



REQUIREMENTS FOR WORKING WITH CONTRACTED PROGRAMS FOR STUDENTS WITH DISABILITIES

NDE OFFICE OF SPECIAL EDUCATION
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SPED
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Requirements for Working with Contracted Programs for Students with Disabilities

Purpose

This resource supports IEP teams when considering and placing students with disabilities in contracted special education programs outside the district. It clarifies legal responsibilities and expectations for school districts and contracted programs to help ensure students receive appropriate, compliant supports and services as they work to return to their public school educational environment.

Legal Foundations

92 NAC 51-013.01- Special education programs and support services may be provided by contracting with another school district, approved cooperative, or with a Nebraska Department of Education provisionally approved service provider. Responsibility for compliance with state and federal regulations for programs for children with disabilities remains with the school district.

92 NAC 51-013.02B-B1- The expenditures for special education contractual services shall be considered for payment of allowable costs (i.e., reimbursable) under the following conditions: The services claimed by the school district or approved cooperative were provided by contracted programs whose service(s) and rate(s) were provisionally approved by the NDE.

92 NAC 51-003.55- A Contract Service Provider is an individual or service agency that submits a Special Education Contract Service Provider Application to the NDE and receives approval after NDE verifies that staff hold current and appropriate Nebraska teaching certificates, DHHS licenses, or national board certifications to provide specific special education and/or related services for which school districts may contract.

92 NAC 51-013.03C & C1-C7- A Contracted Program is a specific type of contract service provider. It is an agency that operates one or more special education classrooms in its own facility and provides special education (and if applicable, related services) to students with disabilities placed there by their IEP team under a contract with the school district. The classroom is led by an onsite, certified special education teacher.

- Contracted special education programs approved by NDE deliver special education and related services as defined in Rule 51 when districts cannot provide a student with a free appropriate public education within the district.
 - Because these services constitute special education, students must be identified with a disability and have an active IEP before being placed in a contracted special education program, regardless of whether the placement is intended to be short-term or long-term.
 - A contracted program must submit a Special Education Contract Service Provider Application to NDE.

- The program receives approval after NDE verifies:
 - All special education as well as related service and other instructional staff, if applicable, hold current and appropriate Nebraska teaching certificates, DHHS licenses, or national board certification.
 - A cost schedule for the educational services the program will provide.
 - A written description of the services provided in the program, including the daily classroom schedule and a summary of the curriculum implemented.
 - Separation of sectarian educational costs and non-sectarian educational costs, if applicable.
 - Separation of the cost of residential care costs from the cost of the educational program, if applicable.
 - Documentation of compliance with required building codes and safety regulations, such as occupancy permits, fire marshal approval, etc.
 - For Educational Service Units Only- A final report of expenditures, which is due within 45 days after the service provider's fiscal year end.

See **Section 013** in [Nebraska Rule 51](#) for full regulations pertaining to contracting with approved providers for special education services.

- Clarification: Although Section 013 in Rule 51 is titled "Contracted Programs," the requirements in Section 013 apply whenever a school district contracts with another school district, an approved cooperative, or an NDE-approved service provider to deliver special education programs or support services. This resource focuses on contracted programs that operate

special education classrooms in their facility, but the Section 013 regulations apply to *all* types of contracted special education service providers (92 NAC 51-013.01).

School District Responsibilities

District Compliance Checklist

When an IEP team places a student in a contracted program for special education services, the school district retains full responsibility for:

- **Ensuring the Contracted Program has been Approved by NDE** - Services claimed for reimbursement must be provided by a program whose rates and codes have been approved by NDE (92 NAC 51-013.02B1).
 - Utilize the [Service Provider Search](#) feature on the Special Education Contract Service Provider portal to confirm the agency's approval status.
 - Annual application and approval is required for each contracted provider (92 NAC 51-013.03H). The NDE application opens in May and closes in mid-October each year; returning providers must reapply within this timeframe.
- New contracted providers have a 45-day grace period to apply for NDE approval after the district initiates a contract (92 NAC 51-013.02C).
 - If the provider fails to submit an application or obtain NDE approval within that grace period window, the district must seek and secure placement for the student in an approved contract program within 14 calendar days (92 NAC 51-013.02C1).
- **Maintaining IDEA and Rule 51 Compliance** - At all times, responsibility for compliance with the Individuals with Disabilities Education Act (IDEA) and Rule 51 regulations in contracted programs for students with disabilities remains with the school district (92 NAC 51-013.01).
 - If a file for a student placed in a contracted program is selected for focused monitoring or an indicator review, or if a state complaint or due process is filed, the district is responsible for compliance.
- **Scheduling IEP Meetings with All Required Participants** - The district is responsible for arranging IEP meetings and ensuring participation by parents, the district, and a representative from the contracted program (92 NAC 51-013.02 & 013.02A).
 - Meetings may occur at the district, the contracted program site, or another appropriate location.
- **Developing, Maintaining, and Updating the IEP** - The district develops, maintains, and revises the student's IEP annually at a minimum (92 NAC 51-013.02).
 - The contracted program implements the IEP as written but does not create or alter it.
 - The IEP and other legal documentation should remain on the district's special education paperwork.
- **Making Placement Decisions**- The student's IEP team, not the contracted program, determines the student's placement based on the student's unique needs and least restrictive environment considerations, not on program availability or administrative convenience (92 NAC 51-013.02 & 013.02A).

- Contracted special education classrooms are special education placements and therefore may only serve students who have been identified with a disability and have an IEP documenting the placement.
 - The district must provide the parent with a prior written notice explaining the placement decision, including why less restrictive options were considered and rejected, and ensure procedural safeguards are followed (92 NAC 51-009.05AA1 and 008.01H).

- **Ensuring a Free Appropriate Public Education for the Student** - Even though services are delivered through contracted staff at a separate facility, the district must ensure the placement meets the student's individual needs (92 NAC 51-003.24).

- **Initiating, Entering, and Maintaining a Written Contract with the Contracted Program** - The district is the responsible party for ensuring that a written contract is in place when services for a student with a disability are delivered through an approved contracted provider (92 NAC 51-013.02D).
 - Since the district bears legal responsibility for the content and compliance of the contract and must ensure the contracted provider is approved, monitor the delivery of services as described in the contract, and is the party claiming reimbursement in SPEDFRS, the district should write the contract (92 NAC 51-92 NAC 51-013.02D).
 - At a minimum, the contract must include:
 - Description of the specific special education (and related services, if applicable) to be provided (92 NAC 51-013.02D1).
 - Names of children served (92 NAC 51-013.02D2).
 - The cost structure for services (92 NAC 51-013.02D3).
 - This is the contracted program's NDE-approved hourly, daily, monthly, or annual rate (92 NAC 51-013.03B).
 - NDE service and agency codes (92 NAC 51-013.02D4).

- **Retaining a Signed Contract on File** - The district must keep a signed copy of the contract in the student's district records (92 NAC 51-013.02E).

- **Monitoring the Student's Progress** - The district must actively monitor the student's progress on IEP goals and verify that the contracted program is implementing services as written in the IEP (92 NAC 51-013.02F).

- **Maintaining Required Student Records** - The district must ensure all applicable special education records are maintained within the district, including (92 NAC 51-013.02F):
 - A record of all referral information, notice to parents, parent notice and consent for initial evaluation, multidisciplinary evaluation team report, notification of IEP meeting, the individual education program, parent notice and consent for initial placement, notice of change of placement or program termination, notice of reevaluation, and other supportive data.
 - Also under 92 NAC 51-013.02F, districts may elect to enter into agreements with approved contracted providers for the proper maintenance and protection of personally identifiable data on children with disabilities.

- **Fulfilling Financial Obligations** - The district is liable for educational costs when it initiates or agrees to placement, or when placement results from due process or court order (92 NAC 51013.02G & G1-G4).
 - Services delivered by a non-approved contracted program are not eligible for reimbursement under special education funding (92 NAC 51-013.02C2).
 - The district assumes full financial responsibility for student placement in any unapproved contracted program.

- **Providing Transportation** - The district must provide special education transportation for any child with a disability when the child is required to attend a facility other than what would be the normal school of attendance for the child to receive appropriate special education services or when the nature of the child's disability is such that special education transportation is required (92 NAC 51-014.01 & B1-2).

School District Best Practices

To ensure the quality of services, compliance, safety, and outcomes of students placed in contracted special education programs, the following district practices are recommended:

- **Conduct Site Visits** - Complete an in-person or virtual visit to review the contracted program's facility, observe the classroom(s), assess student engagement, and meet staff before placement *and* in regular intervals (e.g., quarterly).
- **Obtain References** - Gather insight from other districts that are currently contracting with or have contracted with the approved program in the past regarding their experiences.
- **Confirm Staff Credentials** - Verify that the contracted program's certificated and licensed staff align with those submitted in the agency's application.
- **Verify the Daily Schedule** - Ensure the classroom's schedule supports the student's educational needs.
- **Review the Curriculum** - Confirm the curriculum implemented will advance the student's achievement of Nebraska content area standards and IEP goals and align with district expectations.
- **Review the Contracted Program's Policies** - Evaluate the program's policies on discipline, restraint/seclusion, and emergencies.
- **Write a Comprehensive Contract** - Develop a thorough written contract that goes beyond the minimum elements required in 92 NAC 51-013.02D and D1-D4 to ensure strong oversight and shared expectations between the district and the contracted program. Recommended components to consider include:
 - Explicit progress reporting requirements, including frequency, format, and data expectations (also see 'Monitor Student Progress' bullet point below).
 - The district's right to conduct site visits.
 - Defined communication protocols.
 - Expectations for IEP implementation, including service delivery, documentation, and fidelity checks.
 - Notification requirements for staff changes and maintenance of certificated/licensed staff.
 - Data-sharing agreements that ensure secure handling of educational records and personally identifiable information.
 - Clear parent involvement procedures that outline roles and communication pathways.
 - Termination provisions describing the conditions, notice requirements, and procedures for ending contracted services.

- **Strengthen Student Progress Monitoring Expectations** - Define progress monitoring expectations under 92 NAC 51-013.02F in the district's written contract with the contracted program, including explicit requirements such as:
 - The frequency of progress updates (e.g., weekly, monthly) that must be provided to the district.
 - Required format and data types (e.g., aligned to IEP goals, data-based, behavior charts, work samples).
 - Student attendance and service delivery documentation (e.g., who provided the service, when, and duration) aligned to the student's IEP.
 - Procedures for the contracted provider to report concerns regarding lack of student progress within a set timeframe.

- **Establish a Communication Protocol** - Establish a main district contact for the contracted provider and schedule regular check-ins with the program's leadership.

- **Facilitate Family Engagement** - Inform parents about progress monitoring plans, encourage their participation in site visits or virtual observations, and ensure they know how to contact the district if they have concerns.

- **Discuss Transition Planning** - Confirm the contracted program's willingness to support the student's transition to a less restrictive setting, and, when appropriate, include reintegration plans, goals, and timelines in the IEP.

- **Maintain Detailed Documentation** - In addition to the records required in 92 NAC 51-013.02F, the district may maintain documentation of all communication and oversight activities with the contracted program.

Contracted Program Responsibilities

Contracted Program Compliance Checklist

When a contracted program provides special education services to students placed in their classroom facility by a school district, the agency is responsible for:

- **Obtaining NDE Approval Before Providing Services** - The program must submit a Special Education Contract Service Provider application and secure an approved rate, service code(s), and an agency code before delivering services through a contract with a district (92 NAC 51-013.03A).
 - Apply on the [Special Education Contract Service Provider portal](#).
 - Instructions and resources for all application types are located on the [Service Agencies webpage](#) of the NDE Office of Special Education's website.
- **Submitting Required Application Components** - All aspects of the contracted program application must be addressed and completed accurately for each classroom within the facility, including (92 NAC 51-013.03C):
 - 1) The Nebraska teaching certificates, DHHS licenses, or national board certifications for all special education as well as related service and other instructional staff, if applicable, that currently work in and supervise the classroom (92 NAC 51-013.03C1).
 - If certificated and/or licensed staff in the program are hired or leave the agency during the year, the agency must amend their application accordingly and resubmit it to NDE for verification.
 - As long as an agency's application is in approved status by the annual mid-October due date, they can make revisions and resubmit at any time.
- 2) A cost schedule for the educational services that will be provided in the classroom.
 - For allowable costs, see Rule 51 sections 011 and 012 (92 NAC 51-013.03C2).
 - The cost schedule culminates in the contracted program's requested hourly, daily, monthly, and annual rate based on the preceding year's average per pupil cost in that classroom or the cost as agreed upon pursuant to the contract to the agency providing the educational program (92 NAC 51-013.03B).
 - Upon approval, district payment and reimbursement are limited to the contract program's NDE-approved rate and the amount of service provided, consistent with the contract.

- 3) A written description of the services provided in each program, including the current daily classroom schedule and a summary of the curriculum currently implemented (92 NAC 51-013.03C3).
 - Ensure no personally identifiable student information (e.g., names, initials) is included in the schedule or curricular summary uploads in the application.
 - Resubmit changes in daily classroom structure and/or curriculum throughout the year to the NDE for subsequent review.
- 4) Separation of sectarian educational costs and non-sectarian educational costs, if applicable (92 NAC 51-013.03C4).
- 5) Separation of the cost of residential care costs from the cost of the educational program, if applicable (92 NAC 51-013.03C5).
- 6) Documentation of compliance with required building codes and safety regulations, such as occupancy permits and fire marshal approval (92 NAC 51-013.03C6).

- **Applying Annually** - Application submission and approval is required for each contracted provider on an annual basis (92 NAC 51-013.03H).
 - The NDE application opens in May and closes in mid-October each year. Returning providers must reapply within this timeframe.
 - New contracted providers have a 45-day grace period to apply for NDE approval after the district initiates a contract (92 NAC 51-013.02C).
- If the contracted provider fails to submit an application or to obtain NDE approval within that grace period window, the district must remove the student from the program within 14 calendar days (92 NAC 51-013.02C1).
- **Maintaining a Copy of Each Child's Current IEP** - The contracted program must keep a copy of the student's current IEP on file (92 NAC 51-013.03E).
- **Participating in IEP Meetings as Invited by the District** - Under the district's lead, contracted program staff can contribute to the development of and decisions regarding the IEP and reintegration planning for the student (92 NAC 51-013.02A).
- **Maintaining Building Codes and Safety Regulations** - The contracted program must maintain documentation demonstrating that its facility meets applicable building codes and safety regulations (92 NAC 51-013.03C6).
- **Providing Reasonable Notice Before Terminating Services** - The program must notify the district in a reasonable time period before discontinuing services for a student (92 NAC 51-013.03F).

Contracted Program Best Practices

To support collaboration between districts and families, the quality of services provided, compliance, and the safety and achievement of students, the following contracted program practices are recommended:

- **Train Staff** - Provide professional development for all staff, including paraeducators, related to IEP implementation; instructional expectations; documenting services, supports, and behavioral incidents; and sharing information with the district.
- **Ensure Fidelity of Schedule and Service Delivery Implementation** - Maintain clearly documented classroom schedules and ensure staff follow them consistently. Implement each student's IEP exactly as it is written, providing instruction, accommodations, modifications, and services according to the frequency, location, and duration specified in each student's IEP.
- **Protect Student Data** - Implement secure procedures for handling personally identifiable information.
- **Collect and Provide Timely Updates on Student Progress** - Track and communicate student IEP goal progress, attendance, and service delivery to the district according to the frequency and format documented in the written contract.
- **Designate a District Liaison** - Indicate which of the program's staff members is the primary contact for each district.
- **Notify the District of Staffing Changes Immediately** - Alert the district of shifts in staff, including absences or turnover that could affect IEP implementation.
- **Maintain Proactive and Transparent Communication** - Promptly reach out to the district contact when a student's needs shift or concerns arise.
- **Provide Opportunities for Observation** - Devote recurring times for families and district staff to observe the student's programming and engagement in the contracted program environment.
- **Partner with Districts as they Conduct Compliance Oversight Processes** - Be prepared for visits, file reviews, and implementation verification checks from the district.

Addressing Suspected Contracted Program Noncompliance

District Checklist: Addressing Potential Noncompliance or Contractual Concerns with a Contracted Program

School districts may contract with outside programs or providers to deliver special education and related services; however, entering into a contract does not transfer the district's responsibility under the IDEA and Nebraska Rule 51. Districts remain fully accountable for ensuring that every eligible student receives a Free Appropriate Public Education (FAPE) in accordance with their IEP.

This checklist is designed to help districts respond promptly and appropriately when a contracted program is not meeting contractual obligations or compliance requirements, while keeping students' needs and legal protections at the center of all decisions.

If a contracted program is not upholding their end of the contract and/or is not following IDEA/Rule 51 compliance regulations, the district can take the following steps:

Identify and Document the Concern (92 NAC 51-013.01)

- Begin by clearly identifying what the contracted program is failing to do and how that impacts the student's IEP or access to FAPE. Accurate documentation ensures the district can demonstrate due diligence and take timely, appropriate action.
- Specify what is not being upheld (e.g., IEP services, staffing, data, behavior supports, etc.)- Describe exactly which services, supports, or responsibilities are missing, inconsistent, or inadequate. Be specific about what the program agreed to provide compared to what is actually occurring.
- Identify the IDEA/Rule 51 requirements involved- Connect the concern to the relevant legal standards so it is clear how compliance may be compromised. This frames the issue as both a contractual and regulatory matter.
- Gather documentation- Collect written and observational evidence (e.g., IEPs, service logs, schedules, communications, observations) that supports the concern. This documentation is critical for follow-up and any potential enforcement steps.

Review the Contract (92 NAC 51-013.02D-E)

- Examine the agreement to confirm what the program is legally and operationally responsible for providing. The contract should clearly reflect the expectations for services, staffing, and compliance.

- Confirm the program agreed to provide services consistent with IEPs, meet staff qualification standards, and follow the IDEA and Rule 51.
 - Verify that these obligations are explicitly stated in the contract. If they are missing or vague, that may contribute to implementation problems.
- Determine whether the concern involves a violation of law/regulation (i.e., compliance) or failure to meet service expectations (i.e., performance). This distinction helps guide the district's next steps.

Notify the Contracted Program in Writing

- Provide formal written notice of concerns to ensure clarity, accountability, and a documented record of district action. Written communication should be professional, specific, and focused on student impact.
- Describe concerns and cite specific violations- Clearly explain what is not occurring and how it relates to IDEA, Rule 51, and the contract.
- Reference contract and Rule 51 requirements- Anchor the concerns in both the agreement and regulatory obligations to reinforce the seriousness of the issue.
- Request corrective action with timelines- Specify what must change and by when so progress can be monitored and enforced.

Ensure FAPE Is Not Interrupted for the Student (92 NAC 51-013.01 and 92 NAC 51-007.02)

- The district must take immediate steps to ensure students continue receiving services without gaps. Contract issues should never result in a loss of educational benefit.
- Confirm students continue receiving their IEP services with proper frequency, intensity, and duration as written.
- Arrange temporary services if needed- The district may need to provide backup staffing or alternate placements to maintain FAPE.

Meet with Contracted Program Leadership

- Hold a direct meeting with the program's leadership to clarify expectations, responsibilities, and corrective steps, as this supports problem-solving and accountability.
- Review expectations- Restate the legal and contractual requirements clearly.
- Clarify compliance requirements- Ensure leadership understands their obligations under IDEA and Rule 51.
- Document outcomes- Record agreements, action steps, and timelines from the meeting.

Monitor the Contracted Program's Implementation of Corrective Action Steps

- Track corrective steps- Ensure the program follows through on all agreed actions. Ongoing oversight ensures that corrective steps are actually being carried out and reduces the risk of repeated noncompliance.
- Review logs and data- Check service delivery records to confirm consistency with IEPs.
- Observe services- Conduct site visits or observations to verify actual practice.

Escalate If Necessary

- If issues persist, districts must move beyond informal correction to formal enforcement.
- Issue formal notice- Provide written notification that continued noncompliance may result in further action.
- Consult the district's legal counsel- Obtain guidance on district risk, remedies, and termination options.
- Consider contract termination- If FAPE cannot be assured, ending the agreement may be necessary.

Communicate with Families (92 NAC 51-009.05A)

- Families must be kept informed and involved in decisions affecting their child's services.
- Provide updates- Share what the district is doing to protect services and resolve concerns.
- Issue Prior Written Notice if services and/or placement change- Ensure parents receive the required PWN whenever changes are proposed or made.

Report to NDE's Office of Special Education if Necessary

- Some situations rise to the level of systemic noncompliance and require state involvement.
- Consult NDE OSE if systemic noncompliance exists- NDE can take monitoring action as appropriate.

Strengthen Future Contracts with Contracted Providers (92 NAC 51-013.02D-E)

- Use lessons learned to prevent future issues and ensure stronger accountability.
- Include IDEA/Rule 51 compliance clauses- Make legal obligations explicit in all agreements.

- Require documentation and data sharing- Ensure the district has access to service logs and performance data.
- Specify staff qualification standards- Clearly define required credentials and training expectations.

Ultimately, the goal of addressing concerns with a contracted program is not only to ensure compliance but to safeguard meaningful educational outcomes for students with disabilities. By documenting concerns, enforcing contract terms, maintaining continuity of services, and communicating clearly with families, districts can uphold their legal responsibilities and promote high quality, student-centered practices. This checklist supports districts in taking proactive, structured steps to protect students' rights and ensure that partnerships with external providers strengthen, rather than compromise, special education services.