

TO: Roger D. Breed, Ed.D.
Commissioner of Education

FROM: Gary M. Sherman and Carol McClain
Office of Special Education

SUBJECT: Proposed Regulations and Standards for Early Intervention Programs
(Rule 52)

PROPOSED BOARD ACTION

Authorize the Commissioner to approve a hearing draft on proposed Rule 52 (92 NAC 52) *Regulations and Standards for Early Intervention Programs*, to set a date, time and place for the hearing, and to appoint a hearing official to conduct the hearing on behalf of the State Board.

BACKGROUND INFORMATION

Rule 52

Rule 52 is a newly drafted rule implementing IDEA Part C Regulations 34 CFR 303 that became effective October 28, 2011. Previously, the regulations and standards for Early Intervention Programs (Part C Infants and Toddlers with Disabilities) were incorporated into Rule 51. With the release of the final Part C federal regulations, the definitions, procedures, and requirements were significantly different than those outlined in the Part B federal regulations. This necessitated the development of a new rule comprised of some portions being transferred from Rule 51 and additional sections that are unique to Part C. The hearing draft is annotated indicating the reasons for the various sections of the rule.

Estimated Cost

Minimal costs associated with publication of the hearing notice in newspapers, conducting the hearing, and printing of the rule.

Supporting Documentation: Proposed Rule 52 Hearing Draft

For Additional Information on this item: Call Gary Sherman (402) 471-2471 or e-mail gary.sherman@nebraska.gov; or Carol McClain, (402) 471-2471 or e-mail carol.mcclain@nebraska.gov

RULE 52

PROPOSED HEARING DRAFT

Nebraska Department of Education

Office of Special Education

October 23, 2012

TITLE 92 - NEBRASKA DEPARTMENT OF EDUCATION
 CHAPTER 52 – REGULATIONS AND STANDARDS FOR THE PROVISION OF EARLY INTERVENTION
 SERVICES

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 CHAPTER 52 – REGULATIONS AND STANDARDS FOR THE PROVISION OF EARLY INTERVENTION
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001 Declaration of Responsibility

Neb. Rev. Stat. 43-2507 declares, "Planning for early intervention services shall be the responsibility of each collaborating agency. The planning shall address a statewide Early Intervention Services Program (EISP) of comprehensive, coordinated, family-centered, community based, and culturally competent early intervention services to all eligible infants or toddlers with disabilities and their families in Nebraska."

002 Statutory Authority

This Chapter is adopted pursuant to the statutory authority vested in the Nebraska Department of Education in Neb. Rev. Stat. 43-2516 which declares, "The co-lead agencies shall adopt and promulgate rules and regulations pursuant to the Early Intervention Act."

WORKING DRAFT

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003 Definition of Terms

Procedure 003.01

Agency contracting for services coordination means the agency identified through a contract with the Department of Health and Human Services that assumes the responsibility to deliver the entitlement of services coordination in the planning region.

003.02
34CFR 303.321(a)
(2) (ii)

Assessment of a child and family means the ongoing procedures used by qualified personnel to identify the child's unique strengths and needs, and the early intervention services appropriate to meet those needs throughout the period of the child's eligibility under this Rule, and includes the assessment of the child consistent with 92 NAC 52-006.07A and the child's family, consistent with 92 NAC 52-006.07B.

003.03
303.13(b)(1)(i)

Assistive Technology device means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified or customized, that is used to increase, maintain, or improve the functional capabilities of an infant or toddler with a disability. The term does not include a medical device that is surgically implanted, including a cochlear implant, or the optimization (e.g. mapping), maintenance, or replacement of that device.

003.04
303.13(b)(1)(ii)

Assistive technology service means any service that directly assists an infant or toddler with a disability in the selection, acquisition, or use of an assistive technology device. The term includes:

003.04A
303.13(b)(1)(ii)(A)

The evaluation of the needs of an infant or toddler with a disability, including a functional evaluation of the infant or toddler with a disability in the child's customary environment.

003.04B
303.13(b)(1)(ii) B

Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by infants or toddlers with disabilities;

003.04C
303.13(b)(1)(ii) C

Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices;

003.04D
303.13(b)(1)(ii)(D)

Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;

003.04E
303.13(b)(1)(ii)E

Training or technical assistance for an infant or toddler with a disability or, if appropriate, that child's family; and

003.04F
303.13(b)(1)(ii)F

Training or technical assistance for professionals (including individuals providing education or rehabilitation services) or other individuals who provide services to, or are otherwise substantially involved in the major life functions of, infants and toddlers with disabilities.

303.13(F)(2) 003.05

Audiology services include:

003.05A
303.13(F)(2)(i)

Identification of children with auditory impairments, using at-risk criteria and appropriate audiological screening techniques;

003.05B
303.13(F)(ii)

Determination of the range, nature, and degree of hearing loss and communication functions, by use of audiological evaluation procedures;

003.05C
303.13(F)(iii)

Referral to medical and other services necessary for the habilitation or rehabilitation of an infant or toddler with a disability who has an auditory impairment;

003.05D
303.13(F)(iv)

Provision of auditory training, aural rehabilitation, speech reading and listening devices, orientation and training, and other services;

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303.13(F)(2)(v)

003.05E Provision of services for prevention of hearing loss; and

303.13(F)(vi)

003.05F Determination of the child's individual amplification, including selecting, fitting, and dispensing appropriate listing and vibrotactile devices, and evaluating the effectiveness of those devices.

003.05G Case Management Services/Services Coordination Services

303.6 ~~003.06~~

Child means an individual under the age of six and may include an infant or toddler with a disability as defined in 92 NAC 52-003.23.

003.07

Neb Rev Stat
43-2505(8)

Co-Lead Agencies means the Department of Health and Human Services and the Nebraska Department of Education and any other agencies designated by the Governor for general administration, supervision, and monitoring of programs and activities receiving federal funds under the federal early intervention program and state funds appropriated for early intervention services under the Early Intervention Act.

003.08

303.7

Consent means that the parent has been fully informed of all information relevant to the activity for which consent is sought, in the parent's native language as defined in 92 NAC 52-003.27. The parent understands and agrees in writing to the carrying out of the activity for which the parent's consent is sought, and the consent form describes that activity and lists the early intervention records (if any) that will be released and to whom they will be released. The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time. If a parent revokes consent, that revocation is not retroactive (i.e., it does not apply to an action that occurred before the consent was revoked).

92NAC51-

003.09

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

303.9

003.10

Day means calendar day, unless otherwise indicated.

303.11

003.11

Early intervention service program means the entity designated by the co-lead agencies for reporting under 34 CFR 303.700 through 303.702.

303.12

003.12

Early intervention service provider means an entity (whether public, private, or nonprofit) or an individual that provides early intervention services under Part C of this Chapter, whether or not the entity or individual receives Federal funds under Part C, and may include, where appropriate, the co-lead agencies and a public agency responsible for providing early intervention services to infants and toddlers with disabilities in the State under this Chapter.

303.13

003.13

Early intervention services means developmental services that are provided under public supervision; selected in collaboration with the parents; are provided at no cost except subject to 92 NAC 52-011.04 and 92 NAC 52-011.05(policies related to the use of public benefits or insurance or private insurance) and 34 CFR 303.521 (system of payments and fees), designed to meet the developmental needs of an infant or toddler with a disability and the needs of the family to assist appropriately in the infant's or toddler's development, as identified by the IFSP Team, in any one or more of the following areas: physical development; cognitive development; communication development; social or emotional development or adaptive development; meet the standards of the State; include services identified in 92 NAC 52-003.13A; are provided by qualified personnel identified in 92 NAC 52-010; to the maximum extent appropriate, are provided in natural environments, as defined in 92 NAC 52-003.28; and are provided in conformity with an IFSP as identified in 92 NAC 52-007.

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003.13A Early intervention services includes the following services:

~~303.13(b)(1)~~ 003.13A1 Assistive technology device and service;

~~303.13(b)(2)~~ 003.13A2 Audiology services;

~~303.13(b)(3)~~ 003.13A3 Family training; counseling; and home visits;

~~303.13(b)(4)~~ 003.13A4 Health services;

~~303.13(b)(5)~~ 003.13A5 Medical services;

~~303.13(b)(6)~~ 003.13A6 Nursing services;

~~303.13(b)(7)~~ 003.13A7 Nutrition services;

~~303.13(b)(8)~~ 003.13A8 Occupational therapy;

~~303.13(b)(9)~~ 003.13A9 Physical therapy;

~~303.13(b)(10)~~ 003.13A10 Psychological services;

~~303.13(b)(11)~~ 003.13A11 Services coordination services;

~~303.13(b)(12)~~ 003.13A12 Sign language and cued language services;

~~303.13(b)(13)~~ 003.13A13 Social work service;

~~303.13(b)(14)~~ 003.13A14 Special instruction;

~~303.13(b)(15)~~ 003.13A15 Speech-language pathology services;

~~303.13(b)(16)~~ 003.13A16 Transportation and related costs; and

~~303.13(b)(17)~~ 003.13A17 Vision services.

~~003.14~~ **Evaluation** means the procedures used by qualified personnel to determine a child's initial and continuing eligibility.

~~303.321(a)(2)(i)~~

~~003.15~~ **Family training, counseling, and home visits** means services provided, as appropriate, by social workers, psychologists, and other qualified personnel to assist the family of an infant or toddler with a disability in understanding the special needs of the child and enhancing the special needs of the child and enhancing the child's development.

~~303.13(b)(3)~~

~~003.16~~ **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 educational agency (SEA), including the requirements of Part B of IDEA; include an appropriate preschool, elementary school or secondary school education in the state; and are provided in conformity with an individualized education program that meets the requirements of 92 NAC 51-007.

~~303.15~~

~~003.17~~ **Health services** mean:

~~303.16(a)+(b)~~ 003.17A Services necessary to enable an otherwise eligible child to benefit from the other early intervention services during the time that the child is eligible to receive early intervention services. The term includes such services as clean intermittent catheterization, tracheotomy care, tube feeding, the changing of

dressings or colostomy collection bags, and other health services; and consultation by physicians with other service providers concerning the special health care needs of infants and toddlers with disabilities that will need to be addressed in the course of providing other early intervention services.

003.17B The term does not include:

003.17B1 Services that are surgical in nature (such as cleft palate surgery, surgery for club foot, or the shunting of hydrocephalus); purely medical in nature (such as hospitalization for management of congenital heart ailments, or the prescribing of medicine or drugs for any purpose); or related to the implementation, optimization (e.g., mapping), maintenance, or replacement of a medical device that is surgically implanted, including a cochlear implant.

003.17B2 Devices (such as heart monitors, respirators and oxygen, and gastrointestinal feeding tubes and pumps) necessary to control or treat a medical condition; and

003.17B3 Medical-health services (such as immunizations and regular "well-baby" care) that are routinely recommended for all children.

003.17C Nothing in this Chapter limits the right of an infant or toddler with a disability with a surgically implanted device (e.g., cochlear implant) to receive the early intervention services that are identified in the child's IFSP as being needed to meet the child's developmental outcomes.

003.17D Nothing in this Chapter prevents the early intervention service provider from routinely checking that either the hearing aid or the external components of a surgically implanted device (e.g., cochlear implant) of an infant or toddler with a disability are functioning properly; devices (such as heart monitors, respirators and oxygen, and gastrointestinal feeding tubes and pumps) necessary to control or treat a medical condition; and medical-health services (such as immunizations and regular "well-baby" care) that are routinely recommended for all children.

303.17 003.18

Homeless children mean children who meet the definition given to homeless children and youth in Section 725 of the McKinney-Vento Assistance Act as amended in 14 USC 11431 et. seq.

303.19(a) 003.19

Indian means an individual who is a member of an Indian tribe.

303.19(b) 003.20

Indian tribe means any Federal or State Indian tribe, band, Rancheria, pueblo, colony, or community including any Alaska Native village or regional village corporation (as defined in or established under the Alaska Native Claims Settlement Act, 43 U.S.C. 1601 et. seq.).

303.20 003.21

Individualized Family Service Plan or IFSP means a written plan for providing early intervention services to an infant or toddler with a disability and the infant's or toddler's family that is based on the evaluation and assessment described in 92 NAC 52-006.06 through 006.08; includes the content specified in 92 NAC 52-007; is implemented as soon as possible once parental consent for the early intervention services in the IFSP is obtained (consistent with 92 NAC 52-009.03A); and is developed in accordance with the IFSP procedures in 92 NAC 52-007.

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NDE Procedure 003.22

Individualized Family Service Plan case manager or IFSP Services Coordinator means an early identification service provider who carries out all services coordination services in 92 NAC 52-003.42 when a family declines services coordination.

003.23

303.21

Infant or toddler with a disability means an individual under three years of age who needs early intervention services because the individual is experiencing a developmental delay, as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas: cognitive development, physical development, including vision and hearing, communication development, social or emotional development, adaptive development, or has a diagnosed physical or mental condition that has a high probability of resulting in developmental delay and includes conditions such as chromosomal abnormalities; genetic or impairments; inborn errors of metabolism; disorders reflecting disturbance of the development of the nervous system; congenital infections; severe attachment disorders; and disorders secondary to exposure to toxic substances, including fetal alcohol syndrome. Toddlers remain eligible for early intervention services through the school year in which they reach age 3.

303.321(a)(2)(iii) 003.24

Initial assessment means the assessment of the child and the family assessment conducted prior to the child's first IFSP meeting.

303.13(b)(5) 003.25

Medical services means services provided by a licensed physician for diagnostic or evaluation purposes to determine a child's developmental status and need for early intervention services.

303.24 003.26

Multidisciplinary means the involvement of two or more separate disciplines or professions and with respect to:

003.26A Evaluation of the child in 92 NAC 52-006.06A1 and assessments of the child and family in 92 NAC 52-006.06A2, may include one individual who is qualified in more than one discipline or profession; and

003.26B The IFSP Team in 92 NAC 52-007.01 must include the involvement of the parent and two or more individuals from separate disciplines or professions and one of these individuals must be the Services Coordinator/IFSP Case Manager consistent with 92 NAC 52-007.03A4.

303.25 003.27

Native language means:

003.27A When used with respect to an individual who is limited English proficient or LEP (as that term is defined in section 602(18) of IDEA) the language normally used by that individual, or, in the case of a child, the language normally used by the parents of the child and for evaluations and assessments conducted pursuant to 92 NAC 52-006.06D, the language normally used by the child, if determined developmentally appropriate for the child by qualified personnel conducting the evaluation or assessment.

003.27B When used with respect to an individual who is deaf or hard of hearing, blind or visually impaired, or for an individual with no written language, means the mode of communication that is normally used by the individual (such as sign language, braille, or oral communication).

303.26 003.28

Natural environments means settings that are natural or typical for a same-aged infant or toddler without a disability, may include the home or community settings and must be consistent with 92 NAC 52-007.06.

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303.421(a) 003.29

Notice means prior written notice that must be provided to parents a reasonable time before the co-lead agencies or an early intervention service provider proposes or refuses to initiate or change the identification, evaluation, or placement of the infant or toddler, or the provision of early intervention services to the infant or toddler with a disability and their family.

303.13(b)(6) 003.30

Nursing services includes the assessment of health status for the purpose of providing nursing care, including the identification of patterns of human response to actual or potential health problems; the provision of nursing care to prevent health problems, restore or improve functioning, and promote optimal health and development; and the administration of medications, treatments, and regimens prescribed by a licensed physician.

303.13(b)(7) 003.31

Nutrition services include conducting individual assessments in nutritional history and dietary intake; anthropometric, biochemical and clinical variables; feeding skills and feeding problems; and food habits and food preferences; developing and monitoring appropriate plans to address the nutritional needs of children eligible under this part, based on the findings of the individual assessments in nutritional history and dietary intake; and making referrals to appropriate community resources to carry out nutrition goals.

303.13(b)(8) 003.32

Occupational therapy includes services to address the functional needs of an infant or toddler with a disability related to adaptive development, adaptive behavior, and play, and sensory, motor, and postural development. These services are designed to improve the child's functional ability to perform tasks in home, school, and community settings, and include: identification, assessment, and intervention; adaptation of the environment, and selection, design, and fabrication of assistive and orthotic devices to facilitate development and promote the acquisition of functional skills; and prevention or minimization of the impact of initial or future impairment, delay in development, or loss of functional ability.

303.27(a)(1) 003.33

Parent means:

003.33A A biological or adoptive parent of a child;

303.27(a)(2) 003.33B A foster parent unless state law, regulations or contractual obligations with a state or local agency prohibit a foster parent from acting as a parent;

303.27(a)(3) 003.33C A guardian generally authorized to act as the child's parent, or authorized to make early intervention, educational, health or developmental decisions for the child (but not the State if the child is a ward of the State);

303.27(a)(4) 003.33D An individual acting in the place of a biological or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives, or an individual who is legally responsible for the child's welfare; or

303.27(a)(5) 003.33E A surrogate parent who has been appointed in accordance with 92 NAC 52-009.04.

303.27(b)(1) 003.33F Except as provided in 92 NAC 52-003.33F1 the biological or adoptive parent, when attempting to act as the parent under 92 NAC 52 and when more than one party is qualified under 92 NAC 52-003.33F1 to act as a parent, must be presumed to be the parent for purposes of this section unless the biological or adoptive parent does not have legal authority to make educational or early intervention service decisions for the child.

303.27(b)(2)

003.33F1

If a judicial decree or order identifies a specific person or persons under 92 NAC 52-003.33A through 003.33D to act as the "parent" of a child to make educational or early intervention service decisions on behalf of a child, then the person or persons must be determined to be the "parent" for purposes of this Chapter, except that if an early intervention service provider or a public agency provides any services to a child or any family member of that child, that early intervention service provider or public agency may not act as the parent for that child.

003.34

303.13(b)(9)

Physical Therapy means services to address the promotion of sensorimotor function, through enhancement of musculoskeletal status, neurobehavioral organization, perceptual and motor developmental, cardiopulmonary status, and effective environmental adaptation. These services include:

303.13(b)(9)(i)

003.34A

Screening, evaluation, and assessment of children to identify movement dysfunction;

303.13(b)(9)(ii)

003.34B

Obtaining, interpreting and integrating information appropriate to program planning to prevent, alleviate, or compensate for movement dysfunction and related functional problems; and

303.13(b)(9)(iii)

003.34C

Providing individual and group services or treatment to prevent, alleviate, or compensate for, movement dysfunction and related functional problems.

003.35

303.13(b)(10)

Psychological services means:

303.13(b)(10)(i)

003.35A

Administering psychological and developmental tests and other assessment procedures;

303.13(b)(10)(ii)

003.35B

Interpreting assessment results;

303.13(b)(10)(iii)

003.35C

Obtaining, integrating and interpreting information about child behavior and child and child family conditions relating to learning, mental health, and development; and

303.13(b)(10)(iv)

003.35D

Planning and managing a program of psychological services, including psychological counseling for children and parents, family counseling, consultation on child development, parent training, and education programs.

003.36

303.30

Public agency means the Nebraska Department of Education and Health and Human Services (Co-Lead Agencies) and any other agency or political subdivision of the State.

003.37

303.31

Qualified personnel means personnel who have met State approved or recognized certification, licensing, registration, or other comparable requirements that apply to the areas in which the individuals are conducting evaluations or assessments or providing early intervention services.

NDE Procedure 003.38

Referral means the submission of a request by a parent, physician, or other individual or agency for consideration to determine if an infant or toddler is eligible for early intervention services as an infant or toddler with a disability.

303.320(b)(1)

003.39

Screening Procedures means activities that are carried out under 92 NAC 52-006.04 by, or under the supervision of an early intervention service provider to identify, at the earliest possible age, infants and toddlers suspected of having a disability and in need of early intervention services; and includes the administration of appropriate instruments by personnel trained to administer those instruments. Screening is an optional procedure.

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NDE Procedure 003.40

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

303.32 003.41

Scientifically based research has the meaning given the term in section 9101(37) of the Elementary and Secondary Education Act of 1965, as amended (ESEA). In applying the ESEA to the regulations under Part C of the Act, any reference to "education activities and programs" refers to "early intervention services".

303.34(a)(1) 003.42

Services coordination services mean services provided by a case manager/service coordinator to assist and enable an infant or toddler with a disability and the child's family to receive the services and rights, including procedural safeguards, required under 92 NAC 52.

303.13(b)(12) 003.43

Sign language and cued language services mean teaching sign language, cued language, and auditory/oral language, providing oral transliteration services (such as amplification), and providing sign and cued language interpretation.

303.13(b)(13) 003.44

Social work services means:

303.13(b)(13)(i) 003.44A

Making home visits to evaluate a child's living conditions and patterns of parent-child interactions;

303.13(b)(13)(ii) 003.44B

Preparing a social or emotional developmental assessment of the infant or toddler within the family context;

303.13(b)(13)(iii) 003.44C

Providing individual and family-group counseling with parents and other family members, and appropriate social skill-building activities with infant or toddler and parents;

303.13(b)(13)(iv) 003.44D

Working with those problems in the living situation (home, community, and any center where early intervention services are provided) of a infant or toddler with a disability and the family of that child that affect the child's maximum utilization of early intervention services; and

303.13(b)(13)(v) 003.44E

Identifying, mobilizing and coordinating community resources and services to enable the infant or toddler with a disability and the family to receive maximum benefit from early intervention services.

303.13(b)(14) 003.45

Special Instruction means:

303.13(b)(14)(i) 003.45A

The design of learning environments and activities that promote the infant's or toddler's acquisition of skills in a variety of developmental areas, including cognitive processes and social interaction;

303.13(b)(14)(ii) 003.45B

Curriculum planning, including the planned interaction of personnel, materials, and time and space, that leads to achieving the outcomes in the IFSP for the infant or toddler with a disability;

303.13(b)(14)(iii) 003.45C

Providing families with information, skills, and support related to enhancing the skill development of the child; and

303.13(b)(14)(iv) 003.45D

Working with the infant or toddler with a disability to enhance the child's development.

303.13(b)(15) 003.46

Speech-language pathology services means:

303.13(b)(15)(i) 003.46A

Identification of children with communication or language disorders and delays in development of communication skills, including the diagnosis and appraisal of specific disorders and delays in those skills;

303.13(b)(15)(ii) 003.46B

Referral for medical or other professional services necessary for the habilitation or rehabilitation of children with communication or language disorders and delays in development of communication skills; and

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303.13(b)(15)(iii) 003.46C Provision of services for the habilitation, rehabilitation, or prevention of communication or language disorders and delays in development of communication skills.

303.13(b)(16) 003.47 Transportation and related costs mean the cost of travel and other costs that are necessary to enable an infant or toddler with a disability and the child's family to receive early intervention services.

303.13(b)(17) 003.48 Vision Services means:

303.13(b)(17)(i) 003.48A Evaluation and assessment of visual functioning, including the diagnosis and appraisal of specific visual disorders, delays and abilities that affect early childhood development;

303.13(b)(17)(ii) 003.48B Referral for medical or other professional services necessary for the habilitation or rehabilitation of visual functioning disorders or both; and

303.13(b)(17)(iii) 003.48C Communication skills training, orientation and mobility training for all environments, visual training, and additional training necessary to activate visual motor abilities.

Statute 003.49 Ward of any court means any minor child who, by virtue of a court order entered by a court of competent jurisdiction, has been adjudicated to be a ward of the court.

303.37 003.50 Ward of the State means a child who, as determined by the State where the child resides, is a foster child; a ward of the State; or in the custody of a public child welfare agency. Ward of the State does not include a foster child who has a foster parent who meets the definition of a parent in 92 NAC 52-003.33.

004 Responsibility for Early Intervention Programs

004.01 Reporting of Information Regarding Infants and Toddlers with Disabilities

Procedure

- 004.01A Individual child information shall be reported electronically via the NDE Portal. Each school district or approved cooperative shall maintain and report the following information for infants and toddlers with disabilities receiving services according to an Individualized Family Service Plan (IFSP).
- 004.01A1 Name (or identifier approved by the Nebraska Department of Education) and birthdate;
- 004.01A2 County and district of legal residence;
- 004.01A3 Program setting;
- 004.01A4 Type of disability;
- 004.01A5 Race/ethnicity and gender;
- 004.01A6 Type(s) of service received;
- 004.01A7 Date and reason for exiting early intervention services;
- 004.01A8 State Ward Status and indication of appointment of surrogate if required;
- 004.01A9 Initial verification date and disability pursuant to 92 NAC 52-006.
- 004.01B This data shall be updated at least annually to reflect change(s) in the information in 92 NAC 52-004.01A.
- 004.01C School districts, approved cooperatives and state operated schools shall prepare an accurate and unduplicated child count as of October 1 of each year. The October 1 child count must be approved and submitted by the district administrator or designee via the portal on or before October 31 of each year.
- 004.01D School districts, approved cooperatives and state operated schools shall prepare an accurate and unduplicated year-end child count as of June 30 of each year. The June 30 year-end child count must be approved and submitted by the district administrator or designee via the portal on or before June 30 of each year.
- 004.02 Notice and Opportunity and for Hearing Before Withholding Funds
- 004.02A A school district or approved cooperative providing early intervention services shall be notified by certified mail to the head administrator whenever the NDE Office of Special Education intends to recommend to the State Board of Education that funds be withheld from the school district or approved cooperative.
- 004.02B Within 21 calendar days of the school district's or approved cooperative's receipt of the notice of the NDE Office of Special Education's intention to recommend withholding funds to the State Board of Education, the school district or approved cooperative may request in writing a review by the Commissioner or designee. Following the review, the Commissioner or designee shall:

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- Procedure 004.02B1 Notify the school district or approved cooperative by certified mail that, based upon the review, (s)he will recommend to the State Board of Education that funds be held withheld from the school district or approved cooperative, or
- 004.02B2 Notify the school district or approved cooperative that funds will not be withheld.
- 004.02C Within 30 calendar days of receipt of the notice of the Commissioner's intention to withhold funds, the school district or approved cooperative may request in writing a hearing before the State Board of Education. The hearing shall be conducted in accordance with the hearing procedures of 92 NAC 61, including provisions of that Chapter relating to evidence.
- 004.03 Monitoring and Enforcement
- 004.03A All early intervention service providers and early intervention programs must comply with the requirements of state and federal law and regulation concerning the provision of early intervention services to infants and toddlers with disabilities and will be monitored for compliance with such laws at least once every three years.
- 004.03A1 The primary focus of monitoring activities must be on:
- 004.03A1a Improving early intervention results and functional outcomes for all infants and toddlers with disabilities;
- 004.03A1b Ensuring that early intervention services programs meet the program requirements under IDEA, with a particular emphasis on those requirements that are most closely related to improving early intervention results for infants and toddlers with disabilities.
- 004.03B Failure to comply with the provisions of state and federal statute and administrative rules concerning early intervention services for infants and toddlers with disabilities shall result in notification to early intervention programs or early intervention service providers of specific program deficiencies by the NDE Office of Special Education.
- 004.03C Early intervention service providers or early intervention programs providing early intervention services shall be afforded 45 calendar days to respond to the initial notification with a report of the resolution of deficiencies or a plan for resolution.
- 004.03D Early intervention service providers or early intervention programs failing to respond as set forth in 92 NAC 52-004.03C shall be afforded an additional 30 calendar days following contact from the Administrator of the NDE Office of Special Education or the designee of the Administrator to submit a plan for resolution of deficiencies.
- 004.03E Deficiencies must be corrected as soon as possible, and in no case later than one year after the early intervention service providers or early intervention programs has been notified of the non-compliance. Deficiencies not corrected according to the timelines set forth in 92 NAC 52-004.03 shall be subject to the procedures outlined in 92 NAC 52-004.02.
- 004.03F Early intervention service providers or early intervention programs not meeting the requirements of this Chapter shall be in violation of the law. No state or federal funds shall be paid as long as such violation exists, but no deduction shall be made from any funds required by the Constitution of the State of Nebraska to be paid to such program.

Resolution of Disputes among public agencies and Early Intervention service providers

004.04A If there is a dispute as to who has responsibility for developing or implementing an IFSP, the Departments of Education and Health and Human Services shall resolve the dispute or assign responsibility.

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005 Early Childhood Interagency Planning Region Teams

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005.01 Each school district or approved cooperative shall demonstrate participation in a plan of services for children with disabilities from birth to age five. Such plans shall be prepared by each planning region and be updated annually and must address:

005.01A Gaps and barriers in service delivery;

005.01B Training and technical assistance;

005.01C Parent involvement; and

005.01D Resources.

005.02 The lead agency, school district, approved cooperative or educational service unit designated to coordinate planning region meetings shall invite representatives from the following groups:

005.02A Family members of children with disabilities;

005.02A1 a minimum of 20% of the invited team members must be family members;

005.02B School districts, approved cooperatives and educational service units;

005.02B1 School district or approved cooperative personnel serving on the planning region team are selected at the discretion of the school district or approved cooperative, but shall include: a school district or approved cooperative administrator or a designated representative;

005.02C Nebraska Department of Health and Human Services;

005.02D Agency(ies) providing health and medical services in the Planning Region;

005.02E Head Start or Early Head Start;

005.02F Agencies representing traditionally underserved children and families, including low income, inner-city, homeless children, minority populations and rural areas;

005.02G Child care providers;

005.02H Representative of the services coordination contracting agency; and

005.02I Other relevant agencies or persons serving children with disabilities and their families.

005.03 The Planning Region Team shall:

005.03A Establish operational procedures;

005.03B Discuss issues of regional concern related to services for infants and toddlers with disabilities and their families;

005.03C Make recommendations/provide feedback to local agencies regarding regional services;

005.03D Identify the potential lead agency to provide systems support for the region;

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- 005.03E Assist the services coordination contracting agency to identify gaps and barriers in delivery of services, and to reduce duplication of services within the region.
- 005.03F Identify training and technical assistance needs in the region for all those involved in providing and receiving services;
- 005.03G Assist in child find and public awareness activities to identify infants and toddlers in the region.
- 005.03H Participate in the monitoring process and ongoing improvement activities for children with verified disabilities.

005.04 Annual Meetings

- 005.04A The annual meeting must be conducted prior to July 1 of each year.
- 005.04B The date and place of the annual meeting shall be disseminated within the region so that all school districts, approved cooperatives, service providers, parents, and nonpublic agencies serving children below age five have access to the information.
- 005.04C A written report of the annual meeting shall be prepared, which includes a list of participants and identified gaps and barriers. The written report shall be submitted to the Nebraska Department of Education on a date specified by the Department.

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006 Identification, Referral and Eligibility Determination of Infants and Toddlers with Disabilities

303.302(b)(1)(i)	006.01	<p><u>School districts and approved cooperatives, as part of the child find system, must ensure that all infants and toddlers with disabilities in the State who are eligible for early intervention services are identified, located and evaluated, including: Indian infants and toddlers with disabilities residing on a reservation geographically located in the State (including coordination, as necessary, with tribes, tribal organization, and consortia); infants and toddlers with disabilities who are homeless, in foster care and wards of the State; and infants and toddlers with disabilities who are the subjects of substantiated cases of child abuse or neglect, or are identified as directly affected by illegal substance abuse or withdrawal symptoms resulting from prenatal drug exposure.</u></p>
303.302(b)(2)	006.01A	<p><u>The child find system which is developed and implemented to identify children who are in need of early intervention services must be effective and must be coordinated with all other major efforts to locate and identify children.</u></p>
303.301(a)(1)(i)(ii)	006.01B	<p><u>Information on the availability of early intervention services under 92 NAC 52, and other services as described in 92 NAC 52-006.01C will be disseminated to all primary referral sources (especially hospitals and physicians) the information to be given to parents of infants and toddlers, especially parents with premature infants or infants with other physical risk factors associated with learning or developmental complications.</u></p>
303.301(a)(2)	006.01C	<p><u>Procedures must be adopted for assisting the primary referral sources described in 92 NAC 52-006.02C in disseminating the information described in 92 NAC 52-006.01C1 through 92 NAC 52-006.01C3 to parents of infants and toddlers with disabilities. This information must include:</u></p>
303.301(b)	006.01C1	<p><u>A description of the availability of early intervention services under 92 NAC 52;</u></p>
303.301(b)(1)	006.01C2	<p><u>A description of the child find system and how to refer children under the age of three for an evaluation of early intervention services; and</u></p>
303.301(b)(2)	006.01C3	<p><u>A central directory of public and private early intervention services, resources, experts, groups providing parent support, training information centers, and research and demonstration projects being conducted in the State.</u></p>
303.301(b)(3)	006.01D Referral	
303.303(a)	006.01D1	<p><u>Primary referral sources which includes school districts and approved cooperatives must refer a child under the age of three to the agency responsible for providing services coordination in the Planning Region as soon as possible but in no case later than seven (7) days of becoming aware of an infant or toddler who may be eligible for services.</u></p>
303.303(b)(1)(2)	006.01D2	<p><i>begins when school district becomes aware of child</i> <u>A child under the age of three who is the subject of a substantiated case of child abuse or neglect; or is identified as directly affected by illegal substance abuse or withdrawal symptoms resulting from prenatal drug exposure must be referred to the Early Intervention Program.</u></p>
303.303(c)	006.01D3	<p><u>Primary referral sources include:</u></p>

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303.303(c)(1)

303.303(c)(2)

303.303(c)(3)

303.303(c)(4)

303.303(c)(5)

303.303(c)(6)

303.303(c)(7)

303.303(c)(8)

303.303(c)(9)

303.303(c)(10)

303.303(c)(11)

303.34 006.02

006.01D3a Hospitals, including prenatal and postnatal care facilities;

006.01D3b Physicians;

006.01D3c Parents, including parents of infants and toddlers;

006.01D3d Child care programs and early learning programs;

006.01D3e Schools and approved cooperatives;

006.01D3f Public health facilities;

006.01D3g Other public health or social service agencies;

006.01D3h Other clinics and health care providers;

006.01D3i Public agencies and staff in the child welfare system, including child protective service and foster care;

006.01D3j Homeless family shelters; and

006.01D3k Domestic violence shelters and agencies.

Service Coordinator/IFSP Case Manager Responsibility

006.02A Services Coordinators/IFSP Case Managers shall be responsible for:

303.34(a)(3)(i)

006.02A1

Assisting parents of infants and toddlers with disabilities in gaining access to, and coordinating the provision of, the early intervention services required under this chapter; and

303.34(a)(3)(ii)

006.02A2

Coordinating the other services identified in the IFSP under 92 NAC 52-007 that are needed by, or are being provided to, the infant or toddler with a disability and that child's family, including:

303.34(b)(1)

006.02A2a

Assisting parents of infants and toddlers with disabilities in obtaining access to needed early intervention services and other services identified in the IFSP, including making referrals to providers for needed services and scheduling appointments for infants and toddlers with disabilities and their families;

303.34(b)(2)

006.02A2b

Coordinating the provision of early intervention services and other services (such as educational, social, and medical services that are not provided for diagnostic or evaluative purposes) that the child needs or is being provided;

303.34(b)(3)

006.02A2c

Coordinating evaluations and assessments;

303.34(b)(4)

006.02A2d

Facilitating and participating in the development, review, and evaluation of IFSPs;

303.34(b)(5)

006.02A2e

Conducting referral and other activities to assist families in identifying available EIS providers;

303.34(b)(6)

006.02A2f

Coordinating, facilitating, and monitoring the delivery of services required under this part to ensure that the services are provided in a timely manner;

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303.34(b)(7)	006.02A2g	<u>Conducting follow-up activities to determine that appropriate early intervention services are being provided;</u>
303.34(b)(8)	006.02A2h	<u>Informing families of their rights and procedural safeguards, as set forth in 92 NAC 52-007 and related resources;</u>
303.34(b)(9)	006.02A2i	<u>Coordinating the funding sources for services required under this chapter;</u>
303.34(b)(10)	006.02A2j	<u>Facilitating the development of a transition plan to preschool, school, or, if appropriate, to other services.</u>
<u>006.03 45 Day Timeline</u>		
303.310(a)	006.03A	<u>Except as provided in 92 NAC 52-006.03B, any screening under 92 NAC 52-006.04 (if the parent consents); the initial evaluation and the initial assessments of the child and the family under 92 NAC 52-006.05; and the initial Individualized Family Service Plan (IFSP) meeting under 92 NAC 52-007.02 must be completed within 45 calendar days from the date the Co-lead agency or early intervention service provider receives the referral of the child.</u>
303.310(b)	006.03B	<u>Subject to 92 NAC 52-006.03C, the 45 calendar day timeline described in 92 NAC 52-006.03A does not apply for any period when:</u>
303.310(b)(1)	006.03B1	<u>The child or parent is unavailable to participate in the screening (if applicable), the initial evaluation, the initial assessments of the child and family, or the initial IFSP meeting due to exceptional family circumstances that are documented in the child's early intervention records; or</u>
303.310(b)(2)	006.03B2	<u>The parent has not provided consent for the screening (if applicable), the initial evaluation, or the initial assessment of the child, despite documented, repeated attempts by the early intervention service provider to obtain parental consent.</u>
303.310(c)	006.03C	<u>In the event the circumstances described in 92 NAC 52-006.03B1 or 006.03B2 exist, the early intervention service provider must:</u>
303.310(c)(1)	006.03C1	<u>Document in the child's early intervention records the exceptional family circumstances or repeated attempts by the early intervention service provider to obtain parental consent;</u>
303.310(c)(2)	006.03C2	<u>Complete the screening (if applicable), the initial evaluation, the initial assessments (of the child and family), and initial IFSP meeting as soon as possible after the documented exceptional family circumstances described in 92 NAC 52-006.03B1 no longer exist or parental consent is obtained for the screening (if applicable), the initial evaluation, and the initial assessment of the child; and</u>
303.310(c)(3)	006.03C3	<u>Develop and implement an interim IFSP, to the extent appropriate and consistent with 92 NAC 52-007.05.</u>
303.310(d)	006.03D	<u>The initial family assessment must be conducted within the 45 calendar day timeline in 92 NAC 52-006.03A if the parent concurs and even if other family members are unavailable.</u>

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006.04 Screening

303.320(a)(1) 006.04A The school district or approved cooperative may adopt procedures consistent with requirements of this section, to screen children under the age of three who have been referred to Part C program to determine whether they are suspected of having a disability under 92 NAC 52. If the district or approved cooperative proposes to screen a child it must:

303.320(a)(1)(i) 006.04A1 Provide the parent notice under 92 NAC 52-009.03 of its intent to screen the child to identify whether the child is suspected of having a disability and include in that notice a description of the parent's right to request an evaluation under 92 NAC 52-006 at any time during the screening process; and

303.320(a)(1)(ii) 006.04A2 Obtain parental consent as required in 92 NAC 52-009.03A before conducting the screening procedures.

303.320(a)(2) 006.04B If the parent consents to the screening and the screening or other available information indicates that the child is:

303.320(a)(2)(i) 006.04B1 Suspected of having a disability, after notice is provided under 92 NAC 52-009.03B and once parental consent is obtained as required in NAC 52-009.03A, an evaluation and assessment of the child must be conducted under 92 NAC 52-006; or

303.320(a)(2)(ii) 006.04B2 Not suspected of having a disability, the early intervention service provider must ensure that notice of that determination is provided to the parent under 92 NAC 52-009.03B, and that the notice describes the parent's right to request an evaluation.

303.320(a)(3) 006.04C If the parent of the child requests and consents to an evaluation at any time during the screening process, evaluation of the child must be conducted under 92 NAC 52-006, even if the early intervention service provider has determined under 92 NAC 52-006.04B2 that the child is not suspected of having a disability.

303.320(c) 006.04D For every child under the age of three who is referred to the early intervention program or screened in accordance with 92 NAC 52-006.04A, the school district or approved cooperative is not required to:

303.320(c)(1) 006.04D1 Provide an evaluation of the child under 92 NAC 52-006 unless the child is suspected of having a disability or the parent requests an evaluation under 92 NAC 52-006.04C; or

303.320(c)(2) 006.04D2 Make early intervention services available under 92 NAC 52 to the child unless a determination is made that the child meets the definition of infant or toddler with a disability under 92 NAC 52-003.23.

006.05 Eligibility for Early Intervention Services

92NAC51-006.04E1 006.05A Developmental Delay
To qualify for early intervention services in the category of developmental delay, the child shall have a significant delay as measured by appropriate diagnostic instruments and procedures in one of more of the following areas and by reason thereof, needs early intervention services;

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303.21(a)(1)(i)	006.05A1	<u>Cognitive development;</u>
303.21(a)(1)(ii)	006.05A2	<u>Physical development, including vision and hearing;</u>
303.21(a)(1)(iii)	006.05A3	<u>Communication development;</u>
303.21(a)(1)(iv)	006.05A4	<u>Social or emotional development;</u>
303.21(a)(1)(v)	006.05A5	<u>Adaptive development; or</u>
303.21(a)(1)(vi)	006.05A6	<u>A diagnosed physical or mental condition that:</u>
	006.05A6a	<u>Has a high probability of resulting in a developmental delay; and</u>
303.21(a)(2)(i)	006.05A6b	<u>Includes conditions such as chromosomal abnormalities; genetic or congenital disorders; sensory impairments; inborn errors of metabolism; disorders reflecting disturbances of the development of the nervous system; congenital infections; severe attachment disorders; and disorders secondary to exposure to toxic substances, including fetal alcohol syndrome.</u>
006.06		<u>Evaluation of the child and assessment of the child and family.</u>
303.321(a)(1)	006.06A	<u>The school district or approved cooperative must ensure that, subject to obtaining parental consent in accordance with 92 NAC 52-009.03A1b, each child under the age of three who is referred for evaluation or early intervention services and suspected of having a disability, receives:</u>
303.321(a)(1)(i)	006.06A1	<u>A timely, comprehensive, multidisciplinary evaluation of the child in accordance with 92 NAC 52-006.07 unless eligibility is established under 92 NAC 52-006.06B; and</u>
303.321(a)(1)(ii)	006.06A2	<u>If the child is determined eligible as an infant or toddler with a disability as defined in 92 NAC 52-003.23.</u>
303.321(a)(1)(ii)(A)	006.06A2a	<u>A multidisciplinary assessment of the unique strengths and needs of that infant or toddler and the identification of services appropriate to meet those needs; and</u>
303.321(a)(1)(ii)(B)	006.06A2b	<u>As conducted by the Services Coordinator/IFSP case manager, a family-directed assessment of the resources, priorities, and concerns of the family and the identification of the supports and services necessary to enhance the family's capacity to meet the developmental needs of that infant or toddler. The assessments of the child and family are described in 92 NAC 52-006.08 and these assessments may occur simultaneously with the evaluation, provided that the requirements of 92 NAC 52-006.07 are met.</u>
303.321(a)(3)(i)	006.06B	<u>A child's medical and other records may be used to establish eligibility (without conducting an evaluation of the child) under 92 NAC 52 if those records indicate that the child's level of functioning in one or more of the developmental areas constitutes a developmental delay or that the child otherwise meets the criteria for an infant or toddler with a disability under 92 NAC 52-003.23 and 92 NAC 52-006.09.</u>
303.321(a)(3)(i)	006.06B1	<u>If the child's eligibility is established under 92 NAC 52-006.06B, the school district or approved cooperative must conduct assessments of the child and family in accordance with 92 NAC 52-006.08.</u>

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303.321(a)(3)(ii) 006.06B2 Qualified personnel must use informed clinical opinion when conducting an evaluation and assessment of the child. In addition, the school district or approved cooperative must ensure that informed clinical opinion may be used as an independent basis to establish a child's eligibility even when other instruments do not establish eligibility; however, in no event may informed clinical opinion be used to negate the results of evaluation instruments used to establish eligibility under 92 NAC 52-006.07.

303.321(a)(4) 006.06C All evaluations and assessments of the child and family must be conducted by qualified personnel, in a nondiscriminatory manner, and selected and administered so as not to be racially or culturally discriminatory.

303.321(a)(5) 006.06D Unless clearly not feasible to do so, all evaluations and assessments of a child must be conducted in the native language of the child, in accordance with the definition of native language in 92 NAC 52-003.27.

006.07 Procedures for Evaluation of the Child to Determine Eligibility

303.321(b) 006.07A In conducting an evaluation, no single procedure may be used as the sole criterion for determining a child's eligibility. Procedures must include:

303.321(b)(1) 006.07A1 Administering an evaluation instrument;

303.321(b)(2) 006.07A2 Taking the child's history (including interviewing the parent);

303.321(b)(3) 006.07A3 Identifying the child's level of functioning in each of the developmental areas in 92 NAC 52-003.23 and 92 NAC 52-006.05.

303.321(b)(4) 006.07A4 Gathering information from other sources such as family members, other caregivers, medical providers, social workers, and educators, if necessary, to understand the full scope of the child's unique strengths and needs; and

303.321(b)(5) 006.07A5 Reviewing medical, educational, or other records.

006.08 Procedures for Assessment of the Child and Family

303.321(c)(1) 006.08A An assessment of each infant or toddler with a disability must be conducted by qualified personnel in order to identify the child's unique strengths and needs and the early intervention services appropriate to meet those needs. The assessment of the child must include the following:

303.321(c)(1)(i) 006.08A1 A review of the results of the evaluation conducted under 92 NAC 51-006.07;

303.321(c)(1)(ii) 006.08A2 Personal observations of the child; and

303.321(c)(1)(iii) 006.08A3 The identification of the child's needs in each of the developmental areas in 92 NAC 52-003.23 and 92 NAC 52-006.05.

303.321(c)(2) 006.08A4 A Family-directed assessment must be conducted by qualified personnel in order to identify the family's resources, priorities, and concerns and the supports and services necessary to enhance the family's capacity to meet the developmental needs of the family's infant or toddler with a disability. The family-directed assessment must:

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303.321(c)(2)(i) 006.08A4a Be voluntary on the part of each family member participating in the assessment;

303.321(c)(2)(ii) 006.08A4b Be based on information obtained through an assessment tool and also through an interview with those family members who elect to participate in the assessment; and

303.321(c)(2)(iii) 006.08A4c Include the family's description of its resources, priorities, and concerns related to enhancing the child's development.

303.322 006.09 If, based on the evaluation conducted under 92 NAC 52-006, the school district or approved cooperative determines that a child is not eligible, the school district or approved cooperative must provide the parent with prior written notice required in 92 NAC 52-009.38B and include in the notice information about the parent's right to dispute the eligibility determination through dispute resolution mechanisms under 92 NAC 52-009.05 through 009.08, such as requesting a due process hearing or mediation or filing a State complaint.

006.10 Multidisciplinary Team Evaluation Written Report

300.306(a)(2) 006.10A The team shall prepare a written report of the results of the child's evaluation.

51-006.03E2
92NAC51-006.03E1 006.10A1 The report shall include a statement of:

51-006.03E2a 006.10A1a Whether the child qualifies as an infant or toddler with a disability based on the criteria and definition contained in 92 NAC 52-006;

51-006.03E2c 006.10A1b The basis for making the determination including the results of the evaluation; and

51.006.03E2b 006.10A1c The child's unique strengths and needs in each of the developmental areas: cognitive development; physical development; communication development; social and emotional development and adaptive development;

51-006.03E2d 006.10A1d A listing of the team members that must include the parent and individuals representing two or more separate disciplines pursuant to 92 NAC 52-003.26A.

51-006.03E3 006.10A2 Each team member shall certify in writing whether the report reflects his or her conclusion. If the report does not reflect his or her conclusion, the team member shall submit a separate statement presenting his or her conclusion.

51-006.03E4 006.11 A copy of the evaluation and the documentation of determination of eligibility shall be given to the parent at no cost consistent with 92 NAC 52-009.02F3.

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007 Individual Family Service Plan (IFSP)

303.340 007.01 For each infant or toddler with a disability, the early intervention program and early intervention service providers must ensure the development, review, and implementation of an individualized family service plan (IFSP) developed by a multidisciplinary team, which includes the parent, that:

303.340(a) 007.01A Is consistent with the definition of that term in 92 NAC 52-003.21; and

303.340(b) 007.01B Meets the requirements in 92 NAC 52-007.02 through 007.05.

303.409(c) 007.01C A copy of which is provided at no cost to the parent pursuant to 92 NAC 52-009.02F3.

303.342 007.02 Procedure for IFSP development, review and evaluation

303.342(a) 007.02A For a child referred to the early intervention program and determined to be eligible as an infant or toddler with a disability, a meeting to develop the initial IFSP must be conducted within the 45 calendar day time period described in 92 NAC 52-006.03.

303.342(b) 007.02B A review of the IFSP for a child and the child's family must be conducted every six months, or more frequently if conditions warrant, or if the family requests such a review. The review may be carried out by a meeting or by another means that is acceptable to the parents and other participants. The purpose of the periodic review is to determine:

303.342(b)(i) 007.02B1 The degree to which progress toward achieving the results or outcomes identified in the IFSP is being made; and

303.342(b)(ii) 007.02B2 Whether modification or revision of the results, outcomes, or early intervention services identified in the IFSP is necessary.

303.342(c) 007.02C A meeting must be conducted on at least an annual basis to evaluate and revise, as appropriate, the IFSP for a child and the child's family. The results of any current evaluations and other information available from the assessments of the child and family conducted under 92 NAC 52-006 must be used in determining the early intervention services that are needed and will be provided.

303.342(d)(i) 007.02D IFSP meetings must be conducted in settings and at times that are convenient for the family; and in the native language of the family or other mode of communication used by the family, unless it is clearly not feasible to do so.

303.342(d)(i)(ii) 007.02D1 Meeting arrangements must be made with, and written notice provided to, the family and other participants early enough before the meeting date to ensure that they will be able to attend.

303.342(d)(ii)(2) 007.02E The contents of the IFSP must be fully explained to the parents and informed written consent, as described in 92 NAC 52-003.08, must be obtained, as required in 92 NAC 52-009.03A1c, prior to the provision of early intervention services described in the IFSP.

303.342(e) 007.02F Each early intervention service must be provided as soon as possible but in no case later than 30 days after the parent provides consent for that service, as required in 92 NAC 52-007.04F.

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007.03 IFSP Team Meeting and Periodic Review

303.343 007.03A Each initial IFSP meeting and each annual IFSP Team meeting to evaluate the IFSP must include the following participants pursuant 92 NAC 52-003.26B:

303.343(a)(1)(i) 007.03A1 The parent or parents of the child;

303.343(a)(1)(ii) 007.03A2 Other family members, as requested by the parent, if feasible to do so;

303.343(a)(1)(iii) 007.03A3 An advocate or person outside of the family, if the parent requests that the person participate;

303.343(a)(1)(iv) 007.03A4 Services Coordinator/IFSP case manager who is responsible for implementing the IFSP;

303.343(a)(1)(v) 007.03A5 A person or persons directly involved in conducting the evaluations and assessments in 92 NAC 52-006;

303.343(a)(1)(vi) 007.03A6 As appropriate, persons who will be providing early intervention services under this Chapter to the child or family; and

Procedure 007.03A7 A representative of the school district or approved cooperative who has the authority to commit resources.

303.343(a)(2) 007.03B If a person listed in 92 NAC 52-007.03A5 is unable to attend a meeting, arrangements must be made for the person's involvement through other means, including one of the following:

303.343(a)(2)(i) 007.03B1 Participating in a telephone conference call;

303.343(a)(2)(ii) 007.03B2 Having a knowledgeable authorized representative attend the meeting; or

303.343(a)(2)(iii) 007.03B3 Making pertinent records available at the meeting.

303.343(b) 007.03C Each periodic review under 92 NAC 52-007.02B must provide for the participation of persons in paragraphs 92 NAC 52-007.03A1 through 007.03A4. If conditions warrant, provisions must be made for the participation of other representatives identified in 92 NAC 52-007.03A.

303.344 007.04 Content of the IFSP

303.344(a) 007.04A The IFSP must include a statement of the infant or toddler with a disability's present levels of physical development (including vision, hearing, and health status), cognitive development, communication development, social or emotional development, and adaptive development based on the information from that child's evaluation and assessments conducted under 92 NAC 52-006.06.

303.344(b) 007.04B With the concurrence of the family, the IFSP must include a statement of the family's resources, priorities, and concerns related to enhancing the development of the child as identified through the assessment of the family under 92 NAC 52-006.08A4.

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303.344(c)	<u>007.04C</u>	<u>The IFSP must include a statement of the measurable results or measurable outcomes expected to be achieved for the child (including pre-literacy and language skills, as developmentally appropriate for the child) and family and the criteria, procedures, and timelines used to determine:</u>
303.344(c)(1)	<u>007.04C1</u>	<u>The degree to which progress toward achieving the results or outcomes identified in the IFSP is being made; and</u>
303.344(c)(2)	<u>007.04C2</u>	<u>Whether modifications or revisions of the expected results or outcomes, or early intervention services identified in the IFSP are necessary.</u>
303.344(d)	<u>007.04D</u>	<u>The IFSP must include a statement of the specific early intervention services, based on peer reviewed research (to the extent practicable), that are necessary to meet the unique needs of the child and the family to achieve the results or outcomes identified in 92 NAC 52-007.04C including:</u>
303.344(d)(i)	<u>007.04D1</u>	<u>The length, duration, frequency, intensity, and method of delivering the early intervention services:</u>
303.344(d)(2)(i)	<u>007.04D1a</u>	<u>Frequency and intensity mean the number of days or sessions that a service will be provided, and whether the service is provided on an individual or group basis;</u>
303.344(d)(2)(ii)	<u>007.04D1b</u>	<u>Method means how a service is provided (such as individually or in a group);</u>
303.344(d)(2)(iii)	<u>007.04D1c</u>	<u>Length means the length of time the service is provided during each session of that service (such as an hour or other specified time period);</u>
303.344(d)(2)(iv)	<u>007.04D1d</u>	<u>Duration means projecting when a given service will no longer be provided (such as when the child is expected to achieve the results or outcomes of his or her IFSP).</u>
303.344(d)(ii)(A)	<u>007.04D2</u>	<u>A statement that each early intervention service is provided in the natural environment for that child or service to the maximum extent appropriate, consistent with 92 NAC 52-003.11 and 003.25 or subject to 007.04D3, a justification as to why an early intervention service will not be provided in the natural environment.</u>
303.344(d)1(ii)(B)	<u>007.04D3</u>	<u>The determination of the appropriate setting for providing early intervention services to an infant or toddler with a disability, including any justification for not providing a particular early intervention service in the natural environment for that infant or toddler with a disability and service that must be:</u>
303.344(d)(1)	<u>007.04D3a</u>	<u>Made by the IFSP Team (which includes the parent and other team members);</u>
303.344(d)(2)	<u>007.04D3b</u>	<u>Consistent with the provisions in 92 NAC 52-003.25 and 92 NAC 52-007.06; and</u>
303.344(d)(3)	<u>007.04D3c</u>	<u>Based on the child's outcomes that are identified by the IFSP Team in 92 NAC 52-007.04C.</u>
303.344(d)(3)(iii)	<u>007.04D4</u>	<u>The location of the early intervention services;</u>

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303.344(d)(3)(iv)	007.04D5	<u>The payment arrangements, if any.</u>
303.344(d)(4)	007.04D6	<u>For children who are at least three years of age, the IFSP must include an educational component that promotes school readiness and incorporates pre-literacy, language, and numeracy skills.</u>
303.344(e)	007.04E	<u>To the extent appropriate, the IFSP also must:</u>
303.344(e)(1)	007.04E1	<u>Identify medical and other services that the child or family needs or is receiving through other sources, but that are neither required nor funded under 92 NAC 52;</u>
303.344(e)(2)	007.04E2	<u>If those services are not currently being provided, include a description of the steps the Service Coordinator/IFSP case manager or family may take to assist the child and family in securing those other services.</u>
303.344(f)(1)	007.04F	<u>The IFSP must include the projected date for the initiation of each early intervention service in 92 NAC 52-007.04D, which date must be as soon as possible after the parent consents to the service, but not later than 30 days of receipt of parental consent, as required in 92 NAC 52-007.02E and 009.03A1c; and</u>
303.344(g)(1)	007.04G	<u>The IFSP must include the name of the service coordinator from the profession most relevant to the child's or family's needs (or who IFSP case manager is otherwise qualified to carry out all applicable responsibilities under 92 NAC 52, who will be responsible for implementing the early intervention services identified in a child's IFSP, including transition services, and coordination with other agencies and persons.</u>
303.344(g)(2)	007.04G1	<u>In meeting the requirements in 92 NAC 52-007.04G, the term "profession" includes "services coordination".</u>
303.344(l)(1)(i)(ii)(iii)	007.04H	<u>The IFSP must include the steps and services to be taken to support the smooth transition of the child, in accordance with 92 NAC 52-008, from early intervention services to preschool services under 92 NAC 51, to the extent that those services are appropriate; or other appropriate services including,</u>
303.344(h)(2)(i)	007.04H1	<u>Discussions with, and training of, parents, as appropriate, regarding future placements and other matters related to the child's transition;</u>
303.344(h)(2)(ii)	007.04H2	<u>Procedures to prepare the child for changes in service delivery, including steps to help the child adjust to, and function in, a new setting;</u>
303.344(h)(2)(iii)	007.04H3	<u>Confirmation that childfind information about the child has been transmitted to the other relevant agencies with parental consent if required 92 NAC 52-009.02K, transmission of additional information needed by the school district or approved cooperative to ensure continuity of services from the early intervention program to the special education program, including a copy of the most recent evaluation and assessments of the child and the family and most recent IFSP developed in accordance with 92 NAC 52-007; and</u>
303.344(h)(2)(iv)	007.04H4	<u>Identification of transition services and other activities that the IFSP Team determines are necessary to support the transition of the child.</u>

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303.345 007.05 Interim IFSPs

Early intervention services for an eligible child and the child's family may commence before the completion of the evaluation and assessments in 92 NAC 52 006.06 through 006.08, if the following conditions are met:

303.345(a)

007.05A1 Parental consent is obtained.

303.345(b)

007.05A2 An interim IFSP is developed that includes:

303.345(b)(i)

007.05A2a The name of the Service Coordinator/IFSP case manager who will be responsible consistent with 92 NAC 52-007.04G for implementing the interim IFSP and coordinating with other agencies and persons;

303.345(b)(2)

007.05A2b A representative of the school district or approved cooperative who has the authority to commit district resources; and

303.345(b)(2)

007.05A2c The early intervention services that have been determined to be needed immediately by the child and the child's family.

303.345(c)

007.05A3 Evaluations and assessments are completed within the 45 calendar day timeline in 92 NAC 52-006.03.

303.126

007.06

Natural Environments

303.126(a)

007.06A To the maximum extent appropriate to the needs of the child, early intervention services must be provided in natural environments including home and community settings in which children without disabilities participate.

303.126(b)

007.06B The provision of early intervention services for any infant or toddler may occur in a setting other than a natural environment only if early intervention cannot be achieved satisfactorily for the infant or toddler in a natural environment.

92NAC51-

007.07

Year Round Continuous Services

007.07A

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

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008 Transition to Preschool and Other Programs for Infants and Toddlers Below Age Three

008.01 Transition Planning

303.209(c)(1) 008.01A If a toddler with a disability may be eligible for preschool services under 92 NAC 51, the agency responsible for services coordination, with the approval of the family of the toddler, convenes a conference, among the family, and the school district or approved cooperative not fewer than 90 days, and, at the discretion of all parties, not more than 9 months, before the toddler's third birthday to discuss any services the toddlers may receive under 92 NAC 51; and

303.209(c)(2) 008.01B If the school district or approved cooperative determines that a toddler with a disability is not potentially eligible for services under Part B of IDEA, the agency responsible for services coordination, with the approval of the family of that toddler, makes reasonable efforts to convene a conference among the family, and providers of other appropriate services for the toddler to discuss appropriate services that the toddler may receive.

303.209(d) 008.01C The IFSP Team must ensure for each toddler with a disability:

303.209(d)(1)(i) 008.01C1 It reviews the program options for the toddler with a disability for the period from the toddler's third birthday through the remainder of the school year including the annual notice described in 92 NAC 52-008.02A-008.05;

303.209(d)(1)(ii) 008.01C2 Each family of a toddler with a disability who is served under 92 NAC 52 is included in the development of the transition plan required under this section and 92 NAC 52-007.04H;

303.209(d)(2) 008.01C3 It establishes a transition plan in the IFSP not fewer than 90 days and, at the discretion of all parties, not more than 9 months before the toddler's third birthday; and

303.209(d)(3)(i) 008.01C4 The transition plan in the IFSP includes, consistent with 92 NAC 52-007.04H, as appropriate:

303.209(d)(3)(ii) 008.01C4a Steps for the toddler with a disability and his or her family to exit from the early intervention program; and

303.209(d)(3)(iii) 008.01C4b Any transition services that the IFSP Team identifies as needed by that toddler and his or her family.

303.209(2) 008.01D Any conference conducted under 92 NAC 52-008.01A or meeting to develop the transition plan under 92 NAC 52-008.01C (which conference and meeting may be combined into one meeting) must meet the requirements in 92 NAC 52-007.02D and 007.03A and B.

008.02 Transition Age Three and Older

303.211(b)(1) 008.02A Parents of children with disabilities who are eligible for services under 92 NAC 51 and who continue to receive early intervention services through the school year in which they reach age 3 will be provided an annual notice that contains:

303.211(b)(1)(i) 008.02A1 A description of the rights of the parents to elect to receive services pursuant to 92 NAC 52 or under 92 NAC 51; and

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303.211(b)(1)(ii)

008.02A2 An explanation of the differences between services provided pursuant to 92 NAC 52 and services provided under 92 NAC 51, including:

303.211(b)(1)(ii)(A)

008.02A2a The types of services and the locations at which the services are provided;

303.211(b)(1)(ii)(B)

008.02A2b The procedural safeguards that apply; and

303.211(b)(2)

008.01A2c Consistent with 92 NAC 52-007.04D services provided pursuant to this section will include an educational component that promotes school readiness and incorporates pre-literacy, language, and numeracy skills.

303.211(b)(3)

008.03

Any child served pursuant to 92 NAC 52 has the right, at any time, to receive FAPE, if qualified, (as that term is defined at 92 NAC 52-003.14) under 92 NAC 51 instead of early intervention services under 92 NAC 52.

303.211(b)(4)

008.04

The child must continue to receive all early intervention services identified in the toddler with a disability's IFSP under 92 NAC 52-007 (and consented to by the parent under 92 NAC 52-007.02E) beyond age three until that toddler under 92 NAC 51. This provision does not apply if the school district or approved cooperative has requested parental consent for the initial evaluation under 92 NAC 51-009.08 and the parent has not provided that consent.

008.05

303.211(b)(5)

The school district or approved cooperative must obtain informed consent from the parent of any child with a disability for the continuation of early intervention services pursuant to this section for that child. Consent must be obtained before the child reaches three years of age, where practicable.

303.211(b)(6)(i)

008.06

For toddlers with disabilities age three and older, the IFSP Team ensures a smooth transition from services under this section to preschool by:

303.211(b)(6)(i)(A)

303.211(b)(6)(i)(B)

008.06

With the approval of the parents of the child, convening a transition conference, between the parents and the school district or approved cooperative, not fewer than 90 days and, at the discretion of all parties, not more than 9 months before the child will no longer be eligible to receive, or no longer receives, early intervention services under this section, to discuss any services that the child may receive under 92 NAC 51; and

303.211(b)(6)(i)(C)

008.06

Establishing a transition plan in the IFSP not fewer than 90 days and, at the discretion of all parties, not more than 9 months before the child will no longer be eligible to receive, or no longer receives, early intervention services under this section.

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009 Procedural Safeguards

009.01 Confidentiality and Notice to Parents

303.401a

009.01A

The school district or approved cooperative must ensure that the parents of a child referred for early intervention services are afforded the right to confidentiality of personally identifiable information, including the right to written notice of, and written consent to, the exchange of that information among agencies, consistent with Federal and State laws.

303.401(b)(2)

009.01B

The parents of infants or toddlers who are referred to, or receive early intervention services, are afforded the opportunity to inspect and review all early intervention records about the child and the child's family that are collected, maintained, or used under 92 NAC 52, including records related to evaluations and assessments, screening, eligibility determinations, development and implementation of IFSPs, provision of early intervention services, individual complaints involving the child, or any part of the child's early intervention record under 92 NAC 52.

303.401(c)

009.01B1

The confidentiality procedures described in 92 NAC 52-009.01B apply to the personally identifiable information of a child and the child's family that:

303.401(c)(1)

009.01B1a

Is contained in early intervention records collected, used, or maintained by the school district or approved cooperative or an early intervention service provider; and

303.401(c)(2)

009.01B1b

Applies from the point in time when the child is referred for early intervention services under 92 NAC 52 until the later of when the participating agency is no longer required to maintain or no longer maintains that information under applicable Federal and State laws.

009.02 Records

303.403

009.02A

The following definitions apply to 92 NAC 52-009.01 through 009.02M2:

303.403(a)

009.02A1

Destruction means physical destruction of the record or ensuring that personal identifiers are removed from a record so that the record is no longer personally identifiable under 92 NAC 52-009.02A4.

303.403(b)

009.02A2

Early intervention records mean all records regarding a child that are required to be collected, maintained, or used under 92 NAC 52.

303.403(c)

009.02A3

Participating agency means any individual, agency, entity, or institution that collects, maintains, or uses personally identifiable information to implement the requirements in Part C of IDEA with respect to a particular child. A participating agency includes the co-lead agencies and early intervention service providers and programs and any individual or entity that provides any early intervention services (including service coordination, evaluations and assessments, and other Part C services), but does not include primary referral sources, or public agencies (such as the State Medicaid or CHIP program) or private entities (such as private insurance companies) that act solely as funding sources for early intervention services.

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303.29 009.02A4 Personally identifiable information means personally identifiable information as defined in 34 CFR 99.3, as amended, except that the term "student" in the definition of personally identifiable information in 34 CFR 99.3 means "child" as used in 92 NAC 52 and any reference to "school" means "early intervention service provider" as used in 92 NAC 52.

009.02B Access Rights

303.405(a) 009.02B1 Each participating agency must permit parents to inspect and review any early intervention records relating to their children that are collected, maintained, or used by the agency under 92 NAC 52. The agency must comply with a parent's request to inspect and review records without unnecessary delay and before any meeting regarding an IFSP, or any hearing pursuant to 92 NAC 55, and in no case more than 10 days after the request has been made.

303.405(b) 009.02B2 The right to inspect and review early intervention records under this section includes:

303.405(b)(1) 009.02B2a The right to a response from the participating agency to reasonable requests for explanations and interpretations of the early intervention records.

303.405(b)(2) 009.02B2b The right to request that the participating agency provide copies of the early intervention 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

303.405(b)(3) 009.02B2c The right to have a representative of the parent inspect and review the early intervention records.

303.405(c) 009.02B3 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 provided documentation that the parent does not have the authority under applicable State laws governing such matters as custody, foster care, guardianship, separation, and divorce.

009.02C Record of access

303.406 009.02C1 Each participating agency must keep a record of parties obtaining access to early intervention records collected, maintained, or used under 92 NAC 52 (except access by parents and authorized representatives and 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 early intervention records.

009.02D Records on more than one child

303.407 009.02D1 If any early intervention 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.

009.02E List of types and locations of information

303.408 009.02E1 Each participating agency must provide parents, on request, a list of the types and locations of early intervention records collected, maintained, or used by the agency.

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009.02F Fees for records

303.409(a) 009.02F1 Each participating agency may charge a fee for copies of records that are made for parents if the fee does not effectively prevent the parents from exercising their right to inspect and review those records, except as provided in 92 NAC 52-009.02F3.

303.409(b) 009.02F2 A participating agency may not charge a fee to search for or to retrieve information under this Chapter.

303.409(c) 009.02F3 A participating agency must provide at no cost to parents, a copy of each evaluation, assessment of the child, family assessment, and IFSP as soon as possible but in no case more than seven days after each IFSP meeting.

009.02G Amendment of records at a parent's request

303.410(a) 009.02G1 A parent who believes that information in the early intervention records collected, maintained, or used is inaccurate, misleading, or violates the privacy or other rights of the child or parent may request that the participating agency that maintains the information amend the information.

303.410(b) 009.02G2 The participating agency must decide whether to amend the information in accordance with the request within a reasonable period of time of receipt of the request.

303.410(c) 009.02G3 If the participating agency refuses 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 92 NAC 52-009.02H.

009.02H Opportunity for a hearing

303.411 009.02H1 The participating agency must, on request, provide parents with the opportunity for a hearing to challenge information in their child's early intervention records to ensure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child or parents. A parent may request a hearing under the procedures in 92 NAC 52-009.02J (i.e., procedures that are consistent with the FERPA hearing requirements in 34 CFR 99.22).

009.02I Result of hearing

303.412(a) 009.02I1 If, as a result of the hearing, the participating agency decides that the information is inaccurate, misleading or in violation of the privacy or other rights of the child or parent, it must amend the information accordingly and so inform the parent in writing.

303.412(b) 009.02I2 If, as a result of the hearing, the agency decides that the information is not inaccurate, misleading, or in violation of the privacy or other rights of the child or parent, it must inform the parent of the right to place in the early intervention records it maintains on the child a statement commenting on the information or setting forth any reasons for disagreeing with the decision of the agency.

303.412(c) 009.02I3 Any explanation placed in the early intervention records of the child under this section must:

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303.412(c)(1) 009.0213a Be maintained by the agency as part of the early intervention records of the child as long as the record or contested portion is maintained by the agency; and

303.412(c)(2) 009.0213b If the early intervention records of the child or the contested portion are disclosed by the agency to any party, the explanation must also be disclosed to the party.

009.02J Hearing procedures

303.413 009.02J1 A hearing held under 92 NAC 52-009.02H must be conducted according to the procedures under 34 CFR 99.22.

009.02K Consent prior to disclosure or use

303.414(a) 009.02K1 Except as provided in 92 NAC 52-009.02K2, prior parental consent must be obtained before personally identifiable information is:

303.414(a)(i) 009.02K1a Disclosed to anyone other than authorized representatives, officials, or employees of participating agencies collecting, maintaining, or using the information under 92 NAC 52, subject to 92 NAC 52-009.02K2; or

303.414(a)(2) 009.02K1b Used for any purpose other than meeting a requirement of this part.

303.414(b) 009.02K2 The co-lead agencies, early intervention programs, or other participating agency may not disclose personally identifiable information, as defined in 92 NAC 52-009.02A4, any party except participating agencies (including the co-lead agencies and early intervention service providers) that are part of the State's early intervention system without parental consent unless authorized to do so pursuant to 34 CFR 303.414(b).

303.414(c) 009.02K3 The school district or approved cooperative must provide policies and procedures to be used when a parent refuses to provide consent under 92 NAC 52 (such as a meeting to explain to the parents how their failure to consent affects the ability of their child to receive services under this Chapter) provided that those procedures do not override a parent's right to refuse consent under 92 NAC 52-009.03A.

009.02L Safeguards

303.415(a) 009.02L1 Each participating agency must protect the confidentiality of personally identifiable information at the collection, maintenance, use, storage, disclosure, and destruction stages.

303.415(b) 009.02L2 One official at each participating agency must assume responsibility for ensuring the confidentiality of any personally identifiable information.

303.415(c) 009.02L3 All persons collecting or using personally identifiable information must receive training or instruction regarding the State's policies and procedures under 92 NAC 52-009.01 through 009.02M and 34 CFR Part 99.

303.415(d) 009.02L4 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.

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303.416(a) 009.02M Destruction of information

009.02M1 The participating agency must inform parents when personally identifiable information collected, maintained, or used under 92 NAC 52 is no longer needed to provide services to the child under Part C of the IDEA, the GEPA provisions in 20 U.S.C. 1232f, and EDGAR, 34 CFR parts 76 and 80.

303.416(b) 009.02M2 Subject to 92 NAC 52-009.02M1, the information must be destroyed at the request of the parents. However, a permanent record of a child's name, date of birth, parent contact information (including address and phone number), names of service coordinator(s) and early intervention service provider(s), and exit data (including year and age upon exit, and any programs entered into upon exiting) may be maintained without time limitation.

009.03 Parental Consent and Notice

303.420(a) 009.03A Parental consent and ability to decline services

009.03A1 The school district or approved cooperative must ensure parental consent is obtained before:

303.420(a)(1) 009.03A1a Administering screening procedures under 92 NAC 52-006.04 that are used to determine whether a child is suspected of having a disability;

303.420(a)(2) 009.03A1b All evaluations and assessments of a child are conducted under 92 NAC 52-006.05 through 006.08;

303.420(a)(3) 009.03A1c Early intervention services are provided to the child under 92 NAC 52;

303.420(a)(5) 009.03A1d Public benefits or insurance or private insurance is used if such consent is required under 92 NAC 52-011.04C and 011.05A; and

303.420(a)(6) 009.03A1e Disclosure of personally identifiable information consistent with 92 NAC 52-009.02K.

303.420(b)(1) 009.03A2 If a parent does not give consent under 92 NAC 52-009.03A1a through 009.03A1c, the school district or approved cooperative must make reasonable efforts to ensure that the parent:

303.420(b)(1) 009.03A2a Is fully aware of the nature of the evaluation and assessment of the child or early intervention services that would be available; and

303.420(b)(2) 009.03A2b Understands that the child will not be able to receive the evaluation, assessment, or early intervention service unless consent is given.

303.420(c) 009.03A3 The school district or approved cooperative may not use the due process hearing procedures under 92 NAC 55 to challenge a parent's refusal to provide any consent that is required under 92 NAC 52-009.03A1 through 009.03A1e.

303.420(d) 009.03A4 The parents of an infant or toddler with a disability:

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303.420(d)(1) 009.03A4a Determine whether they, their infant or toddler with a disability, or other family members will accept or decline any early intervention service at any time, in accordance with State law; and

303.421(d)(2) 009.03A4b May decline a service after first accepting it, without jeopardizing other early intervention services under 92 NAC 52.

009.03B Prior written notice and procedural safeguards notice

303.421(a) 009.03B1 Prior written notice must be provided to parents a reasonable time before the school district or approved cooperative proposes or refuses, to initiate or change the identification, evaluation, or placement of their infant toddler, or the provision of early intervention services to the infant or toddler with a disability and that infant's or toddler's family.

303.421(b) 009.03B2 The notice must be in sufficient detail to inform parents about:

303.421(b)(1) 009.03B2a The action that is being proposed or refused;

303.421(b)(2) 009.03B2b The reasons for taking the action; and

303.421(b)(3) 009.03B2c All procedural safeguards that are available under 92 NAC 52-009, including a description of mediation in 92 NAC 52-009.05, how to file a State complaint in 92 NAC 52-009.06 and a due process complaint in the provisions adopted under 92 NAC 55, and any timelines under those procedures.

303.421(c) 009.03B3 The notice must be written in language understandable to the general public; and provided in the native language, as defined in 92 NAC 52-003.27, of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so.

303.421(c)(2) 009.03B3a If the native language or other mode of communication of the parent is not a written language, the school district or approved cooperative must take steps to ensure that:

303.421(c)(2)(i) 009.03B3a(i) The notice is translated orally or by other means to the parent in the parent's native language or other mode of communication;

303.421(c)(2)(ii) 009.03B3a(ii) The parent understands the notice; and

303.421(c)(2)(iii) 009.03B3a(iii) There is written evidence that the requirements of 92 NAC 52-009.03B3a have been met.

009.04 Surrogate Parents

303.422(a) 009.04A The school districts or approved cooperatives must ensure that the rights of a child are protected when no parent (as defined in 92 NAC 52-003.33) can be identified); the school district or approved cooperative, after reasonable efforts, cannot locate a parent; or the child is a ward of the State under the laws of Nebraska.

303.422(b) 009.04B The duty of the school district or approved cooperative under 92 NAC 52-009.04A, includes the assignment of an individual to act as a surrogate for the parent. This assignment process must include a method for determining whether a child needs a surrogate parent; and assigning a surrogate parent to the child.

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303.422(b)(2)	<u>009.04B1</u>	<u>In implementing the provisions under this section for children who are wards of the State or placed in foster care, the school district or approved cooperative must consult with the public agency that has been assigned care of the child.</u>
303.422(c)	<u>009.04C</u>	<u>In the case of a child who is a ward of the State, the surrogate parent, instead of being appointed by the school district or approved cooperative under 92 NAC 52-009.04B may be appointed by the judge overseeing the infant or toddler's case provided that the surrogate parent meets the requirements in 92 NAC 52-009.04D1 and 009.04E.</u>
303.422(d)(1)	<u>009.04D</u>	<u>The school district or approved cooperative may select a surrogate parent in any way permitted under State law.</u>
303.422(d)(2)	<u>009.04D1</u>	<u>School districts or approved cooperatives must ensure that a person selected as a surrogate parent:</u>
303.422(d)(2)(i)	<u>009.04D1a</u>	<u>Is not an employee of the co-lead agencies or any other public agency or early intervention service provider that provides early intervention services, education, care, or other services to the child or any family member of the child;</u>
303.422(d)(2)(ii)	<u>009.04D1b</u>	<u>Has no personal or professional interest that conflicts with the interest of the child he or she represents; and</u>
303.422(d)(2)(iii)	<u>009.04D1c</u>	<u>Has knowledge and skills that ensure adequate representation of the child.</u>
303.422(e)	<u>009.04E</u>	<u>A person who is otherwise qualified to be a surrogate parent under 92 NAC 52-009.04D1 is not an employee of the school district or approved cooperative solely because he or she is paid by the school district or approved cooperative to serve as a surrogate parent.</u>
303.422(f)	<u>009.04F</u>	<u>The surrogate parent has the same rights as a parent for all purposes under 92 NAC 52.</u>
303.422(g)	<u>009.04G</u>	<u>The school district or approved cooperative must make reasonable efforts to ensure the assignment of a surrogate parent not more than 30 days after the school district or approved cooperative determines that the child needs a surrogate parent.</u>
	<u>009.05</u>	<u>Mediation</u>
303.431(a)	<u>009.05A</u>	<u>Parties to disputes involving any matter under 92 NAC 52, including matters arising prior to the filing of a due process complaint, may resolve disputes through a mediation process at any time.</u>
	<u>009.05B</u>	<u>The mediation process:</u>
303.431(b)(1)(i)	<u>009.05B1</u>	<u>Is voluntary on the part of the parties;</u>
303.431(b)(1)(ii)	<u>009.05B2</u>	<u>Is not be used to deny or delay a parent's right to a due process hearing, or to deny any other rights afforded under Part C of the IDEA; and</u>
303.431(b)(1)(iii)	<u>009.05B3</u>	<u>Is conducted by a qualified and impartial mediator who is trained in effective mediation techniques.</u>

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009.05C Mediation Process Requirements

303.431(b)(2)(i)	009.05C1	<u>The Nebraska Department of Education maintains a list of individuals who are qualified mediators and are knowledgeable in laws and regulations relating to the provision of early intervention services.</u>
303.431(b)(2)(ii)	009.05C2	<u>The Nebraska Department of Education assigns mediators on a random, rotational or other impartial basis.</u>
303.431(b)(2)(ii)(3)	009.05C3	<u>The Nebraska Department of Education bears the cost of the mediation process including the costs of meetings described in 92 NAC 52-009.05E.</u>
303.431(b)(4)	009.05C4	<u>Each session in the mediation process must be scheduled in a timely manner and must be held at a location that is convenient to the parties in the dispute.</u>
303.431(b)(5)	009.05C5	<u>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:</u>
303.431(b)(5)(i)	009.05B5a	<u>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</u>
303.431(b)(5)(ii)	009.05B5b	<u>Is signed by both the parent and a representative of the school district or approved cooperative who has the authority to bind such school district or approved cooperative.</u>
303.431(b)(6)	009.05C6	<u>A written signed mediation agreement under 92 NAC 52-009.05C5 is enforceable in any State court of competence jurisdiction or in a district court of the United States.</u>
303.431(b)(7)	009.05C7	<u>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 Nebraska.</u>
303.431(c)	009.05D	<u>An individual who serves as a mediator under 92 NAC 52:</u>
303.431(c)(1)(i)	009.05D1	<u>May not be an employee of the co-lead agencies or an early intervention provider that is involved in the provision of early intervention services or other services to the child; and</u>
303.431(c)(2)	009.05D1a	<u>A person who otherwise qualifies as a mediator is not an employee or the co-lead agencies or an early intervention provider solely because he or she is paid by the co-lead agencies or provider to serve as a mediator.</u>
303.431(c)(1)(ii)	009.05D2	<u>Must not have a personal or professional interest that conflicts with the person's objectivity.</u>
303.431(d)	009.05E	<u>School districts and approved cooperatives may offer to parents 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:</u>

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303.431(d)(1) 009.05E1 Who is under contract with an appropriate alternative dispute resolution entity, or a parent training and information center or community parent resource center established under section 671 or 672 of the IDEA; and

303.431(d)(2) 009.05E2 Who would explain the benefits of, and encourage the use of, the mediation process to the parents.

009.06 Complaints

303.434(a) 009.06A An organization or individual may file a signed written complaint under the procedures described in 92 NAC 52-009.06.

009.06B The complaint must include:

303.434(b)(1) 009.06B1 A statement that the co-lead agencies, public agency, or early intervention service provider has violated a requirement of 92 NAC 52;

303.434(b)(2) 009.06B2 The facts on which the statement is based;

303.434(b)(3) 009.06B3 The signature and contact information for the complainant; and

303.434(b)(4) 009.06B4 If alleging violations with respect to a specific child:

009.06B4a The name and address of the residence of the child;

303.434(b)(4)(i)

009.06B4b The name of the early intervention service provider serving the child;

303.434(b)(4)(ii)

009.06B4c A description of the nature of the problem of the child, including facts relating to the problem; and

303.434(b)(4)(iii)

009.06B4d A proposed resolution of the problem to the extent known and available to the party at the time the complaint is filed.

303.434(b)(4)(iv)

303.434(c)

009.06B5 The complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received.

303.434(d)

009.06B6 The party filing the complaint must forward a copy of the complaint to the public agency or early intervention service provider serving the child at the same time the party files the complaint with the Nebraska Department of Education.

303.433(a)

009.06C

Within 60 days of receipt of a complaint meeting the requirements of 92 NAC 52-009.06B the Nebraska Department of Education will:

303.433(a)(1)

009.06C1

Carry out an independent on-site investigation, if the Nebraska Department of Education determines that an investigation is necessary;

303.433(a)(2)

009.06C2

Give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint;

303.433(a)(3)

009.06C3

Provide the lead agency, public agency, or early intervention service provider with an opportunity to respond to the complaint, including, at a minimum:

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303.433(a)(3)(i)	009.06C3a	<u>At the discretion of the Nebraska Department of Education, a proposal to resolve the complaint; and</u>
303.433(a)(3)(ii)	009.06C3b	<u>An opportunity for a parent who has filed a complaint and the co-lead agency, public agency, or early intervention service provider to voluntarily engage in mediation, consistent with 92 NAC 52-009.05;</u>
303.433(a)(4)	009.06C4	<u>Review all relevant information and make an independent determination as to whether the co-lead agency, public agency, or early intervention service provider is violating a requirement of 92 NAC 52; and</u>
303.433(a)(5)	009.06C5	<u>Issue a written decision to the complainant that addresses each allegation in the complaint and contains:</u>
303.433(a)(5)(i)	009.06C5a	<u>Findings of fact and conclusions; and</u>
303.433(a)(5)(ii)	009.06C5b	<u>The reasons for the Nebraska Department of Education's final decision.</u>
303.433(b)(2)	009.06C5c	<u>If the Nebraska Department of Education finds a failure to provide appropriate services the final decision must include corrective actions appropriate to address the needs of the infant or toddler with a disability who is the subject of the complaint and the infant's or toddler's family including technical assistance activities, negotiations, and corrective actions to achieve compliance.</u>
303.433(b)(1)	009.06D	<u>The Nebraska Department of Education will permit an extension of the time limit under 92 NAC 52-009.06C only if:</u>
303.433(b)(1)(i)	009.06D1	<u>Exceptional circumstances exist with respect to a particular complaint; or</u>
303.433(b)(1)(ii)	009.06D2	<u>The parent or individual and the co-lead agencies, public agency or early intervention service provider involved agree to extend the time to engage in mediation pursuant to 92 NAC 52-009.06C3b.</u>
	009.06E	<u>Complaints which are also the subject of a due process hearing</u>
303.433(c)(1)	009.06E1	<u>If a written complaint is received that is also the subject of a due process hearing under 92 NAC 55, or contains multiple issues of which one or more are part of that hearing, the Nebraska Department of Education must set aside any part of the complaint that is being addressed in the due process hearing until the conclusion of the hearing. However, any issue in the complaint that is not a part of the due process hearing must be resolved using the time limit and procedures described in 92 NAC 52-009.06C and D.</u>
303.433(c)(2)	009.06E2	<u>If an issue raised in a complaint filed under 92 NAC 52-009.06 has previously been decided in a due process hearing involving the same parties the due process hearing decision is binding on that issue and the Nebraska Department of Education must inform the complainant to that effect.</u>
303.433(c)(3)	009.06E3	<u>A complaint alleging a co-lead agency, public agency, or early intervention service provider's failure to implement a due process hearing decision must be resolved by the Nebraska Department of Education.</u>

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009.07 Resolution Process

009.07A The Resolution Meeting

303.442(a)(1) 009.07A1 Within 15 days of receiving notice of the parent's due process complaint, and prior to the initiation of a due process hearing, the school district or approved cooperative must convene a meeting with the parent and the relevant member or members of the IFSP Team who have specific knowledge of the facts identified in the due process complaint that:

303.442(a)(1)(i) 009.07A1a Includes a representative of the school district or approved cooperative who has decision-making authority on behalf of that agency; and

303.442(a)(1)(ii) 009.07A1b May not include an attorney of the school district or approved cooperative unless the parent is accompanied by an attorney.

303.442(a)(2) 009.07A2 The purpose of the resolution 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.

303.442(a)(3) 009.07A3 The meeting described in 92 NAC 52-009.07A1 and 009.07A2 need not be held if:

303.442(a)(3)(i) 009.07A3a the parent and school district or approved cooperative agree in writing to waive the meeting;

303.442(a)(3)(ii) 009.07A3b or the parent and school district or approved cooperative agree to use the mediation process described in 92 NAC 52-009.05.

303.442(a)(4) 009.07A4 The parent and the school district or approved cooperative must determine the relevant members of the IFSP Team to attend the meeting.

009.07B Resolution Period

303.442(b)(1) 009.07B1 If the school district or approved cooperative has not resolved the due process complaint to the satisfaction of the parties within 30 days of the receipt of the due process complaint, the due process hearing may occur.

303.442(b)(2) 009.07B2 Except as provided in 92 NAC 52-009.07C, the timeline for issuing a final decision under 92 NAC 55 begins at the expiration of the 30-day period in 92 NAC 52-009.07B1.

303.442(b)(3) 009.07B3 Except where the parties have jointly agreed to waive the resolution process or to use mediation, notwithstanding 92 NAC 52-009.07B1 and 009.07B2, 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.

303.442(b)(4) 009.07B4 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, including documenting its efforts, the school district or approved cooperative may, at the conclusion of the 30-day period, request that the hearing officer dismiss the parent's due process complaint.

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303.442(b)(5)	<u>009.07B5</u>	<u>If the school district or approved cooperative fails to hold the resolution meeting specified in 92 NAC 52-009.07A within 15 days of receiving notice of a parent's due process complaint or fails to participate in the resolution meeting, the parent may seek the intervention of a hearing officer to begin the due process hearing timeline.</u>
303.442(c)	<u>009.07C</u>	<u>The 45-day timeline for the due process hearing described in 92 NAC 55 starts the day after one of the following events:</u>
303.442(c)(1)	<u>009.07C1</u>	<u>Both parties agree in writing to waive the resolution meeting;</u>
303.442(c)(2)	<u>009.07C2</u>	<u>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; and</u>
303.442(c)(3)	<u>009.07C3</u>	<u>If both parties agree in writing to continue the mediation at the end of the 30-day resolution period, but later, the parent or school district or approved cooperative withdraws from the mediation process.</u>
303.442(d)	<u>009.07D</u>	<u>If a resolution to the dispute is reached at the meeting described in 92 NAC 52-009.07A1 and 009.07A2, the parties must execute a legally binding agreement that is:</u>
303.442(d)(1)	<u>009.07D1</u>	<u>Signed by both the parent and a representative of the school district or approved cooperative who has the authority to bind the agency; and</u>
303.442(d)(2)	<u>009.07D2</u>	<u>Enforceable in any State court of competent jurisdiction or in a district court of the United States.</u>
303.442(e)	<u>009.07E</u>	<u>If the parties execute an agreement pursuant to 92 NAC 52-009.07D, a party may void the agreement within three business days of the agreement's execution.</u>
	<u>009.08</u>	<u>Due Process Hearing</u>
303.433(a)	<u>009.08A</u>	<u>Whenever a due process complaint is received the parents or the early intervention service provider involved in the dispute have the opportunity for an impartial due process hearing, consistent with the procedures in 92 NAC 55.</u>
303.430(e)(1)	<u>009.08B</u>	<u>During the pendency of any proceeding involving a due process complaint under 92 NAC 55, unless the school district or approved cooperative and parents of an infant or toddler with a disability otherwise agree, the child must continue to receive the appropriate early intervention services in the setting identified in the IFSP that was consented to by the parents;</u>
303.430(e)(2)	<u>009.08C</u>	<u>If the due process complaint under 92 NAC 55 involves an application for initial services under 92 NAC 52, the child must receive those services that are not in dispute.</u>

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CHAPTER 52

1 Use of Funds for Early Intervention Services

011.01 General Information

303.521(c) 011.01A Pursuant to the provision of 92 NAC 51-011, IDEA Part B funds are available to provide allowable services to infants and toddlers with verified disabilities from date of diagnosis until August 31 following their third birthday.

011.02 General Limitation in Budget Development

011.02A Except as provided in 92 NAC 52-007.05, only infants and toddlers with a verified disability shall receive early intervention services. This shall include the initial evaluation of an infant or toddler with a suspected disability, regardless of the outcome of the verification decision.

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303.521(c)

011.02B A public agency may not charge the parents of the infant or toddler with a disability for any service (e.g., physical or occupational) under 92 NAC 52 that are part of FAPE for that infant or toddler and the child's family, and those FAPE services must meet the requirements of both 92 NAC 51 and 52.

011.02C Special Education Assurances and the IDEA Consolidated Application of a school district for providing services to infants and toddlers with disabilities shall be submitted annually via the NDE website to the Office of Special Education. Any amendment to the Assurances or the IDEA Consolidated Application shall be subject to the same review as the initial assurances and funding application.

011.02C1 The fiscal year for Early Intervention Services shall be September 1 to August 31.

011.02D The allowable and reimbursable costs for Early Intervention services as budgeted within the IDEA Consolidated Application are restricted to the items specified, which shall be documented and are subject to audit.

011.02D1 Allowable and reimbursable costs for Early Intervention services are restricted to those enumerated in 92 NAC 51-011.01B.

011.03 Payor of the Last Resort

303.510(a) 011.03A Funds under Part C may not be used to satisfy a financial commitment for services that would otherwise have been paid for from another public or private source, including any medical program administered by the Department of Defense.

303.510(a) 011.03B Funds under Part C may be used only for early intervention services that an infant or toddler with a disability needs but is not currently entitled to receive or have payment made from any other Federal, State, local, or private source.

011.04 Use of Public Benefits to Pay for Early Intervention Services

303.520(a)(1) 011.04A Public benefits or insurance of a child or parent may not be used to pay for physical, occupational, and speech/language therapy unless written notification is provided to the child's parents.

303.520(a)(3) 011.04B Prior to using a child's or parent's public benefits or insurance to pay for physical, occupational, and speech/language therapy, the district or approved cooperative must provide written notification to the child's parents.

011.05 Infants and Toddlers with Disabilities Covered by Private Insurance

303.520(b)(1)(i)

011.05A

The early intervention service provider may not use the private insurance of a parent of an infant or toddler with a disability to pay for early intervention services unless the parent provides parental consent, consistent with 92 NAC 52-003.08 and 92 NAC 52-009.03A, to use private insurance to pay for early intervention services for his or her child.

011.05B

Parental consent must be obtained:

303.520(b)(1)(i)(A)

011.05B1

When the lead agency or the early intervention service provider seeks to use the parent's private insurance or benefits to pay for the initial provision of an early intervention service in the IFSP; and

303.520(b)(1)(i)(B)

011.05B2

Each time consent for services is required under 92 NAC 52-009.03A1c due to an increase (in frequency, length, duration, or intensity) in the provision of services in the child's IFSP.

WORKING DRAFT

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012 Contracted Early Intervention Services

Procedures 012.01

92NAC 51-013.01

Early intervention services may be provided by contracting with another school district, approved cooperative, or with a provisionally approved service provider. Responsibility for compliance with state and federal regulations for early intervention services for infants and toddlers with disabilities remains with the resident school district or approved cooperative as delineated in 92 NAC 52.

012.02 For infants and toddlers served through a contract, all parties shall be responsible for meeting the IFSP requirements of 92 NAC 52-007.

012.02A The parent, the school district or approved cooperative and a contracted program representative shall be involved in any decision about the IFSP.

012.02B The services must be provided by contracted programs whose service(s) and rate(s) were provisionally approved by the Nebraska Department of Education.

012.02C The school district or approved cooperative will be allowed a forty-five (45) calendar day grace period when entering into contracts with programs not provisionally approved by the Nebraska Department of Education. Within this forty-five day grace period a school district or approved cooperative is responsible for notifying the program of the application and approval requirements of the Nebraska Department of Education.

012.02D The school district or approved cooperative shall maintain on file a signed copy of the contract with the service agency/provider.

012.02E The school district or approved cooperative shall have on file a copy of the current IFSP to allow them to monitor the progress of those infants and toddlers for whom they have contracted for services.

012.02F Service providers must have on file a copy of the child's current IFSP.

012.02G Service providers shall provide reasonable notice to the school district or approved cooperative prior to termination of services by the provider.

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013 Transportation for Infants and Toddlers with Disabilities and their Families

303.13(b)(16) 013.01 School districts and approved cooperatives shall provide transportation and related costs that are necessary to enable an infant or toddler with a disability and the child's family to receive early intervention services.

Procedures 013.02 Responsibility for Transportation

92NAC 51-014.02A

013.02A The school district or approved cooperative shall be responsible to provide for the transportation expenses of infants and toddlers with disabilities and their family to access early intervention services included in the child's IFSP that are funded by IDEA Part B funds by:

013.02A1 Paying a parent for transporting his or her infant or toddler for actual miles traveled and claimed, or

013.02A2 Operating a vehicle for the purpose of transporting infants and toddlers with disabilities and their families; or

013.02A3 Contracting for transportation services for infants and toddlers with disabilities and their families.

013.02A4 Purchasing services from a common carrier; or

013.02A5 Arranging for such other transportation as is proper and necessary to transport children with disabilities.

013.03 The board of education shall provide transportation for all children with disabilities birth to age three including children birth to age three who are wards of the court.