

Nebraska Department of Education
Office of Special Education

**Supporting Document to
Checklist of Required Special
Education Policies,
Procedures and Practices for
Part B of the IDEA**



2015-2016

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SECTION 1: FAPE REQUIREMENTS:

- 004.01 All providers of special education services shall be under the general supervision of the Nebraska Department of Education for the purpose of meeting the standards of this Chapter. School districts and approved cooperatives shall ensure that all children with verified disabilities, from birth through the school year in which the student reaches age twenty-one, including children who have been suspended or expelled from school, have available to them a free appropriate public education (FAPE) which includes special education and related services to meet their unique needs. School districts' and approved cooperatives' responsibility to ensure the availability of FAPE includes ensuring the availability of FAPE for resident children in detention facilities, correctional facilities, jails and prisons.
- 004.02 The school district or approved cooperative shall ensure that FAPE is available to any individual child with a disability who needs special education and related services, even though the child has not failed or been retained in a course or grade and is advancing from grade to grade.
- 004.02A The determination that a child described in 92 NAC 51-004.02 is eligible under this Chapter must be made on an individual basis by the multidisciplinary evaluation team.
- 004.03 Exceptions to the Requirement to Provide a Free Appropriate Public Education
- 004.03A Children with disabilities who have graduated from high school with a regular high school diploma are not eligible to receive a FAPE.
- 004.03A1 The exception in 92 NAC 51-004.03A does not apply to students who have graduated but have not been awarded a regular high school diploma.
- 004.03A2 Graduation from high school with a regular diploma constitutes a change in placement, requiring written prior notice in accordance with 92 NAC 51-009.05.
- 004.03A3 As used in this section, the term *regular high school diploma* does not include an alternative degree that is not fully aligned with the state's academic standards such as a certificate or a general educational developmental credential (GED).
- 007.07C2 Physical education services, specially designed if necessary, must be made available to every child with a verified disability receiving a free, appropriate public education, unless the school district or approved cooperative enrolls children without disabilities and does not provide physical education to children without disabilities in the same grades.
- 007.07C2a Each child with a verified disability must be afforded the opportunity to participate in the regular physical education program available to nondisabled children unless:
- 007.07C2a(1) The child is enrolled full time in a separate facility; or
- 007.07C2a(2) The child needs specially designed physical education as prescribed in the child's individualized education program.
- 007.07C2b If specially designed physical education is prescribed in a child's individualized education program, the school district or approved cooperative responsible for the education of that child shall provide the services directly or make arrangements for it to be provided through other public or nonpublic programs.

- 007.07C2c The school district or approved cooperative responsible for the education of a child with a verified disability who is enrolled in a separate facility shall ensure that the child receives appropriate physical education services.
- 007.07C3 Each school district or approved cooperative shall ensure assistive technology devices or assistive technology services, or both, as defined in 92 NAC 51-003.02 and 003.03 are made available to any child with a disability if required, as part of the child's:
- 007.07C3a Special education under 92 NAC 51-003.56;
- 007.07C3b Related services under 92 NAC 51-003.49; or
- 007.07C3c Supplementary aids and services under 92 NAC 51-003.59 and 008.01A.
- 007.07C3d On a case by case basis, the use of school-purchased assistive technology devices in a child's home or in other settings is required if the child's IEP team determines that the child needs access to those devices in order to receive a free appropriate public education.
- 007.07C4 The school district or approved cooperative shall take steps including the provision of supplementary aids and services determined appropriate and necessary by the child's IEP Team to provide nonacademic and extracurricular services and activities in the manner necessary to afford each school age child with a verified disability an equal opportunity for participation in those services and activities.
- 007.07C4a Nonacademic and extra-curricular services and activities may include counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the school district or approved cooperative, referrals to agencies that provide assistance to individuals with disabilities, and employment of students, including both employment by the school district or approved cooperative and assistance in making outside employment available.
- 007.07C5 Extended School Year Services (ESYS)
- 007.07C5a Each school district or approved cooperative shall ensure that extended school year services are available as necessary to provide a free appropriate public education consistent with 92 NAC 51-007.07C5b.
- 007.07C5b Extended School Year (ESY) services must be provided only if a child's IEP team determines, on an individual basis, in accordance with Section 007, that the services are necessary for the provision of a free appropriate public education.
- 007.07C5c In implementing the requirements of this section, a school district or approved cooperative may not limit extended school year services to particular categories of disability or unilaterally limit the type, amount, or duration of those services.
- 007.07C6 The need for related services of an instructional nature shall be documented on the IEP or IFSP present level of performance, goals, and objectives, and shall be based on documented diagnostic evidence. Determination of the need for a related service for a child with a verified disability does not require the additional verification of a secondary disability.

SECTION 2: FULL EDUCATIONAL OPPORTUNITY GOAL

004.11A Each school district or approved cooperative shall take steps to ensure that its children with verified disabilities have available to them the variety of educational programs and services available to children without disabilities in the areas served by the district, including art, music, industrial arts, family consumer science education, and vocational education.

SECTION 3: CHILD FIND

006.01A All children with disabilities residing in the state, including children with disabilities who are homeless children or wards of the State and children with disabilities attending nonpublic schools, regardless of the severity of their disabilities, and who are in need of special education and related services, shall be identified, located, and evaluated and a practical method shall be developed and implemented to determine which children with disabilities are currently receiving needed special education and related services.

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

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

SECTION 4: INDIVIDUALIZED EDUCATION PROGRAM

- 007.01 An IEP shall be developed, reviewed, revised, and implemented for each child who receives special education and related services. In order to fulfill the requirements of 92 NAC 51-007.01 for infants and toddlers, school districts or approved cooperatives shall meet the requirements of 92 NAC 52. FAPE is provided to infants and toddlers with a disability in accordance with an IFSP rather than an IEP. The requirements for contents of the IFSP apply rather than the requirements for the contents of an IEP. All other substantive rights and protections established under special education laws apply to infants and toddlers with disabilities receiving FAPE in accordance with an IFSP.
- 007.02 School districts or approved cooperatives must provide special education and related services to a child with a disability in accordance with the child's IEP.
- 007.02A At the beginning of each school year, each school district or approved cooperative shall have an IEP in effect for each child with a verified disability within its jurisdiction.
- 007.02A1 From the end of the school year in which a child reaches age 3, until the child's sixth birthday, the IEP team must consider an IFSP that contains the IFSP content (including the natural environments statement) described in 92 NAC 52 (including an educational component that promotes school readiness and incorporates pre-literacy, language, and numeracy skills for children with an IFSP who are at least three years of age), and that is developed in accordance with the IEP procedures. The IFSP may serve as the IEP of the child, if using the IFSP as the IEP is agreed to by the school district or approved cooperative and the child's parents.
- 007.02B Each school district or approved cooperative shall ensure that an IEP is in effect before special education and related services are provided to a child with a verified disability under this Chapter.
- 007.02C The child's IEP is accessible to each regular education teacher, special education teacher, related service provider, and other service provider who is responsible for its implementation; and
- 007.02D Each teacher and provider described in 92 NAC 51-007.02C must be informed of his or her specific responsibilities related to implementing the child's IEP; and the specific accommodations, modifications, and supports that must be provided for the child in accordance with the IEP.
- 007.03 IEP Team Participants
- 007.03A The school district or approved cooperative shall ensure and document that each IEP team includes the following:
- 007.03A1 The parents of a child with a disability or documentation of 92 NAC 51-007.06D;
- 007.03A2 Not less than one regular education teacher of the child (if the child is, or may be, participating in the regular education environment);
- 007.03A2a The regular education teacher of the child, as a member of the IEP team, shall, to the extent appropriate, participate in the development, review and revision of the IEP of the child, including assisting in the determination of appropriate positive behavioral interventions and supports, and other strategies, and

the determination of supplementary aids and services, program modifications, and support for school personnel consistent with 92 NAC 51-007.07A5.

007.03A3 Not less than one special education teacher, or where appropriate, not less than one special education provider of the child;

007.03A4 A representative of the school district or approved cooperative who:

007.03A4a Is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities;

007.03A4b Is knowledgeable about the general education curriculum; and

007.03A4c Is knowledgeable about the availability of resources of the school district or approved cooperative;

007.03A4c(1) A school district or approved cooperative may designate another member of the IEP team to also serve as the school district or approved cooperative representative, if the criteria in 92 NAC 51-007.03A4 are satisfied.

007.03A5 An individual who can interpret the instructional implications of evaluation results, who may be a member of the team described in 92 NAC 51-007.03A2 through 007.03A6;

007.03A6 At the discretion of the parent or the school district or approved cooperative, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate;

007.03A6a The determination of the knowledge or special expertise of any individual described in 92 NAC 51-007.03A6 shall be made by the party (parents or school district or approved cooperative) who invited the individual to be a member of the IEP.

007.03A7 Whenever appropriate, the child with a disability;

007.03A8 For a child attending a nonpublic school, a representative of the nonpublic school the child attends. If the representative cannot attend, other methods shall be used to ensure participation by the nonpublic school, including individual or conference telephone calls;

007.03A9 For children receiving services from an approved service agency, a representative of the service agency. If the representative is not in attendance, other methods shall be used to ensure participation by the approved service agency, including written communication, or individual or conference telephone calls;

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

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

007.03A10a(1) If the child does not attend the IEP meeting, the school district or approved cooperative shall take other steps to ensure that the child's preferences and interests are considered.

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

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

007.03A12 For a child verified in the category of visual impairment, an educator endorsed to teach a child with visual impairments.

007.04 IEP Team Attendance

007.04A A member of the IEP Team described in 92 NAC 51-007.03A2 through 007.03A5 shall not be required to attend an IEP meeting, in whole or in part, if the parent of a child with a disability and the school district or approved cooperative agree, in writing, that the attendance of such member is not necessary because the member's area of the curriculum or related services is not being modified or discussed in the meeting.

007.04B A member of the IEP Team in 92 NAC 51-007.04A may be excused from attending an IEP meeting, in whole or in part, when the meeting involves a modification to or discussion of the member's area of the curriculum or related services, if:

007.04B1 the parent, in writing, and the school district or approved cooperative consent to the excusal; and

007.04B2 the member submits, in writing, to the parent and the IEP Team, input into the development of the IEP prior to the meeting.

007.05 In the case of a child who was previously served as an infant or toddler under Part C of the Individuals with Disabilities Education Act, an invitation to the initial IEP meeting shall, at the request of the parent, be sent to the Part C services coordinator or other representatives of the Part C system to assist with the smooth transition of services.

007.06 Parent Participation

007.06A The school district or approved cooperative shall take steps to ensure that one or both of the parents of the child with a disability are present at the IEP conference or are afforded the opportunity to participate, including:

007.06A1 Notifying parents of the IEP conference early enough to ensure that they will have an opportunity to attend; and

007.06A2 Scheduling the meeting at a mutually agreed on time and place.

007.06B The notification under 92 NAC 51-007.06A1 must indicate the purpose, time and location of the meeting and who will be in attendance and inform the parents of the provisions of 92 NAC 51-007.03A6, 007.03A6a and 007.05.

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

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

007.06B1b Indicate that the school district or approved cooperative will invite the child to the meeting; and

007.06B1c Identify any other agency that will be invited to send a representative.

007.06C If neither parent can attend the IEP meeting, the school district or approved cooperative shall use other methods to ensure parent participation, including individual or conference telephone calls consistent with 92 NAC 51-007.09H (related to alternate means of meeting participation).

007.06D A meeting may be conducted without a parent in attendance if the school district or approved cooperative is unable to convince the parents they should attend. In this case, the district must keep a record of its attempts to arrange a mutually agreed on time and place such as:

007.06D1 Detailed records of telephone calls made or attempted and the results of the calls;

007.06D2 Copies of correspondence sent to the parents and any responses received; and

007.06D3 Detailed records of visits made to the parent's home or place of employment and the results of those visits.

007.06E The school district or approved cooperative shall take whatever action is necessary to ensure that the parent understands the proceedings of an IEP conference, including arranging for an interpreter for parents who are deaf or whose native language is other than English.

007.07 IEP Development

007.07A The IEP shall include:

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

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

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

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

007.07A2a Meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum; or for preschool children, as appropriate, to participate in appropriate activities, and

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

- 007.07A3 For children with disabilities who take alternate assessments aligned to alternate achievement standards, a description of benchmarks or short-term objectives;
- 007.07A4 A description of how the child's progress toward meeting the annual goals described in 92 NAC 51-007.07A2 will be measured and when periodic reports on the progress the child is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards) will be provided;
- 007.07A5 A statement of the special education and related services and supplementary aids and services based on peer-reviewed research to the extent practicable, to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided to enable the child:
- 007.07A5a To advance appropriately toward attaining the annual goals;
- 007.07A5b To be involved in and progress in the general education curriculum and to participate in extracurricular and other nonacademic activities; and
- 007.07A5c To be educated and participate with other children with disabilities and nondisabled children in the activities described in 92 NAC 51-007.07A5;
- 007.07A6 An explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class and in the activities described in 92 NAC 51-007.07A5;
- 007.07A7 A statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child on state and district-wide assessments; and if the IEP team determines that the child must take an alternate assessment instead of a particular regular state or district-wide assessment of student achievement, a statement of why:
- 007.07A7a The child cannot participate in the regular assessment; and
- 007.07A7b The particular alternate assessment selected is appropriate for the child; and
- 007.07A8 The projected date for the beginning of the services and modifications described in 92 NAC 51-007.07A5 and the anticipated frequency, location, and duration of those services and modifications;
- 007.07A9 Beginning not later than the first IEP to be in effect when the child turns 16, or younger if deemed appropriate by the IEP team, and updated annually thereafter:
- 007.07A9a Appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills; and
- 007.07A9b The transition services (including courses of study) needed to assist the child in reaching those goals; and

007.07A9c If a participating agency, other than the school district or approved cooperative fails to provide the transition services described in the IEP, the school district or approved cooperative shall reconvene the IEP Team to identify alternative strategies to meet the transition objectives for the child set out in the IEP.

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

007.07A10 Nothing in this section shall be construed to require that additional information be included in a child's IEP beyond what is explicitly required in subsection 007.07A, or to require the IEP team to include information under one component of a child's IEP that is already contained in another component of such IEP.

007.07B In developing, reviewing or revising each child's IEP:

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

007.07B2 The IEP team shall consider the results of the initial evaluation or most recent evaluation of the child, and the academic, developmental, and functional needs of the child.

007.07B3 In the case of a child whose behavior impedes his or her learning or that of others, the IEP team shall consider the use of positive behavioral interventions, and supports and other strategies to address that behavior.

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

007.07B5 In the case of a child who is blind or visually impaired, the IEP team shall provide for instruction in Braille and the use of Braille unless the IEP team determines, after an evaluation of the child's reading and writing skills, needs, and appropriate reading and writing media (including an evaluation of the child's future needs for instruction in Braille or the use of Braille), that instruction in Braille or the use of Braille is not appropriate for the child.

007.07B6 The IEP team shall consider the communication needs of the child, and in the case of a child who is deaf or hard of hearing, shall consider the child's language and communication needs, opportunities for direct communications with peers and professional personnel in the child's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the child's language and communication mode.

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

007.07C Services

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

- 007.07C1a Each school district and approved cooperative must ensure that hearing aids worn in school by children with hearing impairments, including deafness, are functioning properly.
- 007.07C1b Subject to 92 NAC 51-007.07C1b(1) each school district and approved cooperative must ensure that the external components of surgically implanted medical devices are functioning properly.
- 007.07C1b(1) For a child with a surgically implanted medical device who is receiving special education and related services under this chapter, a school district and approved cooperative is not responsible for the post-surgical maintenance, programming, or replacement of the medical device that has been surgically implanted (or of an external component of the surgically implanted medical device).
- 007.07C2 Physical education services, specially designed if necessary, must be made available to every child with a verified disability receiving a free, appropriate public education, unless the school district or approved cooperative enrolls children without disabilities and does not provide physical education to children without disabilities in the same grades.
- 007.07C2a Each child with a verified disability must be afforded the opportunity to participate in the regular physical education program available to nondisabled children unless:
- 007.07C2a(1)The child is enrolled full time in a separate facility; or
- 007.07C2a(2)The child needs specially designed physical education as prescribed in the child's individualized education program.
- 007.07C2b If specially designed physical education is prescribed in a child's individualized education program, the school district or approved cooperative responsible for the education of that child shall provide the services directly or make arrangements for it to be provided through other public or nonpublic programs.
- 007.07C2c The school district or approved cooperative responsible for the education of a child with a verified disability who is enrolled in a separate facility shall ensure that the child receives appropriate physical education services.
- 007.07C3 Each school district or approved cooperative shall ensure assistive technology devices or assistive technology services, or both, as defined in 92 NAC 51-003.02 and 003.03 are made available to any child with a disability if required, as part of the child's:
- 007.07C3a Special education under 92 NAC 51-003.56;
- 007.07C3b Related services under 92 NAC 51-003.49; or
- 007.07C3c Supplementary aids and services under 92 NAC 51-003.59 and 008.01A.
- 007.07C3d On a case by case basis, the use of school-purchased assistive technology devices in a child's home or in other settings is required if the child's IEP team determines that the child needs access to those devices in order to receive a free appropriate public education.

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

007.07C4a Nonacademic and extra-curricular services and activities may include counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the school district or approved cooperative, referrals to agencies that provide assistance to individuals with disabilities, and employment of students, including both employment by the school district or approved cooperative and assistance in making outside employment available.

007.07C5 Extended School Year Services (ESYS)

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

007.07C5b Extended School Year (ESY) services must be provided only if a child's IEP team determines, on an individual basis, in accordance with Section 007, that the services are necessary for the provision of a free appropriate public education.

007.07C5c In implementing the requirements of this section, a school district or approved cooperative may not limit extended school year services to particular categories of disability or unilaterally limit the type, amount, or duration of those services.

007.07C6 The need for related services of an instructional nature shall be documented on the IEP present level of performance, goals, and objectives, and shall be based on documented diagnostic evidence. Determination of the need for a related service for a child with a verified disability does not require the additional verification of a secondary disability.

007.08 Programs for Children who Transfer School Districts or Approved Cooperatives

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

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

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

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

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

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

007.08C Transmittal of records

007.08C1 To facilitate the transition for a child who transfers schools the new school in which the child enrolls shall take reasonable steps to promptly obtain the child’s records, including the IEP and supporting documents and any other records relating to the provision of special education or related services to the child, from the previous school in which the child was enrolled, pursuant to Section 99.31(a)(2) of Title 34, Code of Federal Regulations.

007.08C2 The previous school in which the child was enrolled shall take reasonable steps to promptly respond to such request from the new school.

007.08C3 Neb. Rev. Stat. 79-2,105 requires that a copy of a public or private school’s files or records concerning a student shall be provided at no charge, upon request, to any public or private school to which the student transfers.

007.09 IEP Meeting

007.09A A meeting to develop an IEP for a child must be held within thirty (30) calendar days of a determination that the child needs special education and related services.

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

007.09C The IEP team shall review the child’s IEP periodically, but not less frequently than annually, to determine whether the annual goals for the child are being achieved.

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

007.09E In making changes to a child’s IEP after the annual IEP meeting for a school year, the parent of a child with a disability and the school district or approved cooperative may agree not to convene an IEP meeting for the purposes of making those changes, and instead may develop a written document to amend or modify the child’s current IEP.

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

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

007.09G To the extent possible, the school district or approved cooperative shall encourage the consolidation of reevaluation meetings for the child and other IEP Team meetings for the child.

007.09H When conducting IEP team meetings and placement meetings and carrying out administrative matters (such as scheduling, exchange of witness lists, and status conferences), the parent of a child with a disability and a school district or approved cooperative may agree to use alternative means of meeting participation, such as video conferences and conference calls.

007.10 The IEP team shall revise the IEP as appropriate to address:

007.10A Any lack of expected progress toward the annual goals described in 92 NAC 51-007.07 and in the general education curriculum, if appropriate;

007.10B The results of any reevaluation conducted under 92 NAC 51-006.05A;

007.10C The information about the child provided to, or by, the parents, as described in 92 NAC 51-006.06A1;

007.10D The child's anticipated needs; or

007.10E Other matters.

SECTION 5: LEAST RESTRICTIVE ENVIRONMENT

008 Placement of Children With Disabilities

008.01 Least Restrictive Environment (LRE) Requirements

- 008.01A The school district or approved cooperative shall establish policies and procedures to assure that, to the maximum extent appropriate, children with disabilities, including children in public or nonpublic schools and approved service agencies, are educated with children who are not disabled, and that special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.
- 008.01B Before any action is taken with respect to the initial placement of a child with disabilities, the school district or approved cooperative shall be responsible for the provision of a comprehensive individual multidisciplinary evaluation of the child's development and educational needs.
- 008.01C In determining the educational placement of a child with a disability, including a preschool child with a disability, school districts and approved cooperatives must ensure that:
- 008.01C1 The placement decision is made by a group of persons, including the parents and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options; and
- 008.01C2 The placement decision is made in conformity with the least restrictive environment requirements in 92 NAC 51-008.01 and based on the child's unique needs and not on the child's disability.
- 008.01D Each school district or approved cooperative must ensure that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services.
- 008.01D1 The continuum must:
- 008.01D1a Include instruction in regular classes, special classes, special schools, home instruction and instruction in hospitals and institutions; and
- 008.01D1b Make provision for supplementary services (such as resource or itinerant instruction) to be provided in conjunction with regular class placement.
- 008.01E The school district or approved cooperative shall ensure that the educational placement of a child with a verified disability:
- 008.01E1 Is determined at least annually;
- 008.01E2 Is based on his or her individualized education program (IEP); and
- 008.01E3 Is as close as possible to the child's home.
- 008.01F The various array of placement options included under 92 NAC 51-008.01D must be available to the extent necessary to implement the individualized education program for each child with a verified disability.

008.01G Unless a child's IEP or IFSP requires some other arrangement, the child must be educated in the school which he or she would attend if not disabled.

008.01H In selecting the least restrictive environment, consideration must be given to any potential harmful effect on the child or on the quality of services which he or she needs.

008.01I A child with a disability must not be removed from education in age-appropriate regular classrooms solely because of needed modifications in the general curriculum.

34 CFR 300.117 In providing or arranging for the provision of nonacademic and extracurricular services and activities, including meals, recess periods, and the services and activities set forth in 300.107, each public agency must ensure that each child with a disability participates with nondisabled children in extracurricular services and activities to the maximum extent appropriate to meet the needs of that child. The public agency must ensure that each child with a disability has the supplementary aids and services determined by the child's IEP team to be appropriate and necessary for the child to participate in nonacademic settings.

SECTION 6: PROCEDURAL SAFEGUARDS

009 Procedural Safeguards

009.01 Parent Participation in Meetings

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

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

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

009.02 Parent Involvement in Placement Decisions

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

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

- 009.02C If neither parent can participate in a meeting in which a decision is to be made relating to the educational placement of their child, the school district or approved cooperative shall use other methods to ensure their participation, including individual or conference telephone calls, or video conferencing.

- 009.02D A placement decision may be made by a team without the involvement of the parents if the school district or approved cooperative is unable to obtain the parents' participation in the decision. In this case, the school district or approved cooperative must have a record of its attempt to ensure their involvement including information that is consistent with the requirements of 92 NAC 007.06D.

009.03 Opportunity to Examine Records

- 009.03A The parents of a child with a disability must be afforded, in accordance with the procedures of 92 NAC 51-009.03, an opportunity to inspect and review all education records with respect to: the identification, evaluation, and educational placement of the child; and the provision of FAPE to the child.

- 009.03B Each participating agency shall permit parents to inspect and review any education records relating to their children which are collected, maintained or used by the participating agency. The participating agency shall comply with such a request without unnecessary delay and before any meeting regarding an individualized education program or hearing pursuant to 92 NAC 55 or resolution session and in no case more than 45 days after the request has been made.

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

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

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

009.03B2b The right to request that the participating agency provide copies of the records containing the information if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records; and

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

009.03B3 A participating agency may presume that the parent has authority to inspect and review records relating to his or her child unless the service agency has been advised that the parent does not have the authority under applicable Nebraska law governing such matters as guardianship, separation and divorce.

009.03C Record of Access

009.03C1 Each participating agency shall keep a record of parties obtaining access to education records collected, maintained, or used (except access by parents and authorized employees of the participating service agency), including the name of the party, the date access was given, and the purpose for which the party is authorized to use the records.

009.03D Records On More Than One Child

009.03D1 If any education record includes information on more than one child, the parents of those children shall have the right to inspect and review only the information relating to their child or to be informed of that specific information.

009.03E List of Types and Locations of Information

009.03E1 Each participating agency shall provide parents on request a list of the types and locations of education records collected, maintained, or used by the participating agency.

009.03F Fees

009.03F1 A participating agency may charge a fee for copies of records which are made for parents if the fee does not effectively prevent the parents from exercising their right to inspect and review those records.

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

009.03G Amendment of Records at Parent's Request

009.03G1 A parent who believes that information in education records collected, maintained, or used is inaccurate or misleading, or violates the privacy or other rights of the child may request the participating agency which maintains the information to amend the information.

009.03G2 The participating agency shall decide whether to amend the information in accordance with the request within a reasonable period of time of receipt of the request.

009.03G3 If the participating agency decides to refuse to amend the information in accordance with the request, it shall inform the parents of the refusal and advise the parent of the right to a local administrative review to be conducted in accordance with 34 CFR 99.22.

009.03H Opportunity for a Local Administrative Review

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

009.03I Result of Local Administrative Review

009.03I1 If, as a result of the local administrative review, the participating agency decides that the information is inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child, it shall amend the information accordingly and so inform the parent in writing.

009.03I2 If, as a result of the local administrative review, the participating agency decides that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child, the participating agency shall inform the parent of the right to place in the records the participating agency maintains on the child, a statement commenting on the information or setting forth any reasons for disagreeing with the decision of the participating agency.

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

009.03I3a Be maintained by the participating agency as part of the records of the child as long as the record or contested portion is maintained by the participating agency; and

009.03I3b If the records of the child or the contested portion is disclosed by the participating agency to any party, the explanation must also be disclosed to the party.

009.03J Consent for Release of Records

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

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

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

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

009.03K Safeguards

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

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

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

009.03K4 Each participating agency shall maintain, for public inspection, a current listing of the names and positions of those employees within the participating agency who may have access to personally identifiable information.

009.03L Records Regarding Migratory Children with Disabilities

009.03L1 The school district or approved cooperative shall cooperate in the Federal Secretary of Education's efforts under section 613(a)(9) of the Individuals with Disabilities Education Act of 2004 (See Appendix A) to ensure the linkage of records pertaining to migratory children with a disability for the purpose of electronically exchanging among the States, health and education information regarding such children.

009.03M Retention and Destruction of Information and Records

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

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

009.03M3 The information which is no longer necessary to provide educational services to the child, must be destroyed at the request of the parents. However, a permanent record of a student's name, address, and phone number, his or her grades, attendance record, classes attended, grade level completed, and year completed may be maintained without time limitation.

009.04 Procedural Timelines

009.04A Each of the procedural steps necessary to provide a free appropriate public education shall be carried out within the specified time periods.

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

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

009.04A1a(1) A child enrolls in a school served by the school district or approved cooperative after the relevant timeline in 92 NAC 51-009.04A1 has begun and prior to a determination by the child's previous school district or approved cooperative as to whether the child is a child with a disability, but only if the subsequent school district or approved cooperative is making sufficient progress to ensure a prompt completion of the evaluation, and the parent and subsequent school district or approved cooperative agree to a specific time when the evaluation will be completed; or

009.04A1a(2) The parent of a child repeatedly fails or refuses to produce the child for the evaluation.

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

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

009.05 Prior Written Notice

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

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

009.05A2 Refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of a free appropriate public education to the child.

- 009.05B Such prior written notice shall include:
- 009.05B1 A description of the action proposed or refused by the school district or approved cooperative;
 - 009.05B2 An explanation of why the district or approved cooperative proposes or refuses to take the action;
 - 009.05B3 A description of other options the IEP Team considered and the reasons why those options were rejected;
 - 009.05B4 A description of each evaluation procedure, assessment, record, or report the school district or approved cooperative uses as a basis for the proposal or refusal;
 - 009.05B5 A description of any other factors which are relevant to the school district's or approved cooperative's proposal or refusal;
 - 009.05B6 A statement that the parents of a child with a disability have protection under the procedural safeguards of this Chapter and, if this notice is not an initial referral for evaluation, the means by which a copy or description of the procedural safeguards can be obtained; and
 - 009.05B7 Sources for parents to contact to obtain assistance in understanding the provisions of this Chapter.
- 009.05C The notice must be written in language understandable to the general public, and provided in the native language of the parents or other mode of communication used by the parents unless it is clearly not feasible to do so.
- 009.05D If the native language or other mode of communication of the parents is not a written language, the school district or approved cooperative shall take steps to ensure:
- 009.05D1 That the notice is translated orally or by other means to the parents in his or her native language or other mode of communication;
 - 009.05D2 That the parents understand the content of the notice; and
 - 009.05D3 That there is written evidence that the requirements of this section have been met
- 009.06 Procedural Safeguards Notice
- 009.06A A copy of the procedural safeguards available to the parents of a child with a disability shall be given by the school district or approved cooperative to the parents only one time a school year, except that a copy shall also be given to the parents:
- 009.06A1 Upon initial referral or parental request for evaluation;
 - 009.06A2 Upon request by a parent;
 - 009.06A3 Upon receipt by the school district or approved cooperative of the first occurrence of the filing of a complaint under 92 NAC 51-009.11 and the first occurrence of filing a special education due process case under 92 NAC 55; and

- 009.06A4 In accordance with the discipline procedures in 92 NAC 51-016.
- 009.06B The procedural safeguards notice shall include a full explanation of all of the procedural safeguards relating to:
- 009.06B1 Independent educational evaluation;
 - 009.06B2 Prior written notice;
 - 009.06B3 Parental consent;
 - 009.06B4 Access to educational records;
 - 009.06B5 Opportunity to present and resolve disputes through the due process hearings and the state complaint procedures including:
 - 009.06B5a The time period in which to file a state complaint or petition for a due process hearing;
 - 009.06B5b The opportunity for the school district or approved cooperative to resolve the dispute; and
 - 009.06B5c The difference between the due process system and the state complaint procedures; including the jurisdiction of each procedure, what issues may be raised, filing and decisional timelines, and relevant procedures.
 - 009.06B6 The child's placement during pendency of due process proceedings;
 - 009.06B7 Procedures for students subject to placement in an interim alternative educational setting;
 - 009.06B8 Requirements for unilateral placement by parents of children in nonpublic schools at public expense;
 - 009.06B9 The availability of mediation;
 - 009.06B10 Due process hearings, including requirements for disclosure of evaluation results and recommendations;
 - 009.06B11 Civil actions, including the time period in which to file such actions; and
 - 009.06B12 Attorney's fees.
- 009.06C The notice of the procedural safeguards provided to the parent must be written in language understandable to the general public and provided in the native language of the parent as required by 92 NAC 51-009.05C and 009.05D.
- 009.06D The school district or approved cooperative may place a current copy of the procedural safeguards notice on its Internet website if such website exists.
- 009.07 A parent of a child with a disability may elect to receive notices required under this section by an electronic mail (e-mail) communication, if the school district or approved cooperative makes such option available.

009.10 Appointment of Surrogates

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

009.10A1 No parent can be identified;

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

009.10A3 The child is an unaccompanied homeless youth; or

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

009.10A4a In the case of a child who is a ward of the State, such surrogate may alternatively be appointed by the judge overseeing the child's care provided that the surrogate meets the requirements in 92 NAC 51-009.10D3.

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

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

009.10B2 For assigning a surrogate parent to the child.

009.10C The school district or approved cooperative may select a surrogate parent in any way permitted under State law and the district or approved cooperative shall make reasonable efforts to ensure the assignment of a surrogate not more than 30 calendar days after there is a determination that the child needs a surrogate.

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

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

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

009.10D3 Is not an employee of any public agency which is involved in the education or care of the child. A person who otherwise qualifies to be a surrogate parent is not an employee of the agency solely because he or she is paid by the agency to serve as a surrogate parent.

009.10D3a In the case of a child who is an unaccompanied homeless youth, appropriate staff of emergency shelters, transitional shelters, independent living programs, and street outreach programs may be appointed as temporary surrogate parents without regard to 92 NAC 51-009.10D3, until a surrogate parent can be appointed that meets all the requirements of 92 NAC 51-009.10D.

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

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

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

- 009.10F The services of the surrogate parent shall be terminated when:
- 009.10F1 The child is no longer eligible for a surrogate parent under 92 NAC 51-009.08A;
 - 009.10F2 A conflict of interest develops between the interest of the child and the interest of the surrogate parent; or
 - 009.10F3 The surrogate parent fails to fulfill his or her duties as a surrogate parent.
- 009.10G Issues arising from the selection, appointment, or removal of a surrogate parent shall be resolved through hearings established under 92 NAC 55.
- 009.10H The surrogate parent and the school district or approved cooperative which appointed the surrogate parent shall not be liable in civil actions for damages for acts of the surrogate parent unless such acts constitute willful and wanton misconduct.

009.12 Mediation

- 009.12A School districts or approved cooperatives shall implement the procedures established in Section 009 to allow parties to resolve disputes involving any matter described in 92 NAC 51-009.05A1 and 009.05A2 including matters arising prior to the filing of a due process hearing petition through a mediation process which, at a minimum, shall be available whenever a hearing is requested under 92 NAC 55.
- 009.12A1 The procedures for seeking mediation initiated by either the parent(s) or school district or approved cooperative include:
- 009.12A1a Contacting the Nebraska Office of Dispute Resolution who will
 - 009.12A1b Arrange a meeting, invite both parties and conduct the mediation in an attempt to resolve the dispute.
- 009.12B The procedures shall ensure that the mediation process:
- 009.12B1 Is voluntary on the part of the parties;
 - 009.12B2 Is not used to deny or delay a parent's right to a due process hearing under 92 NAC 55, or to deny any other rights afforded under this Chapter; and
 - 009.12B3 Is conducted by a qualified and impartial mediator who is trained in effective mediation techniques.
- 009.12C The school district or approved cooperative may implement the procedures in Section 009 to offer parents and schools or approved cooperatives that choose not to use the mediation process an opportunity to meet, at a time and location convenient to the parents, with a disinterested party who is under contract with:
- 009.12C1 A parent training and information center or community parent resource center in this State established under Section 671 or 672 of the IDEA, or

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

009.12D The Nebraska Department of Education shall maintain a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of special education and related services for use by school districts, approved cooperatives, and parents.

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

009.12F Each session in a mediation process shall be scheduled in a timely manner and shall be held in a location that is convenient to the parties to the dispute.

009.12G In the case that a resolution is reached to resolve the complaint through the mediation process, the parties shall execute a legally binding agreement that sets forth such resolution and that:

009.12G1 States that all discussions that occurred during the mediation process shall be confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding;

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

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

009.12H Discussions that occur during the mediation process shall be confidential and may not be used as evidence in any subsequent due process hearings or civil proceedings of any federal court or state court of a state receiving assistance under Part B of the IDEA as amended in 2004.

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

009.12I1 May not be an employee of:

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

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

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

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

009.13 Resolution Process

009.13A Resolution Meeting

009.13A1 Within 15 days of receiving notice of the parent's due process complaint, and prior to the initiation of a due process hearing under 92 NAC 55, the school district or approved cooperative must

convene a meeting with the parent and the relevant member or members of the IEP Team who have specific knowledge of the facts identified in the due process complaint that:

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

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

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

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

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

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

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

009.13B Resolution Period

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

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

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

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

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

009.13C Adjustments to the 30-day Resolution Period

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

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

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

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

009.13D Written Settlement Agreement

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

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

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

009.13E Agreement Review Period

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

009.14 Special Education Due Process Hearings

009.14A Whenever a due process complaint has been received under 92 NAC 55 or Section 016 of this Chapter, the parents or the school district or approved cooperative shall have an opportunity for an impartial due process hearing consistent with the procedures in 92 NAC 55 and Section 009.13 of this Chapter.

009.14B A parent or a school district or approved cooperative may initiate a hearing on any of the matters described in 92 NAC 51-009.05A relating to the identification, evaluation or educational placement of the child with a disability, or the provision of FAPE to the child by filing a petition pursuant to 92 NAC 55.

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

009.14D The school district or approved cooperative shall inform the parent of any free or low-cost legal and other relevant services available in the area if the parent requests the information or if the parent or the school district or approved cooperative initiates a hearing under 92 NAC 55.

009.14E Any party to a due process hearing has the right to be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities.

006.07 Independent Educational Evaluation

006.07A A parent of a child with a disability has the right to obtain an independent educational evaluation of the child at public expense if the parent disagrees with the evaluation obtained by the school district or approved cooperative, subject to the provisions of 92 NAC 51- 006.07.

006.07B Each school district or approved cooperative shall provide to parents, upon request for an independent educational evaluation, information about where an independent educational evaluation may be obtained, and the school district's or approved cooperative's criteria applicable for independent educational evaluations.

006.07C A parent is entitled to only one independent educational evaluation at public expense each time the school district or approved cooperative conducts an evaluation with which the parent disagrees.

006.07C1 Public expense means that the school district or approved cooperative either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parent.

006.07D If a parent requests an independent educational evaluation at public expense, the school district or approved cooperative must, without unnecessary delay, either:

006.07D1 Initiate a hearing under 92 NAC 55 to show that its evaluation is appropriate; or

006.07D2 Ensure that an independent educational evaluation is provided at public expense, unless the school district or approved cooperative demonstrates at a hearing under 92 NAC 55 that the evaluation obtained by the parent did not meet school district or approved cooperative criteria.

006.07E If the school district or approved cooperative initiates a hearing and the final decision is that the school district's or approved cooperative's evaluation is appropriate, the parent still has the right to an independent educational evaluation, but not at public expense.

006.07F If a parent requests an independent educational evaluation, the school district or approved cooperative may ask for the parent's reason why he or she objects to the public evaluation. However, the school district or approved agency may not require the parent to provide an explanation and may not unreasonably delay either providing the independent educational evaluation at public expense or initiating a due process hearing to defend the public evaluation.

006.07G If the parent obtains an independent educational evaluation at public expense or shares with the school district or approved cooperative an evaluation obtained at private expense, the results of the evaluation:

006.07G1 Must be considered by the school district or approved cooperative, if it meets school district or approved cooperative criteria, in any decision made with respect to the provision of a free appropriate public education to the child; and

006.07G2 May be presented by any party as evidence at a hearing under 92 NAC 55 regarding that child.

006.07H If a hearing officer requests an independent educational evaluation as part of a hearing, the cost of the evaluation must be at public expense.

006.07I If an independent educational evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria that the school district or approved cooperative uses when it initiates an evaluation, to the extent those criteria are consistent with the parent's right to an independent educational evaluation.

006.07J Except for the criteria described in 92 NAC 51-006.07I, a school district or approved cooperative may not impose conditions or timelines related to obtaining an independent educational evaluation at public expense.

016 Disciplinary Removal of Students with Disabilities

016.01 Change of Placement for Disciplinary Removals

016.01A For the purpose of removals of a child with a disability from the child's current educational placement under Section 016, a change of placement occurs if:

016.01A1 The removal is for more than 10 consecutive school days; or

016.01A2 The child is subjected to a series of removals that constitute a pattern:

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

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

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

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

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

016.02 Authority of School Personnel

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

016.02B School personnel under subsection 016.02 may remove a child with a disability who violates a code of student conduct from his or her current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than 10 consecutive school days (to the extent these alternatives are applied to children without disabilities) and for additional removals of not more than 10 consecutive school days in the

same school year for separate incidents of misconduct (as long as those removals do not constitute a change of placement under 92 NAC 51-016.01).

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

016.02C For disciplinary changes in placement that would exceed 10 consecutive school days, if the behavior that gave rise to the violation of the school code is determined not to be a manifestation of the child's disability pursuant to 92 NAC 51-016.02E, school personnel may apply the relevant disciplinary procedures to children with disabilities in the same manner and for the same duration as the procedures that would be applied to children without disabilities, except as provided in 92 NAC 51-016.02D.

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

016.02D1 Continue to receive educational services, as provided in 92 NAC 51-004.01, so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP; and

016.02D2 Receive, as appropriate, a functional behavior assessment, behavior intervention services and modifications, that are designed to address the behavior violation so that it does not recur.

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

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

016.02D5 After a child with a disability has been removed from his or her current placement for 10 school days in the same school year, if the current removal is for not more than 10 consecutive school days and is not a change of placement under 92 NAC 51-016.01, school personnel, in consultation with at least one of the child's teachers, determine the extent to which services are needed as provided in 92 NAC 51-004.01, so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP.

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

016.02E Manifestation Determination

016.02E1 Within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the school district or approved cooperative, the parent, and relevant members of the child's IEP Team (as determined by the parent and the school district or approved cooperative) shall review

all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents to determine:

- 016.02E1a If the conduct in question was caused by or had a direct and substantial relationship to, the child's disability; or
- 016.02E1b If the conduct in question was the direct result of the school district's or approved cooperative's failure to implement the IEP.
- 016.02E2 The conduct must be determined to be a manifestation of the child's disability if the school district or approved cooperative, the parent, and relevant members of the child's IEP Team determine that a condition in either 92 NAC 51-016.02E1a or 016.02E1b was met.
- 016.02E3 If the school district or approved cooperative, the parent, and relevant members of the child's IEP Team determine the condition described in 92 NAC 51-016.02E1b was met, the school district or approved cooperative must take immediate steps to remedy those deficiencies.
- 016.02F If the school district or approved cooperative, the parent, and relevant members of the IEP Team make the determination that the conduct was a manifestation of the child's disability, the IEP Team must:
 - 016.02F1 Either conduct a functional behavioral assessment, unless the school district or approved cooperative had conducted a functional behavioral assessment before the behavior that resulted in a change of placement occurred, and implement a behavioral intervention plan for the child; or if a behavioral intervention plan has already been developed, review the behavioral intervention plan and modify it, as necessary, to address the behavior; and
 - 016.02F2 Except as provided in 92 NAC 51-016.02G, return the child to the placement from which the child was removed, unless the parent and the school district or approved cooperative agree to a change of placement as part of the modification of the behavioral intervention plan.
- 016.02G School personnel may remove a student to an interim alternative educational setting for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the child's disability, if the child:
 - 016.02G1 Carries a weapon to or possesses a weapon at school, on school premises, or to or at a school function under the jurisdiction of the Nebraska Department of Education or a school district or approved cooperative;
 - 016.02G2 Knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises, or at a school function under the jurisdiction of the Nebraska Department of Education or a school district or approved cooperative; or
 - 016.02G3 Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of the Nebraska Department of Education or a school district or approved cooperative.
- 016.02H On the date on which the decision is made to make a removal that constitutes a change of placement of a child with a disability because of a

violation of a code of student conduct, the school district or approved cooperative shall notify the parents of that decision, and provide the parents the procedural safeguards in 92 NAC 51-009.

016.03 The interim alternative educational setting in 92 NAC 51-016.02C, 016.02D and 016.02G shall be determined by the child's IEP Team.

016.04 Appeals Regarding Placement in an Alternative Education Setting

016.04A The parent of a child with a disability who disagrees with any decision regarding placement, or the manifestation determination under this subsection, or a school district or approved cooperative that believes that maintaining the current placement of the child is substantially likely to result in injury to the child or to others, may request a hearing by filing a petition pursuant to 92 NAC 55.

016.04B A hearing officer shall hear and make a determination regarding an appeal pursuant to 92 NAC 55 requested under 92 NAC 51-016.04A.

016.04C In making the determination under 92 NAC 51-016.04B, the hearing officer may:

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

016.04C2 Order a change in placement of the child with a disability to an appropriate interim alternative educational setting for not more than 45 school days if the hearing officer determines that maintaining the current placement of the child is substantially likely to result in injury to the child or to others.

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

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

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

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

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

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

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

016.05 When an appeal under 92 NAC 51-016.04 has been requested by either the parent or the school district or approved cooperative:

016.05A The child shall remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the time period provided for in 92 NAC 51-016.02C, whichever occurs first, unless the parent and the school district or approved cooperative agree otherwise.

016.06 Protections for Children Not Yet Eligible for Special Education and Related Services

016.06A A child who has not been determined to be eligible for special education and related services, and who has engaged in behavior that violates a code of student conduct of the school district or approved cooperative, may assert any of the protections provided for in this Chapter if the school district or approved cooperative had knowledge (as determined in accordance with 92 NAC 51-016.06B that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred.

016.06B A school district or approved cooperative shall be deemed to have knowledge that a child is a child with a disability if, before the behavior that precipitated the disciplinary action occurred:

016.06B1 The parent of the child has expressed concern in writing to supervisory or administrative personnel of the school district or approved cooperative, or a teacher of the child, that the child is in need of special education and related services;

016.06B2 The parent of the child requested an evaluation of the child pursuant to 92 NAC 51-006.02B1; or

016.06B3 The teacher of the child, or other personnel of the school district or approved cooperative expressed specific concerns about a pattern of behavior demonstrated by the child, directly to the director of special education of the school district or approved cooperative or to other supervisory personnel of the school district or approved cooperative.

016.06C A school district or approved cooperative shall not be deemed to have the knowledge that the child is a child with a disability if:

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

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

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

016.06D Conditions that Apply if No Basis of Knowledge

016.06D1 If a school district or approved cooperative does not have knowledge that a child is a child with a disability (in accordance with 92 NAC 51-016.06B or 016.06C) prior to taking disciplinary measures against the child, the child may be subjected to the same disciplinary measures applied to children without disabilities who engaged in comparable behaviors consistent with 92 NAC 51-016.06D2.

016.06D2 If a request is made for an evaluation of a child during the time period in which the child is subjected to disciplinary measures under 92 NAC 51-016.02, the evaluation shall be conducted in an expedited manner.

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

016.06D2b If a child is determined to be a child with a disability, taking into consideration information from the evaluation conducted by the school district or approved cooperative and information provided by the parents, the school district or approved cooperative must provide special education and related services in accordance with this Chapter, including the requirements of 92 NAC 51-016.

016.07 Referral to and Action by law Enforcement and Judicial Authorities

016.07A Nothing in this Chapter shall be construed to prohibit school districts or approved cooperatives from reporting a crime committed by a child with a disability to appropriate authorities or to prevent State law enforcement and judicial authorities from exercising their responsibilities with regard to the application of Federal and State law to crimes committed by a child with a disability.

016.07B A school district or approved cooperative reporting a crime committed by a child with a disability shall ensure that copies of the special education and disciplinary records of the child are transmitted for consideration by the appropriate authorities to whom the school district or approved cooperative reports the crime.

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

SECTION 7: EVALUATION PROCEDURES

006.02 General Evaluation Requirements

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

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

006.02B1 The resident school district or approved cooperative shall conduct a full and individual initial evaluation for each child being considered for special education and related services before the initial provision of special education and related services to a child with a disability. The initial evaluation shall determine whether a child is a child with a disability, and the educational needs of the child.

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

06.02B1a(1) The evaluation is conducted in accordance with the procedures described in Section 006 of this Chapter.

006.02B1a(2) The results of the evaluation are used by the child's IEP team in meeting the requirements of Section 007 of this Chapter.

006.02C Verification criteria and procedures:

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

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

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

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

006.02C3 School districts and approved cooperatives must ensure assessments of children with disabilities who transfer from one school or approved cooperative to another school or approved cooperative in the same academic year are coordinated with such children's prior and subsequent schools, as necessary and as expeditiously as possible, to ensure prompt completion of full evaluations.

006.02C4 School districts and approved cooperatives must ensure materials and procedures used to assess a child with limited English

proficiency are selected and administered to ensure that they measure the extent to which the child has a disability and needs special education, rather than measuring the child's English language skills.

- 006.02C5 School districts and approved cooperatives must ensure a variety of assessment tools and strategies are used to gather relevant functional, developmental and academic information about the child, including information provided by the parent, and information related to enabling the child to be involved in and progress in the general education curriculum (or for a preschool child, to participate in appropriate activities), that may assist in determining:
- 006.02C5a Whether the child is a child with a disability under 92 NAC 51-003.08; and
 - 006.02C5b The content of the child's IEP.
- 006.02C6 School districts and approved cooperatives must ensure any standardized tests that are given to a child:
- 006.02C6a Have been validated for the specific purpose for which they are used; and
 - 006.02C6b Are administered by trained and knowledgeable personnel in accordance with any instructions provided by the producer of the assessments.
 - 006.02C6b(i) If an assessment is not conducted under standard conditions, a description of the extent to which it varied from standard conditions (e.g., the qualifications of the person administering the test, or the method of the test administration) must be included in the evaluation report.
- 006.02C7 School districts and approved cooperatives must ensure tests and other evaluation materials include those tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient.
- 006.02C8 School districts and approved cooperatives must ensure tests are selected and administered so as best to ensure that if a test is administered to a child with impaired sensory, manual, or speaking skills, the test results accurately reflect the child's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the child's impaired sensory, manual, or speaking skills (unless those skills are the factors that the test purports to measure).
- 006.02C9 School districts and approved cooperatives must ensure no single measure or assessment is used as the sole criterion for determining whether a child is a child with a disability and for determining an appropriate educational program for the child.
- 006.02C10 School districts and approved cooperatives must ensure the child is assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities.
- 006.02C11 School districts and approved cooperatives must ensure in evaluating each child with a disability under Section 006, the

evaluation is sufficiently comprehensive to identify all of the child's special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified.

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

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

006.02C14 In interpreting evaluation data for the purpose of determining if a child is a child with a disability and the educational needs of the child, each school district or approved cooperative shall:

006.02C14a Draw upon information from a variety of sources, including aptitude and achievement tests, parent input, teacher recommendations, physical condition, social or cultural background, and adaptive behavior; and

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

006.03 Multidisciplinary Evaluation Team (MDT) Requirements

006.03A The multidisciplinary evaluation team (including the child's parents) shall be responsible for the analysis, assessment and documentation of educational and developmental abilities and needs of each child referred for the purpose of individual evaluation. Using the documentation collected and the verification criteria found in Section 006 of this Chapter and the definitions found in 92 NAC 51-006.04, the MDT shall make all verification decisions. Documented information shall be collected to facilitate the development of a statement of present level of development and educational performance on the IFSP or IEP.

006.03B For students attending nonpublic schools, an administrator of the nonpublic school or a designated representative of the nonpublic school shall be a member of the MDT.

006.03C In making a determination of eligibility, a child shall not be determined to be a child with a disability if the determining factor is lack of appropriate instruction in reading, including the essential components of reading instruction as defined in Section 614(a)(5)(A) of the Individuals with Disabilities Education Act of 2004 (See Appendix A), lack of instruction in math, or limited English proficiency.

006.03D If a determination is made that a child has a disability and needs special education and related services, an IEP must be developed for the child in accordance with Section 007 of this Chapter.

006.03E Multidisciplinary Evaluation Team Written Report (for all suspected disabilities except specific learning disabilities)

006.03E1 The team shall prepare a written report of the results of the evaluation.

006.03E2 The report shall include a statement of:

- 006.03E2a Whether the child qualifies as a child with a disability based on the criteria and definition contained in 92 NAC 51-006.04;
 - 006.03E2b The child's educational needs;
 - 006.03E2c The basis for making the determination; and
 - 006.03E2d A listing of the team members.
 - 006.03E3 Each team member shall certify in writing if the report reflects his or her conclusion. If it does not reflect his or her conclusions, the team member shall submit a separate statement presenting his or her conclusion.
 - 006.03E4 A copy of the evaluation report and the documentation of determination of eligibility shall be given to the parent at no cost.
- 006.03F Multidisciplinary Evaluation Team Written Report for a Child with a Suspected Specific Learning Disability
- 006.03F1 The MDT shall prepare a written report of the results of the evaluation.
 - 006.03F2 The report shall include a statement of:
 - 006.03F2a Whether the child has a specific learning disability based on the criteria and definition contained in 92 NAC 51-006.04K.
 - 006.03F2b The child's educational needs;
 - 006.03F2c The basis for making the determination including an assurance that the determination was made in accordance with 92 NAC 51-006.02C14;
 - 006.03F2d The relevant behavior if any, noted during the observation of the child and the relationship of that behavior to the child's academic functioning;
 - 006.03F2e The educationally relevant medical findings, if any;
 - 006.03F2f Whether the child does not achieve adequately for the child's age or to meet state-approved grade level standards consistent with 92 NAC 51-006.04K3a and the child does not make sufficient progress to meet age or state approved grade level standards consistent with 92 NAC 51-006.04K3b; or whether the child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, state approved grade level standards or intellectual development consistent with 92 NAC 51-006.04K3b(1);
 - 006.03F2g The determination of the team concerning the effects of a visual, hearing, or motor disability; intellectual disability; emotional disturbance; cultural factors; environmental or economic disadvantage; or limited English proficiency on the child's achievement level; and
 - 006.03F2h If the child has participated in a process that assesses the child's response to scientific, research-based intervention, then the instructional strategies used and the student-centered data

collected; and the documentation that the child's parents were notified about:

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

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

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

006.03F2i A listing of the team members.

006.03F3 Each team member shall certify in writing whether the report reflects his or her conclusion. If the report does not reflect his or her conclusions, the team member shall submit a separate statement presenting his or her conclusion.

006.03F4 A copy of the evaluation report and the documentation of determination of eligibility shall be given to the parent at no cost.

006.03G For a school age child who after initial MDT evaluation does not qualify for special education services or for a child with a verified disability who upon reevaluation no longer qualifies for special education services, a problem solving team shall document a plan to assist the teacher(s) in the provision of regular education.

006.04 Eligibility for Special Education

006.04A School districts or approved cooperatives shall provide special education services only to children with verified disabilities.

006.04B Autism

006.04B1 To qualify for special education services in the category of Autism, the child must have a developmental disability which:

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

006.04B1b Is generally evident before age three; and

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

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

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

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

006.04C Deaf-Blindness

006.04C1 To qualify for special education services in the category of Deaf-Blindness, the child must have concomitant hearing and visual impairments, the combination of which causes:

006.04C1a Severe communication needs; and

006.04C1b Other developmental and educational needs.

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

006.04D Developmental Delay

006.04D1 To qualify for special education services in the category of developmental delay, the child shall have a significant delay as measured by appropriate diagnostic instruments and procedures in one or more of the following areas and, by reason thereof needs special education and related services:

006.04D1a Cognitive development,

006.04D1b Physical development,

006.04D1c Communication development,

006.04D1d Social or emotional development,

006.04D1e Adaptive behavior or skills development, or

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

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

006.04E Emotional Disturbance

006.04E1 To qualify for special education services in the category of emotional disturbance, the child must have a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects the child's educational performance:

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

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

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

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

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

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

006.04F Hearing Impairment

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

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

006.04F1b Is permanent or fluctuating, and

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

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

006.04G Intellectual Disability

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

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

006.04H Multiple Impairments

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

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

006.04I Orthopedic Impairment

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

006.04I2 The category includes children with impairments caused by:

006.04I2a Congenital anomaly,

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

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

006.04J Other Health Impairment

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

006.04J1a Limited strength, vitality or alertness, including a heightened alertness to environmental stimuli that results in limited alertness with respect to the educational environment that is due to chronic or acute health problems which adversely affects the child's educational performance such as:

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

006.04K Specific Learning Disability

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

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

006.04K2a The child's parents;

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

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

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

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

006.04K2f A school district administrator or a designated representative.

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

- 006.04K3a The child does not achieve adequately for the child's age or to meet State-approved grade-level standards in one or more of the following areas, when provided with learning experiences and instruction appropriate for the child's age or State-approved grade-level standards: oral expression, listening comprehension, written expression, basic reading skill, reading fluency skills, reading comprehension, mathematics calculation, mathematics problem solving.
- 006.04K3b The child does not make sufficient progress to meet age or State approved grade-level standards in one or more of the areas identified in 92 NAC 51-006.04K3a when using a process based on the child's response to scientific, research-based intervention; or
- 006.04K3b(1) The child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, State-approved grade-level standards, or intellectual development, that is determined by the team to be relevant to the identification of a specific learning disability, using appropriate assessments consistent with 92 NAC 51-006.02.
- 006.04K4 The team determines that its findings under 92 NAC 51-006.04K3a and 006.04K3b are not primarily the result of:
- 006.04K4a A visual, hearing, or motor disability;
- 006.04K4b Intellectual disability;
- 006.04K4c Emotional disturbance;
- 006.04K4d Cultural factors,
- 006.04K4e Environmental or economic disadvantage; or
- 006.04K4f Limited English proficiency.
- 006.04K5 To ensure that underachievement in a child suspected of having a specific learning disability is not due to lack of appropriate instruction in reading or math, the group must consider, as part of the evaluation described in 92 NAC 51-006.02:
- 006.04K5a Data that demonstrate that prior to, or as a part of, the referral process, the child was provided appropriate instruction in regular education settings, delivered by qualified personnel; and
- 006.04K5b Data-based documentation of repeated assessments of achievement at reasonable intervals, reflecting formal assessment of student progress during instruction, which was provided to the child's parents.
- 006.04K6 The school district or approved cooperative must promptly request parental consent to evaluate the child to determine if the child needs special education and related services and must adhere to the timeframes described in 92 NAC 51-009.04A1, unless extended by mutual written agreement of the child's parents and a team of qualified professionals, as described in 92 NAC 51-006.04K2

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

006.04K6b Whenever a child is referred for an evaluation.

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

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

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

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

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

006.04L Speech-Language Impairment

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

006.04L1a A communication disorder such as:

006.04L1a(1) Stuttering;

006.04L1a(2) Impaired articulation;

006.04L1a(3) Language impairment; or

006.04L1a(4) A voice impairment.

006.04L2 This disorder must adversely affect the child's educational performance.

006.04M Traumatic Brain Injury

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

006.04M1a An acquired injury to the brain caused by external physical force resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects the child's educational performance

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

006.04M1b(1) Cognition;

- 006.04M1b(2) Language;
- 006.04M1b(3) Memory;
- 006.04M1b(4) Attention;
- 006.04M1b(5) Reasoning;
- 006.04M1b(6) Abstract thinking;
- 006.04M1b(7) Judgment;
- 006.04M1b(8) Problem solving;
- 006.04M1b(9) Sensory, perceptual and motor abilities;
- 006.04M1b(10) Psychosocial behavior;
- 006.04M1b(11) Physical functions;
- 006.04M1b(12) Information processing; and
- 006.04M1b(13) Speech.

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

006.04N Visual Impairment including Blindness

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

006.04N1a An impairment in vision that, even with correction, adversely affects the child's educational performance.

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

006.05 Reevaluations

006.05A A school district or approved cooperative shall ensure that a reevaluation of each child with a disability is conducted in accordance with the verification procedures in Section 006 of this Chapter:

006.05A1 If the school district or approved cooperative determines that the educational or related services needs, including improved academic achievement and functional performance, of the child warrant, a reevaluation; or

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

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

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

006.05B2 Must occur at least once every three years, unless the parent and the school district or approved cooperative agree that a reevaluation is unnecessary.

SECTION 8: CONFIDENTIALITY OF PERSONALLY IDENTIFIABLE INFORMATION

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

003.17 ***Education records*** means those records that are directly related to a student which are maintained by an educational agency or institution or by a party acting for the agency or institution. This term parallels the definition contained in the regulations implementing the Family Educational Rights and Privacy Act (FERPA).

009.03 Opportunity to Examine Records

009.03A The parents of a child with a disability must be afforded, in accordance with the procedures of 92 NAC 51-009.03, an opportunity to inspect and review all education records with respect to: the identification, evaluation, and educational placement of the child; and the provision of FAPE to the child.

009.03B Each participating agency shall permit parents to inspect and review any education records relating to their children which are collected, maintained or used by the participating agency. The participating agency shall comply with such a request without unnecessary delay and before any meeting regarding an individualized education program or hearing pursuant to 92 NAC 55 or resolution session and in no case more than 45 days after the request has been made.

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

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

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

009.03B2b The right to request that the participating agency provide copies of the records containing the information if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records; and

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

009.03B3 A participating agency may presume that the parent has authority to inspect and review records relating to his or her child unless the service agency has been advised that the parent does not have the authority under applicable Nebraska law governing such matters as guardianship, separation and divorce.

009.03C Record of Access

009.03C1 Each participating agency shall keep a record of parties obtaining access to education records collected, maintained, or used (except access by parents and authorized employees of the participating service agency), including the name of the party, the date access was given, and the purpose for which the party is authorized to use the records.

009.03D Records On More Than One Child

009.03D1 If any education record includes information on more than one child, the parents of those children shall have the right to inspect and review only the information relating to their child or to be informed of that specific information.

009.03E List of Types and Locations of Information

009.03E1 Each participating agency shall provide parents on request a list of the types and locations of education records collected, maintained, or used by the participating agency.

009.03F Fees

009.03F1 A participating agency may charge a fee for copies of records which are made for parents if the fee does not effectively prevent the parents from exercising their right to inspect and review those records.

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

009.03G Amendment of Records at Parent's Request

009.03G1 A parent who believes that information in education records collected, maintained, or used is inaccurate or misleading, or violates the privacy or other rights of the child may request the participating agency which maintains the information to amend the information.

009.03G2 The participating agency shall decide whether to amend the information in accordance with the request within a reasonable period of time of receipt of the request.

009.03G3 If the participating agency decides to refuse to amend the information in accordance with the request, it shall inform the parents of the refusal and advise the parent of the right to a local administrative review to be conducted in accordance with 34 CFR 99.22.

009.03H Opportunity for a Local Administrative Review

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

009.03I Result of Local Administrative Review

009.03I1 If, as a result of the local administrative review, the participating agency decides that the information is inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child, it shall amend the information accordingly and so inform the parent in writing.

009.03I2 If, as a result of the local administrative review, the participating agency decides that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child, the

participating agency shall inform the parent of the right to place in the records the participating agency maintains on the child, a statement commenting on the information or setting forth any reasons for disagreeing with the decision of the participating agency.

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

009.03I3a Be maintained by the participating agency as part of the records of the child as long as the record or contested portion is maintained by the participating agency; and

009.03I3b If the records of the child or the contested portion is disclosed by the participating agency to any party, the explanation must also be disclosed to the party.

009.03J Consent for Release of Records

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

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

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

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

009.03K Safeguards

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

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

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

009.03K4 Each participating agency shall maintain, for public inspection, a current listing of the names and positions of those employees within the participating agency who may have access to personally identifiable information.

009.03L Records Regarding Migratory Children with Disabilities

009.03L1 The school district or approved cooperative shall cooperate in the Federal Secretary of Education's efforts under section 613(a)(9) of the Individuals with Disabilities Education Act of 2004 (See Appendix A) to ensure the linkage of records pertaining to migratory children with a disability for the purpose of electronically exchanging among the States, health and education information regarding such children.

009.03M Retention and Destruction of Information and Records

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

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

009.03M3 The information which is no longer necessary to provide educational services to the child, must be destroyed at the request of the parents. However, a permanent record of a student's name, address, and phone number, his or her grades, attendance record, classes attended, grade level completed, and year completed may be maintained without time limitation.

SECTION 9: CHILDREN IN NONPUBLIC SCHOOLS

015 Children with Disabilities Attending Nonpublic Schools

015.01 Children Placed In or Referred To a Nonpublic School or Facility by the School District or Approved Cooperative As a Means of Providing Special Education and Related Services

015.01A School districts or approved cooperatives shall ensure that a child with a disability who is placed in or referred to a nonpublic school or facility by a school district:

015.01A1 Is provided special education and related services in conformance with an IEP that meets the requirements of Section 007 at no cost to the parents;

015.01A2 Is provided an education that meets the standards that apply to education provided by the school district or approved cooperative including the requirements of this Chapter except 92 NAC 51-003.62; and

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

015.01B The school district or approved cooperative is responsible for initiating and conducting meetings for the purpose of developing, reviewing and revising an IEP for a child with a verified disability.

015.01B1 Before a school district or approved cooperative places a child with a disability in, or refers a child to, a nonpublic school or facility, the school district or approved cooperative shall initiate and conduct a meeting to develop an IEP for the child in accordance with Section 007.

015.01B2 After a child with a disability enters a nonpublic school or facility, any meetings to review and revise the child's IEP may be initiated and conducted by the nonpublic school or facility at the discretion of the school district or approved cooperative.

015.01B3 If the nonpublic school or facility initiates and conducts these meetings, the school district or approved cooperative shall ensure that the parents and nonpublic representative:

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

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

015.02 Children Placed In a Nonpublic School by Parents As a Means of Obtaining Special Education and Related Services; FAPE is At Issue

015.02A This Chapter does not require a school district or approved cooperative to pay for the cost of education, including special education and related services, of a child with a disability at a nonpublic school or facility if that school district or approved cooperative made FAPE available to the child and the parents elected to place the child in a nonpublic school or facility as a means of obtaining special education and related services. However, the school district or approved cooperative shall include that child in the population whose needs are addressed consistent with 92 NAC 51-015.03.

015.02B Disagreements between a parent and a school district or approved cooperative regarding the availability of a program appropriate for the child, and the question of financial reimbursement, are subject to the due process procedures of 92 NAC 55.

015.02B1 If the parents of a child with a disability, who previously received special education and related services under the authority of the school district or approved cooperative, enroll the child in a nonpublic preschool, elementary or secondary school as a means of obtaining special education and related services without the consent of or referral by the school district or approved cooperative, a court or a hearing officer may require the school district or approved cooperative to reimburse the parents for the cost of that enrollment if the court or hearing officer finds that the school district or approved cooperative had not made a free appropriate public education available to the child in a timely manner prior to that enrollment and that the private placement is appropriate.

015.02B1a A parental placement may be found to be appropriate by a hearing officer or a court even if it does not meet the State standards that apply to education provided by the school district or approved cooperative.

015.02C The cost of reimbursement described in 92 NAC 51-015.02B1 may be reduced or denied if:

015.02C1 At the most recent IEP team meeting that the parents attended prior to removal of the child from the public school, the parents did not inform the IEP team that they were rejecting the placement proposed by the school district or approved cooperative to provide a free appropriate public education to their child, including stating their concerns and their intent to enroll their child in a nonpublic school at public expense; or

015.02C2 At least 10 business days (including any holidays that occur on a business day), prior to the removal of the child from the public school or approved cooperative, the parents did not give written notice to the school district of the information described in 92 NAC 51-015.02C1; or

015.02C3 If prior to the parents' removal of the child from the public school, the school district or approved cooperative informed the parents, through the notice requirements described in 92 NAC 51-009.05, of its intent to evaluate the child (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parents did not make the child available for such evaluation; or

015.02C4 Upon a judicial finding of unreasonableness with respect to actions taken by the parents.

015.02D Notwithstanding the notice requirement in 92 NAC 51-015.02C1 and 015.02C2, the cost of reimbursement:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

015.03B Child Find for Parentally-placed Nonpublic School Children with Disabilities

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

015.03B2 The child find process must be designed to ensure:

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

015.03B2b An accurate count of those children.

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

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

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

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

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

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

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

015.03C1a(1) An IEP shall be developed and implemented in accordance with 92 NAC 51-007 for each resident nonpublic school child receiving FAPE.

015.03C1b Parentally-placed nonpublic school children with disabilities who are attending a nonpublic school located outside of their district

of residence may receive special education and related services (referred to as equitable services) from the district in which the nonpublic school is located or a free appropriate public education (FAPE) from the district in which they reside, but not both. The decision on whether to receive equitable services or FAPE is at the discretion of the child's parent.

015.03C1b(1) In accordance with 92 NAC 51-015.03C1 and 92 NAC 51-015.03G through 015.03I, an equitable services plan must be developed and implemented for each nonresident nonpublic school child with a disability who has been designated by the school district or approved cooperative in which the nonpublic school is located to receive equitable services.

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

015.03C2a The number of children evaluated;

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

015.03C2c The number of children served.

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

015.03D Consultation

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

015.03D1a The child find process, including:

015.03D1a(1) How parentally-placed nonpublic school children suspected of having a disability can participate equitably; and

015.03D1a(2) How parents, teachers, and nonpublic school officials will be informed of the process.

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

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

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

015.03D1d(1) The types of services, including direct services and alternate service delivery mechanisms; and

015.03D1d(2) How special education and related services funded by the proportionate amount of federal funds will be apportioned if such funds are insufficient to serve all parentally-placed nonpublic school children; and

015.03D1d(3) How and when those decisions will be made.

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

015.03E Written Affirmation

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

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

015.03F Compliance

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

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

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

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

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

015.03G Equitable Services for Nonresident Nonpublic School Children Determined

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

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

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

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

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

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

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

015.03H1 The equitable services provided to parentally-placed nonresident nonpublic school children with disabilities must be provided by personnel meeting the same standards as personnel providing services in the public schools, except that nonpublic elementary school and secondary school teachers who are providing equitable services to parentally-placed nonresident nonpublic school children with disabilities do not have to meet the special education teacher requirements of Section 003.62.

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

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

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

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

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

015.03H5 Equitable services must be provided:

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

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

015.03I Location of Services and Transportation

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

015.03I1a A school district or approved cooperative may lease a classroom in a nonpublic school building. If properly drafted, the lease transforms the classroom into a public school classroom during the times covered by the lease. The board of education of a public school district may offer the special education programs enumerated in Neb. Rev. Stat. 79-1127 in a leased classroom in a nonpublic school building. It does not, however, have an unqualified legal duty to do so.

015.03J Due Process and State Compliance

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

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

- 015.03J3 Any due process complaint regarding the child find requirements (as described in 92 NAC 51-015.03J2) must be served on the school district or approved cooperative in which the nonpublic school is located and filed with the Nebraska Department of Education.
- 015.03J4 Any complaint that the Nebraska Department of Education or school district or approved cooperative has failed to meet the requirements in 92 NAC 51-015.03C through 015.03E and 012.08 and 92 NAC 51-015.03G through 015.07 must be filed in accordance with the procedures described in 92 NAC 51-009.11.
- 015.03J5 A complaint filed by a nonpublic school official under 92 NAC 51-015.03F1 must be filed with the Nebraska Department of Education in accordance with the procedures in 92 NAC 51-015.03F2.
- 015.04 A school district or approved cooperative may not use special education funds for classes that are organized separately on the basis of school enrollment or religion of the children if:
 - 015.04A The classes are at the same site; and
 - 015.04B The classes include children enrolled in public schools and children enrolled in nonpublic schools.
- 015.05 A school district or approved cooperative may not use special education funds to finance the existing level of instruction in a nonpublic school or to otherwise benefit the nonpublic school.
 - 015.05A A school district or approved cooperative shall use the special education funds provided to meet the special education and related services (FAPE or equitable services) needs of parentally-placed nonpublic school children with disabilities but not for meeting:
 - 015.05A1 The needs of a nonpublic school; or
 - 015.05A2 The general needs of the children enrolled in a nonpublic school.
- 015.06 A school district or approved cooperative may use special education funds to make public school personnel available in other than public facilities:
 - 015.06A To the extent necessary to provide services designed for parentally-placed nonpublic school children with disabilities; and
 - 015.06B If those services are not normally provided by the nonpublic school.
- 015.07 A school district or approved cooperative may use special education funds to pay for the services of an employee of a nonpublic school to provide special education and related services (FAPE or equitable services) if:
 - 015.07A The employee performs the services outside of his or her regular hours of duty; and
 - 015.07B The employee performs the services under public supervision and control.
- 015.08 A school district or approved cooperative may place equipment and supplies in a nonpublic school for the period of time needed for the provision of special education and related services.

- 015.08A The school district or approved cooperative shall ensure that the equipment and supplies placed in a nonpublic school:
- 015.08A1 Are used only for the purpose of providing special education and related services; and
 - 015.08A2 Can be removed from the nonpublic school without remodeling the nonpublic school facilities.
- 015.08B The school district or approved cooperative shall remove equipment or supplies from a nonpublic school if:
- 015.08B1 The equipment and supplies are no longer needed for the purpose of providing special education and related services; or
 - 015.08B2 Removal is necessary to avoid unauthorized use of the equipment and supplies for other than special education purposes.
- 015.08C No special education funds may be used for repairs, minor remodeling or the construction of nonpublic school facilities.
- 015.09 A school district or approved cooperative must control and administer the funds used to provide special education and related services under 92 NAC 51-015.03G through 92 NAC 51-015.03I, and hold title to and administer materials, equipment, and property purchased with those funds for those uses and purposes provided in this Chapter.
- 012.08 Expenditures for Parentally-Placed Nonpublic School Children
- 012.08A To meet the requirement of 92 NAC 51-015.03C, each school district or approved cooperative must spend at least the following on providing special education and related services (including direct services) to parentally-placed nonpublic school children with disabilities:
- 012.08A1 For children aged 3 through 21, an amount that is the same proportion of the school district or approved cooperative's total subgrant under section 611(f) of the IDEA as the number of nonpublic school children with disabilities aged 3 through 21 who are enrolled by their parents in nonpublic including religious, elementary schools and secondary schools located in the school district served by the school district or approved cooperative is to the total number of children with disabilities in its jurisdiction aged 3 through 21.
 - 012.08A2 For children aged three through five, an amount that is the same proportion of the school district or approved cooperative's total subgrant under section 619(g) of the IDEA as the number of parentally-placed nonpublic school children with disabilities aged three through five who are enrolled by their parents in a nonpublic, including religious, elementary school located in the school district served by the school district or approved cooperative, is to the total number of children with disabilities in its jurisdiction aged three through five.
 - 012.08A2a Children aged three through five are considered to be parentally-placed nonpublic school children with disabilities enrolled by their parents in nonpublic, including religious, elementary schools, if they are enrolled in a nonpublic school that meets the definition of elementary school in section 34 CFR 300.13.

- 012.08B If a school district or approved cooperative has not expended all of the funds described in 92 NAC 51-012.08A1 and 012.08A2 by the end of the fiscal year for which Congress appropriated the funds, the school district or approved cooperative must obligate the remaining funds for special education and related services (including direct services) to parentally-placed nonpublic school children with disabilities during a carry-over period of one additional year.
- 012.08C In calculating the proportionate amount of Federal funds to be provided for parentally-placed nonpublic school children with disabilities, the school district or approved cooperative, after timely and meaningful consultation with representatives of nonpublic schools under 92 NAC 51-015.03D, must conduct a thorough and complete child find process to determine the number of parentally-placed children with disabilities attending nonpublic schools located in the school district or approved cooperative.
- 012.08D Each school district or approved cooperative must, after timely and meaningful consultation with representatives of parentally-placed nonpublic school children with disabilities (consistent with 92 NAC 51-015.03D) determine the number of parentally-placed nonpublic school children with disabilities attending nonpublic schools located in the school district or approved cooperative. The count is conducted on December 1 of each year.
- 012.08D1 The count must be used to determine the amount that the school district or approved cooperative must spend on providing special education and related services to parentally-placed nonpublic school children with disabilities in the next subsequent fiscal year.
- 012.08E State and local funds may supplement and in no case supplant the proportionate amount of Federal funds required to be expended for parentally-placed nonpublic school children with disabilities under this Chapter.

SECTION 10: PERSONNEL QUALIFICATIONS

010 Qualifications of Special Education Personnel for Program Approval and Reimbursement

010.01 School districts and approved cooperatives shall ensure that all personnel necessary to carry out this Chapter are appropriately and adequately prepared and trained including that those personnel have the content knowledge and skills to serve children with disabilities, subject to the requirements of Section 2122 of the Elementary and Secondary Education Act of 1965.

010.01A Instructional personnel shall hold valid Nebraska Department of Education certification, be endorsed in the assigned area. Instructional personnel may serve children with visual impairments and children with hearing impairments in a multicategorical program if the instructional personnel have attended training approved by the Department of Education or have received consultation from an individual endorsed in the area of visual hearing impairments. This section does not apply to individuals providing inservice.

010.01B Each person employed as a special education teacher who teaches elementary school, middle school, or secondary school shall be a teacher meeting IDEA 2004 criteria as defined in 92 NAC 51-003.62.

010.01C School districts or approved cooperatives shall take measurable steps to recruit, hire, train and retain teachers meeting IDEA 2004 criteria to provide special education and related services.

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

010.01D Approvable endorsements for program approval and reimbursement shall include:

	Categorical Assignment	NDE Approvable Endorsement
<u>010.01D1</u>	Adaptive Physical Education	Adaptive Physical Education
<u>010.01D2</u>	Autism	Severe/Multiple Disabilities, Educable Mentally Handicapped, Mild/Moderate Disabilities, Behaviorally Disordered, Speech-Language Pathologist Learning Disabilities, Special Education Resource Teacher
<u>010.01D3</u>	Emotional Disturbance	Behaviorally Disordered, Mild/Moderate Disabilities, Special Education Resource Teacher
<u>010.01D4</u>	Deaf-Blindness	Visual Impairment, Severe/Multiple Disabilities
<u>010.01D5</u>	Diagnostic Services	School Psychologist, Educational Audiologist, Speech-Language Pathologist, or any Special Education endorsement

	Categorical Assignment	NDE Approvable Endorsement
<u>010.01D6</u>	Early Childhood Special Education in Home and Centerbased Programs	Early Childhood plus any Special Education, Early Childhood Education Unified, Early Childhood Special Education, or Preschool Disabilities
<u>010.01D7</u>	Hearing Impairments	Deaf or Hard of Hearing
<u>010.01D8</u>	Home (School Age) and Hospital (Birth to 21) Services	Any Teaching endorsement
<u>010.01D9</u>	Home-School Liaison	Any Special Education endorsement, Guidance and Counseling endorsement
<u>010.01D10</u>	Intellectual Disability	Educable Mentally Handicapped, Mild/Moderate Disabilities, Special Education Resource Teacher, Mentally Retarded
<u>010.01D11</u>	Multicategorical Programs	Instructional personnel serving students in a multicategorical program shall be considered to be endorsed in the assigned area if an endorsement is held in at least one of the disability categories served
<u>010.01D12</u>	Multiple Disabilities	Severe/Multiple Disabilities
<u>010.01D13</u>	Orthopedic Impairments	Mild/Moderate Disabilities, Severe/Multiple Disabilities
<u>010.01D14</u>	Program Supervision	Administrative or Supervisory certificate and at least one Special Education endorsement or any Special Education Administrative or Supervisory certificate
<u>010.01D15</u>	Learning Disabilities	Learning Disabilities, Mild/Moderate Disabilities, Special Education Resource Teacher
<u>010.01D16</u>	Speech-Language Impairments	Speech-Language Pathologist
<u>010.01D17</u>	Substitute Teacher	Any Teaching certificate
<u>010.01D18</u>	Traumatic Brain Injury	Severe/Multiple Disabilities, Mild/Moderate Disabilities, Behaviorally Disordered, Speech-Language Pathologist,

	Categorical Assignment	Learning Disabilities, Special Education Resource Teacher NDE Approvable Endorsement
	<u>010.01D19</u> Visual Impairment	Visual Impairment
	<u>010.01D20</u> Work Study Program or Transition Program	Any Special Education endorsement, Guidance and Counseling, Vocational Special Needs or Cooperative Education Diversified Occupations endorsement, Special Services certificate for School Transition Specialist
<u>010.02</u>	For purposes of 92 NAC 51-010.01D5, 010.01D14 and 010.01D20 “special education endorsement” shall include any approvable endorsement under 92 NAC 51-010.01D except 010.01D8, 010.01D17 and excluding the specific endorsements of guidance and counseling, educational audiologist, vocational special needs, cooperative education diversified occupations and special services certificate for school transition specialist.	
<u>010.03</u>	Related Services Personnel and Paraprofessionals	
	<u>010.03A</u>	Related services personnel and paraprofessionals shall hold any State-approved or State-recognized certification, licensing, registration, or other comparable requirements that apply to the professional discipline in which those personnel are providing special education or related services.
	<u>010.03B</u>	Related services personnel who deliver services in their discipline or profession shall not have had certification or licensure requirements waived on an emergency, temporary, or provisional basis.
	<u>010.03C</u>	Paraprofessionals shall be appropriately trained and supervised by qualified special education personnel to be used to assist in the provision of special education and related services under this Chapter.
	<u>010.03D</u>	A paraprofessional shall not teach, as defined in <u>Neb. Rev. Stat.</u> 79-101.12.
<u>010.04</u>	Personnel providing special education services who do not hold Department of Education certification and endorsement shall be licensed by the appropriate State of Nebraska Board of Examiners.	
<u>010.05</u>	Personnel employed by approved service agencies shall be certified by the Department of Education or shall hold the credential or training required by the licensing standard under which the service providers operate.	
<u>010.06</u>	Educational Interpreters	
	<u>010.06A</u>	In order to be a qualified educational sign language interpreter for the purposes of 92 NAC 51-010.06, an individual must attain and maintain one or more of the following competency levels as measured by the following assessments:
	<u>010.06A1</u>	Educational Interpreter Performance Assessment (EIPA), Competency level 3.5 or above
	<u>010.06A2</u>	Registry of Interpreters of the Deaf Certification (RID)

- 010.06A3 National Association of the Deaf (NAD) Competency level 4.0 or above
- 010.06A4 National Interpreter Certification (NIC)
- 010.06A5 American Consortium of Certified Interpreters (ACCI) exam Competency level 4.0
- 010.06A6 Quality Assurance Screening Test (QAST) Competency level 4.0
- 010.06B Subject to the exceptions in 92 NAC 51-010.06C, and 010.06F, school districts and approved cooperatives shall ensure that all sign language interpreters employed by such districts or approved cooperatives to provide special education services are qualified educational sign language interpreters who meet the competency requirements in 92 NAC 51-010.06A.
- 010.06C If the school district or approved cooperative is unable to find a qualified educational sign language interpreter who meets the requirements of 92 NAC 51-010.06A, the school district or approved cooperative may employ for up to one year an interpreter who has received a “Skills at or above the required level” or a “Hire with Caution” on the EIPA pre-hire screening.
- 010.06D If a school district or approved cooperative is unable to find a qualified educational sign language interpreter who meets the requirements of 92 NAC 51-010.06A, the school district or approved cooperative may employ for up to two school years, an interpreter who demonstrates the minimum competency level of 2.5 on the EIPA, NAD or QAST. The school district or approved cooperative must require that the interpreter participate in a professional development plan designed to improve his or her skills and enable him or her to become a qualified educational sign language interpreter within two school years. The plan shall include at least 30 clock hours of training in interpreting per year (August 1 to July 31). The plan shall be approved by the school district or approved cooperative. The school district or approved cooperative must require that the interpreter attain one or more of the competency levels in 92 NAC 51-010.06A within two school years of employment.
- 010.06E If an interpreter does not achieve the required competency levels within the time periods as specified in 92 NAC 51-010.06D, the district or approved cooperative must reopen the position and seek a qualified educational sign language interpreter.
- 010.06F School districts and approved cooperatives shall require that all sign language interpreters employed by the districts or approved cooperatives to deliver special education services submit evidence to the district or approved cooperative of having obtained 20 clock hours of educationally related professional development every two years.
- 010.06G If a sign language interpreter cannot provide the evidence required in 92 NAC 51-010.06F of the professional development, the school district or approved cooperative shall require that the sign language interpreter be retested and achieve the applicable competency level specified in 92 NAC 51-010.06A, 010.06C or 010.06D.
- 010.07 Notwithstanding any other individual right of action that a parent or student may maintain under this Chapter, nothing in this section or ~~part~~ Chapter shall be construed to create a right of action on behalf of an individual student or class of students for the failure of a school district or approved cooperative employee to

meet IDEA 2004 criteria or to prevent a parent from filing a complaint about staff qualification pursuant to Section 009 of this ~~Rule~~ Chapter.

SECTION 11: PARTICIPATION IN STATE AND DISTRICT-WIDE ASSESSMENTS

004.05 Participation in Assessments

- 004.05A School districts shall include all public school students with disabilities in all general state and district-wide assessment programs, including assessments described under section 612(a)(16)(A) of the Individuals with Disabilities Education Act of 2004 (See Appendix A), with appropriate accommodations and alternate assessments where necessary and as indicated in their respective individualized education programs.
- 004.05B In the case of a district-wide assessment, the school district shall develop guidelines for the provision of appropriate accommodations.
- 004.05C In the case of a district-wide assessment, the school district shall develop and implement guidelines for the participation of children with disabilities in alternate assessments for those children who cannot participate in regular assessments under 92 NAC 51-004.05A with accommodations as indicated in their respective individualized education programs. The guidelines shall provide for accommodations and alternate assessments that:
- 004.05C1 Are aligned with the Nebraska Department of Education's challenging academic content standards and challenging student academic achievement standards; and
 - 004.05C2 If the Nebraska Department of Education has adopted alternate academic achievement standards permitted under Section 612(a)(16)(C)(ii)(II) of the Individuals with Disabilities Education Act of 2004 (See Appendix A), measure the achievement of children with disabilities against those standards.
- 004.05D School districts shall make available to the public, and report to the public with the same frequency and in the same detail as they report on the assessment of nondisabled children, the following:
- 004.05D1 The number of children with disabilities participating in regular assessments, and the number of those children who were provided accommodations in order to participate in these assessments.
 - 004.05D2 The number of children with disabilities participating in alternate assessments described in 92 NAC 51-004.05C1.
 - 004.05D3 The number of children with disabilities participating in alternate assessments described in 92 NAC 51-004.05C2.
 - 004.05D4 The performance results of children with disabilities on regular assessments and on alternate assessments (if the number of children with disabilities participating is sufficient to yield statistically reliable information and reporting that information will not reveal personally identifiable information about an individual student), compared with the achievement of all children, including children with disabilities, on those assessments.
- 004.05E In the case of a district-wide assessment, the school district or approved cooperative shall, to the extent feasible, use universal design principles in developing and administering any assessments under this Section.

SECTION 12: SUSPENSION AND EXPULSION RATES

004.06D Public special purpose school systems accredited under 92 NAC 10 and school districts or approved cooperatives shall prepare an accurate and unduplicated year –end child count as of June 30 of each year. The June 30 year-end child count shall be approved and submitted electronically by the portal administrator or designee via the NDE portal on or before June 30 of each year.

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

SECTION 13: ACCESS TO INSTRUCTIONAL MATERIALS

004.15 Access to Instructional Materials

004.15A A school district or approved cooperative that chooses to coordinate with the National Instructional Materials Access Center (NIMAC) when purchasing print instructional materials shall enter into a written contract with the publisher of the print instructional materials to:

004.15A1 Require the publisher to prepare and, on or before the delivery of the print instructional materials, provide to the National Instructional Materials Access Center, electronic files containing the contents of the print instructional materials using the Instructional Materials Accessibility Standard (NIMAS); or

004.15A2 Purchase instructional materials from a publisher that are produced in or may be rendered in specialized formats.

004.15B Nothing in this section shall be construed to require a school district or approved cooperative to coordinate with the National Instructional Materials Access Center. If a school district or approved cooperative chooses not to coordinate with the National Instructional Materials Access Center, the school district or approved cooperative shall provide an assurance to the Nebraska Department of Education that the school district or approved cooperative will provide instructional materials to students with blindness or other students with print disabilities at the same time as other students.

SECTION 14: OVER-IDENTIFICATION AND DISPROPORTIONALITY

34 CFR 300.173 The district must have in effect, consistent with this part and with section 618(d) of the Act, policies and procedures designed to prevent the inappropriate over identification or disproportionate representation by race and ethnicity of children as children with disabilities, including children with disabilities with a particular impairment as described in 300.08.

SECTION 15: PROHIBITION ON MANDATORY MEDICATION

004.11D Prohibition on mandatory medication:

004.11D1 The school districts, approved cooperatives and special education and related services providers are prohibited from requiring parents to obtain a prescription for substances identified under Schedules I, II, III, IV or V in section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)) for the child as a condition of attending school, receiving an evaluation under Section 006 of this Chapter, or receiving services under 92 NAC 51.

004.011D2 Nothing in 92 NAC 51-004.11D1 shall be construed to create a prohibition against teachers and other school personnel consulting or sharing classroom-based observations with parents or guardians regarding a student's academic and functional performance, or behavior in the classroom or school, or regarding the need for evaluation for special education or related services.

SECTION 16: TRANSPORTATION

014 Special Education Transportation

014.01 The board of education shall furnish one of the following types of services to children with disabilities who are residents of the school district:

014.01A Provide transportation for any child with a disability who is forced to leave the school district temporarily because of lack of educational services; and

014.01B Provide transportation within the school district for any child with a disability who is enrolled in a special education program of the district when either:

014.01B1 The child is required to attend a facility other than what would be the normal school of attendance of the child to receive appropriate special education services; or

014.01B2 The nature of the child's disability is such that special education transportation is required.

014.01C The board of education shall provide transportation for all children with disabilities birth to age five including children birth to age five who are wards of the court.

014.01D Transportation for Parentally-Placed Non-Public School Children

014.01D1 If necessary for the child to benefit from or participate in the services provided under this Chapter, a parentally-placed nonpublic school child with a disability must be provided transportation:

014.01D1a From the child's school or the child's home to a site other than the nonpublic school; and

014.01D1b From the service site to the nonpublic school, or to the child's home, depending on the timing of the services.

014.01D2 School districts or approved cooperatives are not required to provide transportation from the child's home to the nonpublic school.

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

014.02 Responsibility for Transportation

014.02A The board of education shall be responsible to provide for the transportation expenses of children with disabilities who are residents of the school district under Neb. Rev. Stat. 79-1129 by:

014.02A1 Paying a parent for transporting his or her child for actual miles traveled and claimed; or

014.02A2 Operating vehicles for the purpose of transporting children with disabilities; or

014.02A3 Contracting for transportation services for children with disabilities; or

014.02A4 Purchasing services from a common carrier; or

- 014.02A5 Arranging for such other transportation as is proper and necessary to transport children with disabilities.
- 014.02B The board of education shall select an efficient and effective means of transportation for the child with a disability at a reasonable cost.
- 014.02C The board of education shall not provide for the transportation expenses of children with a disability who are residents of the school districts under Neb. Rev. Stat. 79-1129 if such children are able to use regular transportation services provided by the district unless:
- 014.02C1 Alteration of the routes of such regular transportation is required to transport children with a disability; or
- 014.02C2 Alteration is required of the equipment or vehicles used in such regular transportation in order to accommodate children with a disability.
- 014.02D The board of education shall provide for expenses equal to the statutory amount for each mile or fraction thereof traveled between the place of residence and the program of attendance when a parent transports his or her child(ren) with a disability. (Refer to Neb. Rev. Stat. 79-1129 and 81-1176.)
- 014.02E Except when a parent is transporting only his or her child, the board of education shall require that the driver and vehicle meet the standards required by 92 NAC 91 and 92.
- 014.02F For students with disabilities participating in the Option Enrollment Program under Neb. Rev. Stat. 79-232 to 79-246, the transportation services included on the student's IEP shall be provided by the district from which the student optioned. The Department shall reimburse the district from which the student optioned for the cost of transportation in accordance with Section 014.