those changes, and instead may develop a written document to amend or modify the child's current IEP.
- ii. If changes are made to the child's IEP in accordance with paragraph (a)(4) (i) of this section, the public agency must ensure that the child's IEP Team is informed of those changes.

5. Consolidation of IEP Team meetings. To the extent possible, the public agency must encourage the consolidation of reevaluation meetings for the child and other IEP Team meetings for the child.

6. Amendments. Changes to the IEP may be made either by the entire IEP Team at an IEP Team meeting, or as provided in paragraph (a)(4) 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.

(b) Review and revision of IEPs—

1. General. Each public agency must ensure that, subject to paragraphs (b)(2) and (b)(3) of this section, the IEP Team—

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- i. Reviews the child’s IEP periodically, but not less than annually, to determine whether the annual goals for the child are being achieved; and
 - ii. Revises the IEP, as appropriate, to address—
 - A. (A) Any lack of expected progress toward the annual goals described in §300.320(a)(2), and in the general education curriculum, if appropriate;
 - B. The results of any reevaluation conducted under §300.303;
 - C. Information about the child provided to, or by, the parents, as described under §300.305(a)(2);
 - D. The child’s anticipated needs; or
- (c) Other matters.**
- 2. Consideration of special factors. In conducting a review of the child’s IEP, the IEP Team must consider the special factors described in paragraph (a)(2) of this section.
 - 3. Requirement with respect to regular education teacher. A regular education teacher of the child, as a member of the IEP Team, must, consistent with paragraph (a)(3) of this section, participate in the review and revision of the IEP of the child.
- (c) Failure to meet transition objectives—**
- 1. Participating agency failure. If a participating agency, other than the public agency, fails to provide the transition services described in the IEP in accordance with §300.320(b), the public

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agency must reconvene the IEP Team to identify alternative strategies to meet the transition objectives for the child set out in the IEP.

2. Construction. Nothing in this part relieves any participating agency, including a State vocational rehabilitation agency, 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 criteria of that agency.

(d) Children with disabilities in adult prisons—

1. Requirements that do not apply. The following requirements do not apply to children with disabilities who are convicted as adults under State law and incarcerated in adult prisons:
 - i. The requirements contained in section 612(a)(16) of the Act and §300.320(a)(6) (relating to participation of children with disabilities in general assessments).
 - ii. The requirements in §300.320(b) (relating to transition planning and transition services) do not apply with respect to the children whose eligibility under Part B of the Act will end, because of their age, before they will be eligible to be released from prison based on consideration of their sentence and eligibility for early release.
2. Modifications of IEP or placement.
 - i. Subject to paragraph (d)(2)(ii) of this section, 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.

- ii. The requirements of §§300.320 (relating to IEPs), and 300.114 (relating to LRE), do not apply with respect to the modifications described in paragraph (d)(2)(i) of this section.

Section 300.325 Private school placements by public agencies

(a) Developing IEPs.

1. Before a public agency places a child with a disability in, or refers a child to, a private school or facility, the agency must initiate and conduct a meeting to develop an IEP for the child in accordance with §§300.320 and 300.324.
2. The agency must ensure that a representative of the private school or facility attends the meeting. If the representative cannot attend, the agency must use other methods to ensure participation by the private school or facility, including individual or conference telephone calls.

(b) Reviewing and revising IEPs.

1. After a child with a disability enters a private school or facility, any meetings to review and revise the child's IEP may be initiated and conducted by the private school or facility at the discretion of the public agency.
2. If the private school or facility initiates and conducts these meetings, the public

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agency must ensure that the parents and an agency representative—

- i. Are involved in any decision about the child's IEP; and
- ii. Agree to any proposed changes in the IEP before those changes are implemented.

(c) Responsibility. Even if a private school or facility implements a child's IEP, responsibility for compliance with this part remains with the public agency and the SEA.

Section 300.328 Alternative means of meeting participation

When conducting IEP Team meetings and placement meetings pursuant to this subpart, and subpart E of this part, and carrying out administrative matters under section 615 of the Act (such as scheduling, exchange of witness lists, and status conferences), the parent of a child with a disability and a public agency may agree to use alternative means of meeting participation, such as video conferences and conference calls.

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District Considerations for Policy and Procedure Development

Sample district policy statement

Individual Education Plans (IEPs) will be developed by teams, which will include all roles identified with Federal and state rules, within 30 days from the initial eligibility decision and at least annually, consistent with state and Federal rules and regulations. The district will use the state-provided model forms to make sure all required components are considered and included. While a draft may be developed before an IEP meeting, the draft will not be considered as the final version and shall be reviewed and revised based on the team, including the parent, input and consensus. If a parent requests an alternate means of attendance, the team will offer attendance via phone or virtual conferences. Procedures for such options will be developed to ensure confidentiality and to obtain proper signatures.

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. Special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or the severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

Procedural Considerations

- What is the continuum of placements provided in the district?
 - » How are staff informed of the placement options within the continuum and the consideration process used to determine appropriate placement?
- What are the steps needed for teams to consider more intensive settings on the continuum of placements?
 - » What accommodations, modifications, assistive technology, and/or behavioral supports have been implemented prior to moving a student to a more restrictive setting?
- What supports and training need to be put in place to ensure staff have the skills necessary to implement the accommodations/modifications, assistive technology, and/or behavioral interventions to ensure students are supported in the least restrictive environment?
- If a student is in a more restrictive setting, what are the steps needed to move toward a less restrictive setting (e.g., if a student is homebound, how frequently does the team need to meet to review progress to make decisions regarding integration back into the school setting?)?
 - » What supports are put in place to help transition a student successfully from a more restrictive placement to a less restrictive placement?
- What professional development is needed for general education staff, administration, and special education staff?
- What are the steps needed to complete behavior intervention plans and functional behavior assessments to help students be more successful in regular education classes?

Guidance resources

- [NE IEP Facilitation Guide](#)
- [NE LRE Guidance Document](#)
- [Dear Colleague Letter \(DCL\) related to Preschool Least Restrictive Environments \(LRE\) \(PDF\)](#)
- [Supporting and Responding to Behavior: Evidence-Based Classroom Strategies for Teachers | OSEP Ideas That Work](#)
- [OSEP Dear Colleague Letter on Supporting Behavior of Students with Disabilities: A Summary for Stakeholders \(PDF\) \(ed.gov\)](#)
- [IDEA Compliance | OSEP Ideas That Work](#)

XVI. Procedural Safeguards

*Hyperlinks were added to IDEA regulations for reference if the topic was already addressed in different chapters of this guidance document.

IDEA Regulations: Procedural Safeguards	Nebraska Rule 51: Procedural Safeguards
<p>Section 300.500 Responsibility of SEA and other public agencies</p> <p>Each SEA must ensure that each public agency establishes, maintains, and implements procedural safeguards that meet the requirements of §300.500 through 300.536.</p> <p>Sec. 300.500 Responsibility of SEA and other public agencies</p> <p>Each SEA must ensure that each public agency establishes, maintains, and implements procedural safeguards that meet the requirements of §§300.500 through 300.53</p> <p>Sec. 300.501 Opportunity to examine records; parent participation in meetings</p> <p>(a) Opportunity to examine records. The parents of a child with a disability must be afforded, in accordance with the procedures of §§300.613 through 300.621, an opportunity to inspect and review all education records with respect to—</p> <ol style="list-style-type: none">1. The identification, evaluation, and educational placement of the child; and2. The provision of FAPE to the child. <p>(b) Parent participation in meetings.</p> <ol style="list-style-type: none">1. The parents of a child with a disability must be afforded an opportunity to participate in meetings with respect to—<ol style="list-style-type: none">i. The identification, evaluation, and educational placement of the child; andii. The provision of FAPE to the child.	<p>Parent Participation in Meetings 92 NAC 51-009.01</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>Parent Involvement in Placement Decisions 92 NAC 51-009.02</p> <p>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.</p>

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2. Each public agency must provide notice consistent with §300.322(a)(1) and (b)(1) to ensure that parents of children with disabilities have the opportunity to participate in meetings described in paragraph (b)(1) of this section.
 3. A meeting does not include informal or unscheduled conversations involving public agency 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 public agency personnel engage in to develop a proposal or response to a parent proposal that will be discussed at a later meeting.
- (c) Parent involvement in placement decisions.
1. Each public agency must ensure that a parent of each child with a disability is a member of any group that makes decisions on the educational placement of the parent's child.
 2. In implementing the requirements of paragraph (c)(1) of this section, the public agency must use procedures consistent with the procedures described in §300.322(a) through (b)(1).
 3. 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 public agency must use other methods to ensure their participation, including individual or conference telephone calls, or video conferencing.

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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 51-007.06D.

Opportunity to Examine Records **92 NAC 51-009.03**

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

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4. A placement decision may be made by a group without the involvement of a parent, if the public agency is unable to obtain the parent's participation in the decision. In this case, the public agency must have a record of its attempt to ensure their involvement.

Sec. 300.502 Independent educational evaluation (addressed in evaluation section)

Sec. 300.503 Prior notice by the public agency; content of notice

(a) Notice. Written notice that meets the requirements of paragraph (b) of this section must be given to the parents of a child with a disability a reasonable time before the public agency—

1. Proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child; or
2. Refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child.

(b) Content of notice. The notice required under paragraph (a) of this section must include—

1. A description of the action proposed or refused by the agency;
2. An explanation of why the agency proposes or refuses to take the action;
3. A description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action;

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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.

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4. A statement that the parents of a child with a disability have protection under the procedural safeguards of this part and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained;
5. Sources for parents to contact to obtain assistance in understanding the provisions of this part;
6. A description of other options that the IEP Team considered and the reasons why those options were rejected; and
7. A description of other factors that are relevant to the agency's proposal or refusal.

(c) Notice in understandable language.

1. The notice required under paragraph (a) of this section must be—
 - i. Written in language understandable to the general public; and
 - ii. Provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so.
2. If the native language or other mode of communication of the parent is not a written language, the public agency must take steps to ensure—
 - i. That the notice is translated orally or by other means to the parent in his or her native language or other mode of communication;

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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.

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- ii. That the parent understands the content of the notice; and
- iii. That there is written evidence that the requirements in paragraphs (c)(2)(i) and (ii) of this section have been met.

Sec. 300.504 Procedural safeguards notice

(a) General. A copy of the procedural safeguards available to the parents of a child with a disability must be given to the parents only one time a school year, except that a copy also must be given to the parents—

1. Upon initial referral or parent request for evaluation;
2. Upon receipt of the first State complaint under §§300.151 through 300.153 and upon receipt of the first due process complaint under §300.507 in a school year;
3. In accordance with the discipline procedures in §300.530(h); and
4. Upon request by a parent.

(b) Internet Web site. A public agency may place a current copy of the procedural safeguards notice on its Internet Web site if a Web site exists.

(c) Contents. The procedural safeguards notice must include a full explanation of all of the procedural safeguards available under §300.148, §§300.151 through 300.153, §300.300, §§300.502 through 300.503, §§300.505 through 300.518, §§300.530 through 300.536 and §§300.610 through 300.625 relating to—

1. Independent educational evaluations;
2. Prior written notice;

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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.

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3. Parental consent;
4. Access to education records;
5. Opportunity to present and resolve complaints through the due process complaint and State complaint procedures, including—
 - i. The time period in which to file a complaint;
 - ii. The opportunity for the agency to resolve the complaint; and
 - iii. The difference between the due process complaint and the State complaint procedures, including the jurisdiction of each procedure, what issues may be raised, filing and decisional timelines, and relevant procedures;
6. The availability of mediation;
7. The child's placement during the pendency of any due process complaint;
8. Procedures for students who are subject to placement in an interim alternative educational setting;
9. Requirements for unilateral placement by parents of children in private schools at public expense;
10. Hearings on due process complaints, including requirements for disclosure of evaluation results and recommendations;
11. State-level appeals (if applicable in the State);
12. Civil actions, including the time period in which to file those actions; and
13. Attorneys' fees.

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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.

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(d) Notice in understandable language.

The notice required under paragraph (a) of this section must meet the requirements of §300.503(c).

Sec. 300.505 Electronic mail

A parent of a child with a disability may elect to receive notices required by §§300.503, 300.504, and 300.508 by an electronic mail communication, if the public agency makes that option available.

Sec. 300.506 Mediation

(a) General. Each public agency must ensure that procedures are established and implemented to allow parties to disputes involving any matter under this part, including matters arising prior to the filing of a due process complaint, to resolve disputes through a mediation process.

(b) Requirements. The procedures must meet the following requirements:

1. The procedures must ensure that the mediation process—
 - i. Is voluntary on the part of the parties;
 - ii. Is not used to deny or delay a parent's right to a hearing on the parent's due process complaint, or to deny any other rights afforded under Part B of the Act; and
 - iii. Is conducted by a qualified and impartial mediator who is trained in effective mediation techniques.
2. A public agency may establish procedures to offer to parents and schools that choose not to use the mediation process, an opportunity to meet, at a time and location convenient to the parents, with a disinterested party—

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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.

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- i. Who is under contract with an appropriate alternative dispute resolution entity, or a parent training and information center or community parent resource center in the State established under section 671 or 672 of the Act; and
 - ii. Who would explain the benefits of, and encourage the use of, the mediation process to the parents.
3.
 - i. The State must 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.
 - ii. The SEA must select mediators on a random, rotational, or other impartial basis.
4. The State must bear the cost of the mediation process, including the costs of meetings described in paragraph (b)(2) of this section.
5. Each session in the mediation process must be scheduled in a timely manner and must be held in a location that is convenient to the parties to the dispute.
6. If the parties resolve a dispute through the mediation process, the parties must execute a legally binding agreement that sets forth that resolution and that—
 - i. States that all discussions that occurred during the mediation process will remain confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding; and

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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 1413(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.

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ii. Is signed by both the parent and a representative of the agency who has the authority to bind such agency.

7. A written, signed mediation agreement under this paragraph is enforceable in any State court of competent jurisdiction or in a district court of the United States.

8. Discussions that occur during the mediation process must be confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding of any Federal court or State court of a State receiving assistance under this part.

(c) Impartiality of mediator.

1. An individual who serves as a mediator under this part—

i. May not be an employee of the SEA or the LEA that is involved in the education or care of the child; and

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

2. A person who otherwise qualifies as a mediator is not an employee of an LEA or State agency described under §300.228 solely because he or she is paid by the agency to serve as a mediator.

Sec. 300.507 Filing a due process complaint

(a) General.

1. A parent or a public agency may file a due process complaint on any of the matters described in §300.503(a)(1) and (2) (relating to the identification, evaluation or educational placement of a child with a disability, or the provision of FAPE to the child).

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Procedural Timelines

92 NAC 51-009.04

009.04A. 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(1). 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(2). 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.

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2. The due process complaint must allege a violation that occurred not more than two years before the date the parent or public agency knew or should have known about the alleged action that forms the basis of the due process complaint, or, if the State has an explicit time limitation for filing a due process complaint under this part, in the time allowed by that State law, except that the exceptions to the timeline described in §300.511(f) apply to the timeline in this section.

(b) Information for parents. The public agency must inform the parent of any free or low-cost legal and other relevant services available in the area if—

1. The parent requests the information; or
2. The parent or the agency files a due process complaint under this section.

Sec. 300.508 Due process complaint

(a) General.

1. The public agency must have procedures that require either party, or the attorney representing a party, to provide to the other party a due process complaint (which must remain confidential).
2. The party filing a due process complaint must forward a copy of the due process complaint to the SEA.

(b) Content of complaint. The due process complaint required in paragraph (a)(1) of this section must include—

1. The name of the child;
2. The address of the residence of the child;

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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.

Prior Written Notice

92 NAC 51-009.05

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 school 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;

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3. The name of the school the child is attending;
4. In the case of a homeless child or youth (within the meaning of section 725(2) 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;
5. A description of the nature of the problem of the child relating to the proposed or refused initiation or change, including facts relating to the problem; and
6. A proposed resolution of the problem to the extent known and available to the party at the time.

(c) Notice required before a hearing on a due process complaint. A party may not have a hearing on a due process complaint until the party, or the attorney representing the party, files a due process complaint that meets the requirements of paragraph (b) of this section.

(d) Sufficiency of complaint.

1. The due process complaint required by this section must be deemed sufficient unless the party receiving the due process complaint notifies the hearing officer and the other party in writing, within 15 days of receipt of the due process complaint, that the receiving party believes the due process complaint does not meet the requirements in paragraph (b) of this section.
2. Within five days of receipt of notification under paragraph (d)(1) of this section, the hearing officer must make a determination

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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 Chapter.

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.

Procedural Safeguards Notice 92 NAC 51-009.06

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

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on the face of the due process complaint of whether the due process complaint meets the requirements of paragraph (b) of this section, and must immediately notify the parties in writing of that determination.

3. A party may amend its due process complaint only if—
 - i. The other party consents in writing to the amendment and is given the opportunity to resolve the due process complaint through a meeting held pursuant to §300.510; or
 - ii. The hearing officer grants permission, except that the hearing officer may only grant permission to amend at any time not later than five days before the due process hearing begins.
 4. If a party files an amended due process complaint, the timelines for the resolution meeting in §300.510(a) and the time period to resolve in §300.510(b) begin again with the filing of the amended due process complaint.
- (e) LEA response to a due process complaint.
1. If the LEA has not sent a prior written notice under §300.503 to the parent regarding the subject matter contained in the parent's due process complaint, the LEA must, within 10 days of receiving the due process complaint, send to the parent a response that includes—
 - i. An explanation of why the agency proposed or refused to take the action raised in the due process complaint;

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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

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- ii. A description of other options that the IEP Team considered and the reasons why those options were rejected;
 - iii. A description of each evaluation procedure, assessment, record, or report the agency used as the basis for the proposed or refused action; and
 - iv. A description of the other factors that are relevant to the agency's proposed or refused action.
2. A response by an LEA under paragraph (e) (1) of this section shall not be construed to preclude the LEA from asserting that the parent's due process complaint was insufficient, where appropriate.

(f) Other party response to a due process complaint. Except as provided in paragraph (e) of this section, the party receiving a due process complaint must, within 10 days of receiving the due process complaint, send to the other party a response that specifically addresses the issues raised in the due process complaint.

Sec. 300.509 Model forms

(a) Each SEA must develop model forms to assist parents and public agencies in filing a due process complaint in accordance with §§300.507(a) and 300.508(a) through (c) and to assist parents and other parties in filing a State complaint under §§300.151 through 300.153. However, the SEA or LEA may not require the use of the model forms.

(b) Parents, public agencies, and other parties may use the appropriate model form described in paragraph (a) of this section, or

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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.

Consent and Insurance

92 NAC 51-009.09

009.09A. Children with Disabilities covered by Public Benefits or Insurance

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another form or other document, so long as the form or document that is used meets, as appropriate, the content requirements in §300.508(b) for filing a due process complaint, or the requirements in §300.153(b) for filing a State complaint.

Sec. 300.510 Resolution process

(a) Resolution meeting.

1. Within 15 days of receiving notice of the parent's due process complaint, and prior to the initiation of a due process hearing under §300.511, the LEA 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—
 - i. Includes a representative of the public agency who has decision-making authority on behalf of that agency; and
 - ii. May not include an attorney of the LEA unless the parent is accompanied by an attorney.
2. 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 LEA has the opportunity to resolve the dispute that is the basis for the due process complaint.
3. The meeting described in paragraph (a)(1) and (2) of this section need not be held if—
 - i. The parent and the LEA agree in writing to waive the meeting; or
 - ii. The parent and the LEA agree to use the mediation process described in §300.506.

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009.09A1. Prior to accessing a child's or parent's public benefits or insurance for the first time, and after providing notification to the child's parents consistent with 92 NAC 51-009.09A2, school districts or approved cooperatives must obtain written, parental consent that:

009.09A1a. Meets the requirements of 34 CFR §99.30 (FERPA) and 34 CFR §300.622, which consent must specify the personally identifiable information that may be disclosed (e.g., records or information about the services that may be provided to a particular child), the purpose of the disclosure (e.g., billing for services under 34 CFR 300), and the agency to which the disclosure may be made (e.g., the State's public benefits or insurance programs (e.g., Medicaid)); and

009.09A1b. Specifies that the parent understands and agrees that the school district or approved cooperative may access the parent's or child's public benefits or insurance to pay for services under this Chapter.

009.09A2. Prior to accessing a child's or parent's public benefits or insurance for the first time, and annually thereafter, the school district or approved cooperative must provide written notification, consistent with 92 NAC 51-009.05C and 009.05D, to the child's parents, that includes:

009.09A2a. A statement of the parental consent provisions in 92 NAC 51-009.09A1a and 009.09A1b of this section;

009.09A2b. A statement of the "no cost" provisions in paragraphs 92 NAC 51-012.09B1 through 012.09B3;

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4. The parent and the LEA determine the relevant members of the IEP Team to attend the meeting.
- (b) Resolution period.**
1. If the LEA 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.
 2. Except as provided in paragraph (c) of this section, the timeline for issuing a final decision under §300.515 begins at the expiration of this 30-day period.
 3. Except where the parties have jointly agreed to waive the resolution process or to use mediation, notwithstanding paragraphs (b)(1) and (2) of this section, 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.
 4. If the LEA 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 §300.322(d)), the LEA may, at the conclusion of the 30-day period, request that a hearing officer dismiss the parent's due process complaint.
 5. If the LEA fails to hold the resolution meeting specified in paragraph (a) of this section within 15 days of receiving notice of a parent's due process complaint or fails to participate in the resolution meeting,

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009.09A2c. A statement that the parents have the right under 34 CFR Part 99 and Part 300 to withdraw their consent to disclosure of their child's personally identifiable information to the agency responsible for the administration of the State's public benefits or insurance program (e.g., Medicaid) at any time; and

009.09A2d. A statement that the withdrawal of consent or refusal to provide consent under 34 CFR Part 99 and Part 300 to disclose personally identifiable information to the agency responsible for the administration of the State's public benefits or insurance program (e.g., Medicaid) does not relieve the school district or approved cooperative of its responsibility to ensure that all required services are provided at no cost to the parents.

009.09B. Children with Disabilities covered by Private Insurance

009.09B1. With regard to services required to provide FAPE to an eligible child under this Chapter, a school district or approved cooperative may access the parents' private insurance proceeds only if the parents provide consent consistent with 92 NAC 51-003.09.

009.09B2. Each time the school district or approved cooperative proposes to access the parent's private insurance proceeds, the school district or approved cooperative must:

009.09B2a. Obtain parental consent in accordance with 92 NAC 51-009.09B1; and

009.09B2b. Inform the parents that their refusal to permit the school district or approved cooperative to access their private insurance does not relieve the school district

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the parent may seek the intervention of a hearing officer to begin the due process hearing timeline.

(c) Adjustments to 30-day resolution period. The 45-day timeline for the due process hearing in §300.515(a) starts the day after one of the following events:

1. Both parties agree in writing to waive the resolution meeting;
2. 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;
3. If both parties agree in writing to continue the mediation at the end of the 30-day resolution period, but later, the parent or public agency withdraws from the mediation process.

(d) Written settlement agreement. If a resolution to the dispute is reached at the meeting described in paragraphs (a)(1) and (2) of this section, the parties must execute a legally binding agreement that is—

1. Signed by both the parent and a representative of the agency who has the authority to bind the agency; and
2. Enforceable in any State court of competent jurisdiction or in a district court of the United States, or, by the SEA, if the State has other mechanisms or procedures that permit parties to seek enforcement of resolution agreements, pursuant to §300.537.

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or approved cooperative of its responsibility to ensure that all required services are provided at no cost to the parents.

Mediation

92 NAC 51-009.12

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.

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(e) Agreement review period. If the parties execute an agreement pursuant to paragraph (d) of this section, a party may void the agreement within 3 business days of the agreement's execution.

Sec. 300.511 Impartial due process hearing

(a) General. Whenever a due process complaint is received under §300.507 or §300.532, the parents or the LEA involved in the dispute must have an opportunity for an impartial due process hearing, consistent with the procedures in §§300.507, 300.508, and 300.510.

(b) Agency responsible for conducting the due process hearing. The hearing described in paragraph (a) of this section must be conducted by the SEA or the public agency directly responsible for the education of the child, as determined under State statute, State regulation, or a written policy of the SEA.

(c) Impartial hearing officer.

1. At a minimum, a hearing officer—
 - i. Must not be—
 - A. An employee of the SEA or the LEA that is involved in the education or care of the child; or
 - B. A person having a personal or professional interest that conflicts with the person's objectivity in the hearing;
 - ii. Must possess knowledge of, and the ability to understand, the provisions of the Act, Federal and State regulations pertaining to the Act, and legal interpretations of the Act by Federal and State courts;

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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:

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- iii. Must possess the knowledge and ability to conduct hearings in accordance with appropriate, standard legal practice; and
 - iv. Must possess the knowledge and ability to render and write decisions in accordance with appropriate, standard legal practice.
2. A person who otherwise qualifies to conduct a hearing under paragraph (c)(1) of this section is not an employee of the agency solely because he or she is paid by the agency to serve as a hearing officer.
3. Each public agency must keep a list of the persons who serve as hearing officers. The list must include a statement of the qualifications of each of those persons.
- (d)** Subject matter of due process hearings. The party requesting the due process hearing may not raise issues at the due process hearing that were not raised in the due process complaint filed under §300.508(b), unless the other party agrees otherwise.
- (e)** Timeline for requesting a hearing. A parent or agency must request an impartial hearing on their due process complaint within two years of the date the parent or agency knew or should have known about the alleged action that forms the basis of the due process complaint, or if the State has an explicit time limitation for requesting such a due process hearing under this part, in the time allowed by that State law.
- (f)** Exceptions to the timeline. The timeline described in paragraph (e) of this section does not apply to a parent if the parent was prevented from filing a due process complaint due to—

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- 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.

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1. Specific misrepresentations by the LEA that it had resolved the problem forming the basis of the due process complaint; or
2. The LEA's withholding of information from the parent that was required under this part to be provided to the parent.

Sec. 300.512 Hearing rights

(a) General. Any party to a hearing conducted pursuant to §§300.507 through 300.513 or §§300.530 through 300.534, or an appeal conducted pursuant to §300.514, has the right to—

1. Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities, except that whether parties have the right to be represented by non-attorneys at due process hearings is determined under State law;
2. Present evidence and confront, cross-examine, and compel the attendance of witnesses;
3. Prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five business days before the hearing;
4. Obtain a written, or, at the option of the parents, electronic, verbatim record of the hearing; and
5. Obtain written, or, at the option of the parents, electronic findings of fact and decisions.

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Resolution Process

92 NAC 51-009.13

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.

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(b) Additional disclosure of information.

1. At least five business days prior to a hearing conducted pursuant to §300.511(a), each party must disclose to all other parties all evaluations completed by that date and recommendations based on the offering party's evaluations that the party intends to use at the hearing.
2. A hearing officer may bar any party that fails to comply with paragraph (b) (1) of this section from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.

(c) Parental rights at hearings. Parents involved in hearings must be given the right to—

1. Have the child who is the subject of the hearing present;
2. Open the hearing to the public; and
3. Have the record of the hearing and the findings of fact and decisions described in paragraphs (a)(4) and (a)(5) of this section provided at no cost to parents.

Sec. 300.513 Hearing decisions

(a) Decision of hearing officer on the provision of FAPE.

1. Subject to paragraph (a)(2) of this section, a hearing officer's determination of whether a child received FAPE must be based on substantive grounds.
2. In matters alleging a procedural violation, a hearing officer may find that a child did not receive a FAPE only if the procedural inadequacies—

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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

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- i. Impeded the child’s right to a FAPE;
 - ii. Significantly impeded the parent’s opportunity to participate in the decision-making process regarding the provision of a FAPE to the parent’s child; or
 - iii. Caused a deprivation of educational benefit.
 3. Nothing in paragraph (a) of this section shall be construed to preclude a hearing officer from ordering an LEA to comply with procedural requirements under §§300.500 through 300.536.
- (b) Construction clause.** Nothing in §§300.507 through 300.513 shall be construed to affect the right of a parent to file an appeal of the due process hearing decision with the SEA under §300.514(b), if a State level appeal is available.
- (c) Separate request for a due process hearing.** Nothing in §§300.500 through 300.536 shall be construed to preclude a parent from filing a separate due process complaint on an issue separate from a due process complaint already filed.
- (d) Findings and decision to advisory panel and general public.** The public agency, after deleting any personally identifiable information, must—
1. Transmit the findings and decisions referred to in §300.512(a)(5) to the State advisory panel established under §300.167; and
 2. Make those findings and decisions available to the public.

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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.

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Sec. 300.514 Finality of decision; appeal; impartial review

(a) Finality of hearing decision. A decision made in a hearing conducted pursuant to §§300.507 through 300.513 or §§300.530 through 300.534 is final, except that any party involved in the hearing may appeal the decision under the provisions of paragraph (b) of this section and §300.516.

(b) Appeal of decisions; impartial review.

- 1.** If the hearing required by §300.511 is conducted by a public agency other than the SEA, any party aggrieved by the findings and decision in the hearing may appeal to the SEA.
- 2.** If there is an appeal, the SEA must conduct an impartial review of the findings and decision appealed. The official conducting the review must—
 - i.** Examine the entire hearing record;
 - ii.** Ensure that the procedures at the hearing were consistent with the requirements of due process;
 - iii.** Seek additional evidence if necessary. If a hearing is held to receive additional evidence, the rights in §300.512 apply;
 - iv.** Afford the parties an opportunity for oral or written argument, or both, at the discretion of the reviewing official;
 - v.** Make an independent decision on completion of the review; and

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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.

Special Education Due Process Hearings 92 NAC 51-009.14

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 92 NAC 51-009.13.

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.

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vi. Give a copy of the written, or, at the option of the parents, electronic findings of fact and decisions to the parties.

(c) Findings and decision to advisory panel and general public. The SEA, after deleting any personally identifiable information, must—

1. Transmit the findings and decisions referred to in paragraph (b)(2)(vi) of this section to the State advisory panel established under §300.167; and
2. Make those findings and decisions available to the public.

(d) Finality of review decision. The decision made by the reviewing official is final unless a party brings a civil action under §300.516.

Sec. 300.515 Timelines and convenience of hearings and reviews

(a) The public agency must ensure that not later than 45 days after the expiration of the 30 day period under §300.510(b), or the adjusted time periods described in §300.510(c)—

1. A final decision is reached in the hearing; and
2. A copy of the decision is mailed to each of the parties.

(b) The SEA must ensure that not later than 30 days after the receipt of a request for a review—

1. A final decision is reached in the review; and
2. A copy of the decision is mailed to each of the parties.

(c) A hearing or reviewing officer may grant specific extensions of time beyond the periods

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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.

set out in paragraphs (a) and (b) of this section at the request of either party.

(d) Each hearing and each review involving oral arguments must be conducted at a time and place that is reasonably convenient to the parents and child involved.

Sec. 300.516 Civil action

(a) General. Any party aggrieved by the findings and decision made under §§300.507 through 300.513 or §§300.530 through 300.534 who does not have the right to an appeal under §300.514(b), and any party aggrieved by the findings and decision under §300.514(b), has the right to bring a civil action with respect to the due process complaint notice requesting a due process hearing under §300.507 or §§300.530 through 300.532. The action may be brought in any State court of competent jurisdiction or in a district court of the United States without regard to the amount in controversy.

(b) Time limitation. The party bringing the action shall have 90 days from the date of the decision of the hearing officer or, if applicable, the decision of the State review official, to file a civil action, or, if the State has an explicit time limitation for bringing civil actions under Part B of the Act, in the time allowed by that State law.

(c) Additional requirements. In any action brought under paragraph (a) of this section, the court—

1. Receives the records of the administrative proceedings;
2. Hears additional evidence at the request of a party; and

3. Basing its decision on the preponderance of the evidence, grants the relief that the court determines to be appropriate.

(d) Jurisdiction of district courts. The district courts of the United States have jurisdiction of actions brought under section 615 of the Act without regard to the amount in controversy.

(e) Rule of construction. Nothing in this part restricts or limits the rights, procedures, and remedies available under the Constitution, the Americans with Disabilities Act of 1990, title V of the Rehabilitation Act of 1973, or other Federal laws protecting the rights of children with disabilities, except that before the filing of a civil action under these laws seeking relief that is also available under section 615 of the Act, the procedures under §§300.507 and 300.514 must be exhausted to the same extent as would be required had the action been brought under section 615 of the Act.

Sec. 300.517 Attorneys' fees

(a) In general.

1. In any action or proceeding brought under section 615 of the Act, the court, in its discretion, may award reasonable attorneys' fees as part of the costs to—
 - i. The prevailing party who is the parent of a child with a disability;
 - ii. To a prevailing party who is an SEA or LEA against the attorney of a parent who files a complaint or subsequent cause of action that is frivolous, unreasonable, or without foundation, or against the attorney of a parent who continued to

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litigate after the litigation clearly became frivolous, unreasonable, or without foundation; or

- iii. To a prevailing SEA or LEA against the attorney of a parent, or against the parent, if the parent's request for a due process hearing or subsequent cause of action was presented for any improper purpose, such as to harass, to cause unnecessary delay, or to needlessly increase the cost of litigation.

2. Nothing in this subsection shall be construed to affect section 327 of the District of Columbia Appropriations Act, 2005.

(b) Prohibition on use of funds.

1. Funds under Part B of the Act may not be used to pay attorneys' fees or costs of a party related to any action or proceeding under section 615 of the Act and subpart E of this part.
2. Paragraph (b)(1) of this section does not preclude a public agency from using funds under Part B of the Act for conducting an action or proceeding under section 615 of the Act.

(c) Award of fees. A court awards reasonable attorneys' fees under section 615(i)(3) of the Act consistent with the following:

1. Fees awarded under section 615(i)(3) of the Act must be based on rates prevailing in the community in which the action or proceeding arose for the kind and quality of services furnished. No bonus or multiplier may be used in calculating the fees awarded under this paragraph.

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2.

- i. Attorneys' fees may not be awarded and related costs may not be reimbursed in any action or proceeding under section 615 of the Act for services performed subsequent to the time of a written offer of settlement to a parent if—
 - A. The offer is made within the time prescribed by Rule 68 of the Federal Rules of Civil Procedure or, in the case of an administrative proceeding, at any time more than 10 days before the proceeding begins;
 - B. The offer is not accepted within 10 days; and
 - C. The court or administrative hearing officer finds that the relief finally obtained by the parents is not more favorable to the parents than the offer of settlement.
- ii. Attorneys' fees may not be awarded relating to any meeting of the IEP Team unless the meeting is convened as a result of an administrative proceeding or judicial action, or at the discretion of the State, for a mediation described in §300.506.
- iii. A meeting conducted pursuant to §300.510 shall not be considered—
 - A. A meeting convened as a result of an administrative hearing or judicial action; or
 - B. An administrative hearing or judicial action for purposes of this section.

3. Notwithstanding paragraph (c)(2) of this section, an award of attorneys' fees and related costs may be made to a parent who is the prevailing party and who was substantially justified in rejecting the settlement offer.

4. Except as provided in paragraph (c)(5) of this section, the court reduces, accordingly, the amount of the attorneys' fees awarded under section 615 of the Act, if the court finds that—
 - i. The parent, or the parent's attorney, during the course of the action or proceeding, unreasonably protracted the final resolution of the controversy;

 - ii. The amount of the attorneys' fees otherwise authorized to be awarded unreasonably exceeds the hourly rate prevailing in the community for similar services by attorneys of reasonably comparable skill, reputation, and experience;

 - iii. The time spent and legal services furnished were excessive considering the nature of the action or proceeding; or

 - iv. The attorney representing the parent did not provide to the LEA the appropriate information in the due process request notice in accordance with §300.508.

5. The provisions of paragraph (c)(4) of this section do not apply in any action or proceeding if the court finds that the State or local agency unreasonably protracted the final resolution of the action or proceeding or there was a violation of section 615 of the Act.

Sec. 300.518 Child's status during proceedings

(a) Except as provided in §300.533, during the pendency of any administrative or judicial proceeding regarding a due process complaint notice requesting a due process hearing under §300.507, unless the State or local agency and the parents of the child agree otherwise, the child involved in the complaint must remain in his or her current educational placement.

(b) If the complaint involves an application for initial admission to public school, the child, with the consent of the parents, must be placed in the public school until the completion of all the proceedings.

(c) If the complaint involves an application for initial services under this part from a child who is transitioning from Part C of the Act to Part B and is no longer eligible for Part C services because the child has turned three, the public agency is not required to provide the Part C services that the child had been receiving. If the child is found eligible for special education and related services under Part B and the parent consents to the initial provision of special education and related services under §300.300(b), then the public agency must provide those special education and related services that are not in dispute between the parent and the public agency.

(d) If the hearing officer in a due process hearing conducted by the SEA or a State review official in an administrative appeal agrees with the child's parents that a change of placement is appropriate, that placement must be treated as an agreement between the State and the parents for purposes of paragraph (a) of this section.

Sec. 300.520 Transfer of parental rights at age of majority

(a) General. A State may provide that, when a child with a disability reaches the age of majority under State law that applies to all children (except for a child with a disability who has been determined to be incompetent under State law)—

- 1.**
 - i.** The public agency must provide any notice required by this part to both the child and the parents; and
 - ii.** All rights accorded to parents under Part B of the Act transfer to the child;
- 2.** All rights accorded to parents under Part B of the Act transfer to children who are incarcerated in an adult or juvenile, State or local correctional institution; and
- 3.** Whenever a State provides for the transfer of rights under this part pursuant to paragraph (a)(1) or (a)(2) of this section, the agency must notify the child and the parents of the transfer of rights.

(b) Special rule. A State must establish procedures for appointing the parent of a child with a disability, or, if the parent is not available, another appropriate individual, to represent the educational interests of the child throughout the period of the child's eligibility under Part B of the Act if, under State law, a child who has reached the age of majority, but has not been determined to be incompetent, can be determined not to have the ability to provide informed consent with respect to the child's educational program.

IDEA Regulations: Procedural Safeguards

Sec. 300.519 – Surrogate parents (covered in different section)

Discipline Procedures (covered in different section)

Sec. 300.530 – Authority of school personnel

Sec. 300.531 – Determination of setting

Sec. 300.532 – Appeal

Sec. 300.533 – Placement during appeals

Sec. 300.534 – Protections for children not determined eligible for special education and related services

Sec. 300.535 – Referral to and action by law enforcement and judicial authorities

Sec. 300.536 – Change of placement because of disciplinary removals

Sec. 300.537 – State enforcement mechanisms

Nebraska Rule 51: Procedural Safeguards

District Considerations for Policy and Procedure Development

Sample district policy statement

[Xyz school district] will implement procedural safeguards outlined in Federal and state regulations (34 CFR § 300.500, 92 NAC 51-009.01). Parents will be given a copy of their procedural safeguards annually or upon initial referral or parental request for evaluation; upon request by a parent; 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 in accordance with the discipline procedures in 92 NAC 51-016. District procedures will be developed for parent participation in decisionmaking parent examination of records, record access, release of records, record amendments, confidentiality safeguards, records regarding migratory children with disabilities, retention and destruction of records, insurance process (if applicable)], and dispute resolution processes.

Procedural considerations

- Develop steps and procedures needed to implement procedural safeguards for each section identified.
 - » Parent participation in decisionmaking
 - » Parent examination of records
 - » Record access
 - » Release of records
 - » Record amendments
 - » Confidentiality safeguards
 - » Records regarding migratory children with disabilities
 - » Retention and destruction of records
 - » Prior written notice
 - » Insurance process (if applicable)
 - » Dispute resolution processes (to include mediation and due process)
 - » Other areas addressed in separate sections: IEE, prior written notice, procedural timelines

Guidance resources

- [NE Medicaid in Public Schools Guidance Document](#)
- [NE Prior Written Notice Guidance Document](#)
- [Parent-Rights-for-Special-Education-3-21.pdf \(ne.gov\)](#)

XVII. Surrogate Parents

IDEA Regulations: Surrogate Parents

Section 300.519 Surrogate parents

(a) General. Each public agency must ensure that the rights of a child are protected when—

1. No parent (as defined in §300.30) can be identified;
2. The public agency, after reasonable efforts, cannot locate a parent;
3. The child is a ward of the State under the laws of that State; or
4. The child is an unaccompanied homeless youth as defined in section 725(6) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(6)).

(b) Duties of public agency. The duties of a public agency under paragraph (a) of this section include the assignment of an individual to act as a surrogate for the parents. This must include a method—

1. For determining whether a child needs a surrogate parent; and
2. For assigning a surrogate parent to the child.

(c) Wards of the State. In the case of a child who is a ward of the State, the surrogate parent alternatively may be appointed by the judge overseeing the child's case, provided that the surrogate meets the requirements in paragraphs (d)(2)(i) and (e) of this section.

(d) Criteria for selection of surrogate parents.

1. The public agency may select a surrogate parent in any way permitted under State law.

Nebraska Rule 51: Surrogate Parents

92 NAC 51-009.10: 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

IDEA Regulations: Surrogate Parents

2. Public agencies must ensure that a person selected as a surrogate parent—

i. Is not an employee of the SEA, the LEA, or any other agency that is involved in the education or care of the child;

ii. Has no personal or professional interest that conflicts with the interest of the child the surrogate parent represents; and

iii. Has knowledge and skills that ensure adequate representation of the child.

(e) Non-employee requirement; compensation. A person otherwise qualified to be a surrogate parent under paragraph (d) of this section is not an employee of the agency solely because he or she is paid by the agency to serve as a surrogate parent.

(f) Unaccompanied homeless youth. 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 paragraph (d)(2)(i) of this section, until a surrogate parent can be appointed that meets all of the requirements of paragraph (d) of this section.

(g) Surrogate parent responsibilities. The surrogate parent may represent the child in all matters relating to—

1. The identification, evaluation, and educational placement of the child; and
2. The provision of FAPE to the child.

Nebraska Rule 51: Surrogate Parents

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. 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.

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

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(h) SEA responsibility. The SEA must make reasonable efforts to ensure the assignment of a surrogate parent not more than 30 days after a public agency determines that the child needs a surrogate parent.

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

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.

District Considerations for Policy and Procedure Development

Policy considerations

When parents are represented in special education policy, include “parent, guardian, or appointed surrogate” and then define surrogate within overall policy consistent with 34 CFR § 300.519 and 92 NAC 51-009.10.

Procedural considerations

- What is included in the surrogate training? How and when is it scheduled? What methods are used?
- What are the qualifications needed to be a surrogate? How are they selected for training?
- What training do school staff need to appropriately determine when a student may need an educational surrogate?
- What should school staff do if a student appears to need a surrogate? How would staff know if the student may need a surrogate?
- What is the procedure for assigning a surrogate to a child?
- What is needed at meetings to document the relationship to the child?
- How often is the assignment reviewed?

Guidance resources

- [OSEP Policy Documents Regarding the Education of Infants, Toddlers, Children and Youth with Disabilities: Surrogate Parents](#)

XVIII. Disciplinary Actions and Removals

IDEA Regulations: Disciplinary Actions and Removals

Nebraska Rule 51: Disciplinary Actions and Removals

300.530 Authority of school personnel

(a) Case-by-case determination. 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 this section, is appropriate for a child with a disability who violates a code of student conduct.

(b) General.

1. School personnel under this section 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 those alternatives are applied to children without disabilities), and for additional removals of not more than 10 consecutive school days in that same school year for separate incidents of misconduct (as long as those removals do not constitute a change of placement under §300.536).
2. 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 public agency must provide services to the extent required under paragraph (d) of this section.

92 NAC 51-009.004.06E

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

92 NAC 51-009.016.01: 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.

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(c) Additional authority. 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 paragraph (e) of this section, school personnel may apply the relevant disciplinary procedures to children with disabilities in the same manner and for the same duration as the procedures would be applied to children without disabilities, except as provided in paragraph (d) of this section.

(d) Services.

1. A child with a disability who is removed from the child’s current placement pursuant to paragraphs (c), or (g) of this section must—
 - i. Continue to receive educational services, as provided in §300.101(a), 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
 - ii. Receive, as appropriate, a functional behavioral assessment, and behavioral intervention services and modifications, that are designed to address the behavior violation so that it does not recur.
2. The services required by paragraph (d) (1), (d)(3), (d)(4), and (d)(5) of this section may be provided in an interim alternative educational setting.

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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.

92 NAC 51-009.016.02-.03: 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

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3. A public agency 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.
 4. 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 §300.536, school personnel, in consultation with at least one of the child's teachers, determine the extent to which services are needed, as provided in §300.101(a), 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.
 5. If the removal is a change of placement under §300.536, the child's IEP Team determines appropriate services under paragraph (d)(1) of this section.
- (e) Manifestation determination.**
1. 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 LEA, the parent, and relevant members of the child's IEP Team (as determined by the parent and the LEA) must review all relevant information in the student's file, including the child's IEP,

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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.

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any teacher observations, and any relevant information provided by the parents to determine—

- i. If the conduct in question was caused by, or had a direct and substantial relationship to, the child’s disability; or
 - ii. If the conduct in question was the direct result of the LEA’s failure to implement the IEP.
 2. The conduct must be determined to be a manifestation of the child’s disability if the LEA, the parent, and relevant members of the child’s IEP Team determine that a condition in either paragraph (e)(1)(i) or (1)(ii) of this section was met.
 3. If the LEA, the parent, and relevant members of the child’s IEP Team determine the condition described in paragraph (e)(1)(ii) of this section was met, the LEA must take immediate steps to remedy those deficiencies.
- (f)** Determination that behavior was a manifestation. If the LEA, 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—
1. Either—
 - i. Conduct a functional behavioral assessment, unless the LEA had conducted a functional behavioral assessment before the behavior that resulted in the change of placement occurred, and implement a behavioral intervention plan for the child; or

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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

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ii. If a behavioral intervention plan already has been developed, review the behavioral intervention plan, and modify it, as necessary, to address the behavior; and

2. Except as provided in paragraph (g) of this section, return the child to the placement from which the child was removed, unless the parent and the LEA agree to a change of placement as part of the modification of the behavioral intervention plan.

(g) Special circumstances. 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—

1. Carries a weapon to or possesses a weapon at school, on school premises, or to or at a school function under the jurisdiction of an SEA or an LEA;
2. 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 an SEA or an LEA; or
3. Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of an SEA or an LEA.

(h) Notification. 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 LEA must notify

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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

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the parents of that decision, and provide the parents the procedural safeguards notice described in §300.504.

i. Definitions. For purposes of this section, the following definitions apply:

1. 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)).
2. 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 that Act or under any other provision of Federal law.
3. Serious bodily injury has the meaning given the term “serious bodily injury” under paragraph (3) of subsection (h) of section 1365 of title 18, United States Code.
4. Weapon has the meaning given the term “dangerous weapon” under paragraph (2) of the first subsection (g) of section 930 of title 18, United States Code.

300.531 Determination of setting

The child’s IEP Team determines the interim alternative educational setting for services under §300.530(c), (d)(5), and (g)

300.532 Appeal

(a) General. The parent of a child with a disability who disagrees with any decision

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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 child 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

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regarding placement under §§300.530 and 300.531, or the manifestation determination under §300.530(e), or an LEA that believes that maintaining the current placement of the child is substantially likely to result in injury to the child or others, may appeal the decision by requesting a hearing. The hearing is requested by filing a complaint pursuant to §§300.507 and 300.508(a) and (b).

(b) Authority of hearing officer.

1. A hearing officer under §300.511 hears, and makes a determination regarding an appeal under paragraph (a) of this section.
2. In making the determination under paragraph (b)(1) of this section, the hearing officer may—
 - i. 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 §300.530 or that the child’s behavior was a manifestation of the child’s disability; or
 - ii. Order a change of 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.
3. The procedures under paragraphs (a) and (b)(1) and (2) of this section may be repeated, if the LEA believes that returning the child to the original placement is substantially likely to result in injury to the child or to others.

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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.

92 NAC 51-009.016.04-.05: 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

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(c) Expedited due process hearing.

1. Whenever a hearing is requested under paragraph (a) of this section, the parents or the LEA involved in the dispute must have an opportunity for an impartial due process hearing consistent with the requirements of §§300.507 and 300.508(a) through (c) and §§300.510 through 300.514, except as provided in paragraph (c)(2) through (4) of this section.
2. The SEA or LEA 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.
3. Unless the parents and LEA agree in writing to waive the resolution meeting described in paragraph (c)(3)(i) of this section, or agree to use the mediation process described in §300.506—
 - i. A resolution meeting must occur within seven days of receiving notice of the due process complaint; and
 - ii. 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.
4. A State may establish different State-imposed procedural rules for expedited due process hearings conducted under this section than it has established for other

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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 –

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due process hearings, but, except for the timelines as modified in paragraph (c)(3) of this section, the State must ensure that the requirements in §§300.510 through 300.514 are met.

5. The decisions on expedited due process hearings are appealable consistent with §300.514.

300.533 Placement during appeals

When an appeal under §300.532 has been made by either the parent or the LEA, the child must remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the time period specified in §300.530(c) or (g), whichever occurs first, unless the parent and the SEA or LEA agree otherwise.

300.534 Protections for children not determined eligible for special education and related services

(a) General. A child who has not been determined to be eligible for special education and related services under this part and who has engaged in behavior that violated a code of student conduct, may assert any of the protections provided for in this part if the public agency had knowledge (as determined in accordance with paragraph (b) of this section) that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred.

(b) Basis of knowledge. A public agency must be deemed to have knowledge that a child is a child with a disability if before the behavior that precipitated the disciplinary action occurred—

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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.

92 NAC 51-009.016.04-.05: 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.

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1. The parent of the child expressed concern in writing to supervisory or administrative personnel of the appropriate educational agency, or a teacher of the child, that the child is in need of special education and related services;
2. The parent of the child requested an evaluation of the child pursuant to §§300.300 through 300.311; or
3. The teacher of the child, or other personnel of the LEA, expressed specific concerns about a pattern of behavior demonstrated by the child directly to the director of special education of the agency or to other supervisory personnel of the agency.

(c) Exception. A public agency would not be deemed to have knowledge under paragraph (b) of this section if—

1. The parent of the child—
 - i. Has not allowed an evaluation of the child pursuant to §§300.300 through 300.311; or
 - ii. Has refused services under this part; or
2. The child has been evaluated in accordance with §§300.300 through 300.311 and determined to not be a child with a disability under this part.

(d) Conditions that apply if no basis of knowledge.

1. If a public agency does not have knowledge that a child is a child with a disability (in accordance with paragraphs (b) and (c)

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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).

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of this section) prior to taking disciplinary measures against the child, the child may be subjected to the disciplinary measures applied to children without disabilities who engage in comparable behaviors consistent with paragraph (d)(2) of this section.

2.

- i. 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 §300.530, the evaluation must be conducted in an expedited manner.
- ii. 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.
- iii. If the child is determined to be a child with a disability, taking into consideration information from the evaluation conducted by the agency and information provided by the parents, the agency must provide special education and related services in accordance with this part, including the requirements of §§300.530 through 300.536 and section 612(a)(1)(A) of the Act

300.535 Referral to and action by law enforcement and judicial authorities.

(a) Rule of construction. Nothing in this part prohibits an agency from reporting a crime committed by a child with a disability to

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appropriate authorities or prevents 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.

(b) Transmittal of records.

1. An agency reporting a crime committed by a child with a disability must ensure that copies of the special education and disciplinary records of the child are transmitted for consideration by the appropriate authorities to whom the agency reports the crime.
2. An agency reporting a crime under this section may transmit copies of the child's special education and disciplinary records only to the extent that the transmission is permitted by the Family Educational Rights and Privacy Act.

300.536 Change of placement because of disciplinary removals

(a) For purposes of removals of a child with a disability from the child's current educational placement under §§300.530 through 300.535, a change of placement occurs if—

1. The removal is for more than 10 consecutive school days; or
2. The child has been subjected to a series of removals that constitute a pattern—
 - i. Because the series of removals total more than 10 school days in a school year;

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- ii. Because the child's behavior is substantially similar to the child's behavior in previous incidents that resulted in the series of removals; and
- iii. 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.

(b)

1. The public agency determines on a case-by-case basis whether a pattern of removals constitutes a change of placement.
2. This determination is subject to review through due process and judicial proceedings.

District Considerations for Policy and Procedure Development

Sample district policy statement to add to disciplinary policy

[Xyz school district] will implement positive behavior intervention strategies to promote appropriate behaviors and improve school climate. Change of placement decisions related to disciplinary removals will be consistent with Federal and state regulations (Section 300.530, 92 NAC 51-009.016). The district will develop procedures to ensure disciplinary procedural safeguards and decisionmaking follows such regulations.

Procedural considerations

Outline steps needed for removals:

- When do school administrators notify special education teachers?
- When does the district initiate manifestation determination review (MDR) processes (e.g., at 10 days or more removals or do they consider doing so earlier?)
- Who sends notices of the MDR meeting to parent?
- What is needed for the MDR prior to the meeting (e.g., gathering of documents such as IEP, behavior plan, review of incident, teacher interviews, student interviews, review of evaluation, review of past manifestation determinations, etc.), and who is responsible for each component?
- Who facilitates the meeting and who needs to be included?
- How does the team address students still in the evaluation process?
- How are meeting decisions documented?
- If the team determines a functional behavior assessment or behavior intervention plan is needed, how is consent documented?
- Who is responsible for completing a prior written notice?
- How are school staff members trained in the MDR process?
- What procedures are needed to address placement decisions after a team makes a decision regarding the manifestation determination?
- Consider developing self-monitoring procedures for MDRs and disciplinary actions for students with disabilities to address and prevent disproportionate discipline practices.

Guidance resources

- [Dear Colleague Letter on the Inclusion of Behavioral Supports in Individualized Education Programs \(PDF\)](#)
- [Manifestation Determination in School Discipline | Center for Parent Information and Resources \(parentcenterhub.org\)](#)
- [IDEA Part B Discipline Data Collection Questions and Answers \(ideadata.org\)](#)

XIX. Comprehensive System of Personnel Development

IDEA/Federal Regulations: Professional Development	Nebraska Rule 51: Comprehensive System of Personnel Development
<p>Section 300.207 Personnel development</p> <p>The LEA must ensure that all personnel necessary to carry out Part B of the Act are appropriately and adequately prepared, subject to the requirements of §300.156 (related to personnel qualifications) and section 2102(b) of the ESEA.</p>	<p>Qualifications of Special Education Personnel for Program Approval and Reimbursement</p> <p>10.01 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.</p> <p>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</p> <p>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</p> <p>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 3.0 on the EIPA, NAD or QAST. The school district or approved cooperative must require that the interpreter participate in a professional</p>

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 include at least 40 clock hours of training in interpreting per year (August 1 to July 31). 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.

010.06F School districts and approved cooperatives shall require that all sign language interpreters employed by the school districts or approved cooperatives to deliver special education services submit evidence to the school district or approved cooperative of having obtained 24 clock hours of professional development every two years (August 1-July 31). This should include at least 18 hours of training related to sign language interpreting. The remaining six hours of training can be in any of the following areas: history, psychology and sociology of the Deaf and hard of hearing; child development; language development; curriculum development; methods of instruction; interpreting for students who are deaf-blind; legal and ethical issues for educational interpreters.

010.06G If a sign language interpreter cannot provide the evidence required in 92 NAC 51-010.06F of the professional development, 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.

District Considerations for Policy and Procedures

Sample district policy statement

[Xyz school district] will implement a comprehensive system of personnel development to include [list what it will include]. Procedures shall be developed to meet all requirements of the comprehensive system.

XX. Transportation

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Section 300.34 Related services.

(a) General. 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.

16. Transportation includes—

- i. Travel to and from school and between schools;
- ii. Travel in and around school buildings; and
- iii. Specialized equipment (such as special or adapted buses, lifts, and ramps), if required to provide special transportation for a child with a disability.

Section 300.107 Nonacademic services.

The State must ensure the following:

(a) Each public agency must 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

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92 NAC 51-009.003.49

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 school 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.

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and activities in the manner necessary to afford children with disabilities an equal opportunity for participation in those services and activities.

(b) Nonacademic and extracurricular services and activities may include counseling services, athletics, **transportation**, health services, recreational activities, special interest groups or clubs sponsored by the public agency, referrals to agencies that provide assistance to individuals with disabilities, and employment of students, including both employment by the public agency and assistance in making outside employment available.

Section 300.139 Location of services and transportation (Children in Private School)

(a) Services on private school premises. Services to parentally-placed private school children with disabilities may be provided on the premises of private, including religious, schools, to the extent consistent with law.

(b) Transportation—

1. General.

i. If necessary for the child to benefit from or participate in the services provided under this part, a parentally-placed private school child with a disability must be provided transportation—

A. From the child's school or the child's home to a site other than the private school; and

B. From the service site to the private school, or to the child's home, depending on the timing of the services.

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92 NAC 51-009.07.07C4a

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.

92 NAC 51-009.014 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.

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- ii. LEAs are not required to provide transportation from the child's home to the private school.
- 2. Cost of transportation. The cost of the transportation described in paragraph (b) (1)(i) of this section may be included in calculating whether the LEA has met the requirement of §300.133.

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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 as a result of the inability or unwillingness of parents to provide transportation

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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 the Nebraska 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 ([see 014.013E1-E10, pg 94](#)).

District Considerations for Policy and Procedure Development

Sample district policy statement

[Xyz school district] will be responsible for coordinating and supplying transportation needs of children with disabilities within the school district consistent with state and Federal regulations (34 CFR § 300.34, 34 CFR § 300.107, and 34 CFR § 300.179; 92 NAC 51-009.07.07C4a, 92 NAC 51-009.003.49 92 NAC 51-009.014) to include transportation services needed for children (including birth to 5-year-olds who are wards of the state, parentally placed nonpublic students who require services) to access academic, related services, and nonacademic services and activities as determined by the child's IEP team. 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.

Procedural considerations

- What are the procedures for teams to identify and implement transportation needs? What forms are needed?
- Who is responsible at the school and district level for ensuring transportation needs are implemented in a timely manner?
- What are the procedures needed to determine how transportation will be provided (e.g., special education bus, parental reimbursement, assistive technology, aids needed, etc.)?
- If parent reimbursements are needed, what is the procedure for turning in receipts and invoices and for issuing payments?
- How will the district meet the transportation needs of birth to 5-year-olds who are wards of the state?
- What transportation procedures are needed to ensure school-age students with disabilities do not miss instructional time and have access to the same school day as students with nondisabled peers?

Guidance resources

- [IDEA 2004 Resource: Questions and Answers on Serving Children with Disabilities Eligible for Transportation. \(PDF\) \(ed.gov\)](#)
- [OSEP Memo 3-10](#)
- [Office of Special Education Programs Policy Letters Regarding Special Education and Related Services](#)

XXI. Assessment Participation and Reporting

IDEA/Federal Regulations: Assessment Participation and Reporting

Section 300.160 Participation in assessments

(a) General. A State must ensure that all children with disabilities are included in all general State and district-wide assessment programs, including assessments described under section 1111 of the ESEA, 20 U.S.C. 6311, with appropriate accommodations and alternate assessments, if necessary, as indicated in their respective IEPs.

(b) Accommodation guidelines.

1. A State (or, in the case of a district-wide assessment, an LEA) must develop guidelines for the provision of appropriate accommodations.
2. The State's (or, in the case of a district-wide assessment, the LEA's) guidelines must—
 - i. Identify only those accommodations for each assessment that do not invalidate the score; and
 - ii. Instruct IEP Teams to select, for each assessment, only those accommodations that do not invalidate the score.

(c) Alternate assessments.

1. If a State has adopted alternate academic achievement standards for children with disabilities who are students with the most significant cognitive disabilities as permitted in section 1111(b)(1)(E) of the ESEA, the State (or, in the case of a district-wide assessment, an LEA) must develop and implement alternate assessments

Nebraska Rule 51: Assessment Participation and Reporting

004.05 Participation in Assessments

004.05A School districts shall include all public school children 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

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and guidelines for the participation in alternate assessments of those children with disabilities who cannot participate in regular assessments, even with accommodations, as indicated in their respective IEPs, as provided in paragraph (a) of this section.

2. For assessing the academic progress of students with disabilities under Title I of the ESEA, the alternate assessments and guidelines in paragraph (c)(1) of this section must provide for alternate assessments that—
 - i. Are aligned with the State’s challenging academic content standards and challenging student academic achievement standards;
 - ii. If the State has adopted alternate academic achievement standards permitted in 34 CFR 200.1(d), measure the achievement of children with the most significant cognitive disabilities against those standards; and
 - iii. Except as provided in paragraph (c)(2)(ii) of this section, a State’s alternate assessments, if any, must measure the achievement of children with disabilities against the State’s grade-level academic achievement standards, consistent with 34 CFR 200.6(a)(2)(ii)(A).
3. Consistent with 34 CFR 200.1(e), a State may not adopt modified academic achievement standards for any students with disabilities under section 602(3) of the Act.

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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.

004.05E 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.

Assessment Reporting

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.

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- A.** (d) Explanation to IEP Teams. A State (or in the case of a district-wide assessment, an LEA) must—
- B.** (1) Provide to IEP teams a clear explanation of the differences between assessments based on grade-level academic achievement standards and those based on alternate academic achievement standards, including any effects of State and local policies on a student’s education resulting from taking an alternate assessment aligned with alternate academic achievement standards, such as how participation in such assessments may delay or otherwise affect the student from completing the requirements for a regular high school diploma; and
- C.** (2) Not preclude a student with the most significant cognitive disabilities who takes an alternate assessment aligned with alternate academic achievement standards from attempting to complete the requirements for a regular high school diploma.
- (e)** Inform parents. A State (or in the case of a district-wide assessment, an LEA) must ensure that parents of students selected to be assessed using an alternate assessment aligned with alternate academic achievement standards under the State’s guidelines in paragraph (c)(1) of this section are informed, consistent with 34 CFR 200.2(e), that their

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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 child), compared with the achievement of all children, including children with disabilities, on those assessments.

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child's achievement will be measured based on alternate academic achievement standards, and of how participation in such assessments may delay or otherwise affect the student from completing the requirements for a regular high school diploma.

(g) Universal design. An SEA (or, in the case of a district-wide assessment, an LEA) must, to the extent possible, use universal design principles in developing and administering any assessments under this section.

Assessment Reporting (Section 300.160-)

(f) Reports. An SEA (or, in the case of a district-wide assessment, an LEA) must make available to the public, and report to the public with the same frequency and in the same detail as it reports on the assessment of nondisabled children, the following:

- 1.** The number of children with disabilities participating in regular assessments, and the number of those children who were provided accommodations (that did not result in an invalid score) in order to participate in those assessments.
- 2.** The number of children with disabilities, if any, participating in alternate assessments based on grade-level academic achievement standards in school years prior to 2017-2018.
- 3.** The number of children with disabilities, if any, participating in alternate assessments aligned with modified academic achievement standards in school years prior to 2016-2017.

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4. The number of children with disabilities who are students with the most significant cognitive disabilities participating in alternate assessments aligned with alternate academic achievement standards.
5. Compared with the achievement of all children, including children with disabilities, the performance results of children with disabilities on regular assessments, alternate assessments based on grade-level academic achievement standards (prior to 2017-2018), alternate assessments based on modified academic achievement standards (prior to 2016-2017), and alternate assessments aligned with alternate academic achievement standards if—
 - (i) The number of children participating in those assessments is sufficient to yield statistically reliable information; and
 - (ii) Reporting that information will not reveal personally identifiable information about an individual student on those assessments.

Every Student Succeeds Act (ESSA)

Every Student Succeeds Act (ESSA)

“SEC.1111.(b)(2)

“(2) ACADEMIC ASSESSMENTS.

A) IN GENERAL.—Each State plan shall demonstrate that the State educational agency, in consultation with local educational agencies, has implemented a set of high quality student academic assessments in mathematics, reading or language arts, and science. The State retains the right to implement such assessments in any other subject chosen by the State.

“(B) REQUIREMENTS.—The assessments under subparagraph (A) shall—... (vi) involve multiple up-to-date measures of student academic achievement, including measures that assess higher-order thinking skills and understanding, which may include measures of student academic growth and may be partially delivered in the form of portfolios, projects, or extended performance tasks;

“(vii) provide for—

“(I) the participation in such assessments of all students;

“(II) the appropriate accommodations, such as interoperability with, and ability to use, assistive technology, for children with disabilities (as defined in section 602(3) of the Individuals with Disabilities Education Act (20 U.S.C. 1401(3))), including students with the most significant cognitive disabilities, and students with a disability who are provided accommodations under an Act other than the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.), necessary to measure the academic achievement of such children relative to the challenging State academic standards or alternate academic achievement standards described in paragraph (1)(E); and

“(III) the inclusion of English learners, who shall be assessed in a valid and reliable manner and provided appropriate accommodations on assessments administered to such students under this paragraph, including, to the extent practicable, assessments in the language and form most likely to yield accurate data on what such students know and can do in academic content areas, until such students have achieved English language proficiency, as determined under subparagraph (G)

“(viii) at the State’s discretion—

“(I) be administered through a single summative assessment; or

“(II) be administered through multiple statewide interim assessments during the course of the academic year that result in a single summative score that provides valid, reliable, and transparent information on student achievement or growth;

“(ix) notwithstanding clause (vii)(III), provide for assessments (using tests in English) of reading or language arts of any student who has attended school in the United States (not including the Commonwealth of Puerto Rico) for 3 or more consecutive school years, except that if the local educational agency determines, on a case-by-case individual basis, that academic assessments in another language or form would likely yield more accurate and reliable information on what such student knows and can do, the local educational agency may

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make a determination to assess such student in the appropriate language other than English for a period that does not exceed 2 additional consecutive years, provided that such student has not yet reached a level of English language proficiency sufficient to yield valid and reliable information on what such student knows and can do on tests (written in English) of reading or language arts;

“(x) produce individual student interpretive, descriptive, and diagnostic reports, consistent with clause (iii), regarding achievement on such assessments that allow parents, teachers, principals, and other school leaders to understand and address the specific academic needs of students, and that are provided to parents, teachers, and school leaders, as soon as is practicable after the assessment is given, in an understandable and uniform format, and to the extent practicable, in a language that parents can understand;

“(xi) enable results to be disaggregated within each State, local educational agency, and school by—

“(I) each major racial and ethnic group;

“(II) economically disadvantaged students as compared to students who are not economically disadvantaged;

“(III) children with disabilities as compared to children without disabilities;

“(IV) English proficiency status;

“(V) gender; and

“(VI) migrant status,

except that such disaggregation shall not be required in the case of a State, local educational agency, or a school in which the number of students in a subgroup is insufficient to yield statistically reliable information or the results would reveal personally identifiable information about an individual student;

“(xii) enable itemized score analyses to be produced and reported, consistent with clause (iii), to local educational agencies and schools, so that parents, teachers, principals, other school leaders, and administrators can interpret and address the specific academic needs of students as indicated by the students’ achievement on assessment items;

“(D) Alternate Assessments for Students with the Most Significant Cognitive Disabilities

“(i) alternate assessments aligned with alternate academic achievement standards.—A State may provide for alternate assessments aligned with the challenging State academic standards and alternate academic achievement standards described in paragraph (1)(E) for students with the most significant cognitive disabilities, if the State—

“(I) consistent with clause (ii), ensures that, for each subject, the total number of students assessed in such subject using the alternate assessments does not exceed 1 percent of the total number of all students in the State who are assessed in such subject;

“(II) ensures that the parents of such students are clearly informed, as part of the process for developing the individualized education program (as defined in section 614(d)(1)(A) of the Individuals with Disabilities Education Act (20 U.S.C. 1414(d)(1)(A)))—

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- “(aa) that their child’s academic achievement will be measured based on such alternate standards; and
 - “(bb) how participation in such assessments may delay or otherwise affect the student from completing the requirements for a regular high school diploma;
 - “(III) promotes, consistent with the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.), the involvement and progress of students with the most significant cognitive disabilities in the general education curriculum;
 - “(IV) describes in the State plan the steps the State has taken to incorporate universal design for learning, to the extent feasible, in alternate assessments;
 - “(V) describes in the State plan that general and special education teachers, and other appropriate staff—
 - “(aa) know how to administer the alternate assessments; and
 - “(bb) make appropriate use of accommodations for students with disabilities on all assessments required under this paragraph;
 - “(VI) develops, disseminates information on, and promotes the use of appropriate accommodations to increase the number of students with significant cognitive disabilities—
 - “(aa) participating in academic instruction and assessments for the grade level in which the student is enrolled; and
 - “(bb) who are tested based on challenging State academic standards for the grade level in which the student is enrolled; and
 - “(VII) does not preclude a student with the most significant cognitive disabilities who takes an alternate assessment based on alternate academic achievement standards from attempting to complete the requirements for a regular high school diploma.
- “(ii) SPECIAL RULES.—
- “(I) RESPONSIBILITY UNDER IDEA.—Subject to the authority and requirements for the individualized education program team for a child with a disability under section 614(d)(1)(A)(i)(VI)(bb) of the Individuals with Disabilities Education Act (20 U.S.C. 1414(d)(1)(A)(i)(VI)(bb)), such team, consistent with the guidelines established by the State and required under section 612(a)(16)(C) of such Act (20 U.S.C. 1412(c)(16)(C)) and clause (i)(II) of this subparagraph, shall determine when a child with a significant cognitive disability shall participate in an alternate assessment aligned with the alternate academic achievement standards.
 - “(II) PROHIBITION ON LOCAL CAP.—Nothing in this subparagraph shall be construed to permit the Secretary or a State educational agency to impose on any local educational agency a cap on the percentage of students administered an alternate assessment under this subparagraph, except that a local educational agency exceeding the cap applied to the State under clause (i)(I) shall submit information to the State educational agency justifying the need to exceed such cap.

District Considerations for Policy and Procedure Development

Sample district policy statement

For students with disabilities participating in the regular education assessment, [xyz school district] will develop guidelines for the provision of appropriate accommodations on assessments. Students will only be eligible for participation in the alternate assessment if they meet state and Federal regulations. The district will develop guidelines for the participation and accommodations of children with disabilities in alternate assessments.

Procedural considerations

- What district guidelines are needed for the provision of appropriate accommodations on regular state and benchmark assessments? What procedures are needed for planning and implementation purposes annually to ensure accommodations are provided appropriately during assessments?
- What guidelines are needed for the participation and accommodations of children with disabilities in alternate assessments and ensure the district isn't providing the alternate assessment to more than 1% of the students with disabilities in the district? What procedures are needed for planning and implementation purposes annually to ensure accommodations are provided appropriately during assessments?
- What are the procedures needed to meet reporting requirements?
 - » How is information reported?
 - » Who is responsible?
 - » What are the business rules for ensuring 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 child?

Guidance resource

- [Office of Special Education Programs Policy Letters Regarding Participation in State and District-wide assessments](#)
- [NSCAS Alternate Summative Assessment – Nebraska Department of Education](#)

XXII. Confidentiality

IDEA Regulations: Confidentiality	Nebraska Rule 51: Confidentiality
<p>300.611 Definitions</p> <p>As used in §§300.611 through 300.625—</p> <p>(a) Destruction means physical destruction or removal of personal identifiers from information so that the information is no longer personally identifiable.</p> <p>(b) Education records means the type of records covered under the definition of “education records” in 34 CFR part 99 (the regulations implementing the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. 1232g (FERPA)).</p> <p>(c) Participating agency means any agency or institution that collects, maintains, or uses personally identifiable information, or from which information is obtained, under Part B of the Act.</p> <p>Section 300.613 Access rights</p> <p>(a) Each participating agency must permit parents to inspect and review any education records relating to their children that are collected, maintained, or used by the agency under this part. The agency must comply with a request without unnecessary delay and before any meeting regarding an IEP, or any hearing pursuant to §300.507 or §§300.530 through 300.532, or resolution session pursuant to §300.510, and in no case more than 45 days after the request has been made.</p> <p>(b) The right to inspect and review education records under this section includes—</p> <ol style="list-style-type: none">1. The right to a response from the participating agency to reasonable requests for explanations and interpretations of the records;	<p>(Procedural safeguards regarding Confidentiality)</p> <p>92 NAC 51-009.03 Opportunity to Examine Records</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>009.03B2. The right to inspect and review education records includes:</p> <p>009.03B2a. The right to a response from the participating agency to reasonable requests for explanations and interpretations of the records; and</p>

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2. The right to request that the 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
3. The right to have a representative of the parent inspect and review the records.

(c) An agency may presume that the parent has authority to inspect and review records relating to his or her child unless the agency has been advised that the parent does not have the authority under applicable State law governing such matters as guardianship, separation, and divorce.

300.614 Record of access

Each participating agency must keep a record of parties obtaining access to education records collected, maintained, or used under Part B of the Act (except access by parents and authorized employees of the participating 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.

Section 300.615 Records on more than one child

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

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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.

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Section 300.616 List of types and locations of information

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

Section 300.617 Fees

(a) Each participating agency may charge a fee for copies of records that are made for parents under this part if the fee does not effectively prevent the parents from exercising their right to inspect and review those records.

(b) A participating agency may not charge a fee to search for or to retrieve information under this part.

Section 300.618 Amendment of records at parent's request

(a) A parent who believes that information in the education records collected, maintained, or used under this part is inaccurate or misleading or violates the privacy or other rights of the child may request the participating agency that maintains the information to amend the information.

(b) The agency must decide whether to amend the information in accordance with the request within a reasonable period of time of receipt of the request.

(c) If the agency decides to refuse to amend the information in accordance with the request, it must inform the parent of the refusal and advise the parent of the right to a hearing under §300.619.

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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.

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Section 300.619 Opportunity for a hearing

The agency must, on request, provide an opportunity for a hearing 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.

Section 300.620 Result of hearing.

(a) If, as a result of the hearing, the agency decides that the information is inaccurate, misleading or otherwise in violation of the privacy or other rights of the child, it must amend the information accordingly and so inform the parent in writing.

(b) If, as a result of the hearing, the agency decides that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child, it must inform the parent of the parent's right to place in the records the agency maintains on the child a statement commenting on the information or setting forth any reasons for disagreeing with the decision of the agency.

(c) Any explanation placed in the records of the child under this section must—

1. Be maintained by the agency as part of the records of the child as long as the record or contested portion is maintained by the agency; and
2. If the records of the child or the contested portion is disclosed by the agency to any party, the explanation must also be disclosed to the party.

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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

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Section 300.622 Consent

(a) Parental consent must be obtained before personally identifiable information is disclosed to parties, other than officials of participating agencies in accordance with paragraph (b) (1) of this section, unless the information is contained in education records, and the disclosure is authorized without parental consent under 34 CFR part 99.

(b)

1. Except as provided in paragraphs (b) (2) and (b)(3) of this section, parental consent is not required before personally identifiable information is released to officials of participating agencies for purposes of meeting a requirement of this part.
2. Parental consent, or the consent of an eligible child who has reached the age of majority under State law, must be obtained before personally identifiable information is released to officials of participating agencies providing or paying for transition services in accordance with §300.321(b)(3).
3. If a child is enrolled, or is going to enroll in a private school that is not located in the LEA of the parent's residence, parental consent must be obtained before any personally identifiable information about the child is released between officials in the LEA where the private school is located and officials in the LEA of the parent's residence.

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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.

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Section 300.623 Safeguards

(a) Each participating agency must protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages.

(b) One official at each participating agency must assume responsibility for ensuring the confidentiality of any personally identifiable information.

(c) All persons collecting or using personally identifiable information must receive training or instruction regarding the State's policies and procedures under §300.123 and 34 CFR part 99.

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

Section 300.624 Destruction of information

(a) The public agency must inform parents when personally identifiable information collected, maintained, or used under this part is no longer needed to provide educational services to the child.

(b) The information 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.

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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.

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Section 300.625 Children's rights

(a) The SEA must have in effect policies and procedures regarding the extent to which children are afforded rights of privacy similar to those afforded to parents, taking into consideration the age of the child and type or severity of disability.

(b) Under the regulations for FERPA in 34 CFR 99.5(a), the rights of parents regarding education records are transferred to the student at age 18.

(c) If the rights accorded to parents under Part B of the Act are transferred to a student who reaches the age of majority, consistent with §300.520, the rights regarding educational records in §§300.613 through 300.624 must also be transferred to the student. However, the public agency must provide any notice required under section 615 of the Act to the student and the parents.

District Considerations for Policy and Procedure Development

Sample district policy statement

[Xyz school district] will protect the confidentiality of personally identifiable information in the education records of students with disabilities. The district shall maintain a system of safeguards to protect the confidentiality of students' educational records and personally identifiable information when collecting, retaining, disclosing, and destroying student special education records, in accordance with Board policy, state requirements, and Federal and state law and regulations.

Procedural considerations

- What steps should staff follow when a parent requests access to their child's records?
 - » What are the timelines associated with these steps?
- What steps should staff follow when a parent requests an amendment to their child's records?
 - » What are the timelines associated with these steps?
- How will the district keep records of parties who obtain access to education records collected, maintained, or used under Part B of the IDEA? How will this information be stored?
- What procedures are needed for amendments to records and hearings?
- How is parental consent for release of records obtained when needed?
- How will the district protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages? What procedures are needed for each stage?
 - » Who is the district-level person responsible for ensuring the confidentiality of any personally identifiable information? What types of procedures does that individual need to have in place?
- How will training for persons collecting or using personally identifiable information regarding the state's policies and procedures be documented and stored?
- What is needed to document and maintain a current listing of the names and positions of those employees within the participating agency who may have access to personally identifiable information? What process will the district follow if this information is requested?
- What procedures are needed for the destruction of records?

Guidance resources

- [IDEA and FERPA Confidentiality Provisions \(PDF\) \(ed.gov\)](#)
- [Understanding the Confidentiality Requirements Applicable to IDEA Early Childhood Programs - Frequently Asked Questions \(FAQs\) \(PDF\)](#)
- [Confidentiality and Access to Student Records | Center for Parent Information and Resources \(parentcenterhub.org\)](#)
- [Office of Special Education Programs Policy Letters Regarding Confidentiality of Education Records](#)

XXIII. Procedure Development Template

Task	Person Responsible	When to Complete	Forms Needed (if any)

XXIV. Sample Procedure Development

Procedure: [Xyz School District] ChildFind activities

Task	Person Responsible	When to Complete	Forms Needed (if any)
Review website regarding information on child find process and identify updates as needed	Special education supervisor	Annually (June)	
Update website content as needed	Special education supervisor	Annually (July)	Website update form
Identify local preschools and pediatricians	Special education preschool coordinator	Annually (July)	
Send out notices to local news media	Special education supervisor	Biannually (August and January)	Communication form (for legal review)
Send preschools and local pediatricians updated brochures or one-pagers with child find information and resources	Special education preschool coordinator	Biannually (August and January)	Brochures, one-pagers
Provide school-level contacts needed updates and forms	Special education coordinator	Annually (August)	Referral forms, referral procedures, brochures, flyers
Professional development for staff (onboarding and annual refreshers of the referral process)	Special education coordinator	Onboarding- Annually (August) Refreshers- Annually (August staff meetings)	PowerPoint slides, special education district manual

Sample procedure

[Xyz school district] will provide the following steps for general child find activities:

1. The special education supervisor will be responsible for developing and maintaining district-level child find activities. The activities include
 - a. Website content to be developed. It will be reviewed at least annually (typically July) and will be revised with updates before the start of school in the fall.
 - b. Printed information (e.g., brochures, one-page flyers) dissemination will be provided to the following in the fall and spring each year:
 - i. Local preschools and daycares
 - ii. Local pediatricians
 - iii. District Parent Teacher Organizations
 - iv. Local nonpublic schools
 - v. Department of Children's Services
2. Professional development training for district staff
 - a. Onboarding content regarding child find activities and referrals will be developed and approved by district coordinator annually. An abbreviated version that provides general content will also be created to be incorporated into onboarding content for all new hires.
 - b. Onboarding training that covers procedural aspects for leadership regarding child find responsibilities will occur before the school year begins for all staff who are hired at the start of the year in the following roles or at the time of hire for those who start after the school year begins: school administrators, preschool services coordinator, and SAT coordinators. Mid-year new hires must receive onboarding coordinated by their supervisor.
 - c. Refresher content will be provided annually for all roles before the school year begins.
3. Parent training
 - a. Content will be developed by the special education coordinator for school teams to use for parent outreach activities such as parent organization meetings. Updated content will be provided each fall to SAT coordinators and their administrators.
4. Referral procedures will be developed and provided to SAT coordinators and associated team members.