

XVI. Procedural Safeguards

*Hyperlinks were added to IDEA regulations for reference if the topic was already addressed in different chapters of this guidance document.

IDEA Regulations: Procedural Safeguards	Nebraska Rule 51: Procedural Safeguards
<p>Section 300.500 Responsibility of SEA and other public agencies</p> <p>Each SEA must ensure that each public agency establishes, maintains, and implements procedural safeguards that meet the requirements of §300.500 through 300.536.</p> <p>Sec. 300.500 Responsibility of SEA and other public agencies</p> <p>Each SEA must ensure that each public agency establishes, maintains, and implements procedural safeguards that meet the requirements of §§300.500 through 300.53</p> <p>Sec. 300.501 Opportunity to examine records; parent participation in meetings</p> <p>(a) Opportunity to examine records. The parents of a child with a disability must be afforded, in accordance with the procedures of §§300.613 through 300.621, an opportunity to inspect and review all education records with respect to—</p> <ol style="list-style-type: none">1. The identification, evaluation, and educational placement of the child; and2. The provision of FAPE to the child. <p>(b) Parent participation in meetings.</p> <ol style="list-style-type: none">1. The parents of a child with a disability must be afforded an opportunity to participate in meetings with respect to—<ol style="list-style-type: none">i. The identification, evaluation, and educational placement of the child; andii. The provision of FAPE to the child.	<p>Parent Participation in Meetings 92 NAC 51-009.01</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>Parent Involvement in Placement Decisions 92 NAC 51-009.02</p> <p>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.</p>

IDEA Regulations: Procedural Safeguards

2. Each public agency must provide notice consistent with §300.322(a)(1) and (b)(1) to ensure that parents of children with disabilities have the opportunity to participate in meetings described in paragraph (b)(1) of this section.
 3. A meeting does not include informal or unscheduled conversations involving public agency 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 public agency personnel engage in to develop a proposal or response to a parent proposal that will be discussed at a later meeting.
- (c) Parent involvement in placement decisions.**
1. Each public agency must ensure that a parent of each child with a disability is a member of any group that makes decisions on the educational placement of the parent's child.
 2. In implementing the requirements of paragraph (c)(1) of this section, the public agency must use procedures consistent with the procedures described in §300.322(a) through (b)(1).
 3. 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 public agency must use other methods to ensure their participation, including individual or conference telephone calls, or video conferencing.

Nebraska Rule 51: Procedural Safeguards

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 51-007.06D.

Opportunity to Examine Records **92 NAC 51-009.03**

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

IDEA Regulations: Procedural Safeguards

4. A placement decision may be made by a group without the involvement of a parent, if the public agency is unable to obtain the parent's participation in the decision. In this case, the public agency must have a record of its attempt to ensure their involvement.

Sec. 300.502 Independent educational evaluation (addressed in evaluation section)

Sec. 300.503 Prior notice by the public agency; content of notice

(a) Notice. Written notice that meets the requirements of paragraph (b) of this section must be given to the parents of a child with a disability a reasonable time before the public agency—

1. Proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child; or
2. Refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child.

(b) Content of notice. The notice required under paragraph (a) of this section must include—

1. A description of the action proposed or refused by the agency;
2. An explanation of why the agency proposes or refuses to take the action;
3. A description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action;

Nebraska Rule 51: Procedural Safeguards

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.

IDEA Regulations: Procedural Safeguards

4. A statement that the parents of a child with a disability have protection under the procedural safeguards of this part and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained;
5. Sources for parents to contact to obtain assistance in understanding the provisions of this part;
6. A description of other options that the IEP Team considered and the reasons why those options were rejected; and
7. A description of other factors that are relevant to the agency's proposal or refusal.

(c) Notice in understandable language.

1. The notice required under paragraph (a) of this section must be—
 - i. Written in language understandable to the general public; and
 - ii. Provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so.
2. If the native language or other mode of communication of the parent is not a written language, the public agency must take steps to ensure—
 - i. That the notice is translated orally or by other means to the parent in his or her native language or other mode of communication;

Nebraska Rule 51: Procedural Safeguards

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.

IDEA Regulations: Procedural Safeguards

- ii. That the parent understands the content of the notice; and
- iii. That there is written evidence that the requirements in paragraphs (c)(2)(i) and (ii) of this section have been met.

Sec. 300.504 Procedural safeguards notice

(a) General. A copy of the procedural safeguards available to the parents of a child with a disability must be given to the parents only one time a school year, except that a copy also must be given to the parents—

1. Upon initial referral or parent request for evaluation;
2. Upon receipt of the first State complaint under §§300.151 through 300.153 and upon receipt of the first due process complaint under §300.507 in a school year;
3. In accordance with the discipline procedures in §300.530(h); and
4. Upon request by a parent.

(b) Internet Web site. A public agency may place a current copy of the procedural safeguards notice on its Internet Web site if a Web site exists.

(c) Contents. The procedural safeguards notice must include a full explanation of all of the procedural safeguards available under §300.148, §§300.151 through 300.153, §300.300, §§300.502 through 300.503, §§300.505 through 300.518, §§300.530 through 300.536 and §§300.610 through 300.625 relating to—

1. Independent educational evaluations;
2. Prior written notice;

Nebraska Rule 51: Procedural Safeguards

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.

IDEA Regulations: Procedural Safeguards

3. Parental consent;
4. Access to education records;
5. Opportunity to present and resolve complaints through the due process complaint and State complaint procedures, including—
 - i. The time period in which to file a complaint;
 - ii. The opportunity for the agency to resolve the complaint; and
 - iii. The difference between the due process complaint and the State complaint procedures, including the jurisdiction of each procedure, what issues may be raised, filing and decisional timelines, and relevant procedures;
6. The availability of mediation;
7. The child's placement during the pendency of any due process complaint;
8. Procedures for students who are subject to placement in an interim alternative educational setting;
9. Requirements for unilateral placement by parents of children in private schools at public expense;
10. Hearings on due process complaints, including requirements for disclosure of evaluation results and recommendations;
11. State-level appeals (if applicable in the State);
12. Civil actions, including the time period in which to file those actions; and
13. Attorneys' fees.

Nebraska Rule 51: Procedural Safeguards

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.

IDEA Regulations: Procedural Safeguards

(d) Notice in understandable language.

The notice required under paragraph (a) of this section must meet the requirements of §300.503(c).

Sec. 300.505 Electronic mail

A parent of a child with a disability may elect to receive notices required by §§300.503, 300.504, and 300.508 by an electronic mail communication, if the public agency makes that option available.

Sec. 300.506 Mediation

(a) General. Each public agency must ensure that procedures are established and implemented to allow parties to disputes involving any matter under this part, including matters arising prior to the filing of a due process complaint, to resolve disputes through a mediation process.

(b) Requirements. The procedures must meet the following requirements:

1. The procedures must ensure that the mediation process—
 - i. Is voluntary on the part of the parties;
 - ii. Is not used to deny or delay a parent's right to a hearing on the parent's due process complaint, or to deny any other rights afforded under Part B of the Act; and
 - iii. Is conducted by a qualified and impartial mediator who is trained in effective mediation techniques.
2. A public agency may establish procedures to offer to parents and schools 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—

Nebraska Rule 51: Procedural Safeguards

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.

IDEA Regulations: Procedural Safeguards

- i. Who is under contract with an appropriate alternative dispute resolution entity, or a parent training and information center or community parent resource center in the State established under section 671 or 672 of the Act; and
 - ii. Who would explain the benefits of, and encourage the use of, the mediation process to the parents.
3.
 - i. The State must 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.
 - ii. The SEA must select mediators on a random, rotational, or other impartial basis.
4. The State must bear the cost of the mediation process, including the costs of meetings described in paragraph (b)(2) of this section.
5. Each session in the mediation process must be scheduled in a timely manner and must be held in a location that is convenient to the parties to the dispute.
6. If the parties resolve a dispute through the mediation process, the parties must execute a legally binding agreement that sets forth that resolution and that—
 - i. States that all discussions that occurred during the mediation process will remain confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding; and

Nebraska Rule 51: Procedural Safeguards

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 1413(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.

IDEA Regulations: Procedural Safeguards

ii. Is signed by both the parent and a representative of the agency who has the authority to bind such agency.

7. A written, signed mediation agreement under this paragraph is enforceable in any State court of competent jurisdiction or in a district court of the United States.
8. Discussions that occur during the mediation process must be confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding of any Federal court or State court of a State receiving assistance under this part.

(c) Impartiality of mediator.

1. An individual who serves as a mediator under this part—
 - i. May not be an employee of the SEA or the LEA that is involved in the education or care of the child; and
 - ii. Must not have a personal or professional interest that conflicts with the person's objectivity.
2. A person who otherwise qualifies as a mediator is not an employee of an LEA or State agency described under §300.228 solely because he or she is paid by the agency to serve as a mediator.

Sec. 300.507 Filing a due process complaint

(a) General.

1. A parent or a public agency may file a due process complaint on any of the matters described in §300.503(a)(1) and (2) (relating to the identification, evaluation or educational placement of a child with a disability, or the provision of FAPE to the child).

Nebraska Rule 51: Procedural Safeguards

Procedural Timelines

92 NAC 51-009.04

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.

IDEA Regulations: Procedural Safeguards

2. The due process complaint must allege a violation that occurred not more than two years before the date the parent or public agency knew or should have known about the alleged action that forms the basis of the due process complaint, or, if the State has an explicit time limitation for filing a due process complaint under this part, in the time allowed by that State law, except that the exceptions to the timeline described in §300.511(f) apply to the timeline in this section.

(b) Information for parents. The public agency must inform the parent of any free or low-cost legal and other relevant services available in the area if—

1. The parent requests the information; or
2. The parent or the agency files a due process complaint under this section.

Sec. 300.508 Due process complaint

(a) General.

1. The public agency must have procedures that require either party, or the attorney representing a party, to provide to the other party a due process complaint (which must remain confidential).
2. The party filing a due process complaint must forward a copy of the due process complaint to the SEA.

(b) Content of complaint. The due process complaint required in paragraph (a)(1) of this section must include—

1. The name of the child;
2. The address of the residence of the child;

Nebraska Rule 51: Procedural Safeguards

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.

Prior Written Notice **92 NAC 51-009.05**

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 school 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;

IDEA Regulations: Procedural Safeguards

3. The name of the school the child is attending;
4. In the case of a homeless child or youth (within the meaning of section 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(2)), available contact information for the child, and the name of the school the child is attending;
5. A description of the nature of the problem of the child relating to the proposed or refused initiation or change, including facts relating to the problem; and
6. A proposed resolution of the problem to the extent known and available to the party at the time.

(c) Notice required before a hearing on a due process complaint. A party may not have a hearing on a due process complaint until the party, or the attorney representing the party, files a due process complaint that meets the requirements of paragraph (b) of this section.

(d) Sufficiency of complaint.

1. The due process complaint required by this section must be deemed sufficient unless the party receiving the due process complaint notifies the hearing officer and the other party in writing, within 15 days of receipt of the due process complaint, that the receiving party believes the due process complaint does not meet the requirements in paragraph (b) of this section.
2. Within five days of receipt of notification under paragraph (d)(1) of this section, the hearing officer must make a determination

Nebraska Rule 51: Procedural Safeguards

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.

Procedural Safeguards Notice 92 NAC 51-009.06

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

IDEA Regulations: Procedural Safeguards

on the face of the due process complaint of whether the due process complaint meets the requirements of paragraph (b) of this section, and must immediately notify the parties in writing of that determination.

3. A party may amend its due process complaint only if—
 - i. The other party consents in writing to the amendment and is given the opportunity to resolve the due process complaint through a meeting held pursuant to §300.510; or
 - ii. The hearing officer grants permission, except that the hearing officer may only grant permission to amend at any time not later than five days before the due process hearing begins.
 4. If a party files an amended due process complaint, the timelines for the resolution meeting in §300.510(a) and the time period to resolve in §300.510(b) begin again with the filing of the amended due process complaint.
- (e) LEA response to a due process complaint.
1. If the LEA has not sent a prior written notice under §300.503 to the parent regarding the subject matter contained in the parent's due process complaint, the LEA must, within 10 days of receiving the due process complaint, send to the parent a response that includes—
 - i. An explanation of why the agency proposed or refused to take the action raised in the due process complaint;

Nebraska Rule 51: Procedural Safeguards

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

IDEA Regulations: Procedural Safeguards

- ii. A description of other options that the IEP Team considered and the reasons why those options were rejected;
 - iii. A description of each evaluation procedure, assessment, record, or report the agency used as the basis for the proposed or refused action; and
 - iv. A description of the other factors that are relevant to the agency's proposed or refused action.
2. A response by an LEA under paragraph (e) (1) of this section shall not be construed to preclude the LEA from asserting that the parent's due process complaint was insufficient, where appropriate.

(f) Other party response to a due process complaint. Except as provided in paragraph (e) of this section, the party receiving a due process complaint must, within 10 days of receiving the due process complaint, send to the other party a response that specifically addresses the issues raised in the due process complaint.

Sec. 300.509 Model forms

(a) Each SEA must develop model forms to assist parents and public agencies in filing a due process complaint in accordance with §§300.507(a) and 300.508(a) through (c) and to assist parents and other parties in filing a State complaint under §§300.151 through 300.153. However, the SEA or LEA may not require the use of the model forms.

(b) Parents, public agencies, and other parties may use the appropriate model form described in paragraph (a) of this section, or

Nebraska Rule 51: Procedural Safeguards

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.

Consent and Insurance

92 NAC 51-009.09

009.09A. Children with Disabilities covered by Public Benefits or Insurance

IDEA Regulations: Procedural Safeguards

another form or other document, so long as the form or document that is used meets, as appropriate, the content requirements in §300.508(b) for filing a due process complaint, or the requirements in §300.153(b) for filing a State complaint.

Sec. 300.510 Resolution process

(a) Resolution meeting.

1. Within 15 days of receiving notice of the parent's due process complaint, and prior to the initiation of a due process hearing under §300.511, the LEA 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—
 - i. Includes a representative of the public agency who has decision-making authority on behalf of that agency; and
 - ii. May not include an attorney of the LEA unless the parent is accompanied by an attorney.
2. 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 LEA has the opportunity to resolve the dispute that is the basis for the due process complaint.
3. The meeting described in paragraph (a)(1) and (2) of this section need not be held if—
 - i. The parent and the LEA agree in writing to waive the meeting; or
 - ii. The parent and the LEA agree to use the mediation process described in §300.506.

Nebraska Rule 51: Procedural Safeguards

009.09A1. Prior to accessing a child's or parent's public benefits or insurance for the first time, and after providing notification to the child's parents consistent with 92 NAC 51-009.09A2, school districts or approved cooperatives must obtain written, parental consent that:

009.09A1a. Meets the requirements of 34 CFR §99.30 (FERPA) and 34 CFR §300.622, which consent must specify the personally identifiable information that may be disclosed (e.g., records or information about the services that may be provided to a particular child), the purpose of the disclosure (e.g., billing for services under 34 CFR 300), and the agency to which the disclosure may be made (e.g., the State's public benefits or insurance programs (e.g., Medicaid)); and

009.09A1b. Specifies that the parent understands and agrees that the school district or approved cooperative may access the parent's or child's public benefits or insurance to pay for services under this Chapter.

009.09A2. Prior to accessing a child's or parent's public benefits or insurance for the first time, and annually thereafter, the school district or approved cooperative must provide written notification, consistent with 92 NAC 51-009.05C and 009.05D, to the child's parents, that includes:

009.09A2a. A statement of the parental consent provisions in 92 NAC 51-009.09A1a and 009.09A1b of this section;

009.09A2b. A statement of the "no cost" provisions in paragraphs 92 NAC 51-012.09B1 through 012.09B3;

IDEA Regulations: Procedural Safeguards

4. The parent and the LEA determine the relevant members of the IEP Team to attend the meeting.
- (b) Resolution period.**
1. If the LEA 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.
 2. Except as provided in paragraph (c) of this section, the timeline for issuing a final decision under §300.515 begins at the expiration of this 30-day period.
 3. Except where the parties have jointly agreed to waive the resolution process or to use mediation, notwithstanding paragraphs (b)(1) and (2) of this section, 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.
 4. If the LEA 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 §300.322(d)), the LEA may, at the conclusion of the 30-day period, request that a hearing officer dismiss the parent's due process complaint.
 5. If the LEA fails to hold the resolution meeting specified in paragraph (a) of this section within 15 days of receiving notice of a parent's due process complaint or fails to participate in the resolution meeting,

Nebraska Rule 51: Procedural Safeguards

009.09A2c. A statement that the parents have the right under 34 CFR Part 99 and Part 300 to withdraw their consent to disclosure of their child's personally identifiable information to the agency responsible for the administration of the State's public benefits or insurance program (e.g., Medicaid) at any time; and

009.09A2d. A statement that the withdrawal of consent or refusal to provide consent under 34 CFR Part 99 and Part 300 to disclose personally identifiable information to the agency responsible for the administration of the State's public benefits or insurance program (e.g., Medicaid) does not relieve the school district or approved cooperative of its responsibility to ensure that all required services are provided at no cost to the parents.

009.09B. Children with Disabilities covered by Private Insurance

009.09B1. With regard to services required to provide FAPE to an eligible child under this Chapter, a school district or approved cooperative may access the parents' private insurance proceeds only if the parents provide consent consistent with 92 NAC 51-003.09.

009.09B2. Each time the school district or approved cooperative proposes to access the parent's private insurance proceeds, the school district or approved cooperative must:

009.09B2a. Obtain parental consent in accordance with 92 NAC 51-009.09B1; and

009.09B2b. Inform the parents that their refusal to permit the school district or approved cooperative to access their private insurance does not relieve the school district

IDEA Regulations: Procedural Safeguards

the parent may seek the intervention of a hearing officer to begin the due process hearing timeline.

(c) Adjustments to 30-day resolution period. The 45-day timeline for the due process hearing in §300.515(a) starts the day after one of the following events:

1. Both parties agree in writing to waive the resolution meeting;
2. 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;
3. If both parties agree in writing to continue the mediation at the end of the 30-day resolution period, but later, the parent or public agency withdraws from the mediation process.

(d) Written settlement agreement. If a resolution to the dispute is reached at the meeting described in paragraphs (a)(1) and (2) of this section, the parties must execute a legally binding agreement that is—

1. Signed by both the parent and a representative of the agency who has the authority to bind the agency; and
2. Enforceable in any State court of competent jurisdiction or in a district court of the United States, or, by the SEA, if the State has other mechanisms or procedures that permit parties to seek enforcement of resolution agreements, pursuant to §300.537.

Nebraska Rule 51: Procedural Safeguards

or approved cooperative of its responsibility to ensure that all required services are provided at no cost to the parents.

Mediation

92 NAC 51-009.12

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.

IDEA Regulations: Procedural Safeguards

(e) Agreement review period. If the parties execute an agreement pursuant to paragraph (d) of this section, a party may void the agreement within 3 business days of the agreement's execution.

Sec. 300.511 Impartial due process hearing

(a) General. Whenever a due process complaint is received under §300.507 or §300.532, the parents or the LEA involved in the dispute must have an opportunity for an impartial due process hearing, consistent with the procedures in §§300.507, 300.508, and 300.510.

(b) Agency responsible for conducting the due process hearing. The hearing described in paragraph (a) of this section must be conducted by the SEA or the public agency directly responsible for the education of the child, as determined under State statute, State regulation, or a written policy of the SEA.

(c) Impartial hearing officer.

1. At a minimum, a hearing officer—

i. Must not be—

A. An employee of the SEA or the LEA that is involved in the education or care of the child; or

B. A person having a personal or professional interest that conflicts with the person's objectivity in the hearing;

ii. Must possess knowledge of, and the ability to understand, the provisions of the Act, Federal and State regulations pertaining to the Act, and legal interpretations of the Act by Federal and State courts;

Nebraska Rule 51: Procedural Safeguards

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:

IDEA Regulations: Procedural Safeguards

- iii. Must possess the knowledge and ability to conduct hearings in accordance with appropriate, standard legal practice; and
 - iv. Must possess the knowledge and ability to render and write decisions in accordance with appropriate, standard legal practice.
2. A person who otherwise qualifies to conduct a hearing under paragraph (c)(1) of this section is not an employee of the agency solely because he or she is paid by the agency to serve as a hearing officer.
3. Each public agency must keep a list of the persons who serve as hearing officers. The list must include a statement of the qualifications of each of those persons.
- (d)** Subject matter of due process hearings. The party requesting the due process hearing may not raise issues at the due process hearing that were not raised in the due process complaint filed under §300.508(b), unless the other party agrees otherwise.
- (e)** Timeline for requesting a hearing. A parent or agency must request an impartial hearing on their due process complaint within two years of the date the parent or agency knew or should have known about the alleged action that forms the basis of the due process complaint, or if the State has an explicit time limitation for requesting such a due process hearing under this part, in the time allowed by that State law.
- (f)** Exceptions to the timeline. The timeline described in paragraph (e) of this section does not apply to a parent if the parent was prevented from filing a due process complaint due to—

Nebraska Rule 51: Procedural Safeguards

- 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.

IDEA Regulations: Procedural Safeguards

1. Specific misrepresentations by the LEA that it had resolved the problem forming the basis of the due process complaint; or
2. The LEA's withholding of information from the parent that was required under this part to be provided to the parent.

Sec. 300.512 Hearing rights

(a) General. Any party to a hearing conducted pursuant to §§300.507 through 300.513 or §§300.530 through 300.534, or an appeal conducted pursuant to §300.514, has the right to—

1. Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities, except that whether parties have the right to be represented by non-attorneys at due process hearings is determined under State law;
2. Present evidence and confront, cross-examine, and compel the attendance of witnesses;
3. Prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five business days before the hearing;
4. Obtain a written, or, at the option of the parents, electronic, verbatim record of the hearing; and
5. Obtain written, or, at the option of the parents, electronic findings of fact and decisions.

Nebraska Rule 51: Procedural Safeguards

Resolution Process

92 NAC 51-009.13

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.

IDEA Regulations: Procedural Safeguards

(b) Additional disclosure of information.

1. At least five business days prior to a hearing conducted pursuant to §300.511(a), each party must disclose to all other parties all evaluations completed by that date and recommendations based on the offering party's evaluations that the party intends to use at the hearing.
2. A hearing officer may bar any party that fails to comply with paragraph (b) (1) of this section from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.

(c) Parental rights at hearings. Parents involved in hearings must be given the right to—

1. Have the child who is the subject of the hearing present;
2. Open the hearing to the public; and
3. Have the record of the hearing and the findings of fact and decisions described in paragraphs (a)(4) and (a)(5) of this section provided at no cost to parents.

Sec. 300.513 Hearing decisions

(a) Decision of hearing officer on the provision of FAPE.

1. Subject to paragraph (a)(2) of this section, a hearing officer's determination of whether a child received FAPE must be based on substantive grounds.
2. In matters alleging a procedural violation, a hearing officer may find that a child did not receive a FAPE only if the procedural inadequacies—

Nebraska Rule 51: Procedural Safeguards

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

IDEA Regulations: Procedural Safeguards

- i. Impeded the child’s right to a FAPE;
 - ii. Significantly impeded the parent’s opportunity to participate in the decision-making process regarding the provision of a FAPE to the parent’s child; or
 - iii. Caused a deprivation of educational benefit.
 3. Nothing in paragraph (a) of this section shall be construed to preclude a hearing officer from ordering an LEA to comply with procedural requirements under §§300.500 through 300.536.
- (b)** Construction clause. Nothing in §§300.507 through 300.513 shall be construed to affect the right of a parent to file an appeal of the due process hearing decision with the SEA under §300.514(b), if a State level appeal is available.
- (c)** Separate request for a due process hearing. Nothing in §§300.500 through 300.536 shall be construed to preclude a parent from filing a separate due process complaint on an issue separate from a due process complaint already filed.
- (d)** Findings and decision to advisory panel and general public. The public agency, after deleting any personally identifiable information, must—
1. Transmit the findings and decisions referred to in §300.512(a)(5) to the State advisory panel established under §300.167; and
 2. Make those findings and decisions available to the public.

Nebraska Rule 51: Procedural Safeguards

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.

IDEA Regulations: Procedural Safeguards

Sec. 300.514 Finality of decision; appeal; impartial review

(a) Finality of hearing decision. A decision made in a hearing conducted pursuant to §§300.507 through 300.513 or §§300.530 through 300.534 is final, except that any party involved in the hearing may appeal the decision under the provisions of paragraph (b) of this section and §300.516.

(b) Appeal of decisions; impartial review.

- 1.** If the hearing required by §300.511 is conducted by a public agency other than the SEA, any party aggrieved by the findings and decision in the hearing may appeal to the SEA.
- 2.** If there is an appeal, the SEA must conduct an impartial review of the findings and decision appealed. The official conducting the review must—
 - i.** Examine the entire hearing record;
 - ii.** Ensure that the procedures at the hearing were consistent with the requirements of due process;
 - iii.** Seek additional evidence if necessary. If a hearing is held to receive additional evidence, the rights in §300.512 apply;
 - iv.** Afford the parties an opportunity for oral or written argument, or both, at the discretion of the reviewing official;
 - v.** Make an independent decision on completion of the review; and

Nebraska Rule 51: Procedural Safeguards

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.

Special Education Due Process Hearings 92 NAC 51-009.14

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 92 NAC 51-009.13.

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.

IDEA Regulations: Procedural Safeguards

vi. Give a copy of the written, or, at the option of the parents, electronic findings of fact and decisions to the parties.

(c) Findings and decision to advisory panel and general public. The SEA, after deleting any personally identifiable information, must—

1. Transmit the findings and decisions referred to in paragraph (b)(2)(vi) of this section to the State advisory panel established under §300.167; and
2. Make those findings and decisions available to the public.

(d) Finality of review decision. The decision made by the reviewing official is final unless a party brings a civil action under §300.516.

Sec. 300.515 Timelines and convenience of hearings and reviews

(a) The public agency must ensure that not later than 45 days after the expiration of the 30 day period under §300.510(b), or the adjusted time periods described in §300.510(c)—

1. A final decision is reached in the hearing; and
2. A copy of the decision is mailed to each of the parties.

(b) The SEA must ensure that not later than 30 days after the receipt of a request for a review—

1. A final decision is reached in the review; and
2. A copy of the decision is mailed to each of the parties.

(c) A hearing or reviewing officer may grant specific extensions of time beyond the periods

Nebraska Rule 51: Procedural Safeguards

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.

set out in paragraphs (a) and (b) of this section at the request of either party.

(d) Each hearing and each review involving oral arguments must be conducted at a time and place that is reasonably convenient to the parents and child involved.

Sec. 300.516 Civil action

(a) General. Any party aggrieved by the findings and decision made under §§300.507 through 300.513 or §§300.530 through 300.534 who does not have the right to an appeal under §300.514(b), and any party aggrieved by the findings and decision under §300.514(b), has the right to bring a civil action with respect to the due process complaint notice requesting a due process hearing under §300.507 or §§300.530 through 300.532. The action may be brought in any State court of competent jurisdiction or in a district court of the United States without regard to the amount in controversy.

(b) Time limitation. The party bringing the action shall have 90 days from the date of the decision of the hearing officer or, if applicable, the decision of the State review official, to file a civil action, or, if the State has an explicit time limitation for bringing civil actions under Part B of the Act, in the time allowed by that State law.

(c) Additional requirements. In any action brought under paragraph (a) of this section, the court—

1. Receives the records of the administrative proceedings;
2. Hears additional evidence at the request of a party; and

3. Basing its decision on the preponderance of the evidence, grants the relief that the court determines to be appropriate.

(d) Jurisdiction of district courts. The district courts of the United States have jurisdiction of actions brought under section 615 of the Act without regard to the amount in controversy.

(e) Rule of construction. Nothing in this part restricts or limits the rights, procedures, and remedies available under the Constitution, the Americans with Disabilities Act of 1990, title V of the Rehabilitation Act of 1973, or other Federal laws protecting the rights of children with disabilities, except that before the filing of a civil action under these laws seeking relief that is also available under section 615 of the Act, the procedures under §§300.507 and 300.514 must be exhausted to the same extent as would be required had the action been brought under section 615 of the Act.

Sec. 300.517 Attorneys' fees

(a) In general.

1. In any action or proceeding brought under section 615 of the Act, the court, in its discretion, may award reasonable attorneys' fees as part of the costs to—
 - i. The prevailing party who is the parent of a child with a disability;
 - ii. To a prevailing party who is an SEA or LEA against the attorney of a parent who files a complaint or subsequent cause of action that is frivolous, unreasonable, or without foundation, or against the attorney of a parent who continued to

IDEA Regulations: Procedural Safeguards

litigate after the litigation clearly became frivolous, unreasonable, or without foundation; or

- iii. To a prevailing SEA or LEA against the attorney of a parent, or against the parent, if the parent's request for a due process hearing or subsequent cause of action was presented for any improper purpose, such as to harass, to cause unnecessary delay, or to needlessly increase the cost of litigation.

2. Nothing in this subsection shall be construed to affect section 327 of the District of Columbia Appropriations Act, 2005.

(b) Prohibition on use of funds.

1. Funds under Part B of the Act may not be used to pay attorneys' fees or costs of a party related to any action or proceeding under section 615 of the Act and subpart E of this part.
2. Paragraph (b)(1) of this section does not preclude a public agency from using funds under Part B of the Act for conducting an action or proceeding under section 615 of the Act.

(c) Award of fees. A court awards reasonable attorneys' fees under section 615(i)(3) of the Act consistent with the following:

1. Fees awarded under section 615(i)(3) of the Act must be based on rates prevailing in the community in which the action or proceeding arose for the kind and quality of services furnished. No bonus or multiplier may be used in calculating the fees awarded under this paragraph.

Nebraska Rule 51: Procedural Safeguards

2.

- i. Attorneys' fees may not be awarded and related costs may not be reimbursed in any action or proceeding under section 615 of the Act for services performed subsequent to the time of a written offer of settlement to a parent if—
 - A. The offer is made within the time prescribed by Rule 68 of the Federal Rules of Civil Procedure or, in the case of an administrative proceeding, at any time more than 10 days before the proceeding begins;
 - B. The offer is not accepted within 10 days; and
 - C. The court or administrative hearing officer finds that the relief finally obtained by the parents is not more favorable to the parents than the offer of settlement.
- ii. Attorneys' fees may not be awarded relating to any meeting of the IEP Team unless the meeting is convened as a result of an administrative proceeding or judicial action, or at the discretion of the State, for a mediation described in §300.506.
- iii. A meeting conducted pursuant to §300.510 shall not be considered—
 - A. A meeting convened as a result of an administrative hearing or judicial action; or
 - B. An administrative hearing or judicial action for purposes of this section.

IDEA Regulations: Procedural Safeguards

Nebraska Rule 51: Procedural Safeguards

3. Notwithstanding paragraph (c)(2) of this section, an award of attorneys' fees and related costs may be made to a parent who is the prevailing party and who was substantially justified in rejecting the settlement offer.
4. Except as provided in paragraph (c)(5) of this section, the court reduces, accordingly, the amount of the attorneys' fees awarded under section 615 of the Act, if the court finds that—
 - i. The parent, or the parent's attorney, during the course of the action or proceeding, unreasonably protracted the final resolution of the controversy;
 - ii. The amount of the attorneys' fees otherwise authorized to be awarded unreasonably exceeds the hourly rate prevailing in the community for similar services by attorneys of reasonably comparable skill, reputation, and experience;
 - iii. The time spent and legal services furnished were excessive considering the nature of the action or proceeding; or
 - iv. The attorney representing the parent did not provide to the LEA the appropriate information in the due process request notice in accordance with §300.508.
5. The provisions of paragraph (c)(4) of this section do not apply in any action or proceeding if the court finds that the State or local agency unreasonably protracted the final resolution of the action or proceeding or there was a violation of section 615 of the Act.

Sec. 300.518 Child's status during proceedings

(a) Except as provided in §300.533, during the pendency of any administrative or judicial proceeding regarding a due process complaint notice requesting a due process hearing under §300.507, unless the State or local agency and the parents of the child agree otherwise, the child involved in the complaint must remain in his or her current educational placement.

(b) If the complaint involves an application for initial admission to public school, the child, with the consent of the parents, must be placed in the public school until the completion of all the proceedings.

(c) If the complaint involves an application for initial services under this part from a child who is transitioning from Part C of the Act to Part B and is no longer eligible for Part C services because the child has turned three, the public agency is not required to provide the Part C services that the child had been receiving. If the child is found eligible for special education and related services under Part B and the parent consents to the initial provision of special education and related services under §300.300(b), then the public agency must provide those special education and related services that are not in dispute between the parent and the public agency.

(d) If the hearing officer in a due process hearing conducted by the SEA or a State review official in an administrative appeal agrees with the child's parents that a change of placement is appropriate, that placement must be treated as an agreement between the State and the parents for purposes of paragraph (a) of this section.

Sec. 300.520 Transfer of parental rights at age of majority

(a) General. A State may provide that, when a child with a disability reaches the age of majority under State law that applies to all children (except for a child with a disability who has been determined to be incompetent under State law)—

- 1.**
 - i.** The public agency must provide any notice required by this part to both the child and the parents; and
 - ii.** All rights accorded to parents under Part B of the Act transfer to the child;
- 2.** All rights accorded to parents under Part B of the Act transfer to children who are incarcerated in an adult or juvenile, State or local correctional institution; and
- 3.** Whenever a State provides for the transfer of rights under this part pursuant to paragraph (a)(1) or (a)(2) of this section, the agency must notify the child and the parents of the transfer of rights.

(b) Special rule. A State must establish procedures for appointing the parent of a child with a disability, or, if the parent is not available, another appropriate individual, to represent the educational interests of the child throughout the period of the child's eligibility under Part B of the Act if, under State law, a child who has reached the age of majority, but has not been determined to be incompetent, can be determined not to have the ability to provide informed consent with respect to the child's educational program.

IDEA Regulations: Procedural Safeguards**Nebraska Rule 51: Procedural Safeguards**

Sec. 300.519 – Surrogate parents (covered in different section)

Discipline Procedures (covered in different section)

Sec. 300.530 – Authority of school personnel

Sec. 300.531 – Determination of setting

Sec. 300.532 – Appeal

Sec. 300.533 – Placement during appeals

Sec. 300.534 – Protections for children not determined eligible for special education and related services

Sec. 300.535 – Referral to and action by law enforcement and judicial authorities

Sec. 300.536 – Change of placement because of disciplinary removals

Sec. 300.537 – State enforcement mechanisms

District Considerations for Policy and Procedure Development

Sample district policy statement

[Xyz school district] will implement procedural safeguards outlined in Federal and state regulations (34 CFR § 300.500, 92 NAC 51-009.01). Parents will be given a copy of their procedural safeguards annually or upon initial referral or parental request for evaluation; upon request by a parent; 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 in accordance with the discipline procedures in 92 NAC 51-016. District procedures will be developed for parent participation in decisionmaking parent examination of records, record access, release of records, record amendments, confidentiality safeguards, records regarding migratory children with disabilities, retention and destruction of records, insurance process (if applicable)], and dispute resolution processes.

Procedural considerations

- Develop steps and procedures needed to implement procedural safeguards for each section identified.
 - » Parent participation in decisionmaking
 - » Parent examination of records
 - » Record access
 - » Release of records
 - » Record amendments
 - » Confidentiality safeguards
 - » Records regarding migratory children with disabilities
 - » Retention and destruction of records
 - » Prior written notice
 - » Insurance process (if applicable)
 - » Dispute resolution processes (to include mediation and due process)
 - » Other areas addressed in separate sections: IEE, prior written notice, procedural timelines

Guidance resources

- [NE Medicaid in Public Schools Guidance Document](#)
- [NE Prior Written Notice Guidance Document](#)
- [Parent-Rights-for-Special-Education-3-21.pdf \(ne.gov\)](#)