

## XII. Eligibility

IDEA Regulations: Eligibility	Nebraska Rule 51: Eligibility
<p data-bbox="100 382 724 411"><b>Section 300.306 Determination of eligibility</b></p> <p data-bbox="126 441 683 550"><b>(a)</b> 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><li data-bbox="136 848 740 995">2. The public agency provides a copy of the evaluation report and the documentation of determination of eligibility at no cost to the parent.</li></ol> <p data-bbox="126 1020 769 1129"><b>(b)</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 1163 756 1843" style="list-style-type: none"><li data-bbox="136 1163 756 1743">1. If the determinant factor for that determination is—<ol data-bbox="178 1264 756 1743" style="list-style-type: none"><li data-bbox="178 1264 756 1575">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><li data-bbox="178 1608 756 1675">ii. Lack of appropriate instruction in math; or</li><li data-bbox="178 1709 756 1743">iii. Limited English proficiency; and</li></ol></li><li data-bbox="136 1776 756 1843">2. If the child does not otherwise meet the eligibility criteria under §300.8(a).</li></ol>	<p data-bbox="821 382 1078 411"><b>92 NAC 51-006.03</b></p> <p data-bbox="847 441 1477 1024"><b>006.03A.</b> 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="847 1058 1425 1239"><b>006.03B.</b> 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="847 1272 1458 1654"><b>006.03C.</b> 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="847 1688 1468 1869"><b>006.03D.</b> 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

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## 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](#)