

**NEBRASKA DEPARTMENT  
OF EDUCATION**

# **RULE 3**

**REGULATIONS GOVERNING HIGH ABILITY LEARNERS**

**TITLE 92, NEBRASKA ADMINISTRATIVE CODE,  
CHAPTER 3**

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**State of Nebraska  
Department of Education  
301 Centennial Mall South  
Lincoln, Nebraska 68509**



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**001 GENERAL PROVISIONS**

001.01. Statutory Authority

This Chapter is adopted pursuant to power and duty vested in the State Board of Education in the following Revised Statutes of Nebraska (R.R.S.):

001.01A. Section 79-318, which reads:

"The State Board of Education shall:  
. . . (5) (i) approve general plans and adopt educational policies, standards, rules, and regulations for carrying out the board's responsibilities and those assigned to the State Department of Education by the Legislature. . .";

001.01B. Section 79-1105, which reads in part:

"The State Department of Education has authority to employ a full-time consultant trained and experienced in the field of education of learners with high ability. Such consultant shall encourage, advise, and consult with each school of the state in the development and implementation of plans for education of learners with high ability. . ."

001.01C. Section 79-1107(3) which reads:

"Learner with high ability means a student who gives evidence of high performance capability in such areas as intellectual, creative, or artistic capacity or in specific academic fields and who requires accelerated or differentiated curriculum programs in order to develop those capabilities fully."

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001.01D. Section 79-1108, which reads:

"For school year 1997-98 and each school year thereafter, each school district shall identify learners with high ability and may provide accelerated or differentiated curriculum programs that will address the educational needs of the identified students at levels appropriate for the abilities of those students. The accelerated or differentiated curriculum programs shall meet the standards of quality established by the department. Educational service units may identify learners with high ability and provide accelerated or differentiated curriculum programs for school districts. Any school district or educational service unit shall be eligible to apply for funds from the Education Innovation Fund to be used for development and improvement of the approved accelerated or differentiated curriculum programs of the district or educational service unit."

001.02. Scope and Delimitations

This Chapter is adopted for the purpose of defining and providing for the standards of quality for accelerated or differentiated curriculum programs for the education of high ability learners, and for the purposes of the distribution of funds to eligible local systems and approval requirements for measuring academic progress of students in accelerated or differentiated curriculum programs. The State Board of Education, through the provisions of this Chapter, intends to encourage schools of the state to develop and implement plans for the appropriate education of learners with high abilities.

001.03. Mission and Belief Statement

001.03A. Statement of Purpose. All Nebraska school districts should provide for individual student needs and the development of extraordinary ability and potential.

001.03B. Belief Statements. Educational programs for high ability learners are based on the beliefs that:

001.03B1. High ability learner capabilities are evidenced in all races, creeds, national origins, genders, physical abilities, and economic strata.

001.03B2. All learners with high ability should have an education free from economic and cultural bias.

001.03B3. Individuals with high abilities have unique learning needs.

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001.03B4. Learners with high ability come from diverse economic and cultural settings and must be identified. Services should be provided to address their educational needs.

001.03B5. Educators have a responsibility to be adequately trained to meet the needs of learners with high ability.

001.03B6. Community understanding and involvement is critical in the education of learners with high ability.

001.03B7. Parents are valued partners in the education of learners with high ability.

001.03B8. Learners with high ability require a variety of challenging experiences that will enable them to demonstrate their potential.

001.03B9. Educational excellence for learners with high ability requires a commitment of financial and human resources.

**002**    **DEFINITIONS**

002.01. Approved Accelerated or Differentiated Curriculum Programs means academic programs that serve the educational needs of learners with high ability developed and approved under Section 79-1108 R.R.S.

002.02. Department shall mean the Nebraska Department of Education.

002.03. Evaluation. A process of using information about programming to guide decision-making in present and future efforts. Its purposes include: guiding planning for maintaining or improving programming, comparing and selecting among several options or alternatives, and judging whether stated goals and objectives have been attained.

002.04. Learner with High Ability. "Learner with high ability means a student who gives evidence of high performance capability in such areas as intellectual, creative, or artistic capacity or in specific academic fields and who requires accelerated or differentiated curriculum programs in order to develop those capabilities fully." [as defined in Nebraska Revised Statute Sec. 79-1107(3)]

002.05. School Fiscal Year shall mean the fiscal year of each school district which commences on September 1 of each year and ends on August 31 of each year pursuant to 79-1091 R.R.S.

002.06. Special Populations. Those students who, in order to meet their learning needs, may require different and/or special strategies.

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002.07. Start-Up Costs. Eligible start-up costs mean costs identified in Section 007.02 associated with: a) conducting local needs assessments for programs for learners with high ability; b) staff development activities for certified staff and specialized teachers of high ability learners under Sections 004 (Identification Procedures) and 005 (Continuum of Programming Services Options, and Strategies and Affective or Guidance Needs); c) enhancement of testing procedures for 004 (Identification Procedures); and, d) materials, software and/or distance learning fees for use with high ability learners. Applicants must affirm that they have not, as of the date of the application, provided students identified as high ability learners with accelerated or differentiated programs or services for the education of learners with high ability.

002.08. Compacted Curriculum. A process for reducing the amount of the curriculum material allowing the student to show mastery of the content by doing less volume of work, eliminating that which has been mastered prior to normal presentation or teaching clusters of needed skills in reduced time frame, and providing time for enrichment and/or acceleration activities appropriate to high ability learners while ensuring mastery of basic skills.

**003 DEVELOPMENT OF AN APPROVABLE DISTRICT PLAN FOR THE DELIVERY OF ACCELERATED OR DIFFERENTIATED CURRICULUM PROGRAMS TO HIGH ABILITY LEARNERS**

003.01. In order to be an approved program, each school district shall identify learners with high ability. Educational Service Units (ESUs) may identify learners with high ability and/or provide accelerated or differentiated curriculum programs for school districts. Each approved plan for a school district, whether provided by the district or for the district by an ESU, shall include the following elements:

003.01A. The district's philosophy on educational service to learners with high ability.

003.01B. The district's operational definition of high ability learner.

003.01C. The goals and objectives of the local program for learners with high ability.

003.01D. Procedures for identification of learners with high ability as described in 004, Identification Procedures.

003.01E. A description of the continuum of program services, options, and strategies as described in 005, Accelerated and Differentiated Curriculum Program Options and Affective or Guidance.

003.01F. Overall program evaluation process as described in 008, Evaluation and Future Planning.

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003.01G. Staff development training and support as described in 006.04.

003.01H. Program management outline, including: personnel roles, plan for communicating the district plan to parents and the public, budget, facilities, and supplies.

003.01I. Include identified students from Class I districts in the system in the accelerated or differentiated curriculum program.

003.02. The district-wide plan may be developed by a representative committee including parents, classroom teachers, administrators, and other interested parties. Advisory members with experience or expertise in education of learners with high ability are highly encouraged to be a part of the planning committee.

003.03. Each school district or Educational Service Unit shall make the written plan available to the citizens of the district.

**004 IDENTIFICATION PROCEDURES**

004.01. Schools must develop a system to identify learners with high ability as defined in Sec. 79-1107 R.R.S. This system shall:

004.01A. Use multiple assessment measures and appraisals so that schools can identify students in different talent areas and at different ages.

004.01B. Provide students with equal access to identification opportunities.

004.01C. Identify talents that are not readily apparent in students, as well as those that are obvious.

004.02. The identification process shall include multiple criteria in an effort to be inclusive rather than exclusive. This process shall be based on the elements in 004.01A-C, a combination of standardized instruments and non-standardized means and criteria, and a local needs assessment.

004.03. The identification process shall include provision for parents, guardians, or other persons exercising legal or actual charge or control over the child to appeal any decision of the school regarding the identification or non-identification of their child as a high ability learner to the school board.

004.04. Within the first thirty (30) days of each school year, starting in 1997-98, the school district administration shall make available to classroom teachers an initial "list" of K-12 students who meet the district criteria for learners of high ability and the areas of high capability of each of those students.



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004.05. School districts shall annually provide the Department with a copy of their criteria for identifying learners with high ability, the number of students identified according to the criteria, and the number of students participating in an approved accelerated or differentiated curriculum program. School districts shall also have a list of the students identified and how the students compare to the criteria available for inspection by Department personnel.

004.06. Within the first thirty (30) days of each school year, starting in 1997-98, the school district administration shall notify parents, guardians, or other persons who have legal or actual charge or control of children identified as high ability learners that their child has been so identified and make available to such persons information about how their child has been identified. Information may be provided about possible educational strategies to meet their special needs, which may include the strategies identified in Section 005 and a list of outside resources and programs available to parents and students directly.

**005**    **CONTINUUM OF PROGRAMMING SERVICES, OPTIONS, AND STRATEGIES AND AFFECTIVE OR GUIDANCE NEEDS**

005.01. Districts serving high ability learners shall serve identified high ability learners by using instructional curriculum patterns that include, but are not limited to the following:

005.01A. Differentiated Curriculum. The "regular" curriculum must be described at the district level as required before differentiated curriculum can be devised. Differentiated curriculum shall mean an adjustment of the regular program as appropriate for the individual learner in terms of content, process, and/or product.

005.01B. Curriculum Acceleration. The student enters into or moves through the regular curriculum at an accelerated pace by any combination of the following: grade level skipping; content level acceleration; cluster grouping by content; early entrance to school; compacting the curriculum; early graduation; or, course waivers.

005.01C. Curriculum Enrichment. The provision of in-depth and/or multi-disciplinary exploration of content or courses and/or experiences beyond those provided in the regular curriculum.

005.01D. Compacted Curriculum. A process for assessing the student's mastery of content, eliminating that which has been mastered prior to normal presentation or teaching clusters of needed skills in a reduced time frame, and substituting enrichment activities and/or accelerated studies appropriate to high ability learners.

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005.01E. Student Grouping. The use of various organizational formats that meet the learning style and specific curricular needs of high ability learners.

005.01F. Mentoring/Shadowing. The linking of a student with a person with a specific knowledge base in a short-term or in-depth, sharing relationship resulting in a series of learning experiences. This experience may occur within a school setting or "on-site."

005.02. Learners with high ability need affective as well as cognitive growth. Therefore, affective curriculum, as well as specialized counseling specific to the needs of learners with high ability, shall be provided by each eligible, approved school district.

005.02A. Affective Curriculum provides personal/social awareness and adjustment, academic planning and performance, and vocational and career awareness, investigation, and planning.

005.02B. Specialized Counseling provides individual or small group guidance services to learners with high ability which will help them to make long-range decisions about school and career choices.

**006    PREPARATION OF PROFESSIONAL STAFF (as suggested by the Nebraska Department of Education)**

006.01. Learners with high ability deserve to be served by professionals who have specialized preparation, expertise in content and instructional methods, involvement in ongoing development, and portray exemplary personal and professional traits.

006.02. The director/supervisor/coordinator of a local district program for learners with high ability and the teachers whose primary responsibility is working with learners with high ability should have, or be working toward, an endorsement in Gifted Education.

006.03. The recommendations of 006.02 should not apply to the director/supervisor/coordinator of a program for learners with high ability or the teacher whose primary responsibility is working with learners with high ability if such a person has held a similar position for a period of two years or more. However, this individual should show to the local district administrator evidence of continued involvement in professional growth programs in the field of Gifted Education.

006.04. All teachers and administrators in the school district should be aware of the district-wide plan for learners with high ability, and have an understanding of the characteristics of such students. Teachers who provide instruction and services that are part of the program for high ability students should be able to design and implement classroom experiences which utilize differentiation of curriculum and instruction, and be able to assess the work and progress of learners with high ability.

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006.04A. This knowledge base could be attained by: completion of at least one college-level course in Gifted Education or by involvement in at least ten (10) clock hours of information concerning learners with high ability within a college course.

006.04B. Or, by providing inservice training to administrative and teaching staff members to help them have an understanding of the characteristics of learners with high ability, be able to design and implement classroom experiences that utilize differentiation of curriculum and instruction, and be able to assess the work and progress of such learners.

**007 STATE FUNDING**

007.01. Section 79-1108.02 R.R.S. states in part:

“(1) beginning with school fiscal year 1998-99, the Legislature shall appropriate funds to be distributed by the department pursuant to subsections (2) and (3) of this section to local systems as defined in section 79-1003 annually on or before October 15.

(2) For school fiscal years through 2000-01, five percent of the appropriation under subsection (1) of this section shall be reserved for distribution as grants to local systems for startup costs as defined by the State Board of Education. The funds distributed pursuant to this subsection shall be distributed based on a pro rata share of the eligible costs submitted in grant applications.

(3) Local systems may apply to the department for base funds and matching funds pursuant to this section to be spent on approved accelerated or differentiated curriculum programs. Each eligible local system shall receive one-tenth of one percent of the appropriation as base funds plus a pro rata share of the remainder of the appropriation based on identified students participating in an accelerated or differentiated curriculum program, up to ten percent of the prior year's fall membership as defined in section 79-1003, as matching funds. Eligible local systems shall: (a) Provide an approved accelerated or differentiated curriculum program for students identified as learners with high ability; (b) Provide funds from other sources for the approved accelerated or differentiated curriculum program greater than or equal to fifty percent of the matching funds received pursuant to the subsection; (c) Provide an accounting of the funds received pursuant to this section, funds required by subdivision (b) of this subsection, and the total cost of the program on or before August 1 of the year following the receipt of funds in manner prescribed by the department, not to exceed one report per year; (d) Provide data regarding the academic progress of students participating in the accelerated or differentiated curriculum program in a manner prescribed by the department, not to exceed one report per year; and, (e) Include

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identified students from Class I districts that are part of the local system in the accelerated or differentiated curriculum program.

If a local system will not be providing the necessary matching funds pursuant to subdivision (b) of this subsection, the local system shall request a reduction in the amount received pursuant to this subsection such that the local system will be in compliance with such subdivision. Local systems not complying with the requirements of this subsection shall not be eligible local systems in the following year."

007.02. The Department will distribute eligible Startup Costs funds to applicant systems as appropriated by the Legislature based upon a pro rata share of eligible costs submitted to the Department as a whole by all local systems pursuant to Section 79-1108 R.R.S.

007.02A. Systems shall apply to the Department for startup costs on forms provided by the Department. To be eligible, the system's startup cost funding applications shall be received by the Department by no later than September 15.

007.02B. Eligible start-up costs shall be determined according to the following: 1) costs for staff development related to Sections 004 (Identification Procedures) and Section 005 (Continuum of Programming Services, Option, and Strategies and Affective or Guidance Needs) up to \$100 per certified staff member; and, 2) costs for needs assessment, testing enhancement and other materials and supplies up to \$50 per identified student or 10% of the prior year's fall membership as defined in Section 79-1003.

007.03. For purposes of the requirements of §79-1108.02(3) R.R.S. and Section 007.01 of this Rule, "funds from other sources" means funds local systems receive from sources other than funds received under the provisions of §79-1105 R.R.S. through §79-1109 R.R.S. and this rule.

007.04. Local systems applying for base and matching funds under this Section shall use the application forms provided by the Department. Such applications must be received by the Department by September 15 of each year.

007.05. When a system will not be providing the necessary funds from "other sources" and must request a reduction in the amount received as required in §79-1108.02(3) R.R.S., such reduced amounts may be deducted from any amounts the system receives as "matching funds" from the Department under §79-1108.02(3) for the following school fiscal year. If a system must request a reduction under §79-1108.02(3) for any one school fiscal year and the system ceased to be eligible for or does not apply for base and matching funds for the following school fiscal year, the system must refund to the Department the amount of the reduction by the end of the first school fiscal year in which the system ceases to be eligible or does not apply. All requests for reduction shall be made on forms supplied by the Department.

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007.06. For purposes of the payment of funds to systems under §79-1108.02 R.R.S. and Section 007 of this Rule, the Department will distribute any funds a system is eligible for to the high school district of the system. Such high school districts shall act as the fiscal agent for such funds of the system.

007.07. Data requirements for measuring and reporting academic progress: The system shall gather and maintain aggregate data measuring the academic progress of all its identified high ability learners.

007.07A. At a minimum, this shall include aggregate achievement test scores and/or GPAs, and the number of identified high ability learners participating in Advanced Placement Classes or honors level course work.

007.07B. The system shall also provide such data to the Department on forms prescribed by the Department by no later than September 15 of each year.

007.08. Accounting of Funds. Systems shall provide an accounting of funds to the Department pursuant to Section 79-1108.02 R.R.S. on forms provided by the Department.

**008 EVALUATION AND FUTURE PLANNING**

008.01. Every school district serving high ability learners shall establish procedures for both formative and summative evaluation to determine the effectiveness of the district-wide plan for services extended to the learners with high ability.

008.01A. The evaluation procedures should allow for input from parents, educators, students, and community members.

008.01B. Quality indicators and illustrative criteria for both curriculum-based and student-based components should be used in the evaluation of the district program goals and objectives.

008.01C. The yearly review should include program strengths and weaknesses in such areas as: program design, students needs, learning environment, curriculum, student identification, personnel qualifications, resources, communication, staff development, and cost effectiveness.

008.02. The local plan should be revised according to the results of the yearly review. Curricular planning should be open to and reflective of advanced research and information regarding learning and learners with high ability.

008.02A. The Evaluation Plan and Yearly Review shall be available for review by interested persons upon request.

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**009    APPEALS**

009.01. Any applicant for funding under Section 007 aggrieved by any decision of the Department in regard to its application may request in writing a review by the Commissioner of Education within fifteen (15) calendar days of its receipt of the Department's decision on the application. The Commissioner shall review the claim together with all other materials submitted in the applicant's application, the requirements of this Rule, and state law. The Commissioner, within 90 days of the Department's receipt of the claim, shall make a final written determination regarding the claim. A copy of this decision shall be mailed to the claimant, certified mail, return receipt requested.

009.02. If the claimant disagrees with the Commissioner's final written decision, it may request a hearing on the decision within fifteen (15) days following its receipt of the decision pursuant to 92 NAC 61(Rule 61).

**010    PENALTIES FOR NONCOMPLIANCE**

010.01. In addition to other penalties which may be provided by law for noncompliance with the requirements of Section 79-1105 through 79-1108.03 R.R.S. and the requirements of this Rule, a school district's failure to comply with the identification requirements of Section 79-1108 R.R.S. and Section 004 of this Rule shall be treated as if it were a violation of a mandatory provision of 92 NAC 10, and may subject the district to loss of accreditation as provided in that chapter.