

**NEBRASKA DEPARTMENT
OF EDUCATION**

RULE 3

REGULATIONS GOVERNING LEARNERS WITH HIGH ABILITY

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

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**State of Nebraska
Department of Education
P.O. Box 94987
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TITLE 92 - NEBRASKA DEPARTMENT OF EDUCATION

CHAPTER 3 - REGULATIONS GOVERNING LEARNERS WITH HIGH ABILITY

001 GENERAL PROVISIONS

001.01 Statutory Authority

This Chapter is adopted pursuant to Neb. Rev. Stat. 79-318 and 79-1105 through 79-1108.03.

001.02 Scope and Delimitations

This Chapter is adopted for the purpose of specifying consistent methods for the identification of learners with high ability, defining and providing for the standards of quality for a continuum of high ability services distributing funds to eligible school districts and combinations of school districts, and establishing requirements for measuring the academic progress of students receiving high ability services. The State Board of Education, through the provisions of this Chapter, intends to encourage schools to develop and implement plans for the appropriate education of learners with high ability. Changes to this chapter become operative beginning with the first school year that starts after the effective date of such changes.

002 DEFINITIONS

002.01 Appeals Process means a procedure for a student or a parent, or guardian to request a review of an identification, placement, or service decision on which there is a disagreement.

002.02 Assessment Tool means a measure used to ascertain evidence of potential and/or demonstrated ability. Tools should include varying measurements aligned with the operational definition of High Ability Learner.

002.03 Combination of school districts means two or more school districts acting together or an educational service unit acting on behalf of two or more school districts.

002.04 Department means the Nebraska Department of Education.

002.05 Exit Procedure means a systematic process used to determine whether a student is no longer benefiting from high ability eligibility and should be released from the identification.

002.06 High Ability Services means a continuum of academic and affective instructional approaches, settings, and staffing selected for the delivery of appropriate services to support the needs of individual learners with high ability.

002.07 Learner with High Ability has the same meaning as in Neb. Rev. Stat. 79-1107.

002.08 Local Norms means comparing student performance on standardized assessments with grade-level peers in the same local context (i.e. school building, district, etc.).

002.09 Matching Funds means funds a school district or a combination of school districts uses to fund an approved accelerated or differentiated curriculum program

from sources other than the appropriation distributed pursuant to the provisions of section 006 of this chapter.

002.10 Multiple Criteria means the use of three (3) or more varied assessment tools in the identification of learners with high ability.

002.11 National Norms means the use of standardized tests to compare the scores of students with a common national standard defined by the performance of a representative national sample of students of the same age or in the same grade.

002.12 State Norms means comparing student performance on standardized assessments with a common state standard defined by the performance of a representative state sample of students of the same age or in the same grade.

002.13 Portability means that an identification as a learner with high ability by a Nebraska school district is a part of a student's permanent record, and such identification makes the student eligible for high ability services in all Nebraska school districts regardless of transfers or relocations.

002.14 Regular Curriculum means a standards-based sequence of planned learning that enables a student to master the knowledge and skills of the student's current grade level.

002.15 School District means a local system as defined in Neb. Rev. Stat. 79-1003.

002.16 School Fiscal Year means the fiscal year of a school district as defined in Neb. Rev. Stat. 79-1091.

002.17 Twice-Exceptional means a student who is:

002.17(A) Identified as a learner with high ability pursuant to this Rule; and

002.17(B) A child with a disability pursuant to Neb. Rev. Stat. 79-1117 or a qualified student with a disability pursuant to section 504 of the federal Rehabilitation Act of 1973, 29 U.S.C. 794, or Title II of the federal Americans with Disabilities Act of 1990, 42 U.S.C. 12131 to 12165.

003 PLAN FOR HIGH ABILITY SERVICES

003.01 To qualify as an approved program and receive state funding for high ability learning, a school district or combination of school districts must submit a High Ability Learning Plan to the department annually. The department will approve a plan that meets the standards of quality described in this section. For a program to be approved, the plan must include the following standards of quality:

003.01(A) A definition of learner with high ability that operationalizes the elements of the definition in Neb. Rev. Stat. 79-1107;

003.01(B). The goals and objectives of the local program for learners with high ability;

003.01(C) Identification procedures for learners with high ability as described in section 004 of this chapter;

003.01(D) A description of the continuum of high ability services as described in section 005 of this chapter;.

003.01(E) The evaluation process as described in section 007 of this chapter;

003.01(F) A staff development training and support plan; and

003.01(G) A program management outline, including, but not limited to, personnel roles, the plan for communicating with parents and guardians and the public, an appeals process, and an action plan.

003.02 The approved plan may be developed by a representative planning committee including parents and guardians, classroom teachers, administrators, and outside stakeholders. Advisory members with experience or expertise in education of learners with high ability are highly encouraged to be a part of the planning committee.

003.03 Each school district or combination of school districts with an approved plan must make such approved plan available to the citizens of the school district or combination of school districts by posting a copy publicly (ex: on their respective websites, parent and guardian communication platform, etc.). A written copy must also be provided upon request.

004 IDENTIFICATION PROCEDURES

004.01 Each school district, individually or in a combination of school districts, must adopt uniform procedures to identify students as learners with high ability. The procedures may be developed or administered by an individual school district or a combination of school districts. The procedures must:

004.01(A) Recognize a student's exceptional abilities, potential, interests, and needs by creating a holistic profile. The procedures should focus on identifying areas of strength rather than emphasizing the absence of weakness;

004.01(B) Align with the operational definition of learner with high ability and any continuum of services provided;

004.01(C) Include universal consideration of all students by annually reviewing results from universally administered statewide assessments and/or whole grade norm-referenced assessments using a nationally recognized assessment instrument. This process will create a pool of potential candidates for identification of learners with high ability. This process must ensure thorough identification within the candidate pool;

004.01(D) Be based on multiple criteria. Criteria should be designed for identification of learners with high ability within the local population;

004.01(D)(i) Include scores from valid and reliable instruments that can identify exceptional abilities and potential;

004.01(D)(ii) Criteria must combine quantitative and qualitative data, including data with direct relevance to the operational definition of a learner with high ability;

004.01(D)(iii) Use local, state and/or national norms;

004.01(D)(iv) Include at least three (3) data points as follows:

004.01(D)(iv)(1) One data point must be from one of the following quantitative assessment tools:

004.01(D)(iv)(1)(a) An individually administered or group-administered, norm-referenced or criterion-referenced aptitude, ability, cognitive, achievement, or individual intelligence assessment;

004.01(D)(iv)(1)(b) A record of academic activity such as grades, grade point average, formative assessments, summative assessments, task performance, and/or student products. Performance data for twice-exceptional students should include accommodations;

004.01(D)(iv)(1)(c) The student's cumulative records, which may include progress reports, evaluations, or, for twice-exceptional learners, Individualized Education Program (IEP) or 504 Plan documentation;

004.01(D)(iv)(1)(d) Student behavior metrics, such as absenteeism, tardiness, suspension, and other documented incidents;

004.01(D)(iv)(1)(e) Results from language acquisition assessments (ex. ELPA) and/or biliteracy and language proficiency tests (ex. AAPPL, Avant STAMP) to identify advanced language development or potential among English Learners;

004.01(D)(iv)(1)(f) Analysis of variable performance across domains to identify twice-exceptional students; or

004.01(D)(iv)(1)(g) An additional valid and reliable assessment.

004.01(D)(iv)(2) The second data point must be from one of the following qualitative assessment tools:

004.01(D)(iv)(2)(a) Nominations;

004.01(D)(iv)(2)(b) An assessment of student performance, work samples, or a student portfolio;

004.01(D)(iv)(2)(c) Enrollment and evidence of success in accelerated or advanced coursework, enrichment programs, honors classes, or classes for which students are eligible to receive college credit;

004.01(D)(iv)(2)(d) A record of accomplishments, such as awards, honors, extracurricular achievements, or success in external organizations;

004.01(D)(iv)(2)(e) Observation checklists or anecdotal records;

004.01(D)(iv)(2)(f) Rating scales, checklists, or questionnaires;

004.01(D)(iv)(2)(g) An individual interview; or

004.01(D)(iv)(2)(h) Teacher, school personnel, parent or guardian, Community member, peer, or self-input; and

004.01(D)(iv)(3) The third data point and any additional data points may be from the categories in subdivision 004.01(D)(iv)(1) or 004.01(D)(iv)(2) of this section, from an additional valid and reliable measure or procedure, or from teachers, parents or guardians, community members, peers, or self-input; and

004.01(E) Include an appeals process for parents, guardians, or other persons exercising legal or actual charge or control over the child to appeal any decision of the school regarding the identification or non-identification of their child as a learner with high ability.

004.02 Within thirty (30) school days following the identification of a learner with high ability, the district must notify a parent or guardian of such identification and provide the procedures under which the student was identified as a learner with high ability and other relevant information.

004.03 Within the first thirty (30) school days following the identification of a learner with high ability, the school district administration must provide the classroom teacher with documentation of such identification.

004.04 If a student is identified as a learner with high ability but will not receive high ability services, the school district or combination of school districts must provide written notice to a parent or guardian that no high ability services will be provided.

004.05 Identification as a learner with high ability in Nebraska is portable. Each school district or combination of districts must establish and implement procedures for the statewide portability of an identification as a learner with high ability, including, but not limited to:

004.05(A) Transferring the evidence for any such identification and information about any high ability services received with the student records if a student leaves the school district prior to graduation;

004.05(B) Reviewing the student records of any student transferring into the school district within thirty (30) school days of enrollment to determine if the student has been identified as a learner with high ability, if the student has received any high ability services, and what, if any, high ability services will be provided to the student;

004.05(C) If under subdivision 004.05(B) of this chapter a student transferring into the school district is found to have been identified as a learner with high ability, communicating with parents and guardians within sixty (60) calendar days of enrollment about any high ability services to be provided to the student; and

004.05(D) If the learner with high ability identification records for any student transferring into the school district are incomplete, consulting with the former school district or a parent or guardian, to obtain the complete record.

004.06 The identification status of a student identified as a learner with high ability may only be terminated by a school district or combination of school districts following an exit procedure established pursuant to this subdivision. Each school district

or combination of school districts must develop a formal exit procedure which includes, but is not limited to:

004.06(A) Provision of a written notice to a parent or guardian that the student's identification as a learner with high ability is under review. Such notice must include the reason for undertaking such review. The reason must be based on a legitimate educational concern related to high ability services. Behavioral concerns, academic/achievement performance, or transferring schools alone do not qualify as legitimate educational concerns related to high ability services. Exit decisions must be based on comprehensive evidence that aligns with the operational definition of a high ability learner and the student's demonstrated needs;

004.06(B) An evaluation of student performance. The evaluation must be designed to identify the source of the student's legitimate educational concern related to high ability services and identify the most appropriate intervention. Multiple data points should be considered. No single criterion, such as grades or conduct, is sufficient to remove a student's identification as a student with high ability;

004.06(C) Communication with a parent or guardian and the student to discuss the results of the evaluation;

004.06(D) Development of an action plan addressing the area of concern for a designated period of time. This may include, but is not limited to, behavior intervention, a change in services, or additional evaluation;

004.06(E) A review of the data at the end of the designated period to determine whether the student's high ability identification status should be maintained or formally exited, based on the student's educational needs;

004.06(F) Notification of a parent or guardian in writing of the determination. The determination may be appealed by a parent or guardian pursuant to the appeals process developed pursuant to subdivision 004.01(E) of this chapter; and

004.06(G) Eligibility for a student who is exited from their status as learner with high ability may be reidentified as a learner with high ability in the same manner as any other student is so identified.

004.07 In cases where a student identified as a learner with high ability transfers to a school district that does not offer high ability services or does not offer services in the identified domain (e.g., math, performing arts), the receiving school district must:

004.07(A) Provide written notice to the parent or guardian within thirty (30) school days of the student's enrollment. This notice must clearly state that the school district or combination of school districts does not offer services in the identified area of high ability or does not provide high ability services;

004.07(B) Maintain the student's record of high ability identification, regardless of the availability of services within the school district or combination of school districts, unless the exit procedure outlined in section 004.06 is followed; and

004.07(C) Provide the parent or guardian the opportunity to discuss any alternative educational options that may be provided to support the students' continued growth.

005 CONTINUUM OF HIGH ABILITY SERVICES

005.01 Each school district or combination of school districts serving learners with high ability must serve identified learners with high ability during the school day. Additional offerings, such as academic competitions, clubs, or optional extra-curricular activities may be used supplementally. School districts, or a combination of school districts, must serve such students using a continuum of high ability services that may include, but are not limited to, the following:

005.01(A) Differentiated Curriculum. Differentiated curriculum is an adjustment of the regular curriculum that provides challenges at appropriate levels according to the strengths of individual students. Differentiated curriculum provides such challenges through modified processes, products, or content, including, but not limited to:

005.01(A)(i) Curriculum Enrichment. Curriculum enrichment is the process of enhancing the regular curriculum by offering additional opportunities, resources, or activities that extend, deepen, or broaden learning experiences for students who have already mastered or can quickly master the standard content;

005.01(A)(ii) Curriculum Compacting. Curriculum compacting is the process of assessing student mastery and adjusting curriculum for students who have already mastered the material replacing content students know with new content, enrichment options, or other activities;

005.01(A)(iii) Project-Based Learning. Project-based learning (PBL) is a learning model that encourages the active participation of learners with high ability and allows such learners to gain knowledge and develop skills as they work to investigate a complex problem, question, or challenge over a sustained amount of time. PBL enhances both academic and social skills and emphasizes the use of technology;

005.01(A)(iv) Independent Study. Independent study is a learning model where a student conducts self-directed research projects that are carefully planned with the teacher and monitored frequently; or

005.01(A)(v) Advanced Academic Courses. Advanced academic courses are designed to offer more challenging learning experiences than the regular curriculum, often at a faster pace and more in-depth. Examples include: courses for which students are eligible for college credit, honors courses, and dual enrollment.

005.01(B) Grade-Based Acceleration. Grade-based acceleration occurs when a student moves through the regular curriculum at a rate faster than typical of the same-aged peers. Curriculum acceleration includes, but is not limited to, skipping a grade level, subject-based acceleration, early entrance into kindergarten or postsecondary education, or earning credit by examination.

005.01(C) Student Ability or Flexible Grouping. Student ability or flexible grouping is the use of various organizational formats to meet the academic and affective needs of learners with high ability through placement with like-ability peers. Grouping is flexible and uses data to group and regroup students for learning activities based on their strengths, interests, and readiness. This includes, but is not limited to:

005.01(C)(i) Cluster Grouping A method of grouping in which high ability students at a specific grade level are placed together in one classroom, along with a group of high-achieving and average-ability students. This reduces the span of academic readiness levels the teacher needs to manage, making it easier to provide targeted instruction while ensuring exposure to rigorous content to students who have not yet been identified to help develop their talents;

005.01(C)(ii) Enrichment Clusters Collaborative, choice-based projects, usually scheduled for one or two periods a week and conducted in cycles throughout the year that allow students and teachers to work in areas of interest with others who share the same interest,

005.01(C)(iii) Pull-out Programs Students with advanced potential are pulled from their regular classrooms to work with a staff member who facilitates accelerated and/or enriched learning experiences, or

005.01(C)(iv) Cross-Grade Grouping Students of similar ability are grouped across different grade levels in particular subjects; and

005.01(D) Mentoring/Shadowing. The pairing of a student with an individual with specialized knowledge in a short-term or in-depth, mentoring relationship designed to provide a series of meaningful learning experiences. This experience may occur within a school setting or at an external location.

005.02 Learners with high ability require affective support to foster cognitive growth. Therefore, targeted affective skill development and growth and success supports must be provided by each eligible, approved school district or combination of school districts with an approved plan.

005.02(A) Affective Skill Development refers to the intentional teaching and development of emotional, social, and interpersonal skills to address the unique needs and challenges associated with learners with high ability. This includes, but is not limited to, providing opportunities for students to develop emotional intelligence, resilience, and interpersonal skills through targeted activities, discussions, and peer interactions.

005.02(B) Growth & Success Supports provides targeted strategies to address the unique social and emotional needs of high ability learners, preparing them to succeed and become college and career ready. This includes, but is not limited to, approaches for managing perfectionism, underachievement, transitions, academic planning, and performance, as well as vocational and career awareness, exploration, and planning.

006 STATE FUNDING

006.01 The Department will, annually on or before October 15, distribute funds appropriated for approved accelerated or differentiated curriculum programs to school districts and combinations of school districts.

006.02 Each school district may apply to the Department individually or in a combination of school districts for base funds and matching funds. Each eligible applicant school district or combination of school districts will receive one-tenth of one percent of the appropriation as base funds plus a pro rata share of the remainder of the appropriation based on identified learners with high ability participating in an approved program as matching funds. For purposes of calculating matching funds under this subsection, the number of identified learners with high ability participating in an approved program in any school district may not exceed ten percent of the prior school year's fall membership as defined in Neb. Rev. Stat. 79-1003. Each applicant school district or combination of school districts must:

006.02(A) Provide an approved program pursuant to section 003 of this chapter for students identified as learners with high ability;

006.02(B) Provide matching funds greater than or equal to fifty percent of the matching funds received pursuant to this chapter;

006.02(C) On or before August 1 of the year following the receipt of funds, provide an accounting in the manner prescribed by the Department of the funds received pursuant to this section, matching funds required by subdivision 006.02(B) of this chapter, and the total cost of the accelerated or differentiated curriculum program; and

006.02(D) Provide data regarding the academic progress of students participating in the accelerated or differentiated curriculum program as required under subsection 007.02 of this chapter.

006.03 If a school district or combination of school districts will not be providing the necessary matching funds required by subdivision 006.02(B) of this chapter, the school district or combination of school districts must request a reduction in the amount received such that the school district or combination of school districts will be in compliance with such requirement. A school district or combination of school districts not complying with the matching fund requirement in subdivision 006.02(B) of this chapter will be ineligible for funds in the following year.

006.04 A School district or combination of school districts applying for base and matching funds under this section must use the application forms provided by the Department. Such applications must be received by the Department by September 15 of each year.

006.05 School districts that are applying for funding under this chapter as part of a combination of school districts must determine the method for identifying expenditures for funding with the approved program and reach a consensus on a mutually-beneficial plan.

006.06 Each school district or combination of school districts must provide an accounting of funds to the Department pursuant to Neb. Rev. Stat. 79-1108.02 on

forms provided by the Department. Each combination of school districts must designate a fiscal agent, which may be one of the member school districts or an educational service unit. The fiscal agent will complete the application, revise and publish the approved plan, and provide the accounting of funds to the Department.

007 DATA, EVALUATION, AND FUTURE PLANNING

007.01 Data requirements for measuring and reporting academic progress: Each school district must gather and maintain aggregate data measuring the academic progress for the school district's identified learners with high ability. Each school district or combination of districts must provide the data required under this subsection to the Department by June 30 of each school year electronically via the Department's reporting system using the Department's student identifier system.

007.01(A) At a minimum, such data must include:

007.01(A)(i) Individual achievement, including student achievement data collected pursuant to 92 NAC 10;

007.01(A)(ii) SAT/ACT scores;

007.01(A)(iii) Graduation rates; and

007.01(A)(iv) The number of identified learners with high ability participating in courses for which students are eligible for college credit, honors courses, or dual enrollment.

007.01(B) Each school district must provide the data required under subsection 007.01 of this chapter to the Department on forms prescribed by the Department.

007.02 Program review Each school district or combination of school districts serving learners with high ability must establish procedures for both formative and summative evaluation for a review. The purpose of such evaluation is to measure program effects, identify strengths, and provide information to drive continuous improvement of supporting learners with high ability.

007.02(A) The evaluation procedures must include input from parents and guardians, educators, students, and community members.

007.02(B) Each school district or combination of school districts must conduct a comprehensive program review at least once every five years. A report summarizing the program review process and its outcomes must be submitted to the Department within each five-year period. The program review process should include, but is not limited to:

007.02(B)(i) Methods and tools for evaluation, including, but not limited to, a schedule for periodic feedback and review of the program goals, identification process, services, personnel, budget, and reporting practices;

007.02(B)(ii) Collection and analysis of data about student performance, including, but not limited to, academic and affective outcomes; demographics, learning climate, and former high school students. Analysis includes, but is not limited to, outcomes in relation to program goals and identification proportionality;

007.02(B)(iii) Analysis of progress toward the goals outlined in the approved plan;

007.02(B)(iv) Personnel qualifications and staff development, including, but not limited to, the number of FTE dedicated to learners with high ability, the number of high ability endorsed staff, counselors, and number of professional learning hours related to learners with high ability;

007.02(B)(v) Communication, including, but not limited to, efforts to publicize the approved plan, communication with parents and guardians regarding identification and services, and community and family engagement; and

007.02(B)(vi) Stakeholder perceptions, including, but not limited to, student, parent or guardian, staff, and community perceptions of the program.

007.03 Plan revisions Each approved plan should be revised each five years in response according to the results of the evaluation review. Revised plans should include, but not be limited to, findings from the review process, changes implemented, and newly established goals.

007.04 The evaluation procedures and review must be available for review by interested persons upon request after redaction of any personally identifiable student information.

008 APPEALS

008.01 Any applicant for funding under section 006 of this chapter aggrieved by a decision of the Department related to this chapter may request in writing a review by the Commissioner of Education within fifteen (15) calendar days of receipt of the Department's decision. The Commissioner must review the claim together with all other materials submitted in the claimant's application, the requirements of this chapter, and state law. The Commissioner, within ninety (90) calendar days of the Department's receipt of the claim, must make a final written determination regarding the claim. A copy of the final written determination must be mailed to the claimant, certified mail, return receipt requested.

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

009 PENALTIES FOR NONCOMPLIANCE

009.01 In addition to other penalties which may be provided by law for noncompliance with the requirements of Neb. Rev. Stat. 79-1105 through 79-1108.03 and the requirements of this chapter, the failure of a school district to comply with the identification requirements of Neb. Rev. Stat. 79-1108 and section 004 of this chapter will be treated as a violation of a mandatory provision of 92 NAC 10 (Rule 10), and may subject the school district to loss of accreditation as provided in that chapter. A school district may comply with the identification requirements in combination with one or more other school districts.