

XV. Placement and LRE

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Section 300.327 Educational placements.

Consistent with §300.501(c), each public agency must ensure that the parents of each child with a disability are members of any group that makes decisions on the educational placement of their child.

Section 300.114 LRE requirements

General.

1. Except as provided in §300.324(d)(2) (regarding children with disabilities in adult prisons), the State must have in effect policies and procedures to ensure that public agencies in the State meet the LRE requirements of this section and §§300.115 through 300.120.
2. Each public agency must ensure that—
 - i. To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are nondisabled; and
 - ii. Special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only if 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.

(b) Additional requirement—State funding mechanism—

1. General.
 - i. A State funding mechanism must not result in placements that violate the

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Least Restrictive Environment (LRE) Requirements

92 NAC 51-008.01

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

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requirements of paragraph (a) of this section; and

- ii. A State must not use a funding mechanism by which the State distributes funds on the basis of the type of setting in which a child is served that will result in the failure to provide a child with a disability FAPE according to the unique needs of the child, as described in the child's IEP.

2. Assurance. If the State does not have policies and procedures to ensure compliance with paragraph (b)(1) of this section, the State must provide the Secretary an assurance that the State will revise the funding mechanism as soon as feasible to ensure that the mechanism does not result in placements that violate that paragraph.

Section 300.115 Continuum of alternative placements.

(a) Each public agency must ensure that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services.

(b) The continuum required in paragraph (a) of this section must—

1. Include the alternative placements listed in the definition of special education under §300.39 (instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions); and
2. Make provision for supplementary services (such as resource room or itinerant

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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 requires some other arrangement, the child must be

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instruction) to be provided in conjunction with regular class placement.

Section 300.116 Placements.

In determining the educational placement of a child with a disability, including a preschool child with a disability, each public agency must ensure that—

(a) The placement decision—

1. 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
2. Is made in conformity with the LRE provisions of this subpart, including §§300.114 through 300.118;

(b) The child's placement—

1. Is determined at least annually;
2. Is based on the child's IEP; and
3. Is as close as possible to the child's home;

(c) Unless the IEP of a child with a disability requires some other arrangement, the child is educated in the school that he or she would attend if nondisabled;

(d) In selecting the LRE, consideration is given to any potential harmful effect on the child or on the quality of services that he or she needs; and

(e) A child with a disability is not removed from education in age-appropriate regular classrooms solely because of needed modifications in the general education curriculum.

Section 300.117 Nonacademic settings

In providing or arranging for the provision of nonacademic and extracurricular services

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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.

Definition of individualized education program

003.31 Individualized education program (IEP) means a written statement for a child with a verified disability that is developed, reviewed and revised in a meeting in accordance with Section 007 which specifies the special education and related services necessary to assure the child a free appropriate public education

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

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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 the extracurricular services and activities to the maximum extent appropriate to 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 300.118 Children in public or private institutions

Except as provided in §300.149(d) (regarding agency responsibility for general supervision of some individuals in adult prisons), an SEA must ensure that §300.114 is effectively implemented, including, if necessary, making arrangements with public and private institutions (such as a memorandum of agreement or special implementation procedures).

Section 300.119 Technical assistance and training activities.

Each SEA must carry out activities to ensure that teachers and administrators in all public agencies—

- (a) Are fully informed about their responsibilities for implementing §300.114; and
- (b) Are provided with technical assistance and training necessary to assist them in this effort.

Section 300.320 Definition of individualized education program

General. As used in this part, the term individualized education program or IEP

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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

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means a written statement for each child with a disability that is developed, reviewed, and revised in a meeting in accordance with §§300.320 through 300.324, and that must include—

1. A statement of the child’s present levels of academic achievement and functional performance, including—
 - i. How the child’s disability affects the child’s involvement and progress in the general education curriculum (i.e., the same curriculum as for nondisabled children); or
 - ii. For preschool children, as appropriate, how the disability affects the child’s participation in appropriate activities;
2.
 - i. A statement of measurable annual goals, including academic and functional goals designed to—
 - A. 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; and
 - B. Meet each of the child’s other educational needs that result from the child’s disability;
 - ii. For children with disabilities who take alternate assessments aligned to alternate academic achievement standards, a description of benchmarks or short-term objectives;
3. A description of—
 - i. How the child’s progress toward meeting the annual goals described

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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.

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in paragraph (2) of this section will be measured; and

- ii. 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;
4. 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—
- i. To advance appropriately toward attaining the annual goals;
 - ii. To be involved in and make progress in the general education curriculum in accordance with paragraph (a)(1) of this section, and to participate in extracurricular and other nonacademic activities; and
 - iii. To be educated and participate with other children with disabilities and nondisabled children in the activities described in this section;
5. 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 paragraph (a)(4) of this section;
- 6.
- i. A statement of any individual appropriate accommodations

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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.

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that are necessary to measure the academic achievement and functional performance of the child on State and districtwide assessments consistent with section 612(a)(16) of the Act; and

ii. If the IEP Team determines that the child must take an alternate assessment instead of a particular regular State or districtwide assessment of student achievement, a statement of why—

- A. The child cannot participate in the regular assessment; and
- B. The particular alternate assessment selected is appropriate for the child; and

7. The projected date for the beginning of the services and modifications described in paragraph (a)(4) of this section, and the anticipated frequency, location, and duration of those services and modifications.

(b) Transition services. 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, and updated annually, thereafter, the IEP must include—

1. Appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills; and
2. The transition services (including courses of study) needed to assist the child in reaching those goals.

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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:

07.06A1 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

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(c) Transfer of rights at age of majority. Beginning not later than one year before the child reaches the age of majority under State law, the IEP must include a statement that the child has been informed of the child's rights under Part B of the Act, if any, that will transfer to the child on reaching the age of majority under §300.520.

(d) Construction. Nothing in this section shall be construed to require—

1. That additional information be included in a child's IEP beyond what is explicitly required in section 614 of the Act; or
2. The IEP Team to include information under one component of a child's IEP that is already contained under another component of the child's IEP.

Section 300.321 IEP Team

(a) General. The public agency must ensure that the IEP Team for each child with a disability includes—

1. The parents of the child;
2. Not less than one regular education teacher of the child (if the child is, or may be, participating in the regular education environment);
3. Not less than one special education teacher of the child, or where appropriate, not less than one special education provider of the child;
4. A representative of the public agency who—
 - i. Is qualified to provide, or supervise the provision of, specially designed

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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 school 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

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instruction to meet the unique needs of children with disabilities;

- ii. Is knowledgeable about the general education curriculum; and
- iii. Is knowledgeable about the availability of resources of the public agency.

5. An individual who can interpret the instructional implications of evaluation results, who may be a member of the team described in paragraphs (a)(2) through (a)(6) of this section;

6. At the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate; and

7. Whenever appropriate, the child with a disability.

(b) Transition services participants.

1. In accordance with paragraph (a)(7) of this section, the public agency must invite a child with a disability to attend the child's IEP Team meeting if a purpose of the meeting will be the consideration of the postsecondary goals for the child and the transition services needed to assist the child in reaching those goals under §300.320(b).
2. If the child does not attend the IEP Team meeting, the public agency must take other steps to ensure that the child's preferences and interests are considered.
3. To the extent appropriate, with the consent of the parents or a child who has reached the age of majority, in implementing the

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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:

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requirements of paragraph (b)(1) of this section, the public agency must invite a representative of any participating agency that is likely to be responsible for providing or paying for transition services.

(c) Determination of knowledge and special expertise. The determination of the knowledge or special expertise of any individual described in paragraph (a)(6) of this section must be made by the party (parents or public agency) who invited the individual to be a member of the IEP Team.

(d) Designating a public agency representative. A public agency may designate a public agency member of the IEP Team to also serve as the agency representative, if the criteria in paragraph (a) (4) of this section are satisfied.

(c) IEP Team attendance.

1. A member of the IEP Team described in paragraphs (a)(2) through (a)(5) of this section is not required to attend an IEP Team meeting, in whole or in part, if the parent of a child with a disability and the public agency agree, in writing, that the attendance of the member is not necessary because the member's area of the curriculum or related services is not being modified or discussed in the meeting.
2. A member of the IEP Team described in paragraph (c)(1) of this section may be excused from attending an IEP Team meeting, in whole or in part, when the meeting involves a modification to or

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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;

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discussion of the member's area of the curriculum or related services, if—

- i. The parent, in writing, and the public agency consent to the excusal; and
- ii. The member submits, in writing to the parent and the IEP Team, input into the development of the IEP prior to the meeting.

(f) Initial IEP Team meeting for child under Part C. In the case of a child who was previously served under Part C of the Act, an invitation to the initial IEP Team meeting must, at the request of the parent, be sent to the Part C service coordinator or other representatives of the Part C system to assist with the smooth transition of services.

Section 300.322 Parent participation

(a) Public agency responsibility—general. Each public agency must take steps to ensure that one or both of the parents of a child with a disability are present at each IEP Team meeting or are afforded the opportunity to participate, including—

1. Notifying parents of the meeting early enough to ensure that they will have an opportunity to attend; and
2. Scheduling the meeting at a mutually agreed on time and place.

(b) Information provided to parents.

1. The notice required under paragraph (a)(1) of this section must—
 - i. Indicate the purpose, time, and location of the meeting and who will be in attendance; and

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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 92 NAC 51-007.07A, 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:

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- ii. Inform the parents of the provisions in §300.321(a)(6) and (c) (relating to the participation of other individuals on the IEP Team who have knowledge or special expertise about the child), and §300.321(f) (relating to the participation of the Part C service coordinator or other representatives of the Part C system at the initial IEP Team meeting for a child previously served under Part C of the Act).
2. 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—
- i. Indicate—
 - A. That a purpose of the meeting will be the consideration of the postsecondary goals and transition services for the child, in accordance with §300.320(b); and
 - B. That the agency will invite the student; and
 - ii. Identify any other agency that will be invited to send a representative.
- (c) Other methods to ensure parent participation. If neither parent can attend an IEP Team meeting, the public agency must use other methods to ensure parent participation, including individual or conference telephone calls, consistent with §300.328 (related to alternative means of meeting participation).
- (d) Conducting an IEP Team meeting without a parent in attendance. A meeting may be conducted without a parent in attendance if

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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

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the public agency is unable to convince the parents that they should attend. In this case, the public agency must keep a record of its attempts to arrange a mutually agreed on time and place, such as—

1. Detailed records of telephone calls made or attempted and the results of those calls;
2. Copies of correspondence sent to the parents and any responses received; and
3. Detailed records of visits made to the parent's home or place of employment and the results of those visits.

(c) Use of interpreters or other action, as appropriate. The public agency must take whatever action is necessary to ensure that the parent understands the proceedings of the IEP Team meeting, including arranging for an interpreter for parents with deafness or whose native language is other than English.

(f) Parent copy of child's IEP. The public agency must give the parent a copy of the child's IEP at no cost to the parent.

Section 300.323 When IEPs must be in effect

(a) General. At the beginning of each school year, each public agency must have in effect, for each child with a disability within its jurisdiction, an IEP, as defined in §300.320.

(b) IEP or IFSP for children aged three through five.

1. In the case of a child with a disability aged three through five (or, at the discretion of the SEA, a two-year-old child with a disability who will turn age three during the

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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.

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.

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school year), the IEP Team must consider an IFSP that contains the IFSP content (including the natural environments statement) described in section 636(d) of the Act and its implementing regulations (including an educational component that promotes school readiness and incorporates pre-literacy, language, and numeracy skills for children with IFSPs under this section who are at least three years of age), and that is developed in accordance with the IEP procedures under this part. The IFSP may serve as the IEP of the child, if using the IFSP as the IEP is—

- i. Consistent with State policy; and
- ii. Agreed to by the agency and the child's parents.

2. In implementing the requirements of paragraph (b)(1) of this section, the public agency must—

- i. Provide to the child's parents a detailed explanation of the differences between an IFSP and an IEP; and
- ii. If the parents choose an IFSP, obtain written informed consent from the parents

(c) Initial IEPs; provision of services. Each public agency must ensure that—

1. A meeting to develop an IEP for a child is conducted within 30 days of a determination that the child needs special education and related services; and
2. As soon as possible following development of the IEP, special education

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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.

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and related services are made available to the child in accordance with the child's IEP.

(d) Accessibility of child's IEP to teachers and others. Each public agency must ensure that—

1. The child's IEP is accessible to each regular education teacher, special education teacher, related services provider, and any other service provider who is responsible for its implementation; and
2. Each teacher and provider described in paragraph (d)(1) of this section is informed of—
 - i. His or her specific responsibilities related to implementing the child's IEP; and
 - ii. The specific accommodations, modifications, and supports that must be provided for the child in accordance with the IEP.

(c) IEPs for children who transfer public agencies in the same State. If a child with a disability (who had an IEP that was in effect in a previous public agency in the same State) transfers to a new public agency in the same State, and enrolls in a new school within the same school year, the new public agency (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 public agency), until the new public agency either—

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1. Adopts the child's IEP from the previous public agency; or
 2. Develops, adopts, and implements a new IEP that meets the applicable requirements in §§300.320 through 300.324.
- (f)** IEPs for children who transfer from another 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 public agency in a new State, and enrolls in a new school within the same school year, the new public agency (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 public agency), until the new public agency—
1. Conducts an evaluation pursuant to §§300.304 through 300.306 (if determined to be necessary by the new public agency); and
 2. Develops, adopts, and implements a new IEP, if appropriate, that meets the applicable requirements in §§300.320 through 300.324.
- (g)** Transmittal of records. To facilitate the transition for a child described in paragraphs (c) and (f) of this section—
1. The new public agency in which the child enrolls must 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 public agency in which the child

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was enrolled, pursuant to 34 CFR 99.31(a)(2); and

2. The previous public agency in which the child was enrolled must take reasonable steps to promptly respond to the request from the new public agency.

Section 300.324 Development, review, and revision of IEP

(a) Development of IEP—

1. General. In developing each child's IEP, the IEP Team must consider—
 - i. The strengths of the child;
 - ii. The concerns of the parents for enhancing the education of their child;
 - iii. The results of the initial or most recent evaluation of the child; and
 - iv. The academic, developmental, and functional needs of the child.
2. Consideration of special factors. The IEP Team must—
 - i. In the case of a child whose behavior impedes the child's learning or that of others, consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior;
 - ii. In the case of a child with limited English proficiency, consider the language needs of the child as those needs relate to the child's IEP;
 - iii. In the case of a child who is blind or visually impaired, provide for instruction

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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;

- iv.** Consider the communication needs of the child, and in the case of a child who is deaf or hard of hearing, 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; and
- v.** Consider whether the child needs assistive technology devices and services.

- 3.** Requirement with respect to regular education teacher. A regular education teacher of a child with a disability, as a member of the IEP Team, must, to the extent appropriate, participate in the development of the IEP of the child, including the determination of—
 - i.** Appropriate positive behavioral interventions and supports and other strategies for the child; and
 - ii.** Supplementary aids and services, program modifications, and support

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for school personnel consistent with §300.320(a)(4).

4. Agreement.

- i. In making changes to a child's IEP after the annual IEP Team meeting for a school year, the parent of a child with a disability and the public agency may agree not to convene an IEP Team meeting for the purposes of making those changes, and instead may develop a written document to amend or modify the child's current IEP.
- ii. If changes are made to the child's IEP in accordance with paragraph (a)(4) (i) of this section, the public agency must ensure that the child's IEP Team is informed of those changes.

5. Consolidation of IEP Team meetings. To the extent possible, the public agency must encourage the consolidation of reevaluation meetings for the child and other IEP Team meetings for the child.

6. Amendments. Changes to the IEP may be made either by the entire IEP Team at an IEP Team meeting, or as provided in paragraph (a)(4) 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.

(b) Review and revision of IEPs—

1. General. Each public agency must ensure that, subject to paragraphs (b)(2) and (b)(3) of this section, the IEP Team—

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- i. Reviews the child’s IEP periodically, but not less than annually, to determine whether the annual goals for the child are being achieved; and
 - ii. Revises the IEP, as appropriate, to address—
 - A. (A) Any lack of expected progress toward the annual goals described in §300.320(a)(2), and in the general education curriculum, if appropriate;
 - B. The results of any reevaluation conducted under §300.303;
 - C. Information about the child provided to, or by, the parents, as described under §300.305(a)(2);
 - D. The child’s anticipated needs; or
- (c) Other matters.
- 2. Consideration of special factors. In conducting a review of the child’s IEP, the IEP Team must consider the special factors described in paragraph (a)(2) of this section.
 - 3. Requirement with respect to regular education teacher. A regular education teacher of the child, as a member of the IEP Team, must, consistent with paragraph (a)(3) of this section, participate in the review and revision of the IEP of the child.
- (c) Failure to meet transition objectives—
- 1. Participating agency failure. If a participating agency, other than the public agency, fails to provide the transition services described in the IEP in accordance with §300.320(b), the public

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agency must reconvene the IEP Team to identify alternative strategies to meet the transition objectives for the child set out in the IEP.

2. Construction. Nothing in this part relieves any participating agency, including a State vocational rehabilitation agency, 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 criteria of that agency.

(d) Children with disabilities in adult prisons—

1. Requirements that do not apply. The following requirements do not apply to children with disabilities who are convicted as adults under State law and incarcerated in adult prisons:
 - i. The requirements contained in section 612(a)(16) of the Act and §300.320(a)(6) (relating to participation of children with disabilities in general assessments).
 - ii. The requirements in §300.320(b) (relating to transition planning and transition services) do not apply with respect to the children whose eligibility under Part B of the Act will end, because of their age, before they will be eligible to be released from prison based on consideration of their sentence and eligibility for early release.
2. Modifications of IEP or placement.
 - i. Subject to paragraph (d)(2)(ii) of this section, the IEP Team of a child with a disability who is convicted as an adult under State law and incarcerated in

an adult prison may modify the child's IEP or placement if the State has demonstrated a bona fide security or compelling penological interest that cannot otherwise be accommodated.

- ii. The requirements of §§300.320 (relating to IEPs), and 300.114 (relating to LRE), do not apply with respect to the modifications described in paragraph (d)(2)(i) of this section.

Section 300.325 Private school placements by public agencies

(a) Developing IEPs.

1. Before a public agency places a child with a disability in, or refers a child to, a private school or facility, the agency must initiate and conduct a meeting to develop an IEP for the child in accordance with §§300.320 and 300.324.
2. The agency must ensure that a representative of the private school or facility attends the meeting. If the representative cannot attend, the agency must use other methods to ensure participation by the private school or facility, including individual or conference telephone calls.

(b) Reviewing and revising IEPs.

1. After a child with a disability enters a private school or facility, any meetings to review and revise the child's IEP may be initiated and conducted by the private school or facility at the discretion of the public agency.
2. If the private school or facility initiates and conducts these meetings, the public

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agency must ensure that the parents and an agency representative—

- i. Are involved in any decision about the child's IEP; and
- ii. Agree to any proposed changes in the IEP before those changes are implemented.

(c) Responsibility. Even if a private school or facility implements a child's IEP, responsibility for compliance with this part remains with the public agency and the SEA.

Section 300.328 Alternative means of meeting participation

When conducting IEP Team meetings and placement meetings pursuant to this subpart, and subpart E of this part, and carrying out administrative matters under section 615 of the Act (such as scheduling, exchange of witness lists, and status conferences), the parent of a child with a disability and a public agency may agree to use alternative means of meeting participation, such as video conferences and conference calls.

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District Considerations for Policy and Procedure Development

Sample district policy statement

Individual Education Plans (IEPs) will be developed by teams, which will include all roles identified with Federal and state rules, within 30 days from the initial eligibility decision and at least annually, consistent with state and Federal rules and regulations. The district will use the state-provided model forms to make sure all required components are considered and included. While a draft may be developed before an IEP meeting, the draft will not be considered as the final version and shall be reviewed and revised based on the team, including the parent, input and consensus. If a parent requests an alternate means of attendance, the team will offer attendance via phone or virtual conferences. Procedures for such options will be developed to ensure confidentiality and to obtain proper signatures.

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. Special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or the severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

Procedural Considerations

- What is the continuum of placements provided in the district?
 - » How are staff informed of the placement options within the continuum and the consideration process used to determine appropriate placement?
- What are the steps needed for teams to consider more intensive settings on the continuum of placements?
 - » What accommodations, modifications, assistive technology, and/or behavioral supports have been implemented prior to moving a student to a more restrictive setting?
- What supports and training need to be put in place to ensure staff have the skills necessary to implement the accommodations/modifications, assistive technology, and/or behavioral interventions to ensure students are supported in the least restrictive environment?
- If a student is in a more restrictive setting, what are the steps needed to move toward a less restrictive setting (e.g., if a student is homebound, how frequently does the team need to meet to review progress to make decisions regarding integration back into the school setting?)?
 - » What supports are put in place to help transition a student successfully from a more restrictive placement to a less restrictive placement?
- What professional development is needed for general education staff, administration, and special education staff?
- What are the steps needed to complete behavior intervention plans and functional behavior assessments to help students be more successful in regular education classes?

Guidance resources

- [NE IEP Facilitation Guide](#)
- [NE LRE Guidance Document](#)
- [Dear Colleague Letter \(DCL\) related to Preschool Least Restrictive Environments \(LRE\) \(PDF\)](#)
- [Supporting and Responding to Behavior: Evidence-Based Classroom Strategies for Teachers | OSEP Ideas That Work](#)
- [OSEP Dear Colleague Letter on Supporting Behavior of Students with Disabilities: A Summary for Stakeholders \(PDF\) \(ed.gov\)](#)
- [IDEA Compliance | OSEP Ideas That Work](#)