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# NDE Monitoring Protocol for Special Education

A Guide for Implementing Monitoring  
Activities with Nebraska School Districts

Nebraska Department of Education

10/1/2011



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## Introduction

*Congress enacted the Education for All Handicapped Children Act (Public Law 94-142) in 1975, to mandate a free appropriate public education (FAPE) for all children, regardless of their disability, and to support states and localities in protecting the rights of, meeting the individual needs of, and improving the educational results for children and youth with disabilities and their families. This landmark law which was amended in 2004 is currently titled the Individuals with Disabilities Education Improvement Act commonly referred to as IDEA. Since the 1975 passage of Public Law 94-142, significant progress has been made toward meeting our goal of developing and implementing effective programs and services for all infants, toddlers, preschoolers, children and youth with disabilities.*

*Improving educational results for children with disabilities requires a continued focus on the full implementation of IDEA to ensure that each child's educational placement and services are determined on an individual basis, according to the unique needs of each child, and are provided in the least restrictive environment. While Public Law 94-142 issued a national challenge to ensure access to education for all children with disabilities, the 2004 Amendments to IDEA challenges us not only to continue that assurance, but also to improve results and outcomes for infants, toddlers, preschoolers, children and youth with disabilities and their families.*

*Appropriate implementation of federal and state laws and regulations ensures that infants, toddlers, preschoolers, children and youth with disabilities are provided a free appropriate public education (FAPE) in natural and least restrictive environments (LRE). Accountability in the provision of early intervention, special education and related services demonstrates the effectiveness of how we plan and deliver services to meet the needs of infants, toddlers, preschoolers, children and youth with disabilities.*

## **Overview**

*The federal regulations require states to monitor the implementation of IDEA. The primary focus of the state's monitoring must be on:*

- 1) Improving educational results and functional outcomes for all children with disabilities; and*
- 2) Ensuring that school districts in the state meet the program requirements of the law, with particular emphasis on those requirements that are most closely related to improving educational results for children with disabilities.*

*As part of this responsibility, the Nebraska Department of Education is required to monitor Nebraska school districts using quantifiable indicators in each of the following priority areas:*

- Provision of free appropriate public education (FAPE) in the least restrictive environment (LRE) including:
  - a. Identification, evaluation and verification of children and youth with disabilities*
  - b. Disproportionate representation of racial and ethnic groups in special education and related services, to the extent the representation is the result of inappropriate identification*
  - c. Development, implementation and review of the Individualized Family Service Plan (IFSP), or the Individualized Education Program (IEP)*
  - d. Placement in the Least Restrictive Environment (LRE)*
  - e. Procedural Safeguards**
- Effective general supervision of the provision of special education, including:
  - a. Effective monitoring activities;*
  - b. Implementation of Dispute Resolution, Mediation, Complaint, and Due Process activities;*
  - c. Review of school district Policies and Procedures and Special Education Forms**

## **Nebraska's Special Education 5 Year Monitoring Process**

*The Individuals with Disabilities Education Act (IDEA) requires the Department of Education to review each school district's implementation of special education requirements. Nebraska has developed monitoring procedures which require districts to be reviewed at least once every five (5) years for implementation of the requirements under both Part B (3-21 ) and Part C (Birth to Age 3). .*

*To meet all of these requirements, Nebraska has developed and implemented a monitoring process which will assist NDE in reviewing local school district special education programs. The NDE Special Education Office reviews a variety of data sources to document each school district's compliance with 92 NAC 51 (Rule 51). The monitoring process includes a review of a variety of areas including:*

- *District Policies, Procedures and Practices*
- *Special Education Forms*
- *Results of Mediations, Complaints and Due process*
- *Results of Fiscal Audits and Sub Recipient Reviews conducted in the district*
- *Data gathered during on-site visit including student file review results, interviews etc.*

The steps in the monitoring process include:

- Step One: Planning the Monitoring Activity*
- Step Two: Desk Review*
- Step Three: Child/Student File Review – Identification of Noncompliance*
- Step Four: Notification and Correction of Noncompliance*
- Step Five: Verification of Correction of Noncompliance*
- Step Six: Closing the Monitoring File*

## Step 1: Planning the Monitoring Activity

*The Nebraska Department of Education, Special Education Office, conducts a monitoring training workshop during August of each year. School districts who are scheduled to be monitored during the upcoming school year must participate in this training. The training focuses on the monitoring process, training materials and the website used to record results.*

*The NDE Regional Consultant is responsible for maintaining the timeframe for completing the monitoring activities and file reviews. To insure full implementation of the Individuals with Disabilities Education Act, Monitoring activities for both Part B and Part C must be conducted. The on-site visits for Parts B and C should be conducted as close together as possible. In most cases, the on-site review can be completed within 1-2 days. However, in larger districts the process may take longer, but should not exceed one week.*

*The NDE Regional Consultant will meet with the school district personnel to review the monitoring plan for the upcoming year and establish the school district's monitoring team. The monitoring team shall be composed of NDE staff, (the district's assigned Regional Consultant, plus one other NDE Regional Consultant), District Staff (Superintendent, District Special Education Director), and other school district personnel, such as principals, teachers, counselors, or persons assigned to oversee special education activities in the district. The monitoring team may include the ESU ILCD Facilitator if requested by the school district.*

*The NDE Regional Consultant will meet with the monitoring team to discuss the various components of the monitoring process, including training, file reviews, correction of noncompliance and verification of correction of noncompliance. The NDE Regional Consultant will also discuss with the monitoring team how information generated from the monitoring activities will be incorporated into the ILCD process and improve results. Additionally, the NDE Regional Consultant(s) will provide training to the district personnel who will be participating in the onsite review of files. This activity should be one which will build inter rater reliability for reviewing files, as well as, introducing district personnel to the review process and expectations. Following this training, the onsite file review should be completed within 1 month of the training.*

## Step 2: Desk Review

The NDE Regional Consultant will review components of the district's special education program to assist the monitoring team in focusing the on-site visit. The components reviewed as part of the desk audit include:

- District forms used by the district to document the implementation of 92 NAC 51
- District Policies, Procedures and Practices
- Review of any complaints filed and investigated by NDE pursuant to 92 NAC 51-009.11
- Review of any due process findings issued pursuant to 92 NAC 55
- Review of the timely correction of any noncompliance identified during the previous monitoring cycle.
- Issues identified as part of previous fiscal review or sub-recipient fiscal reviews.

### A. Forms Review:

To determine whether the district has in place practices which are likely to result in full implementation of the special education regulations, NDE will review the school district forms for implementing and documenting the implementation of IDEA and Rule 51 regulations as part of the desk audit:

Part B	Part C
<p>Notice of Proposal/Refusal to:</p> <ul style="list-style-type: none"> <li>➤ Initial evaluation</li> <li>➤ Reevaluation</li> <li>➤ Initial Placement</li> <li>➤ Change of Placement</li> </ul>	<p>Notice of Proposal/Refusal to:</p> <ul style="list-style-type: none"> <li>➤ Initial evaluation</li> <li>➤ Reevaluation</li> <li>➤ Initial Placement</li> </ul> <p>Change of Placement</p>
<p>Consent for:</p> <ul style="list-style-type: none"> <li>➤ Initial evaluation</li> <li>➤ Reevaluation</li> <li>➤ Initial Placement</li> </ul>	<p>Consent for:</p> <ul style="list-style-type: none"> <li>➤ Initial evaluation</li> <li>➤ Reevaluation</li> <li>➤ Initial Placement</li> </ul>
Multidisciplinary Team Report	Multidisciplinary Team Report
Notification of the IEP Meeting	Notification of IFSP Meeting
IEP Meeting Attendance Excusals	Individualized Family Service Plan (IFSP)
Individualized Education Program (IEP)	Parent Rights
Reevaluation, No Further Testing Needed	
Summary of Performance Report	
Consent to Invite Outside Agency to IEP meeting	
Parent Rights	

### B. Policies Procedures and Practices:

School Districts are required to have policies, procedures and practices which are consistent with the requirements of the IDEA and Rule 51. Annually, districts must submit a checklist indicating whether they have policies, procedures and practices in place to fully implement

*the requirements of the IDEA and Rule 51. Additionally, districts are required to have on file with the Nebraska Department of Education, their most current policies and procedures. Districts should review their policies, procedures and practices annually, and update them if warranted by a change statute or regulation. Districts must ensure that their NDE Regional Consultant is provided with a copy of any change in the district policies or procedures. The NDE Regional Consultant will then review the revision to ensure that the revised policy is consistent with federal and state statute and regulations.*

*C. Complaint Investigations and Due Process Cases:*

*The Letter of Findings from Complaints or the Hearing Officer's Findings from Due Process Hearings will be shared with the NDE Regional Consultant, who will work with the district to ensure the timely correction of any noncompliance identified. When the correction is documented and verified by the NDE Regional Consultant, a Closeout Letter for the Complaint will be sent by the NDE Complaint Investigator to the district or the Hearing Officer will be notified for due process hearing findings. Complaints and due process hearings filed within the previous five (5) years, with incidence of noncompliance identified and corrected through either of these processes must be included in the student file review to ensure that corrections continue to be in place.*

*D. Correction of Previously Identified Noncompliance:*

*As part of the Desk Audit, the NDE Special Education Regional Representative will review the letter of finding from the previous on-site visit conducted in the district. The Regional Consultant will note any finding of noncompliance and the corrective actions taken by the district to ensure correction. A review of the standards which were the basis for the previous finding of noncompliance will be included in the on-site file review conducted in the district.*

*E. Previous fiscal reviews or sub-recipient fiscal reviews*

*Fiscal reviews or sub-recipient fiscal reviews conducted during the previous five years will be reviewed to determine whether it is necessary to review specific standards during the on-site visit. If a fiscal review or sub-recipient review resulted in a finding of noncompliance, the standard which was the basis for that finding must be reviewed during the on-site visit.*

### Step 3: On-Site Review: Identification of Noncompliance

*File Reviews, for both Part B and Part C of the IDEA, shall be conducted with the districts once every five (5) years, and documented on the district's secure ILCD/Special Education website. Accountability in the provision of early intervention services and special education and related services demonstrates the effectiveness of special education and early intervention services in meeting the needs of children and youth with disabilities. The child/student file review is required to document that districts are fully implementing the requirements of state and federal law and regulation. The Nebraska Department of Education, Special Education Office, is responsible for all determinations of compliance, the oversight of correction, and the validation that a district has corrected any and all incidence of noncompliance.*

#### A. NDE Personnel Involved in the File Review

*At least two NDE Regional Consultants will conduct the onsite file review. The NDE Regional Consultant responsible for the district will take the lead role. Other NDE staff assisting in the on-site file review will provide support for reviewing the files and answering questions from district personnel. The NDE staff is responsible for all phases of the file review, which includes **the selection of files, the onsite review, the finalization of the file review, approval of the corrective action plan (CAP) and verification of correction of noncompliance.***

#### B. File Review Instructions:

*1. The NDE Regional Consultant will meet with the school district staff and provide the training for each step of the process.*

*2. The NDE Regional Consultant will complete the child/student file selection **no more than three weeks prior** to the onsite review of files. A random selection of files will be conducted first to establish a baseline for the number of files to be reviewed onsite. The random population of files will be determined by the total number of special education students in the district. (See chart below) This establishes the minimum number of files to be reviewed. That minimum number of files will be revised to take into account the following factors:*

- Variety of disability categories represented in the district;*
- Ages of students being served;*
- Settings within the district in which students receive services;*
- Children served in nonpublic schools; and*
- Children served in out of district placements.*

Number of Special Education Children	Percentage of Files
1 – 20	40%
21 - 50	30%
51 - 100	20%
101 - 500	10%
501 and above	5%

*When the random selection is complete and it is determined that the selection needs to be refined, files will be manually added or deleted. Acceptable reasons for additions or deletions would be: not enough student files listed; one or more of the disability categories is not represented; a certain age group is not included (3 to 5 year olds, and 18 to 21 year olds); there are too many or too few from one disability category; etc. When files are selected for Part C the sample should include children who have transitioned from Part C to Part B. The sample should also include children with service coordination and some without service coordination, with special consideration given to the children without service coordination, since school districts provide all services and case management support.*

*After review of the file selection, if the team is satisfied it meets all of the criteria, the student files to be reviewed are set.*

### *3: Select Reviewers and Reviewer assignments:*

*The selected student files must be assigned to file reviewers, which must include not only NDE staff, but also school district staff. Districts are encouraged to make their teaching staff available for the onsite review, since the training and review provides an opportunity to discuss issues and refine skills. The NDE Staff will complete the review for 10% to 20% of the child/student files selected, and will oversee the review the remaining files by district teachers and service providers. The NDE staff will review district files prior to, or on the same day as the onsite visit, so that they know the basic procedures and content of the files and establish inter-rater reliability with the other reviewers.*

*File assignments will be in a range of 1 to 6 files per reviewer. There are two methods for assigning student files to be reviewed; Manual File Review Assignment and Automatic File Review Assignment. Utilization of the Manual File Review Assignment allows the district to pick which child/student file to assign to which reviewer. The Automatic File Review Assignment method automatically assigns files to be reviewed to individual reviewers. The assignment is made by listing files by age and assigning them to reviewers listed by name.*

### *4. Completion of Score Sheets*

*On the score sheets page, the file reviewer names are listed, with child/student names listed below. If a reviewer has entered data on his/her score sheet, the date and time of the last data entry is also shown. The reviewer will enter data onto the score sheet. When the reviewer completes the review it is submitted for scoring, and a report that shows all the data is issued to the district. Data may be reviewed in a number of ways:*

- District File Review Submission Status Report: this report shows the score sheets submitted.*
- District File Review Summary Report which may be sorted by:*
  - Overall*
  - By Regulation*
  - By Student*
  - By Reviewer*
  - By Disability*

##### *5. Finalization of the File Review*

*When the File Review is completed, the school district will be given up to 10 working days to review their results, and ask any questions about the process. Following the 10 working days, or it could occur on the day of the onsite visit, the NDE Regional Consultant will finalize the file review and the correction of noncompliance activities, if needed, will be initiated. This finalization step is the responsibility of, and must be completed by the NDE Regional Consultant who is the direct contact for the district.*

### IDEA Limited Sub-Recipient On-Site Fiscal Review

*The NDE Special Education Office staff will complete a sub-recipient onsite fiscal review of the district to assure that the district is using IDEA funds appropriately. This limited review will examine selected expenditures for goods or services authorized in accordance with an approved budget. Staff will use the NDE special education fiscal review instrument. This limited review is not intended to replace other fiscal grant requirements (i.e. independent audit, etc.) but rather is to assist with assuring that expenditures are appropriate and allowable for the grant.*

*The IDEA Sub-Recipient on-site review may look at the following IDEA funding sources: 611 Base; 611 E/P (including proportionate share and CEIS; 619-PS (3-5); Part C (0-3); and ARRA funds for E/P; (3-5) and (0-3) ending 9/30/2011.*

*This review will be completed in conjunction with the on-site visit during the monitoring year for the districts. Additional reviews may occur more frequently as deemed necessary by the NDE, Office of Special Education.*

#### Step 4: Notification and Correction of Noncompliance

When the File Review is completed, the NDE Regional Consultant will finalize the file review and will notify the district, Appendix A, in writing within two weeks, of the results of the file review. Pursuant to 92 NAC 51-004.14D, all noncompliance must be corrected as soon as possible, and in no case later than one year from the date on which the district is notified of a finding of noncompliance. In order to demonstrate correction of the noncompliance, the district is required to:

1. Determine the root cause of the noncompliance;
2. **Within 45 days of being notified** of the finding of noncompliance, submit a corrective action plan outlining the steps the district will take to correct all instances of noncompliance;
3. If necessary, revise the district policy related to the noncompliance and review and revise the district procedures that contributed to the noncompliance to ensure the noncompliance does not recur.
4. For any noncompliance concerning a child-specific requirement that is not subject to a specific timeline requirement, the district must correct the individual case of noncompliance, unless the child is no longer in the jurisdiction of the district. Similarly, for any noncompliance concerning a child specific timeline requirement, the district must complete the required action, although late, unless the child is no longer within the jurisdiction of the school district.
5. Prior to implementation of the corrective action plan, it must be submitted to NDE for approval. Following approval and implementation, the district must provide NDE with documentation of the effectiveness of the plan in correcting all identified noncompliance.

School districts or approved cooperatives failing to respond shall be given **an additional 30 days** following the official contact from NDE Special Education Office administrator to submit a plan for the resolution of the identified noncompliance. All Noncompliance must be corrected within one year of the date the district was notified of the noncompliance. Noncompliance not corrected within the established timelines will be subject to implementation of the procedures in 92 NAC 51-004.09 regarding the withholding of funds.

##### A. Corrective Action Plan (CAP) Work Flow

The NDE Regional Consultant will contact the school district to discuss the corrective action plan, review the noncompliance identified during the file review, and assist the school district in developing the corrective action plan. **The overall CAP process, which includes verification by NDE that noncompliance has been corrected must be completed within 9 months from that date of notification of noncompliance.** The school district will have **45 days in which to submit the corrective action plan** for approval by the NDE Regional Consultant.

*Throughout the corrective action process, interaction between the school district and the NDE Regional Consultant will be documented to ensure that the corrective action process is completed within the one year timeline. Documentation will be maintained regarding each step of the corrective action process (i.e. when the plan is submitted for approval; when the plan is approved by NDE; when the plan is completed; etc).*

*The Corrective Action Plan must include each of the regulations that were found to be out of compliance systemically (less than 80% implementation rate), and each of the regulations found to be out of compliance in individual files (implementation rate of greater than 80% but less than 100%). For each regulation found to be in noncompliance, the corrective action plan must contain the actions which will be taken by the district to ensure full implementation of the regulation in the future, the timelines and persons responsible for taking the actions, and the manner in which the effectiveness of the corrective actions will be evaluated. A sample of the corrective action plan is included in Appendix B.*

*1. Findings of systemic noncompliance: (Less than 80% Implementation Rate): For findings of systemic noncompliance, the corrective action plan must include a list of the actions which will be taken by the district to correct the noncompliance, the timeline for implementing the actions and the persons responsible for each action. Findings of systemic noncompliance generally require a greater degree of corrective action to ensure that the district has corrected the identified noncompliance throughout the district. Additionally, it is expected that the corrective action will take a greater amount of time to implement than is necessary to correct individual files. In order to ensure that the noncompliance does not reoccur in the future, it is anticipated that staff training will be part of the corrective action. If training is included as part of any corrective action, the training must be submitted to NDE and approved prior to conducting the training activity. Districts must maintain documentation that the training occurred, including the date of the training and who was in attendance.*

*2. Individual findings of noncompliance: (Implementation rate of greater than 80% but less than 100). All findings of noncompliance contained in individual student files must be corrected. For any noncompliance concerning a child-specific requirement that is not subject to a specific timeline requirement, the district must correct the individual case of noncompliance, unless the child is no longer in the jurisdiction of the district. Similarly, for any noncompliance concerning a child specific timeline requirement, the district must complete the required action, although late, unless the child is no longer within the jurisdiction of the school district.*

#### *B. NDE Review and Approval of the Corrective Action Plan*

*When the district has completed the corrective action plan, it will be submitted to the appropriate NDE Regional Consultant for review and approval. The NDE reviewer may either "Approve" or "Reject" the corrective action plan. If the corrective action plan is approved, the district is notified and may proceed with the implementation of the corrective action plan. If the corrective action plan is rejected, the district will need to revise the activities, timelines,*

*materials, etc., as directed by the NDE Regional Consultant. The plan must then be resubmitted for approval. The NDE reviewer may include comments while either accepting or rejecting the corrective action plan. Sample letters are included in Appendix C.*

### *C. Implementation of the Corrective Action Plan*

*The NDE Regional Consultant is prepared to assist the district with the implementation of the corrective action plan. Assistance may include:*

- Providing training to the district staff;*
- Providing materials for trainings;*
- Contacting a possible consultant/presenter;*
- Have monthly meetings, via phone or in person, to discuss the progress in completing the CAP;*
- Reviewing proposed revisions to policy, procedures and practices;*
- Assisting the district in developing or revising their forms, etc...*

*When the corrective action plan is completed the district must notify the NDE Regional Consultant of the completion, submitting the completed corrective action plan for review. The NDE Regional Consultant, in concert with the District Monitoring Team, will determine the next steps in verifying the correction of noncompliance. The Completion Date for the corrective action activities is not to exceed nine (9) months after the notification of the instances of noncompliance. This will assist NDE and school districts or approved cooperatives in reviewing results, documenting correction and making added corrections if necessary, within the one (1) year correction requirement.*

### Step 5: Verification of Correction of Noncompliance:

*NDE will take the following steps to determine that the noncompliance has been corrected. These are not exclusive steps; others may be added as needed, to document that the correction of noncompliance has been completed successfully:*

- 1. Review the documentation submitted by the district that the corrective action plan has been implemented (i.e. revised policies/procedures etc)*
- 2. For any noncompliance concerning a child-specific requirement that is not subject to a specific timeline requirement, NDE will review the correction of the individual case of noncompliance, unless the child is no longer in the jurisdiction of the district. Similarly, for any noncompliance concerning a child specific timeline requirement, NDE will review whether the required action was completed, although late, unless the child is no longer within the jurisdiction of the school district.*
- 3. Based on a review of updated data from subsequent review or data collection, NDE will determine whether the school district is now correctly implementing the specific regulatory requirement.*

*A Final Report is completed by the NDE Regional Consultant when the district or cooperative has submitted the results/outcomes from the CAP and provides documentation of the correction. The NDE Regional Consultant will review the results using a number of methods to verify correction of noncompliance. Those methods may include, but are not limited to:*

- on-site observations,*
- interviews with staff,*
- interviews with parents,*
- review of agenda,*
- materials and results from trainings;*
- review of more files to document change in policy, procedure or practice, etc...*

*Whatever methods have been used, the verification must be documented in the NDE final report.*

*Sample verification Reports are included in Appendix D.*

*The NDE Regional Consultant must verify that all instances of noncompliance identified during the file review have been corrected. The verification includes a review of the specific student file in which the noncompliance was identified as well as a review of a sampling of additional files. Any noncompliance identified during the verification process must also be corrected. A record of the student files review and the regulations reviewed in each file must be maintained to document full correction of noncompliance. A sample of the Correction of Individual Student Files Reviewed is contained in Appendix D.*

## Step 6: Closing the Monitoring Process

*The Closeout Letter will be completed by NDE Regional Consultant following the completion of the verification activities and the final report. This Closeout Letter is a clear statement by NDE that the district has completed the CAP successfully and the district is now in full compliance with IDEA Regulations and 92 NAC 51 (Nebraska Rule 51). A Sample Closeout Letter is included in Appendix E.*

*Attached to the Closeout Letter will be a copy of the Verification and Documentation of Correction of all Noncompliance, which was completed by the NDE Regional Consultant. A file will be maintained in the Lincoln Office for each district. That file will contain the following items.*

- *Notification of Compliance/Noncompliance Letter*
- *Corrective Action Plan (CAP)*
- *Acceptance/Rejection of the CAP*
- *Notification of Completion of CAP*
- *Verification of Correction of Non Compliance Final Report*
- *Closeout Letter*

*Upon completion of all of these activities, the NDE Regional Consultant will complete and upload onto the district's secure ILCD website a Monitoring Final Report outlining each aspect of the review, the determination of compliance, and any activities completed or ongoing to maintain compliance and support improved outcomes and results for infants, toddlers, preschoolers, children and youth with disabilities .*

## **Part C Monitoring: Collaboration between Department of Education (NDE) and the Nebraska Department of Health and Human Services (DHHS)**

### *A. General Monitoring Responsibilities*

*The Nebraska Department of Education, Office of Special Education Regional Consultants monitor school districts and approved cooperatives using the 92 NAC 51 (Rule 51) Part C File Review Checklists.*

*The NDHHS Early Intervention Office reviews the agencies that contract to provide service coordination using the Nebraska HHS Finance and Support Manual, 480 NAC 10-000 H & CB Services Checklist.*

### *B. Combined Agency Reviews:*

*The NDE Office of Special Education has a five (5) year schedule for reviewing school districts and approved cooperatives. This review schedule is not grouped by ESUs or Planning Region Teams, as a general rule. However, there are a few areas that are grouped by ESU, and consequently, by Planning Region Team. The DHHS reviews of service coordination are scheduled on a three (3) year schedule, which is dictated by the length of the Medicaid grant, and grouped by Planning Region Team. When it is feasible, and the school district is in agreement, the EDN Service Coordination Review and the NDE Special Education Monitoring activities may take place at the same time. The DHHS Part C Coordinator and NDE Regional Representative will make efforts to coordinate their schedules for each year.*

### *C. Sharing Monitoring Results/ Completion of Corrective Action Plans (CAP):*

*When monitoring activities have been completed by either agency, the results of that review will be shared with the other agency, especially if there are instances of noncompliance. The agency that identifies the noncompliance will be responsible for ensuring the correction of identified noncompliance and monitoring the related CAP. Only one finding will be issued in each situation, regardless of whether the noncompliance can be attributed to the Services Coordination agency or the school district or approved cooperative. The DHHS Part C Coordinator will work with the service coordination agency; and the NDE Regional Consultants will work with school districts and approved cooperatives in their assigned areas to complete the CAP.*

*DHHS will require Services Coordination agencies to submit a progress report at the end of the first six months of a CAP. The report will be shared with the appropriate NDE Regional Consultant. DHHS and NDE will ensure completion of CAPs issued by their respective agencies by the end of the one year allowed for correction and the results will be included in the Annual Performance Report (APR).*

*NDE will follow the Correction of Noncompliance process outlined in the Nebraska Department of Education Monitoring Protocol. When the CAP is completed and the Closeout Letter is sent, the Closeout Letter will be shared with the DHHS Part C Coordinator.*

*If there is any dispute in the findings or the correction of noncompliance, the issue will be settled by the Management Teams of the Co Lead Agencies.*

*The letters sent by DHHS and NDE to notify agencies of the need for development of a CAP have been aligned to convey similar information while separating state-level responsibilities:*

- *The letter used by DHHS to notify Services Coordination agencies of the need for a CAP includes citations from the DHHS Services Coordination Manual describing the regulations related to the finding(s).*
- *The letter used by NDE to notify school districts and approved cooperatives of the need for a CAP includes citations from 92 Nebraska Administrative Code 51 describing the regulations related to the finding(s).*
- *The CAP notification letter sent by NDE to school districts and approved cooperatives encourages them to share the CAP information with their PRT and the Services Coordination agency in their area.*

*Appropriate NDE and DHHS staff may schedule a meeting with representatives from the school district or approved cooperative, Services Coordination agency, and Planning Region Teams to discuss the findings and the CAP.*

## Appendix A: Sample Notification for Systemic/Individual Noncompliance

TO: School District  
FR: NDE Regional Consultant  
RE: Identification of Noncompliance

- Part B  
 Part C

On \_\_\_\_\_, 2011 a file review were conducted at \_\_\_\_\_ Public School, and finalized on \_\_\_\_\_, 20\_\_\_\_. As a result of that visit, the following findings were made:

*Findings of Systemic Noncompliance:  
(List here regulations found to have a compliance rate of 80% or less)*

*Individual Findings of Noncompliance:  
(List student file in which noncompliance was identified and the specific regulation found to be out of compliance.)*

*Pursuant to 92 NAC 51-004.14D, all noncompliance must be corrected as soon as possible, and in no case later than one year from the date of this Notification of Noncompliance. In order to demonstrate correction of the noncompliance, the district is required to:*

- 1. Determine the root cause of the noncompliance;*
- 2. Submit a corrective action plan outlining the steps the district will take to correct all instances of noncompliance; (Within 45 days of receipt of this letter)*
- 3. If necessary, revise the district policy related to the noncompliance and review and revise the district procedures that contributed to the noncompliance to ensure the noncompliance does not recur.*
- 4. For any noncompliance concerning a child-specific requirement that is not subject to a specific timeline requirement, the district must correct the individual case of noncompliance, unless the child is no longer in the jurisdiction of the district. Similarly, for any noncompliance concerning a child specific timeline requirement, the district must complete the required action, although late, unless the child is no longer within the jurisdiction of the school district.*
- 5. Prior to implementation of the corrective action plan, it must be submitted to NDE for approval. Following approval and implementation, the district must provide NDE with documentation of the effectiveness of the plan in correcting all identified noncompliance.*

*NDE will take the following steps to determine that the noncompliance has been corrected.*

- 1. Review the documentation submitted by the district that the corrective action plan has been implemented (i.e. revised policies/procedures etc)*
- 2. For any noncompliance concerning a child-specific requirement that is not subject to a specific timeline requirement, NDE will review the correction of the individual case of*

*noncompliance, unless the child is no longer in the jurisdiction of the district. Similarly, for any noncompliance concerning a child specific timeline requirement, NDE will review whether the required action was completed, although late, unless the child is no longer within the jurisdiction of the school district.*

- 3. Based on a review of updated data from subsequent review or data collection, NDE will determine whether the school district is now correctly implementing the specific regulatory requirement.*

*If a district fails to correct the identified noncompliance within one year of the date of this letter, NDE must take enforcement actions to ensure compliance, which may include implementation of the provisions contained in 92 NAC 51-004.09 (Notice and Opportunity for a Hearing Before Withholding Funds).*

*If you have any questions concerning the noncompliance identified in your district or questions regarding the development and implementation of the corrective action plan, including the timeline for correction of noncompliance, please contact the Special Education Regional consultant assigned to your district.*

## Appendix A: Sample Notification of Compliance

TO: School District

FROM: NDE Regional Consultant (staff name)

RE: Finding of Compliance for:

Part B

Part C

On \_\_\_\_\_, 2011, onsite monitoring activities and a file review were conducted at Any School Public School. The purpose of the review was to determine the level of compliance within the district with the regulations and standards contained in 92 NAC 51 (Rule 51). As a result of the review the district was determined to be in compliance in the areas reviewed. Therefore, a corrective action plan is not required.

A summary of the monitoring activities and file review is available on your ILCD Website under the monitoring/File Review component. Pursuant to our monitoring protocol, your next on site visit will be conducted during the \_\_\_\_\_ school year.

Thanks you and your Monitoring Team for your assistance in the monitoring process. If you have any questions, please contact me at:

Phone: \_\_\_\_\_

email: \_\_\_\_\_

## Appendix B: Sample Corrective Action Plan for Systemic/Individual Noncompliance

### Corrective Action Plan Systemic Noncompliance

School Name and Co/Dist. # \_\_\_\_\_

Date File Review Conducted: September 22, 2011,

Date File Review Finalized: September 29, 2011,

Letter of Findings issued on September 30, 2011.

The corrective action plan must be completed within nine (9) months of the issuance of the letter of finding, June 30, 2012.

#### Monitoring Corrective Action Plan

##### Findings of systemic noncompliance: (Less than 80% Implementation Rate)

Findings of systemic noncompliance require a greater degree of corrective action to ensure the district has corrected the identified noncompliance and has taken steps necessary to ensure the full implementation of the regulation throughout the district. Additionally, it is expected that the corrective action is such that the noncompliance will not reoccur in the future.

Regulation	Corrective actions* including timelines and persons responsible	Manner in which effectiveness of corrective action will be evaluated
<p>007.07A2 – A statement of measurable annual goals, including academic and functional goals, designed to:</p>	<p>The District will conduct training for all teachers in the next 60 days to review files, and determine if the goals on IEPs are measurable. The Special Education Director will conduct the trainings, and attendance will be mandatory. Training will focus on How to Develop A Measurable Goal.</p>	<p>The NDE Staff will review the training outline and materials that will be used by the district. A Pre and Post questionnaire will be used with staff to determine immediate results, A more detailed evaluation of the training, will be a review of 2 files from each teacher to determine if skills taught in the training were used to develop more measurable goals.</p>

\*If training is included as part of any corrective action, the training must be submitted to NDE and approved prior to conducting the training activity. Districts must maintain documentation that the training occurred, including the date of the training and who was in attendance.

## Appendix B: Sample Corrective Action Plan for Systemic/Individual Noncompliance

### Corrective Action Plan Individual File Noncompliance

School Name and Co./Dist # \_\_\_\_\_

Date File Review Conducted: September 22, 2011,

Date File Review Finalized: September 29, 2011,

Letter of Findings issued on September 30, 2011.

The corrective action plan must be completed within nine (9) months of the issuance of the letter of finding, June 30, 2012.

(Note: If the regulation was found to be a systemic issue, it will not appear in this part of the CAP since it has already been addressed in the Systemic part of the CAP.) The same information is needed to demonstrate and document correction of noncompliance. There is no threshold for correction of noncompliance, even if the finding is a single finding, and the district has a 97% implementation of the regulation, it must be identified and corrected to 100%.

Regulation	Corrective actions* including timelines and persons responsible	Manner in which effectiveness of corrective action will be evaluated
007.03A4	There were 2 files found out, within 6 months of this notification, an IEP will be held for each student, and the District Representative will be present at the meeting.	The District Representatives participation in the IEP Meeting. Files will be reviewed, including 5 additional, randomly selected, files
007.03A5	There were 2 files found out, within 6 months of this notification, an IEP will be held for each student, and the District Representative will be present at the meeting.	The District Representatives participation in the IEP Meeting. Files will be reviewed, including 5 additional, randomly selected, files
007.07A1	An IEP meeting will be scheduled and completed in the next 30 days, to complete the Present Levels of Academic Achievement and Functional Performance	File will be reviewed, including 5 additional, randomly selected, files completed by the teacher who prepared the file with noncompliance
007.07A9a	An IEP meeting will be scheduled and completed in the next 30 days, to complete the transition planning component of the IEP.	File will be reviewed, including 5 additional, randomly selected, files completed by the teacher who prepared the file with noncompliance
007.07B3	At the student's next IEP meeting there will be an indication that this regulation was considered. A review of 10 files indicated that it was addressed in all 10 files, and appears to be an oversight in this file.	The student's most recent IEP will be reviewed for correction, plus an additional 5, randomly selected, files .

\*If training is included as part of any corrective action, the training must be submitted to NDE and approved prior to conducting the training activity. Districts must maintain documentation that the training occurred, including the date of the training and who was in attendance.

## Appendix C: Sample Approval/Rejection of Corrective Action Plan

### *Approval of Corrective Action Plan*

DATE:

TO: School District  
FROM: NDE Regional Consultant (staff name)  
RE: Acceptance of CAP for:  
 Part B  
 Part C

*Thank you for submitting a copy of your proposed corrective action plan written in response to the special education file review recently conducted in your district. The purpose of the review was to determine the level of compliance with the regulations and standards contained in 92 NAC 51 (Rule 51). As a result of the review the district was determined to be out of compliance in one or more areas. Therefore, a corrective action plan was required. NDE has completed the review of the corrective action plan and has determined that, if implemented as written, the corrective actions will result in full implementation of the regulations and standards which were found to be out of compliance. All corrective actions must be completed within 9 months of the date your district was notified of non-compliance. Thus, you will need to correct all systemic and individual noncompliance pursuant to the corrective action plan by\_\_\_\_\_. Following your submission of documentation that the corrective actions have been taken, NDE will verify the correction through a review of updated data.*

*If training is included as part of any corrective action, the training must be submitted to NDE and approved prior to conducting the training activity. Districts must maintain documentation that the training occurred, including the date of the training and who was in attendance.*

*If you have any questions, or need assistance in the correction of noncompliance, please feel free to contact me.*

## Appendix C: Sample Approval/Rejection of Corrective Action Plan

### *Rejection of Corrective Action Plan*

DATE:

TO: School District  
FROM: NDE Regional Consultant (staff name)  
RE: Rejection of CAP for:  
 Part B  
 Part C

*Thank you for submitting a copy of your proposed corrective action plan written in response to the special education file review recently conducted in your district. The purpose of the review was to determine the level of compliance with the regulations and standards contained in 92 NAC 51 (Rule 51). As a result of the review the district was determined to be out of compliance in one or more areas. Therefore, a corrective action plan was required. NDE has completed the review of the corrective action plan and has determined that if implemented as written, the corrective actions will not result in full implementation of the regulations and standards which were found to be out of compliance. Therefore, the district must revise the corrective action plan in the following manner:*

- 1. The timelines need to be added to all the activities*
- 2. The training proposed needs to focus more directly on the requirements for attendance at the IEP meeting.*

*Please revise and resubmit your corrective action plan within 10 days. If you have questions regarding the corrective action plan, please contact me as soon as possible so that I will be able to assist you in the development of the plan. If training is included as part of any corrective action, the training must be submitted to NDE and approved prior to conducting the training activity. Districts must maintain documentation that the training occurred, including the date of the training and who was in attendance*

*All corrective actions must be completed within 9 months of the date your district was notified of non-compliance. Thus, you will need to correct all systemic and individual noncompliance by \_\_\_\_\_, 2011.*

*If you have any questions, or need assistance in the correction of noncompliance, please feel free to contact me.*

## Appendix D: Verification of Correction of Noncompliance

### Verification of Correction of Noncompliance Final Report

School District: \_\_\_\_\_

Date Completed CAP Submitted: \_\_\_\_\_

Date of Final Report: \_\_\_\_\_

#### Verification of Systemic Correction

Regulation	Summary of Corrective Actions taken	Documentation
<p>These would be the systemic regulations that were corrected</p> <p><b>007.07A1</b></p>	<p>This would be a summary of the corrective actions completed by the school district. This will include information trainings, teacher reviews, parent interviews, etc.</p> <p><i>Training was held on November 15, 2011 with the 8 Special education teachers, to review their goals, specifically whether or not the goals were measurable. A pre test on measurable goals was given to each attendee. The Director of Special Education had each teacher present a goal, other teachers would critique the goal, and the group would rewrite the goal, looking specifically at the measurability of the goal. Following completion of the training, the attendees were given a post test on measurable goals.</i></p>	<p>This would be a summary of the actions completed and the documentation collected to demonstrate that the district had corrected all instances of noncompliance identified on the systemic level. This will include information on review of policies and procedures, trainings, file reviews, parent interviews, teacher interviews, etc.. Anything carried out by NDE to verify that the activity occurred, and its impact on correction of noncompliance.</p> <p><i>Training Session was held on November 15, 2011 List of Attendees, Content, Materials and the Pre-/Post-Test were submitted and reviewed by NDE. All 8 Special Education Teachers participated in the training, and used IEPs that had been developed for their students. Each teacher had 2 files that were used in the training. The Pre-/Post-Tests showed that about 40% of teachers were uncertain about all of the requirements to test the measurability of a goal. By the time of the Post-Test less than 5% had any questions. On May 15, 2012, NDE staff conducted a verification file review. Two files, from each teacher, were randomly selected and reviewed for measurable goals. All 16 files were in compliance with 92 NAC 51-007.07A1.</i></p>

## Appendix D: Verification of Correction of Noncompliance

### Verification of Correction for Individual Files

<i>Regulation</i>	<i>Corrective actions* including timelines and persons responsible</i>	<i>Documentation</i>
<i>007.03A4</i>	<i>There were 2 files found out, within 6 months of this notification, an IEP will be held for each student, and the District Representative will be present at the meeting.</i>	<i>NDE Staff reviewed the two files and the District Representative was present at the meeting. Five additional files were reviewed for this regulation.</i>
<i>007.03A5</i>	<i>There were 2 files found out, within 6 months of this notification, an IEP will be held for each student, and the Person to Interpret the Evaluation Results will be present at the meeting.</i>	<i>NDE Staff reviewed the two files, and the Person to Interpret the evaluation information was present at the meeting. Five additional files were reviewed for this regulation</i>
<i>007.07A1</i>	<i>An IEP meeting will be scheduled and completed in the next 30 days, to complete the Present Levels of Academic Achievement and Functional Performance</i>	<i>NDE Staff reviewed the one files, after the IEP meeting had been held and the PLAAFP was complete. Five additional files were reviewed for this regulation</i>
<i>007.07A9a</i>	<i>An IEP meeting will be scheduled and completed in the next 30 days, to complete the transition planning component of the IEP.</i>	<i>NDE Staff reviewed the one files, after the IEP meeting had been held and the transition planning was complete. Five additional files were reviewed for this regulation</i>
<i>007.07B3</i>	<i>At the student's next IEP meeting there will be an indication that this regulation was considered.</i>	<i>A review of 10 files indicated that it was addressed in all 10 files, and appears to be an oversight in this file.</i>
<i>007.07C2</i>	<i>An IEP meeting will be scheduled and completed in the next 30 days, to discuss the child's participation in physical education program.</i>	<i>A review of the file after the IEP meeting contained information on the child's participation in PE.</i>

## Appendix D: Verification of Correction of Noncompliance

### Documentation of Correction of the Individual Student Files Review

Put "Yes" in the cell if the file is in compliance with the regulation and "no" if the file does not meet the requirements of the regulation. If a cell is gray, it must be reviewed for that file and regulation.

Student Identifier	Regulation 007.03A4	Regulation 007.03A5	Regulation 007.07A1	Regulation 007.07A9a	Regulation 007.07B3	Percent of Compliance
# 234789	Yes		Yes	Yes		100%
# 245889		Yes	Yes	Yes		100%
# 317332		Yes	Yes		Yes	100%
# 311436		Yes	Yes		Yes	100%
# 236804	Yes	Yes	Yes	Yes		100%
#267994		Yes	Yes	Yes	Yes	100%
#311884		Yes	Yes		Yes	100%
#309921	Yes		Yes		Yes	100%
#226683			Yes	Yes		100%
#239451	Yes		Yes	Yes		100%
#275362			Yes		Yes	100%
#257794	Yes		Yes		Yes	100%
#267752	Yes		Yes		Yes	100%
#294412			Yes		Yes	100%
#305684			Yes		Yes	100%
#286931	Yes		Yes		Yes	100%
Percent of Compliance	100%	100%	100%	100%	100%	100%

## Appendix E: Completing the Monitoring Process

Date:

TO: School District  
FROM: NDE Regional Consultant  
RE: Verification of Correction and Closeout Letter  
 Part B  
 Part C

On \_\_\_\_\_, 2011 onsite monitoring activities and a file review were conducted in your district. As a result of that visit, the following findings were made:

*Findings of Systemic Noncompliance:*  
(List regulations found to have a compliance rate of 80% or less)

*Individual Findings of Noncompliance:*  
(List student file in which noncompliance was identified and the specific regulation found to be out of compliance.)

*A corrective action plan was submitted by the district and was approved by NDE. NDE reviewed the information submitted by the district documenting that the corrective action plan has been implemented (i.e. revised policies/procedures, correction of files, completion of trainings, etc). For any noncompliance concerning a child-specific requirement that is not subject to a specific timeline requirement, NDE reviewed the correction of the individual case of noncompliance, unless the child is no longer in the jurisdiction of the district. Similarly, for any noncompliance concerning a child specific timeline requirement, NDE reviewed whether the required action was completed, although late, unless the child is no longer within the jurisdiction of the school district.*

*Based on a review of updated data from subsequent review or data collection, NDE has determined that the school district is now correctly implementing all regulatory requirements which were the subject of the finding of noncompliance. NDE has determined that the correction of noncompliance occurred within one year of the date of the Notification of Noncompliance as required by state and federal regulation.*

*Thank you for your assistance in the monitoring process and the correction of noncompliance identified within your district. If you have any questions please contact the Special Education Regional Representative assigned to your district.*