

BOARD OF EDUCATION-SPECIAL
MEETING

Wednesday, May 24, 2017 6:30 PM

Morrill Elementary School Library

508 Jefferson Ave.

Morrill, NE 69358

- I. CALL TO ORDER FOR REGULAR MEETING
 - I.1. Pledge to the Flag
 - I.2. Roll Call
 - I.3. Notification of Open Meetings Law Posting
 - I.4. Recognition of Recording
- II. APPROVAL OF AGENDA
- III. APPROVE RESIGNATION OF STAFF MEMBERS
- IV. CONSIDER/POSSIBLY APPROVE NEW STAFF RECOMMENDATIONS FOR 2017-2018
- V. POLICY REVIEW CONCERNING STUDENT BEHAVIOR ISSUE MANAGEMENT POLICIES
- VI. NEXT REGULAR MEETING DATE, JUNE 12, 2017
- VII. ADJOURNMENT

SUSPENSION OF STUDENTS

The authority to suspend for a "short term" and to propose an "extended term" suspension and/or expulsion is delegated to the principal or his or her designee. A short-term suspension shall mean the exclusion of a student from school attendance for a period not to exceed five school days. A long-term suspension means the exclusion of a student from school attendance for a period exceeding five school days but less than twenty school days.

The provisions of this section apply to all pupils enrolled in the school district. When considering possible courses of action for special education students in regard to alleged violations of school rules, policies, and regulations, procedural due process rights guaranteed under applicable Federal and State statutes are applicable. The school district is obligated to see that every special education student is provided an appropriate educational program without cost to the parent. Conversely, schools are not required to maintain pupils who are a danger to themselves or others in regular attendance centers.

Suspension from classes or school will not be carried out unless the student while subject to school authority:

1. uses violence, force, threat or intimidation in a manner causing substantial interference with school purposes; or
2. causes or attempts to cause substantial damage to school or private property or steals or attempts to steal school or private property of substantial value; or
3. causes or attempts to cause physical injury to another person except in self-defense; or threatens or intimidates any student for the purpose or intent of obtaining something of value from the student; or
4. possesses or transmits any firearm, knife, explosive or other dangerous object that is ordinarily considered a weapon; or
5. without medical sanction where prescription substances are in question, possesses, uses, transmits, or is under the influence of any narcotic drug, hallucinogenic drug, amphetamine, barbiturate, marijuana, alcoholic beverages, or any other controlled substance; or
6. commits public indecency as defined in Nebraska statute 28-806 if that student is at least twelve years of age but less than nineteen years of age; or
7. commits or attempts to commit sexual assault against any person if a complaint has been filed by a prosecutor alleging the incident as required in Nebraska statute 79-267.8; or
8. engages in any other illegal activity which constitutes a danger to other students or interferes with school purposes; or
9. repeatedly violates the policies, rules and standards of student conduct established by the district.

A given suspension will be for a period of time not to exceed 5 school days. A student

Approved _____ Reviewed _____ Revised _____
will be informed of the charges against him or her and, if the student denies them, an explanation of the evidence will be given and the student will be given an opportunity to refute the charges. No time delay is necessary between the time a pupil is notified of the charges and the time of the hearing before the principal.

Guidelines to insure that students are afforded due process during a suspension or proposed suspension from school will be developed. The procedural rules, regulations and guidelines will be approved by the Board of Education and made known to students, parents and school staff.

Administrative procedures complying with the Student Discipline Act shall also be in place to ensure due process to the student should the principal decide to administer a long-term suspension, expulsion, or mandatory reassignment.

If a student's presence poses a continuing danger to persons or property or an ongoing threat of disruption to the academic process, an emergency exclusion may be invoked and the student may be immediately removed from

school. However, notice and hearing should follow as soon as practical and not more than ten days following the initial exclusion.

The principal should make a reasonable effort to contact the parent(s) or guardian(s) of a suspended student by telephone or to communicate to them directly regarding the specific act(s) for which the suspension is ordered and the length of the suspension. If personal contact cannot be made then a notice will be mailed to parents within 24 hours stating the specific act(s) for which the suspension is ordered and the length of the suspension.

All records and documentation regarding suspension will be destroyed within three years of the student's continuous absence from school. No information regarding a suspension will be communicated to any person not directly involved in the disciplinary proceedings.

The right of appeal to the Board of Education in cases involving student suspension described in this policy does not extend to a suspension from a student extracurricular activities program or other disciplinary action affecting participation in an extracurricular activities program.

Legal Reference: Neb. Statute 79-254 et seq. (Student Discipline Act)
 20 U.S.C. §§ 1400 et seq. (Individuals with Disabilities Education Act)
 34 C.F.R. §§ 104.1 et seq.
 34 C.F.R. §§ 300 et seq.

Cross Reference: 504.01 Student Due Process Rights

EXPULSION OF STUDENTS

For the purposes of this policy and as defined in the Student Discipline Act, expulsion shall mean exclusion from attendance in all schools within the district for a period of time as defined in Nebraska statute 79-283.

Students may be expelled for violations of board policy, school rules or the law. It shall be within the discretion of the administrator to discipline a student by using an expulsion for a single offense or for a series of offenses depending on the nature of the offense and the circumstances surrounding the offense.

The superintendent will develop procedural rules, regulations and guidelines governing expulsions. These shall be approved by the Board of Education and made known to students, parents and school staff. The principal shall keep records of all expulsions.

All cases of expulsion shall be preceded by short-term suspension and its related procedures or by the condition of emergency exclusion which applies only when a student (a) has a dangerous communicable disease transmissible through normal school contacts and poses an immediate threat to the health and safety of the school community; or (b) exhibits conduct which presents a clear threat to the physical safety of himself/herself or others, or is so extremely disruptive as to make temporary removal necessary to preserve the rights of other students to pursue an education.

When a student is expelled, the student shall be provided with:

1. Notice of the standard of conduct allegedly violated, acts the student is alleged to have committed and a summary of the evidence to be presented against the student;
2. The penalty, if any, which the principal has recommended in the charge and any other penalty to which the student may be subject;
3. A statement that the student has a right to a hearing, upon request, on the specified charges;
4. A description of the hearing procedures, along with procedures for appealing any decision rendered at the hearing;
5. A statement the principal, legal counsel for the school, the student, the student's parent or representative or guardian has the right;
 - to examine the student's academic and disciplinary records and any affidavits to be used at the hearing concerning the alleged misconduct and;
 - to know the identity of the witnesses to appear at the hearing and the substance of their testimony;

Approved _____ Reviewed _____ Revised _____

6. A form on which the student or the student's parent/guardian may request a hearing.

Supplemental to these procedures, a special education student must be provided with additional procedures. A determination should be made of whether the student is actually guilty of the misconduct. A staffing team should determine whether the student's behavior is caused by the student's disability and whether the conduct is the result of inappropriate placement. Discussions and conclusions of this meeting should be recorded.

If the special education student's conduct is not caused by the disability, the student may be expelled or suspended for a long-term period following written notice to the parent and pursuant to the school district's expulsion hearing procedures. If the misconduct is caused by the disability and a change in placement is recommended, the change must be made pursuant to the placement procedures used by the school district.

Legal Reference: Neb. Statute 28-1204.04
 79-245 et seq.
 Goss v. Lopez, 419 U.S. 565 (1975).
 Wood v. Strickland, 420 U.S. 308 (1975)
 20 U.S.C. §§ 1400 et seq. (Individuals with Disabilities Education Act)
 34 C.F.R. §§ 104.1 et seq.
 34 C.F.R. §§ 300 et seq.

Cross Reference: 504 Student Rights and Responsibilities

PROCEDURE FOR SUSPENSION AND EXPULSION

Development of Uniform Discipline System

It shall be the responsibility of the Superintendent to develop and maintain a Board approved system of uniform discipline through the district's schools. This system of discipline should encourage the positive development of a student's self concept and his ability to exercise self-control.

1. Short-Term Suspension

1.1. Students may be excluded by the principal or his designee from school or any function for a period of up to five school days (short-term suspension) on the following grounds:

1.1.1. Conduct constituting grounds for expulsion as hereinafter set forth; or

1.1.2. Other violations of rules and standards of behavior adopted by the Morrill Public Schools Board of Education or the administrative or teaching staff of the school, which occur on or off school grounds, if such conduct interferes with school purposes or there is a nexus between such conduct and school.

1.2. The following process will apply to short-term suspension:

1.2.1. The principal or his or her designee shall make a reasonable investigation of the facts and circumstances. In addition, such short-term suspension shall be made only after a determination that the suspension is necessary to help any student, to further school purposes, or to prevent an interference with school purposes.

1.2.2. Prior to commencement of the short-term suspension, the student shall be given oral or written notice of the charges against the student. The student shall be advised of what the student is accused of having done, the basis of the accusation, and an explanation of the evidence the authorities have.

1.2.3. The student shall be afforded an opportunity to explain the student's version of the facts to the person affecting the short-term suspension.

1.2.4. Within 24 hours or such additional time as is reasonably necessary following the suspension, the principal or administrator shall send a written statement to the student, and the student's parent or guardian, describing the student's conduct, misconduct or violation or the rule or standard and the reasons for the action taken. An opportunity shall be afforded to the student, and the student's parent or guardian, to have a conference with regard to the matter

Reviewed _____ Revised _____
with the principal or administrator ordering the short-term suspension before or at the time the student returns to school. The principal or administrator shall determine who in addition to the parent or guardian shall attend the conference.

2. Long-Term Suspension

2.1. Students may be excluded by the principal or his or her designee from school or any school function for a period of five school days but less than twenty school days on (long-term suspension) the conduct constituting grounds for expulsion as hereinafter set forth. The process for long-term suspension is hereinafter set forth.

3. Expulsion

- 3.1. Defined: Expulsion shall mean exclusion from attendance in all schools, grounds and activities of or within the system for a period not to exceed the remainder of the semester in which it took effect unless the misconduct occurred:
 - 3.1.1. Within ten school days prior to the end of the first semester, in which case the expulsion shall remain in effect through the second semester, or
 - 3.1.2. Within ten school days prior to the end of the second semester, in which case the expulsion shall remain in effect for summer school and the first semester of the following school year, or
 - 3.1.3. Unless the expulsion is for conduct specified concerning firearms, in which case the expulsion shall remain in effect for the period specified therein. Such action may be modified or terminated by the school district at any time during the expulsion period.

4. Summer Review

- 4.1. Any expulsion that will remain in effect during the first semester of the following school year shall be automatically scheduled for review before the beginning of the school year. The review shall be conducted by the hearing officer who conducted the initial expulsion hearing, or a hearing officer appointed by the Superintendent in the event no hearing was previously held or the initial hearing officer is no longer available or willing to serve, after the hearing officer has given notice of the review to the student and the student's parent or guardian. This review shall be limited to newly discovered evidence or evidence of changes in the student's circumstances occurring since the original hearing. This review may lead to a recommendation by the hearing officer that the student be readmitted for the upcoming school year. If the school board or Board of Education or a committee of such board took the final action to expel the student, the student may be readmitted only by action of the Board. Otherwise the student may be readmitted by action of the Superintendent.

5. Suspension of Enforcement

- 5.1. Enforcement of an expulsion action may be suspended (i.e., "stayed") for a period of not more than one full semester in addition to the balance of the semester in which the expulsion takes effect, and as a condition of such suspended action, the student may be assigned to a school, class, or program which the school district seems appropriate for rehabilitation of the student. In lieu of other authorized educational programs to which the student may be assigned, such school, class, or program may be offered as a community-centered classroom and may include experiences for the student as an observer or aide in governmental functions, as an on the job trainee, and as a participant in specialized tutorial experiences or individually prescribed educational and counseling programs. Such programs shall include an individualized learning program to enable the student to continue academic work for credit toward graduation. At the conclusion of the designated period:
 - 5.1.1. If the student has satisfactorily participated in the school, class, or program to which such student has been assigned the student shall be reinstated and permitted to return to the school of former attendance or to attend other programs offered by the district, and action to expunge the record of the expulsion action may be taken at the discretion of the Superintendent or his or her designee, or
 - 5.1.2. If the student's conduct has been unsatisfactory, the expulsion action shall be enforced. The determination of whether the student's participation and conduct has been satisfactory or not shall be made by the director of student services or his/her administrative assistant.

6. Students Subject to Juvenile or Court Probation

- 6.1. Prior to the readmission to school of any student who is less than nineteen years of age and who is subject to the supervision of a juvenile probation officer or an adult probation officer pursuant to the order of the District Court, County Court, or Juvenile Court, who chooses to meet conditions of

probation by attending school, and who has previously been expelled from school, the director of student services or designee shall meet with the student's probation officer and assist in developing conditions of probation that will provide specific guidelines for behavior and consequences for misbehavior at school (including conduct on school grounds and conduct during all educational functions or events off school grounds) as well as educational objectives that must be achieved. If the guidelines, consequences, and objectives provided by the director of student services or designee are agreed to by the probation officer and the student, and the court permits the student to return to school under the agreed to conditions, the student may be permitted to return to school. The student shall, upon such return, be screened by the school for possible disabilities and, if the screening so indicated, be referred for evaluation for possible placement in a special education program. The student may be expelled or otherwise disciplined for subsequent conduct as provided in Board policy and state statute.

7. Grounds for Short-Term Suspension, Long-Term Suspension, Expulsion or Mandatory Reassignment

- 7.1. The following types of student conduct shall constitute grounds for short-term suspension, long-term suspension, and expulsion or mandatory reassignment, when such activity occurs on school grounds or during an educational function or event on school grounds, or in a school owned or utilized vehicle being used for school purposes or at a school sponsored activity or athletic event.
 - 7.1.1. Willfully disobeying any reasonable written or oral request of a school staff member, or the voicing of disrespect to those in authority.
 - 7.1.2. Use of violence, force, coercion, threat, intimidation, or similar conduct in a manner that constitutes a substantial interference with school purposes.
 - 7.1.3. Sexual assault or attempting to sexually assault any person.
 - 7.1.4. Willfully causing or attempting to cause substantial damage to property, stealing or attempting to steal property of substantial value, or repeated damage or theft involving property.
 - 7.1.5. Causing or attempting to cause personal injury to a school employee, to a school volunteer, or to any student.
 - 7.1.6. Threatening or intimidating any student for the purpose of, or with the intent of, obtaining money or anything of value from such student.
 - 7.1.7. Knowingly possessing, handling, or transmitting any object or material that is ordinarily or generally considered a weapon.
 - 7.1.8. Engaging in the selling, using, possessing or dispensing of alcoholic beverages, tobacco, narcotics, drugs, controlled substances, inhalants or being under the influence of any of the above; or possession of drug paraphernalia.
 - 7.1.9. Engaging in the selling, using, possessing, or dispensing of an imitation controlled substance as defined in section 28 401, of the Nebraska statutes, or material represented to be alcoholic beverages, narcotics, drugs, controlled substances or inhalants.
 - 7.1.10. Truancy or failure to attend assigned classes or assigned activities.
 - 7.1.11. Tardiness to school, assigned classes or assigned activities.
 - 7.1.12. The use of language, written or oral, or conduct, including gestures, which is profane or abusive to students or staff members. Profane or abusive language or conduct includes, but is not limited to, that

which is commonly understood and intended to be derogatory toward a group or individual based upon race, gender, national origin, or religion.

7.1.13. Public indecency.

7.1.14. Repeated violation of any of the rules adopted by the school district or the school.

7.1.15. Engaging in any unlawful activity as determined by the United States or the State of Nebraska.

7.1.16. Dressing in a manner wherein such dress is dangerous to the student's health and safety or to the health and safety of others or is distracting or indecent to the extent that it interferes with the learning and educational process.

7.1.17. Willfully violating the behavioral expectations for those students riding Morrill Public Schools' buses.

7.2. In addition, a student may be suspended (short-term or long-term), expelled, or mandatory reassigned for sexual assault or attempted sexual assault of any person regardless of the time or location of the offense if a complaint alleging such conduct is filed to a court of competent jurisdiction.

7.3. In addition, a student who engages in the following conduct on school grounds or during an educational function or event off school grounds:

7.3.1. The knowing and intentional use of force in causing or attempting to cause personal injury to a school employee, school volunteer, or student, except if caused by accident, self-defense, or on the reasonable belief that the force used was necessary to protect some other person and the extent of force used was reasonably believed to be necessary, or

7.3.2. The knowing and intentional possession, use, or transmission of a firearm or other dangerous weapon, shall be expelled for the remainder of the school year in which it took effect if the misconduct occurs during the first semester, and if the expulsion for such conduct takes place during the second semester, the expulsion shall remain in effect for the first semester of the following school year. Such action may be modified or terminated by the school district at any time during the expulsion period.

7.3.2.1. In addition, if the student is determined to have brought a firearm to school, or to have possessed a firearm at school, the student shall be expelled from school for a period of not less than one year. The Superintendent may modify such one year expulsion requirement on a case-by-case basis, provided that such modification is in writing.

7.3.2.2. Bringing a firearm or other dangerous weapon to school for any reason is discouraged; however, a student will not be subject to disciplinary action if he/she brings such item to school under the following conditions:

7.3.2.2.1. Prior written permission to bring the firearm or other dangerous weapon to school shall be obtained from the student's teacher, building administrator and parent.

7.3.2.2.2. The purpose of having the firearm or other dangerous weapon in school shall be for a legitimate education function.

7.3.2.2.3. A plan for its transportation into and from the school, its storage while in the school building and how it will be displayed shall have prior written approval by the teacher and building administrator. Such plan shall require that such item will be in the possession of an adult staff member at all times except for such times as is necessary to fulfill the educational function.

- 7.3.2.2.4. The firearm or other dangerous weapon shall be in an inoperable condition while it is on school grounds.
- 7.3.2.2.5. A student who brings a firearm or other dangerous weapon to school without having complied with the above conditions shall be subject to disciplinary action.
8. Procedures for Long-Term Suspension, Expulsion or Mandatory Reassignment- The following procedures shall be followed with regard to any long term suspension, expulsion or mandatory reassignment.
- 8.1. The principal shall prepare a written summary of the alleged violation and the evidence supporting the alleged violation with the Superintendent or his or her designee.
- 8.2. If the principal determines that the student must be suspended immediately to prevent or substantially reduce the risk of
- 8.2.1. Interference with an educational function or school purpose or
- 8.2.2. A personal injury to the student himself or herself, other students, school employees, or school volunteers, and a notice of intent to discipline the student by long term suspension, expulsion, or mandatory reassignment is filed with the Superintendent or his or her designee, the student may be suspended by the principal until the date of the long term suspension, expulsion, or mandatory reassignment takes effect if no hearing is requested or, if a hearing is requested, the date the hearing examiner makes the report of his or her findings and a recommendation of the action to be taken to the Superintendent.
- 8.2.3. The principal or his or her designee shall serve by registered or certified mail or by personal service the student and the student's parents or guardian with a written notice within two school days of the date of the decision to recommend long term suspension or expulsion. Said notice shall include the following:
- 8.2.3.1. The rule or standard of conduct allegedly violated and the acts of the student alleged to constitute a cause for long-term suspension or expulsion including a summary of the evidence to be presented against the student as submitted by the principal or assistant principal.
- 8.2.3.2. The penalties to which the student may be subjected and the penalty which the principal, or his or her designee has recommended in the charge.
- 8.2.3.3. A statement explaining the student's right to a hearing upon request on the specified charges.
- 8.2.3.3. A description of the hearing procedures provided by these policies along with procedures for appealing any decision rendered at the hearing.
- 8.2.3.4. A statement that the administrative representative, legal counsel for school, the student, the student's parents, or the student's representative or guardian shall have the right to examine the student's academic and disciplinary records and any affidavits to be used at the hearing concerning the alleged misconduct, and the right to know the identity of the witnesses to appear at the hearing and the substance of their testimony.
- 8.2.3.5. A form or a request for hearing to be signed by such parties and delivered to the principal or his or her designee in person or by registered or certified mail.
- 8.2.4. Nothing in this policy shall preclude the student, student's parents, guardian or representative from discussing and settling the matter with appropriate school personnel prior to the hearing stage.

- 8.2.5. In the event that the principal has not received a request for hearing within five school days following receipt of the written notice, the punishment recommended in the charge by the principal, or his or her designee shall automatically go into effect.
- 8.2.6. If a hearing is requested more than five school days following the actual receipt of the written notice, but not more than thirty calendar days after actual receipt, the student shall be entitled to a hearing but the punishment imposed may continue in effect pending final determination.
- 8.2.7. If a request for hearing is not received within thirty calendar days following the mailing or delivery of the written notice, the student shall not be entitled to a hearing.
- 8.2.8. In the event that a hearing is required to be provided, the Superintendent shall appoint a hearing officer.

9. Hearing Procedure:

9.1. Hearing Officer

- 9.1.1. The hearing officer shall be any person designated by the Superintendent. The hearing officer shall be an individual who has had no involvement in the charge, will not be a witness at the hearing and who has not brought the charges against the student. It shall be the duty of the hearing officer to remain throughout all deliberations. The hearing officer shall be available prior to any hearing held pursuant to this policy to answer any questions the administrative representative, the student, the student's parents, or guardian, may have regarding the nature and conduct of the hearing.

9.2. Administrative Representative

- 9.2.1. The principal may appoint an administrative representative to present the facts and evidence. Such administrative representative may be an attorney or may be represented by an attorney, but any such attorney shall not advise the hearing officer or parties who may review the proceedings as their counsel.

9.3. Notice of Hearing

- 9.3.1. If a hearing is requested within five school days of receipt of the notice, the hearing officer shall, within two school days after being appointed, give written notice to the administrative representative, and the student, the student's parents or guardian of the time and place for the hearing. The hearing shall be scheduled within a period of five school days after it is requested. No hearing shall be held upon less than two school days' actual notice to the administrative representative, and the student, the student's parents, or guardian, except with the consent of all of the parties.

9.4. Continuance

- 9.4.1. Upon written request of the student or the student's parents or guardian, the hearing officer shall have the disciplinary authority to continue from time to time the hearing. In addition, the hearing officer may continue the hearing upon any good cause.

9.5. Access to Records

- 9.5.1. The administrative representative, the student, the student's parent or guardian and the legal counsel of the student shall have the right to examine the records and affidavits and the statements of any witnesses in the possession of the Morrill Public Schools Board of Education at any reasonable time prior to the hearing.

9.6. Hearing Procedure

- 9.6.1. The hearing shall be attended by the hearing officer, the student, the student's parents, or guardian, the student's representative if any, and the administrative representative. Witnesses shall be present only when they are giving information at the hearing or with the consent of both parties. The student may be excluded at the discretion of the hearing officer at times when the student's psychological evaluation or emotional problems are being discussed. The student or the student's parents or guardian or both may be represented by legal counsel. The hearing examiner may exclude anyone from the hearing when his/her actions substantially disrupt an orderly hearing. The formal rules of evidence shall not apply at the hearing. The administrative representative shall present to the hearing officer statements, in affidavit form, of any person having information about the student's conduct and the student's records, but not unless such statements and records have been made available to the student, the student's parents, guardian or representative prior to the hearing. The information contained if such records shall be explained and interpreted prior to or at the hearing to the student, parents or guardian, or representative at their request, by appropriate school personnel. The student, the student's parents, guardian, or representative, the administrative representative or the hearing officer may ask witnesses testify at the hearing. Such testimony shall be under oath and the hearing officer shall be authorized to administer the oath. The student, parent, guardian, or representative, administrative representative, or the hearing officer shall have the right to question any witness giving information at the hearing, the student may testify in his/her own defense in which case he/she shall be subject to cross-examination nor will any conclusion be drawn there from. Any person giving evidence by written statement or in person at a hearing shall be given the same immunity from liability as a person testifying in a court case. A single hearing may be conducted for more than one student if in the discretion of the hearing examiner a single hearing is not likely to result in confusion or prejudice to the interest of any of the students involved.
- 9.6.2. If during the conduct of such hearing, the hearing examiner concludes that any of such student's interests will be substantially prejudiced by a group hearing, or that confusion is resulting, the hearing examiner may order a separate hearing for each or any of said students.

9.7. Availability of Witnesses

- 9.7.1. The hearing officer will have the authority to subpoena any witnesses to the hearing and shall make reasonable efforts to assist in obtaining the attendance of any witnesses requested by the student, student's parents or guardian or their legal representative.

9.8. Record

- 9.8.1. The proceedings of the hearing shall be recorded at the expense of the school district.

9.9. Findings

- 9.9.1. Within a reasonable time after the conclusion of the hearing, the hearing officer shall prepare and submit to the Superintendent of schools his/her written findings and recommendation as to disposition. This report shall explain, in terms of the needs of both the student and the school board, the reasons for the particular recommendation. Such recommendation may range from no action, through the entire field of counseling, to long-term suspension, expulsion, or mandatory reassignment.

9.10. Review by Superintendent

9.10.1. The Superintendent of schools shall review the findings and recommendations of the hearing officer and in his/her discretion may also review any of the facts and evidence presented at the hearing and based upon such report and the facts shall determine the sanctions to be imposed. However, the Superintendent may not impose a more severe sanction than that imposed by the hearing officer.

9.11. Notice of Determination

9.11.1. Written notice of the findings and recommendations of the hearing officer and the determination of the Superintendent of schools shall be made by certified or registered mail or by personal delivery to the student and the student's parents or guardian. Upon receipt of such written notice by the student and/or parents and guardian, the determination of the Superintendent shall take immediate effect.

9.12. Appeal to Board

9.12.1. The student, student's parents or guardian may, within seven school days following the receipt of the Superintendent's decision, submit to the Superintendent of schools a written request for a hearing before the Morrill Public Schools Board of Education.

9.13. Review by Morrill Public Schools Board of Education

9.13.1. Upon receipt of the request for review of the Superintendent's determination. The Morrill Public Schools Board of Education or a committee of not less than three members shall, within ten school days, hold a hearing on the matter. Such hearing shall be made on the record except that the Board may admit new or additional evidence to avoid substantial threat of unfairness. Such new evidence shall be recorded. The Board of Education or committee thereof may withdraw to deliberate privately upon the record and new evidence. Any such deliberation shall be held in the presence only of board members in attendance at the appeal proceeding, but may be held in the presence of legal counsel who has not previously acted as the administrative representative in presenting the school's case before the hearing officer. If any questions arise during such deliberations, which require additional evidence, the Board of Education or committee thereof may require the hearing to receive such evidence, subject to the right of all parties to be present. A record of any such now or additional evidence shall be made and shall be considered as a part of the record and based upon the evidence presented at the hearing before the hearing officer, and such now or additional evidence, the Board of Education or the committee shall make a final disposition of the matter. The Board may alter the Superintendent's disposition of the case if it finds his/her decision to be too severe, but it may not impose a more severe sanction. A designated method of giving notice by the Board of Education or committee thereof, if required, for any Board review shall be by posting on the school house door

9.13.2. The final decision of the Board shall be delivered to the student and parents or legal guardian of the student by personally delivering the same or by mailing the same by certified or registered mail.

10. Special Education - Discipline Actions for Special Education Students

10.1. Special Education students will be disciplined according to current Rule 51 and any other state and/or federal rules and regulations affecting the discipline of Special Education students.

**NEBRASKA DEPARTMENT
OF EDUCATION**

RULE 55

**RULES OF PRACTICE & PROCEDURE FOR DUE PROCESS HEARINGS
IN SPECIAL EDUCATION CONTESTED CASES**

**TITLE 92, NEBRASKA ADMINISTRATIVE CODE,
CHAPTER 55**

**EFFECTIVE DATE
SEPTEMBER 9, 2012
(REVISED)**

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



**TITLE 92 - NEBRASKA DEPARTMENT OF EDUCATION
CHAPTER 55 - SPECIAL EDUCATION CONTESTED CASES**

ALPHABETICAL TABLE OF CONTENTS

<u>Subject or Title</u>	<u>Statutory Authority</u>	<u>Code Section</u>
Appeal	<u>Neb. Rev. Stat. §§79-1167, 84-917, 84-919; 20 U.S.C. 1401, 1415, and 1439</u>	Section 009
Commencement of Special Education Contested Case	<u>Neb. Rev. Stat. §§79-1162, 79-1163, 79-1164, 84-913; 20 U.S.C. 1401, 1415, and 1439</u>	Section 004
Decision and Order	<u>Neb. Rev. Stat. §§79-1164, 79-1167, 84-915; 20 U.S.C. 1401 and 1415</u>	Section 008
Ex parte Communications	<u>Neb. Rev. Stat. §84-914</u>	Section 002
Hearing of Special Education Contested Case	<u>Neb. Rev. Stat. §§79-1164, 79-1165, 79-1166, 84-913, 84-913.03 84-914, 84-915.01; 20 U.S.C. 1401 and 1415</u>	Section 007
Hearing Officer	<u>Neb. Rev. Stat. §§79-1163, 84-913.04, 84-914; 20 U.S.C. 1401, 1415, and 1439</u>	Section 005
Intervention	<u>Neb. Rev. Stat. §84-912.02</u>	Section 003
Prehearing Matters	<u>Neb. Rev. Stat. §§79-1164, 84-913, 84-913.01, 84-913.02, 84-913.03, 84-914</u>	Section 006
Scope and Definitions	<u>Neb. Rev. Stat. §§79-1162, 84-901, 84-909, 84-909.01; 20 U.S.C. 1401, 1415, and 1439</u>	Section 001

**TITLE 92 - NEBRASKA DEPARTMENT OF EDUCATION
CHAPTER 55 - SPECIAL EDUCATION CONTESTED CASES**

NUMERICAL TABLE OF CONTENTS

<u>Subject or Title</u>	<u>Statutory Authority</u>	<u>Code Section</u>
Scope and Definitions	<u>Neb. Rev. Stat.</u> §§79-1162, 84-901, 84-909, 84-909.01; 20 U.S.C. 1401, 1415, and 1439	Section 001
Ex parte Communications	<u>Neb. Rev. Stat.</u> §84-914	Section 002
Intervention	<u>Neb. Rev. Stat.</u> §84-912.02	Section 003
Commencement of Special Education Contested Case	<u>Neb. Rev. Stat.</u> §§79-1162, 79-1163, 79-1164, 84-913; 20 U.S.C. 1401, 1415, and 1439	Section 004
Hearing Officer	<u>Neb. Rev. Stat.</u> §§79-1163, 84-913.04, 84-914; 20 U.S.C. 1401 and 1415	Section 005
Prehearing Matters	<u>Neb. Rev. Stat.</u> §§79-1164, 84-913, 84-913.01, 84-913.02, 84-913.03 84-914	Section 006
Hearing of Special Education Contested Case	<u>Neb. Rev. Stat.</u> §§79-1164, 79-1165, 79-1166, 84-913, 84-913.03 84-914, 84-915.01; 20 U.S.C. 1401, 1415, and 1439	Section 007
Decision and Order	<u>Neb. Rev. Stat.</u> §§79-1164, 79-1167, 84-915; 20 U.S.C. 1401 and 1415	Section 008
Appeal	<u>Neb. Rev. Stat.</u> §§79-1167, 84-917, 84-919; 20 U.S.C. 1401, 1415, and 1439	Section 009

TITLE 92 -NEBRASKA DEPARTMENT OF EDUCATION
CHAPTER 55 -RULES OF PRACTICE AND PROCEDURE FOR DUE PROCESS
HEARINGS IN SPECIAL EDUCATION CONTESTED CASES

001. General.

001.01. Application of Rules. Pursuant to Neb. Rev. Stat. §84-909.01, the Attorney General shall promulgate model rules of procedure appropriate for use by as many agencies as possible. For rules of procedure adopted on or after August 1, 1994, each agency shall adopt as many of the model rules as is practicable under the circumstances. Agencies may adopt regulations which vary from the model rules; however, any agency adopting a rule of procedure that differs from the model rule shall include in the agency's explanatory statement the reasons why the relevant portions of the Attorney General's model rules are impracticable under the circumstances. This Chapter is based upon the Attorney General's model rule for contested cases with modifications to comply with the requirements of the Nebraska Special Education Act (Neb. Rev. Stat. §§79-1110 to 79-1184) and the Individuals With Disabilities Education Act (20 U.S.C. 1400 to 1487). This Chapter shall apply to all hearings brought by a parent or a public agency pursuant to the Nebraska Special Education Act, Title 92 NAC 51 (Rule 51) or the Individuals With Disabilities Education Act and its implementing regulations which relate to the identification, evaluation or educational placement of a child with a disability, the provision of a free appropriate public education or early intervention services to a child, or records relating thereto; and only to such hearings.

001.02. Definitions. The following definitions shall apply as used throughout Chapter 55 of these rules and regulations.

001.02A. Commissioner shall mean the State Commissioner of Education.

001.02B. Special education contested case shall mean a proceeding before a hearing officer in which the legal rights, duties, or privileges of specific parties are required by the Nebraska Special Education Act or the Individuals With Disabilities Education Act to be determined after a hearing.

001.02C. Department shall mean the Nebraska Department of Education, which is comprised of the State Board of Education and the Commissioner of Education.

001.02D. Ex parte communication shall mean an oral or written communication which is not on the record in a special education contested case with respect to which reasonable notice to all parties was not given. Ex parte communication shall not include:

TITLE 92
CHAPTER 55

001.02D1. Communications which do not pertain to the merits of a special education contested case;

001.02D2. Communications required for the disposition of ex parte matters as authorized by law; and,

001.02D3. Communications to which all parties have given consent.

001.02E. Hearing officer shall mean the person or persons conducting a special education hearing, contested case, or other proceeding pursuant to the Nebraska Special Education Act or the Individuals With Disabilities Education Act, whether designated as the presiding officer, administrative law judge, or some other title designation.

001.02F. Parent means:

001.02F1. A natural, adoptive or foster parent of a child;

001.02F2. A guardian but not the State if the child is a ward of the State;

001.02F3. A person acting in the place of a natural or adoptive parent (including a grandparent, stepparent or other relative with whom the child lives; or a person who is legally responsible for the child's welfare); or

001.02F4. A surrogate parent who has been appointed in accordance with 92 NAC 51-009.08.

001.02G. Party means the parent of a child with a disability or an infant or toddler with a disability, a competent student of the age of majority with a disability, or a public agency by or against whom a special education contested case is brought or a person allowed to intervene in a special education contested case. The Department shall be named as a party if, and only if, the petition contains an allegation that the Department has acted improperly or has improperly failed to act with respect to its duties under Neb. Rev. Stat. §79-1152.

001.02H. Petition means the initial document filed with the Department and served on the other party that sets forth a claim related to the initiation, change, or termination or the refusal to initiate, change, or terminate the identification, evaluation, or educational placement of a child with a disability or an infant or toddler with a disability; or the provision of a free appropriate public education or early intervention services; or records relating thereto and a request for action.

001.02H1. The petition shall set forth an alleged violation or violations that occurred not more than two (2) years before the date the parent or public agency knew or should have known about the alleged action that forms the basis of the claim, except that the exceptions to the timeline described in subsection 004.02 shall apply to the timeline described in this subsection.

TITLE 92
CHAPTER 55

001.02I. Public agency includes the state educational agency, lead agency, local educational agencies, educational service agencies, and any other political subdivisions of the state that are responsible for providing education to children with disabilities or early intervention services to an infant or toddler with a disability.

001.02I1. Local educational agency (LEA) means a public board of education or other public authority legally constituted within the state for either administrative control or direction of, or to perform a service function for, public elementary or secondary schools in a city, county, township, school district, or other political subdivision of the state, or for a combination of school districts or counties as are recognized in the state as an administrative agency for its public elementary or secondary schools. The term includes an educational service agency as defined in subsection 001.02I2 and any other public institution or agency having administrative control and direction of a public elementary or secondary school.

001.02I2. Educational service agency (ESA) means a regional public multiservice agency which is authorized by state law to develop, manage, and provide services or programs to LEAs and which is recognized as an administrative agency for purposes of the provision of special education and related services provided within public elementary and secondary schools of the state. The term includes any other public institution or agency having administrative control and direction over a public elementary or secondary school and includes entities that meet the definition of intermediate educational unit in section 602(23) of the Individuals With Disabilities Education Act as in effect prior to June 4, 1997.

001.02J. Day, as used in this Chapter, means calendar day unless otherwise indicated as business day. Business day means Monday through Friday, except for federal and state holidays.

001.02K. Serious bodily injury shall have the meaning given the term under paragraph (3) of Subsection (h) of Section 1365 of Title 18, United States Code.

002. Prohibitions against ex parte communications.

002.01. Prohibitions; when applicable. The prohibitions found in this section shall apply beginning at the time notice for hearing is given.

002.02. Prohibitions; to whom applicable.

002.02A. Parties and public. No party in a special education contested case or other person outside the Department having an interest in the special education contested case shall make or knowingly cause to be made an ex parte communication to the hearing officer.

002.02B. Persons in decisionmaking roles. No hearing officer shall make or knowingly cause to be made an ex parte communication to any party in a special education contested case or other person outside the Department having an interest in the special education contested case.

TITLE 92
CHAPTER 55

002.03. Disclosure of contacts. The hearing officer who receives or who makes or knowingly causes to be made an ex parte communication set forth in subsections 002.02A through 002.02B shall file in the record of the special education contested case:

002.03A. All such written communications;

002.03B. Memoranda stating the substance of all such oral communications; and,

002.03C. All written responses and memoranda stating the substance of all oral responses to all the ex parte communications.

002.03D. The filing shall be made within two (2) business days of the receipt or making of the ex parte communication. Notice of the filing, with an opportunity to respond, shall be given to all parties of record.

002.03E. Filing and notice of filing provided under subsection 002.03D shall not be considered on the record and reasonable notice for purposes of the definition of ex parte communication.

003. Intervention in a special education contested case.

003.01. Intervention in a special education contested case shall be allowed when the following requirements are met:

003.01A. A petition for intervention must be submitted in writing to the hearing officer at least five (5) days before the hearing. Copies must be mailed by the petitioner for intervention to all parties named in the hearing officer's notice of the hearing;

003.01B. The petition must state facts demonstrating that the petitioner's legal rights, duties, privileges, immunities, or other legal interests arising under the Nebraska Special Education Act or the Individuals With Disabilities Education Act may be substantially affected by the proceeding or that the petitioner qualifies as an intervenor under any provision of law; and

003.01C. The hearing officer must determine that the interests of justice and the orderly and prompt conduct of the proceedings will not be impaired by allowing the intervention.

003.02. The hearing officer may grant a petition for intervention at any time upon determining that the intervention sought is in the interests of justice and will not impair the orderly and prompt conduct of the proceedings.

003.03. If a petitioner qualifies for intervention, the hearing officer may impose conditions upon the intervenor's participation in the proceedings, either at the time that intervention is granted or at any subsequent time. Those conditions may include:

TITLE 92
CHAPTER 55

003.03A. Limiting the intervenor's participation to designated issues in which the intervenor has a particular interest demonstrated by the petition;

003.03B. Limiting the intervenor's use of discovery, cross-examination, and other procedures so as to promote the orderly and prompt conduct of the proceedings; and,

003.03C. Requiring two or more intervenors to combine their presentation of evidence and argument, cross-examination, discovery, and other participation in the proceedings.

003.04. The hearing officer, at least 24 hours before the hearing, shall issue an order granting or denying each pending petition for intervention, specifying any conditions and briefly stating the reasons for the order.

003.04A. The hearing officer may modify the order at any time, stating the reasons for the modification.

003.04B. The hearing officer shall promptly give notice of an order granting, denying, or modifying intervention to the petitioner for intervention and to all parties.

004. Commencement of a special education contested case.

004.01. A parent or local educational agency shall request a hearing by filing a petition under this Chapter within two (2) years of the date the parent or agency knew or should have known about the alleged action that forms the basis of the petition.

004.02. The timeline described in subsection 004.01 shall not apply to a parent if the parent was prevented from requesting the hearing due to:

004.02A. specific misrepresentations by the local educational agency that it had resolved the problem form the basis of the petition, or

004.02B. the local educational agency's withholding or information from parent that was required under this chapter to be provided to the parent.

004.03. The special education contested case begins with the filing of a petition with the Department and the service of a copy of the petition on the other party. The petition is the initial document filed with the Department and served on the other party that sets forth a claim and request for action. The petition shall remain confidential. A sample petition (request for a hearing) is available from the Nebraska Department of Education Office of Special Education.

004.04. A party to a special education contested case shall be the parent or public agency by or against whom a special education contested case is brought or a parent or public agency allowed to intervene in a special education contested case.

004.05. A party may appear on his or her own behalf in a special education contested case proceeding or may be represented by an attorney or other representative as permitted by law.

TITLE 92
CHAPTER 55

004.06. The pleadings in a special education contested case may include a petition, answer, reply, notice, motion, stipulation, objection or order or other formal written document filed in a proceeding before the Department. Any pleading filed in a special education contested case shall meet the following requirements:

004.06A. The pleading shall contain a heading specifying the name of the Department and the title or nature of the pleading, shall state material factual allegations and state concisely the action that is being requested shall contain the name and address of the petitioner and respondent, and shall be signed by the party filing the pleading, or when represented by an attorney, the signature of that attorney.

004.06A1. Attorneys shall also include their address, telephone number and bar number.

004.06A2. The initial petition shall contain, in addition, the following information which shall remain confidential:

004.06A2(a). The name of the child whose special education or early intervention services is the subject of the hearing, the address of the residence of the child (or available contact information in the case of a homeless child), and the name of the school the child is attending;

004.06A2(b). A description of the nature of the problem of the child relating to the proposed or refused initiation of, or change in, the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education or early intervention services to the child including facts relating to the problem; and,

004.06A2(c). A proposed resolution of the problem to the extent known and available to the party at the time.

004.06A3. A party may not have a due process hearing until the party, or the attorney representing the party, files and serves on the other party a copy of a petition meeting the requirements of subsection 004.06A2.

004.06B. All pleadings shall be made on white, letter-sized (8 1/2 x 11) paper and shall be legibly typewritten, photostatically reproduced, printed or handwritten. If handwritten, a pleading must be written in ink.

004.07. The initial petition shall be filed with the Department at its official office, at the State Office Building, 6th Floor, 301 Centennial Mall South, Lincoln, Nebraska, 68509 and a copy of the petition shall be served on the other party. Filing may be accomplished by personal delivery or mail and will be received during regular office hours of the Department, which are 8:00 a.m. to 5:00 p.m. Central Time, Monday through Friday, except state holidays. All subsequent pleadings shall be filed with the hearing officer as directed by the hearing officer. Service of the petition on the other party shall be by U.S. mail return receipt requested. Proof of service by return receipt shall be filed with the Department and the hearing officer.

TITLE 92
CHAPTER 55

004.08. Upon receipt of the initial petition, the Department shall assign the petition to a hearing officer and send a notice of assignment to the hearing officer with the petition attached. The Department shall also serve a notice to file an answer and a copy of the notice of assignment and of the petition on each respondent listed in the petition personally or by first-class or certified mail and send copies to the hearing officer and petitioner. Written proof of such service shall be filed with the Hearing Officer. Except as provided in subsection 004.09, each respondent must within ten (10) days of receiving the petition, send to the petitioner and file with the hearing officer an answer that specifically addresses the issues raised in the petition.

004.09. If a local education agency has not sent a prior written notice to the parent as required by subsection 009.03B of Rule 51 regarding the subject matter contained in the parent's petition, such local education agency shall, within ten (10) days of receiving the petition, send to the parent and file with the hearing officer an answer that shall include:

004.09A. An explanation of why the agency proposed or refused to take the action raised in the petition;

004.09B. A description of other options that the IEP Team or IFSP Team considered and the reasons why those options were rejected;

004.09C. A description of each evaluation procedure, assessment, record, or report the agency used as the basis for the proposed or refused action; and

004.09D. A description of the factors that are relevant to the agency's proposal or refusal.

004.10. The petition shall be deemed sufficient unless the party receiving service of a copy of the petition notifies the hearing officer and the other party in writing that the receiving party believes the petition has not met the requirements of subsection 004.06A2.

004.11. The party providing a hearing officer notification under subsection 004.10 shall provide the notification within fifteen (15) days of receiving a copy of the petition.

004.12. Within five (5) days of receipt of the notification provided under Section 004.11, the hearing officer shall make a determination on the face of the petition of whether the petition meets the requirements of subsection 004.06A2, and shall immediately notify the parties in writing of such determination.

004.13. An answer filed by a local education agency pursuant to subsection 004.09 shall not be construed to preclude such local educational agency from asserting that the parent's petition was insufficient where appropriate.

004.14. All pleadings subsequent to the initial petition shall be served by the party filing such pleading upon all attorneys of record or other representatives of record, upon all unrepresented parties, and upon the Department. Service shall be made personally or by first-class or certified mail. Written proof of such service shall be filed with the hearing officer.

TITLE 92
CHAPTER 55

004.15. Subsection 009.11 of Rule 51 (92 NAC 51) requires that within fifteen (15) days prior to the opportunity for an impartial due process hearing under this Chapter, the local educational agency shall convene a meeting with the parents and the relevant member or members of the IEP Team who have specific knowledge of the facts identified in the complaint for the purpose of resolving the issues raised in the complaint.

004.16. If the local educational agency has not resolved the issues raised in the petition to the satisfaction of the parents within thirty (30) days of the receipt of the petition, a hearing date shall be set by the hearing officer and all of the applicable timelines for a due process hearing under this Chapter shall commence. A written notice of the time and place of hearing and the name of the hearing officer shall be served by the hearing officer upon all attorneys of record or other representatives of record and upon all unrepresented parties. The notice must include a proof of such service and shall be filed with the hearing officer.

004.17. In computing time prescribed or allowed by this Chapter of these rules and regulations or by any applicable statute in which the method of computing time is not specifically provided, days will be computed by excluding the day of the act or event and including the last day of the period.

004.18. Within forty-five (45) days after the receipt of a petition by the Department, the hearing officer shall prepare a final decision and order directing such action as may be necessary and mail a copy of the decision and order to each of the parties and to the Commissioner in the manner required by subsection 008.04.

005. Hearing officer; criteria.

005.01. The Department shall assign to a hearing officer the functions of conducting a prehearing conference and/or a hearing and rendering a final decision and order. Hearing officers assigned by the Department shall have exclusive original jurisdiction over cases arising under Neb. Rev. Stat. §79-1152 and §§79-1162 to 1167, and juvenile courts shall not in any event have jurisdiction over such matters.

005.02. A person may serve as hearing officer at successive stages of the same special education contested case.

005.03. The hearing officer shall not be a person who is an employee or officer of a state or local public agency which is involved in the education or care of the child on whose behalf the hearing is being held. A person who otherwise qualifies to conduct a special education contested case hearing is not an employee of the agency solely because the person is paid by the agency to serve as a hearing officer.

005.04. No hearing officer shall participate in any way in any hearing or matter in which the hearing officer may have a conflict of interest including any personal or professional interest that would conflict with his or her objectivity in the hearing.

TITLE 92
CHAPTER 55

005.05. Hearing officers shall possess knowledge of, and the ability to understand, the provisions of the Individuals with Disabilities Education Act (20 U.S.C. 1400 to 1487) and regulations pertaining to this Act and the Nebraska Special Education Act (Neb. Rev. Stat. §§79-1110 to 79-1184) and regulations pertaining to this Act, and legal interpretations of these Acts by federal and state courts;

005.06. Hearing officers shall possess the knowledge and ability to conduct hearings in accordance with appropriate, standard legal practice; and

005.07. Hearing officers shall possess the knowledge and ability to render and write decisions in accordance with appropriate, standard legal practice.

006. Prehearing Procedures.

006.01. Prehearing conferences and orders. A hearing officer designated to conduct a hearing may determine whether a prehearing conference will be conducted. If a prehearing conference is not held, a hearing officer for the hearing may issue a prehearing order, based on the pleadings, to regulate the conduct of the proceedings.

006.01A. If a prehearing conference is conducted:

006.01A1. The hearing officer shall set the time and place of the conference and give reasonable written notice to all parties and to all persons who have filed written petitions to intervene in the matter and shall give notice to other persons entitled to notice.

006.01A2. The notice referred to in subsection 006.01A1 shall include the following:

006.01A2(a). The names and mailing addresses of all parties and other persons to whom notice is being given by the hearing officer;

006.01A2(b). The official file or other reference number, the name of the proceeding, and a general description of the subject matter;

006.01A2(c). A statement of the time, place, and nature of the prehearing conference;

006.01A2(d). A statement of the legal authority and jurisdiction under which the prehearing conference and the hearing are to be held;

006.01A2(e). The name, official title, mailing address, and telephone number of the hearing officer for the prehearing conference;

006.01A2(f). A statement that a party who fails to attend or participate in a prehearing conference, hearing, or other stage of a special education contested case or who fails to make a good faith effort to comply with a prehearing order may be held in default under the Administrative Procedure Act unless otherwise precluded by law; and

TITLE 92
CHAPTER 55

006.01A2(g). Any other matters that the hearing officer considers desirable to expedite the proceedings.

006.01B. The hearing officer shall conduct a prehearing conference, as may be appropriate, to deal with such matters as exploration of settlement possibilities, preparation of stipulations, clarification of issues, rulings on identity and limitation of the number of witnesses, objections to proffers of evidence, determination of the extent to which direct evidence, rebuttal evidence, or cross-examination will be presented in written form and the extent to which telephone, television, or other electronic means will be used as a substitute for proceedings in person, order of presentation of evidence and cross-examination, rulings regarding issuance of subpoenas, discovery orders, and protective orders, and such other matters as will promote the orderly and prompt conduct of the hearing. The hearing officer shall issue a prehearing order incorporating the matters determined at the prehearing conference.

006.01C. The hearing officer may conduct all or part of the prehearing conference by telephone, television, or other electronic means if each participant in the conference has an opportunity to participate in, to hear, and, if technically feasible, to see the entire proceeding while it is taking place.

006.02. Discovery in special education contested cases.

006.02A. The hearing officer, at the request of any party or upon the hearing officer's own motion, may issue subpoenas, discovery orders, and protective orders in accordance with the rules of civil procedure except as may otherwise be prescribed by law. Subpoenas and orders issued under this subsection may be enforced by the district court.

006.02B. Any prehearing motion to compel discovery, motion to quash, motion for protective order or other discovery-related motion shall:

006.02B1. Quote the interrogatory, request, question, or subpoena at issue, or be accompanied by a copy of the interrogatory, request, subpoena or excerpt of a deposition;

006.02B2. State the reasons supporting the motion;

006.02B3. Be accompanied by a statement setting forth the steps or efforts made by the moving party or his or her counsel to resolve by agreement the issues raised and that agreement has not been achieved; and

006.02B4. Be filed with the hearing officer. The moving party must serve copies of all such motions to all parties to the special education contested case and to the Department.

006.02C. Other than is provided in subsection 006.02B4 above, discovery materials need not be filed with the hearing officer or served on the Department.

TITLE 92
CHAPTER 55

006.03. Continuances. Except as specified in subsection 007.07C2 for expedited hearings, the hearing officer may, in his or her discretion, grant specific extensions of time or continuances of hearings beyond the forty-five (45) day time limit for rendering a final decision in subsection 004.18 at the timely request of any party for good cause shown. A party must file a written motion for continuance which states in detail the reasons why a continuance is necessary and serve a copy of the motion on all other parties and the Department.

006.03A. Good cause. Good cause for an extension of time or continuance may include, but is not limited to, the following:

006.03A1. Illness of the party, legal counsel or witness;

006.03A2. A change in legal representation; or

006.03A3. Settlement negotiations are underway.

006.04. Amendments.

006.04A. A petition may be amended only if the other party consents in writing to such amendment and is given the opportunity to resolve the complaint through a meeting held pursuant to 92 NAC 51-009.11A or if the hearing officer grants permission for a party to amend its petition at any time not later than five (5) days before a due process hearing occurs.

006.04B. The applicable timeline for a due process hearing under this part shall recommence at the time the party files an amended petition, including the timeline under 92 NAC 51-009.11A.

006.04C. A hearing officer may allow, in his or her discretion, the filing of supplemental pleadings alleging facts material to the case occurring after the original pleadings were filed. A hearing officer may also permit amendment of pleadings where a mistake appears or where amendment does not materially change a claim or defense.

006.05. Informal Disposition. Unless otherwise precluded by law, informal disposition may be made of any special education contested case by stipulation, agreed settlement, consent order, or default.

007. Conducting a special education contested case hearing.

007.01. Order. At the discretion of the hearing officer, the hearing may be conducted in the following order:

007.01A. The hearing is called to order by the hearing officer. Any preliminary motions, stipulations or agreed orders are entertained.

TITLE 92
CHAPTER 55

007.01B. The party requesting the due process hearing shall not be allowed to raise issues at the due process hearing that were not raised in the petition filed under Section 004, unless the other party agreed otherwise.

007.01C. Each party may be permitted to make an opening statement. Opening statements take place in the same order as the presentation of evidence.

007.01D. Presentation of evidence.

007.01D1. Evidence will be received in the following order:

007.01D1(a). Evidence is presented by the petitioner;

007.01D1(b). Evidence is presented by the respondent;

007.01D1(c). Rebuttal evidence is presented by the petitioner; and

007.01D1(d). Surrebuttal evidence is presented by the respondent.

007.01D2. With regard to each witness who testifies, the following examination may be conducted:

007.01D2(a). Direct examination conducted by the party who calls the witness;

007.01D2(b). Cross-examination by the opposing party;

007.01D2(c). Redirect examination by the party who called the witness;
and,

007.01D2(d). Recross-examination by the opposing party.

007.01E. After the evidence is presented, each party may have opportunity to make a closing argument. Closing arguments shall be made in the same order as the presentation of evidence. The hearing officer may request that the parties submit briefs in lieu of closing arguments.

007.02. Evidence.

007.02A. In special education contested cases the hearing officer may admit and give probative effect to evidence which possesses probative value commonly accepted by reasonably prudent persons in the conduct of their affairs and may exclude incompetent, irrelevant, immaterial and unduly repetitious evidence.

007.02B. Any party to a formal hearing before the hearing officer, from which a decision may be appealed to the courts of this state, may request that the hearing officer be bound by the rules of evidence applicable in district court by delivering to the hearing officer at least three (3) days prior to the holding of the hearing a written request

TITLE 92
CHAPTER 55

therefore. Such request shall include the requesting party's agreement to be liable for the payment of costs incurred thereby and upon any appeal or review thereof, excluding the cost of court reporting services which the hearing officer shall procure for the hearing.

007.02C. Documentary evidence may be received in the form of copies or excerpts or incorporated by reference.

007.02D. All evidence including records and documents in the possession of the hearing officer of which he or she desires to avail himself or herself shall be offered and made a part of the record in the case. No factual information or evidence other than the record shall be considered in the determination of the case.

007.02E. A hearing officer or designee may administer oaths and issue subpoenas in accordance with the rules of civil procedure except as may otherwise be prescribed by law. Any witness compelled to attend or produce evidence shall be entitled to fees and expenses allowed in district court. Any failure to respond to subpoenas and orders issued under this subsection shall be certified by the hearing officer to the district court of Lancaster County for enforcement or for punishment for contempt of the district court.

007.02F. The hearing officer shall give effect to the rules of privilege recognized by law.

007.02G. The hearing officer may take official notice of cognizable facts and in addition may take official notice of general, technical, or scientific facts within his or her specialized knowledge and the rules and regulations adopted and promulgated by the Department.

007.02G1. Parties shall be notified either before or during the hearing or by reference in preliminary reports or otherwise of materials so noticed.

007.02G2. Parties shall be afforded an opportunity to contest facts so noticed.

007.02G3. The record shall contain a written record of everything officially noticed.

007.02H. The hearing officer may utilize his or her experience, technical competence and specialized knowledge in the evaluation of the evidence presented to it.

007.02I. The hearing officer may produce evidence on the officer's own motion. If the hearing officer requests an independent educational evaluation as part of a hearing, the cost of the evaluation must be at public expense.

007.02I1. Public expense means that the school district either pays for the full cost of the evaluation or insures the evaluation is otherwise provided at no cost to the parent.

TITLE 92
CHAPTER 55

007.02J. If the parent obtains an independent educational evaluation of his or her child at private expense, the results of the evaluation may be presented as evidence at a hearing under this Chapter regarding the child.

007.02K. Except as specified in subsection 007.11A for expedited hearings, at least five business days prior to a hearing conducted pursuant to this Chapter, each party shall 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.

007.02L. A hearing officer may bar any party that fails to comply with subsection 007.02K from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.

007.02M. Except as specified in subsection 007.11A for expedited hearings, any party shall have the right to prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five (5) business days before the hearing.

007.03. Conducting the hearing by electronic means. The hearing officer may conduct all or part of the hearing by telephone, television, or other electronic means if each participant in the hearing has an opportunity to participate in, to hear, and, if technically feasible, to see the entire proceeding while it is taking place.

007.04. Official record.

007.04A. The Department shall prepare an official record, which shall include testimony and exhibits, in each special education contested case, but it shall not be necessary to transcribe the record of the proceedings unless requested by a party for purpose of rehearing or appeal, in which event the transcript and record shall be furnished by the Department upon request. Parties other than parents may also request the transcript and official record for the purpose of rehearing or appeal and it shall be furnished by the Department upon request and tender of the cost of preparation.

007.04B. The Department shall maintain an official record of each special education contested case under the Nebraska Special Education Act or the Individuals With Disabilities Education Act for at least five (5) years following the date of the final order.

007.04C. The Department record shall consist only of the following:

007.04C1. Notices of all proceedings;

007.04C2. Any pleadings, motions, requests, preliminary or intermediate rulings and orders, and similar correspondence to or from the Department or the hearing officer pertaining to the special education contested case;

TITLE 92
CHAPTER 55

007.04C3. The record of the hearing before the Department, including all exhibits and evidence introduced during such hearing, a statement of matters officially noticed by the hearing officer during the proceeding, and all proffers of proof and objections and rulings thereon; and

007.04C4. The final order.

007.04D. As provided in subsection 002.03 the hearing officer who receives or who makes or knowingly causes to be made an ex parte communication as set forth in that subsection shall make the appropriate filings which shall be included in the official record of the special education contested case.

007.04E. Except to the extent that the Administrative Procedure Act or another statute provides otherwise, the Department record shall constitute the exclusive basis for action in special education contested cases under the Nebraska Special Education Act or the Individuals With Disabilities Education Act and for judicial review thereof.

007.05. Costs. All formal hearings shall be recorded by a court reporter at the expense of the Department. All other costs of a formal hearing shall be paid by the party or parties incurring the costs, unless otherwise ordered by a United States district court pursuant to the Individuals With Disabilities Education Act.

007.06. Parties' Rights. Any party to a hearing conducted pursuant to this Chapter shall be accorded:

007.06A. 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;

007.06B. The right to present evidence and confront, cross-examine, and compel the attendance of witnesses;

007.06C. The right to obtain a written, or, at the option of the parents, electronic verbatim record of the hearing; and,

007.06D. The right to obtain written, or, at the option of the parents, electronic findings of fact and decisions.

007.06E. Except as specified in subsection 007.07C2 for expedited hearings, the right to prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five (5) business days before the hearing.

TITLE 92
CHAPTER 55

007.07. Appeals Related to Placement in Alternative Educational Settings.

007.07A. In general.

007.07A1. The parent of a child with a disability who disagrees with any decision regarding placement under 92 NAC 51 – 016; or the manifestation determination under 92 NAC 51-016.02E; or a local educational agency that believes that maintaining the current placement of the child is substantially likely to result in injury to the child or to others, may request a hearing by filing a petition pursuant to the procedures in this Chapter.

007.07A2. The hearing officer shall hear, and make a determination regarding, an appeal requested under subsection 007.07A.

007.07B. In making the determination under subsection 007.07A2 the hearing officer may order a change in placement of a child with a disability. In such situations, the hearing officer may:

007.07B1. Return a child with a disability to the placement from which the child was removed; or

007.07B2. Order a change in placement of a child with a disability to an appropriate interim alternative educational setting for not more than forty-five (45) school days if the hearing officer determines that maintaining the current placement of such child is substantially likely to result in injury to the child or to others.

007.07C. Placement during appeals. When an appeal under subsection 007.07A has been requested by either the parent or the local educational agency-

007.07C1. The child shall remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the time period provided for in subsection 016.02C of Rule 51 (92 NAC 51), whichever occurs first, unless the parent and the State or local educational agency agree otherwise, and

007.07C2. The hearing officer shall arrange for an expedited hearing , which shall occur within twenty (20) school days of the date the hearing is requested and shall result in a determination within ten (10) school days after the hearing.

007.08. Maintenance of current educational placement.

007.08A. Except as provided in subsection 007.07C, during the pendency of any administrative or judicial proceeding regarding a special education contested case under this Chapter, unless the state or local agency and the parents or the lead agency and the parents of the child agree otherwise, the child involved in the special education contested case must remain in his or her current educational placement or must continue to receive the early intervention services currently being provided in the setting identified in the IFSP that is consented to by the parents.

TITLE 92
CHAPTER 55

007.08B. If the special education contested case 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. If the case involves an application for initial early intervention services the infant or toddler shall receive the services not in dispute.

007.08C. If the decision of the hearing officer in a special education contested case agrees with the child's parents that a change of placement is appropriate, that placement must be treated as an agreement between the State or local agency and the parents for the purposes of subsection 007.08A.

007.09. Parental rights at hearings.

007.09A. Parents involved in hearings must be given the right to:

007.09A1. Have the child who is the subject of the hearing present; and

007.09A2. Open the hearing to the public.

007.09B. The record of the hearing and the findings of fact and decisions described in subsections 007.06C and 007.06D must be provided at no cost to parents.

007.10. Each hearing involving oral arguments must be conducted at a time and place that is reasonably convenient to the parents and child involved.

007.11. Expedited special education contested case hearings under Section 007, are appealable consistent with subsection 008.09 and shall:

007.11A. Meet the requirements of this Chapter except the time periods identified in subsections 007.02M and 007.02K regarding disclosure of certain evidence shall be two (2) business days; and

007.11B. Be conducted by a hearing officer who satisfies the requirements of this Chapter.

008. Decision and order in a special education contested case.

008.01. Every decision and order adverse to a party to the proceeding, rendered by the hearing officer in a special education contested case, shall be in writing or stated in the record and shall be accompanied by a jurisdictional statement and by findings of fact and conclusions of law.

008.02. Subject to subsection 008.03, a decision made by a hearing officer shall be made on substantive grounds based on a determination of whether the child received a free appropriate public education or early intervention services.

TITLE 92
CHAPTER 55

008.03. In matters alleging a procedural violation, a hearing officer may find that a child did not receive a free appropriate public education or early intervention services only if the procedural inadequacies:

008.03A. Impeded the child's right to a free appropriate public education or early intervention services;

008.03B. Significantly impeded the parents' opportunity to participate in the decisionmaking process regarding the provision of a free appropriate public education or early intervention services to the parents' child; or

008.03C. Caused a deprivation of educational benefit.

008.04. Nothing in subsections 008.02 and 008.03 shall be construed to preclude a hearing officer from ordering a local educational agency to comply with procedural requirements under this section.

008.05. Nothing in this Chapter shall be construed to affect the right of a parent to file a complaint with the Department pursuant to 92 NAC 51-009.09.

008.06. The decision and order should include:

008.06A. The name of the Department and name of the proceeding;

008.06B. The time and place of the hearing;

008.06C. The names of all parties or their attorneys who entered an appearance at the hearing;

008.06D. The findings of fact consisting of a concise statement of the conclusions upon each special education contested issue of fact;

008.06E. The conclusions of law consisting of the applications of the controlling law to the facts found and the legal results arising therefrom; and

008.06F. The order consisting of the action taken as a result of the facts found and the legal conclusions arising therefrom.

008.07. Parties to the proceeding shall be notified of the decision and order or by certified mail in the manner required by subsection 008.08. A copy of the decision and order and accompanying findings and conclusions shall be delivered or mailed upon request to each party or his or her attorney of record in the manner required by subsection 008.08.

TITLE 92
CHAPTER 55

008.08. At the completion of the proceedings, the hearing officer shall prepare a report based on the evidence presented containing findings of fact and conclusions of law. The report shall contain a description of the substance of the evidence presented at the hearing and a list of exhibits offered into evidence together with a statement of which exhibits were received and which were not. Within forty-five (45) days after the receipt of a request for a hearing by the Department, or longer if continuances are granted pursuant to subsection 006.03, the hearing officer shall prepare and mail a final decision and order directing such action as may be necessary. The report and the final decision and order shall be delivered via certified mail to each party or attorney of record and to the Commissioner of Education.

008.09. A decision made in a hearing conducted pursuant to this Chapter shall be final, except that any party involved in such hearing may appeal such decision under the provisions of law referred to in Section 009.

008.10. The hearing officer shall forward to the Department the original pleadings, orders, and exhibits in the case. Such materials shall be forwarded within five (5) calendar days of the date of the final decision and order.

009. Appeals to state or federal court; enforcement.

009.01. Any person aggrieved by the findings, conclusions, and final decision in a special education contested case is entitled to judicial review under the Nebraska Special Education Act or the Individuals With Disabilities Education Act.

009.02. Under the Nebraska Special Education Act (Neb. Rev. Stat. §79-1167), parties desiring to appeal a hearing officer decision must file a petition for review in the district court of the county in which the main administrative offices of the school district are located within two (2) years after service of the final decision and order by the hearing officer on the party seeking such review. The two (2) year period for appeal commences to run from the date of mailing of the notice of order and decision to the parties or their attorneys of record. Service of the petition and summons must be made in accordance with Nebraska law.

009.03. The provisions of Neb. Rev. Stat. §79-1167 specify the procedure for and effect of taking an appeal to state district court under the Nebraska Special Education Act.

009.04. Under the Nebraska Special Education Act (Neb. Rev. Stat. §79-1167), any party of record may seek enforcement of the final decision and order of the hearing officer by filing a petition for appropriate relief in the district court of the county in which the main administrative offices of the school district are located within one (1) year after the date of the hearing officer's final decision and order.

009.05. Under Section 1415(I)(2) of the Individuals With Disabilities Education Act (20 U.S.C. 1415), any party aggrieved by the findings and decision made under this Chapter shall have the right to bring a civil action with respect to the complaint presented pursuant to this Chapter, which 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. Under

TITLE 92
CHAPTER 55

Section 1415(I)(3)(B) of the Individuals With Disabilities Education Act (20 U.S.C. 1415), in any action brought under Section 1415 of the Act, the United States District court, in its discretion, may award reasonable attorney's fees as part of the costs to the parents of a child with a disability who is the prevailing party.

009.06. The provisions of 20 U.S.C. 1415(I)(2)(B) and 1439(a)(1) specify the requirements applicable to state or federal court in a civil action appealing a special education due process case under the Individuals With Disabilities Education Act.

009.07. The provisions of 20 U.S.C. 1415(I)(3)(B) - (G) govern the availability and amount of attorney's fees that may be awarded by the United States District Court under the Individuals With Disabilities Education Act (20 U.S.C. 1401 to 1487).

009.08. The party bringing a civil action under subsection 009.05 shall have ninety (90) days from the date of the decision of the hearing officer to bring such action; or, if the state has an explicit time limitation for bringing such action under Part B of the Individuals With Disabilities Education Act (20 U.S.C. 1411 to 1444), in such time as the state law allows.

**NEBRASKA DEPARTMENT
OF EDUCATION**

RULE 51

**REGULATIONS AND STANDARDS FOR SPECIAL EDUCATION
PROGRAMS**

**TITLE 92, NEBRASKA ADMINISTRATIVE CODE,
CHAPTER 51**

**EFFECTIVE DATE
JANUARY 1, 2017
(REVISED)**

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



TITLE 92 - NEBRASKA DEPARTMENT OF EDUCATION
 CHAPTER 51 - REGULATIONS AND STANDARDS FOR SPECIAL EDUCATION PROGRAMS

ALPHABETICAL TABLE OF CONTENTS

<u>SUBJECT</u>	<u>STATUTORY AUTHORITY</u>	<u>CODE SECTION</u>
Children with Disabilities Attending Nonpublic Schools	79-318, 79-319, 79-1160	015
Contracted Programs	79-318, 79-319, 79-1160	013
Declaration of Responsibility	79-318, 79-319, 79-1127	001
Definition of Terms	79-318, 79-319, 79-1160 20 U.S.C. 1400-1482	003
Disciplinary Removal of Children with Disabilities	79-318, 79-319, 79-1160 20 U.S.C. 1400-1482	016
Early Childhood Services for Children Birth to Age Five	79-318, 79-319, 79-1160	005
Identification of Children with Disabilities, Multidisciplinary Teams and Reporting of Diagnostic Data	79-318, 79-319, 79-1160 20 U.S.C. 1400-1482	006
Individualized Education Program (IEP)	79-318, 79-319, 79-1160 20 U.S.C. 1400-1482	007
Placement of Children with Disabilities	79-318, 79-319, 79-1160 20 U.S.C. 1400-1482	008
Procedural Safeguards	79-318, 79-319, 79-1160 20 U.S.C. 1400-1482	009
Qualifications of Special Education Personnel for Program Approval and Reimbursement	79-318, 79-319, 79-1160 20-150, 20 U.S.C. 1400-1482	010
Responsibility for Special Education Programs	79-318, 79-319, 79-1160 20 U.S.C. 1400-1482	004
School District Budget Development and Payment Process for Early Childhood Special Education Programs (ECSE)	79-318, 79-319, 79-1160 20 U.S.C. 1400-1482	012
School District Budget Development and Reimbursement Process for School Age Programs	79-318, 79-319, 79-1160	011
Special Education Transportation	79-318, 79-319, 79-1160	014
Statutory Authority	79-318, 79-319, 79-1160	002

TITLE 92 - NEBRASKA DEPARTMENT OF EDUCATION
 CHAPTER 51 - REGULATIONS AND STANDARDS FOR SPECIAL EDUCATION PROGRAMS

NUMERICAL TABLE OF CONTENTS

<u>SUBJECT</u>	<u>STATUTORY AUTHORITY</u>	<u>CODE SECTION</u>
Declaration of Responsibility	79-318, 79-319, 79-1127	001
Statutory Authority	79-318, 79-319, 79-1160	002
Definition of Terms	79-318, 79-319, 79-1160 20 U.S.C. 1400-1482	003
Responsibility for Special Education Programs	79-318, 79-319, 79-1160 20 U.S.C. 1400-1482	004
Early Childhood Services for Children Birth to Age Five	79-318, 79-319, 79-1160	005
Identification of Children with Disabilities, Multidisciplinary Teams and Reporting of Diagnostic Data	79-318, 79-319, 79-1160 20 U.S.C. 1400-1482	006
Individualized Education Program (IEP)	79-318, 79-319, 79-1160 20 U.S.C. 1400-1482	007
Placement of Children with Disabilities	79-318, 79-319, 79-1160 20 U.S.C. 1400-1482	008
Procedural Safeguards	79-318, 79-319, 79-1160 20 U.S.C. 1400-1482	009
Qualifications of Special Education Personnel for Program Approval and Reimbursement	79-318, 79-319, 79-1160 20-150, 20 U.S.C. 1400-1482	010
School District Budget Development and Reimbursement Process for School Age Programs	79-318, 79-319, 79-1160	011
School District Budget Development and Payment Process for Early Childhood Special Education Programs (ECSE)	79-318, 79-319, 79-1160 20 U.S.C. 1400-1482	012
Contracted Programs	79-318, 79-319, 79-1160	013
Special Education Transportation	79-318, 79-319, 79-1160	014
Children with Disabilities Attending Nonpublic Schools	79-318, 79-319, 79-1160	015
Disciplinary Removal of Children with Disabilities	79-318, 79-319, 79-1160 20 U.S.C. 1400-1482	016

TITLE 92
CHAPTER 51

001 Declaration of Responsibility

Neb. Rev. Stat. §79-1127 declares, "The board of education of every school district shall provide or contract for special education programs and transportation for all resident children with disabilities who would benefit from such programs."

002 Statutory Authority

This Chapter is adopted pursuant to the statutory authority vested in the Nebraska Department of Education in Neb. Rev. Stat. §79-1160 which declares, "The State Department of Education shall adopt, promulgate and publish rules and regulations necessary to carry out the Special Education Act" and in Neb. Rev. Stat. §§79-318 and 79-319.

TITLE 92
CHAPTER 51

003 Definition of Terms

- 003.01 **Adjusted average per pupil cost (AAPC)** of the preceding year means the amount computed by dividing the total instructional expenditure, excluding special education expenditures, by the preceding year's average daily membership as reported in the annual finance report. The costs of sectarian instruction shall not be included in determining the adjusted average per pupil cost of the preceding year and the computation shall be subject to audit by appropriate state agencies. (See Section 011.)
- 003.02 **Assistive technology device** means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve functional capabilities of a child with a disability. The term does not include a medical device that is surgically implanted, or the replacement of such device.
- 003.03 **Assistive technology service** means any service that directly assists a child with a disability in the selection, acquisition, or use of an assistive technology device. The term includes the evaluation of the needs of a child with a disability, including a functional evaluation of the child in the child's customary environment; purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by children with a disability; selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing or replacing of assistive technology devices; coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs; training or technical assistance for a child with a disability, or if appropriate, that child's family; and training or technical assistance for professionals (including individuals providing education or rehabilitation services), employers, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of the child with a disability.
- 003.04 **At no cost** means that all specially-designed instruction is provided without charge, but does not preclude incidental fees that are normally charged to nondisabled children or their parents as a part of the regular education program.
- 003.05 **Below age five** means those children who have not reached their fifth birthday on or before July 31 of the current school year.
- 003.06 **Categorical program** means a special education program setting in which services are provided to children with the same disability.
- 003.07 **Child find** means that all children with disabilities residing in the State, including children with disabilities who are homeless children, or are wards of the State and children with disabilities attending nonpublic schools, regardless of the severity of their disability, and who are in need of special education and related services, are identified, located, and evaluated; and a practical method is developed and implemented to determine which children are currently receiving needed special education and related services (See Section 006).
- 003.08 **Child with a disability** means a child who has been verified pursuant to Section 006 as a child with autism, a behavior disorder (herein referred to as emotional disturbance), deaf-blindness, a developmental delay, a hearing impairment including deafness, an intellectual disability, multiple impairment, an orthopedic impairment, an other health impairment, a specific learning disability, a speech-language impairment, a traumatic brain injury or a visual impairment including blindness, who because of this impairment needs special education and related services. If, under 92 NAC 51-003.56, it is determined, through an appropriate evaluation under

TITLE 92
CHAPTER 51

Section 006, that a child has one of the disabilities identified above, but only needs a related service and not special education, the child is not a child with a disability under this Chapter. If the related service required by the child is considered special education rather than a related service, the child would be determined to be a child with a disability.

- 003.09 **Consent** means that the parent has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language, or other mode of communication; that the parent understands and agrees in writing to the carrying out of the activity for which his or her consent is sought; that the consent includes a description of the proposed activity and a list of records (if any) which will be released and to whom they will be released; and the parent understands that the granting of consent is voluntary and may be revoked at any time. If a parent revokes consent, that revocation is not retroactive (i.e., it does not negate an action that has occurred after the consent was given and before the consent was revoked). If the parent revokes consent in writing for their child's receipt of special education services after the child is initially provided special education and related services, the school district or approved cooperative is not required to amend the child's education records to remove any references to the child's receipt of special education and related services because of the revocation of consent.
- 003.10 **Controlled substance** means a drug or other substance identified under schedules I, II, III, IV or V in Section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)).
- 003.11 **Cooperative** means two or more school districts or an Educational Service Unit (ESU) approved by the Nebraska Department of Education to jointly perform special education functions, including receipt of special education payments.
- 003.12 **Core Academic Subjects** has the meaning given the term in Section 602(4) of the Individuals with Disabilities Education Act of 2004. (See Appendix A)
- 003.13 **Day** means calendar day unless otherwise indicated as business day or school day;
- 003.13A **Business day** means Monday through Friday, except for Federal and State holidays (unless holidays are specifically included in the designation of business day) as in 92 NAC 51-015.02C2.
- 003.13B **School day** means any day, including a partial day, that children are in attendance at school for instructional purposes. The term school day has the same meaning for all children in school, including children with and without disabilities.
- 003.14 **Destruction** means physical destruction or removal of personal identifiers from information so that the information is no longer personally identifiable.
- 003.15 **Early childhood special education (ECSE) programs** means special education programs and related services designed to serve children below age five with verified disabilities.
- 003.16 **Early Intervening Services** means the development and implementation of coordinated, early intervening services, which may include interagency financing structures, for children in kindergarten through grade 12 (with a particular emphasis on children in kindergarten through grade 3) who are not currently identified as needing special education or related services but who need additional academic and behavioral support to succeed in a general education environment.

TITLE 92
CHAPTER 51

- 003.17 **Education records** means those records that are directly related to a child which are maintained by an educational agency or institution or by a party acting for the agency or institution. This term parallels the definition contained in the regulations implementing the Family Educational Rights and Privacy Act (FERPA).
- 003.18 **Educational sign language interpreter** means a person who provides interpreter services for individuals with deafness or hearing impairments for special education evaluations or services pursuant to IEPs; and who is qualified to facilitate communication between people who do not share a common language or mode of communication.
- 003.19 **Equipment** means machinery, utilities, and built-in equipment, and any necessary enclosures or structures to house the machinery, utilities, or equipment, and all other items necessary for the functioning of a particular facility as a facility for the provision of educational services, including items such as instructional equipment and necessary furniture; printed, published, and audio-visual instructional materials; telecommunications, sensory, and other technological aids and devices, and books, periodicals, documents, and other related materials.
- 003.20 **Equitable services plan** means a written statement that describes the special education and related services the school district or approved cooperative will provide to a parentally-placed non-resident child with a disability enrolled in a nonpublic school in a district other than the district of residence who has been designated to receive services, including the location of the services and any transportation necessary consistent with Section 015 of this Chapter, and is developed and implemented in accordance with Section 015 of this Chapter.
- 003.21 **Evaluation** means procedures used in accordance with 92 NAC 51-006 to determine whether a child has a disability and the nature and extent of the special education and related services that the child needs.
- 003.22 **Excess costs** means the difference between: (1) the total allowable cost of the special education programs excluding residential care, and (2) the number of children (full time equivalency) in the special education program multiplied by the adjusted average per pupil cost of the school district of each child for the preceding year.
- 003.23 **Extended school year services** means special education and related services that: are provided to a child with a disability, beyond the normal school year of the school district or approved cooperative, in accordance with the child's IEP, at no cost to the parents of the child, and meet the requirements of 92 NAC 51.
- 003.24 **Free appropriate public education or FAPE** means special education and related services that are provided at public expense, under public supervision, and direction, and without charge; meet the standards of the state including the requirements of this Chapter; include an appropriate preschool, elementary school, or secondary school education in Nebraska and are provided in conformity with an individualized education program (IEP) that meets the requirements of 92 NAC 51-007.
- 003.25 **Full time equivalency (FTE)** means the amount of time an individual staff member spends in his or her position assignment as it relates to the total time in the work week defined for that position by each school district.

TITLE 92
CHAPTER 51

- 003.26 **Functional behavioral assessment** means the process of gathering information that may be used to maximize the effectiveness and efficiency of behavior support (direct observation must be included). It involves a description of the problem behavior, the identification of antecedents which occasion the behavior and consequences which maintain it, the function the behavior serves (e.g., attention, communication, task avoidance), and the selection of alternative behaviors which will provide the same function.
- 003.27 **Homeless children** has the meaning given the term homeless children and youth in Section 725 of the McKinney-Vento Homeless Assistance Act (42 U.S.C.11434a).
- 003.28 **Illegal drug** means a controlled substance, but does not include a controlled substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under the Controlled Substances Act (21 U.S.C. 812(c)) or under any other provisions of federal law.
- 003.29 **Include** means that the items named are not all of the possible items that are covered, whether like or unlike the ones named.
- 003.30 **Independent educational evaluation** means an evaluation conducted by a qualified examiner who is not employed by the school district or approved cooperative responsible for the education of the child in question.
- 003.31 **Individualized education program (IEP)** means a written statement for a child with a verified disability that is developed, reviewed and revised in a meeting in accordance with Section 007 which specifies the special education and related services necessary to assure the child a free appropriate public education.
- 003.32 **Individualized education program team or IEP team** means a group of individuals described in Section 007 that is responsible for developing, reviewing, or revising an IEP for a child with a disability.
- 003.33 **Individualized Family Service Plan (IFSP)** means a written plan for providing early intervention services to a child with a disability age birth through the school year in which the child reaches age 3 and the child's family that is developed and implemented in accordance with 92 NAC 52.
- 003.34 **Level I Special Education Services** means those services provided to children who require an aggregate of not more than three (3) hours of such services per week. Level I special education services may be provided for or contracted for and shall include all administrative, diagnostic, consultative, vocational adjustment counselor services and support services. Administration, diagnostic services, and special education staff consultation with other staff shall not be included in the computation of hours of services provided to a child each week.
- 003.35 **Level I and Level II Combination Special Education Services** means those special education programs which serve both Level I and Level II students in a combined program.
- 003.36 **Level II Special Education Services** means those special education and related services which are provided for a period of time exceeding an aggregate of three hours per week.

TITLE 92
CHAPTER 51

- 003.37 **Level III Special Education Contractual Services** means those special education and related services provided in an educational setting not operated by the school district or approved cooperative whose rates are approved by the Nebraska Department of Education. This shall mean special education and related services provided for a period of time exceeding an aggregate of three hours per week.
- 003.38 **Life support equipment** means equipment used to maintain or sustain life functions.
- 003.39 **Limited English Proficient** has the meaning given the term in Section 602(18) in the Individuals with Disabilities Education Act of 2004. (See Appendix A)
- 003.40 **Multicategorical program** means a special education program setting which provides services to any combination of categories of children with disabilities.
- 003.41 **Multidisciplinary evaluation team (MDT)** means a group of qualified professionals and the parent whose responsibility is to evaluate the abilities and needs of a child referred for evaluation and to determine whether or not the child meets the definition of a child with a disability.
- 003.42 **Native language**, (when used with respect to an individual of limited English proficiency), means the language normally used by that individual, or, in the case of a child, the language normally used by the parents of the child, except in all direct contact with a child (including evaluation of the child), the language normally used by the child in the home or learning environment. For an individual with deafness or blindness, or for an individual with no written language, the mode of communication is that normally used by the individual (such as sign language, Braille, or oral communication).
- 003.43 **Notice** means written information provided to the parent of a child with a disability a reasonable time before the school district or approved cooperative proposes or refuses to initiate or change identification, evaluation, or educational placement of a child or the provision of a free appropriate public education.
- 003.44 **Parent** means a biological or adoptive parent of a child; a foster parent, unless State law, regulations, or contractual obligations with a State or local entity prohibit a foster parent from acting as a parent; a guardian generally authorized to act as the child's parent, or authorized to make educational decisions for the child (but not the State if the child is a ward of the State); an individual acting in the place of a biological or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives, or an individual who is legally responsible for the child's welfare; or a surrogate parent who has been appointed in accordance with 92 NAC 51-009.10B. The biological or adoptive parent, when attempting to act as the parent and when more than one party is qualified to act as a parent, must be presumed to be the parent unless the biological or adoptive parent does not have legal authority to make educational decisions for the child. However, if a judicial decree or order identifies a specific person or persons to act as the "parent" of a child or to make educational decisions on behalf of a child, then such person or persons shall be determined to be the "parent" for purposes of this subsection.
- 003.45 **Personal equipment and supplies** means items necessary for daily life activities occurring outside the requirement of the IEP which are generally expected to be the responsibility of parents.

TITLE 92
CHAPTER 51

- 003.46 **Personally identifiable** means information that contains the name of the child, the child's parent or other family member; the address of the child; a personal identifier such as the child's social security number or NDE student ID; or a list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty.
- 003.47 **Public agency** includes the Nebraska Department of Education, school districts and approved cooperatives and any other political subdivisions of the state that are responsible for providing education to children with disabilities.
- 003.48 **Referral** means the submission of a request by a parent, school personnel or approved agency for an individual evaluation of a child suspected of having a disability.
- 003.49 **Related services** means transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education, and includes speech-language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, early identification and assessment of disabilities in children, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services for diagnostic or evaluation purposes. Related services also include school health services and school nurse services, social work services in schools, and parent counseling and training. Related services do not include a medical device that is surgically implanted (including cochlear implants), the optimization of that device's functioning (e.g., mapping), maintenance of that device, or the replacement of that device. This definition does not limit the right of a child with a surgically planted device (e.g., cochlear implant) to receive related services as listed in this definition that are determined by the IEP team to be necessary for the child to receive FAPE or limits the responsibility of a school district to appropriately monitor and maintain medical devices that are needed to maintain the health and safety of the child, including breathing, nutrition, or operation of other bodily functions, while the child is transported to and from school or is at school; or prevents the routine checking of an external component of a surgically implanted device to make sure it is functioning properly.
- 003.50 **Residential care** means food and lodging and any other related expenses which are not part of the education program, but such care shall not include expenditures for medical or dental services. (See 92 NAC 53.)
- 003.51 **School age programs** means special education programs and related services designed to serve children with verified disabilities from age five through the school year in which the children reach age twenty-one. Children who have reached their fifth birthday prior to July 31 shall be considered school age.
- 003.52 **School district** means a public school district or a cooperative approved as a Nebraska Department of Education special education service provider.
- 003.53 **Serious bodily injury** means bodily injury which involves substantial risk of death; extreme physical pain; protracted and obvious disfigurement; or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.
- 003.54 **Service agency** means the school district or approved cooperative, educational service unit, local or regional office of mental retardation, or some combination thereof, or such other agency approved by the Department of Education as may provide a special education program including an institution not wholly owned or controlled by the state or a political subdivision.

TITLE 92
CHAPTER 51

- 003.55 **Service provider** means an individual or service agency, excluding a school district or approved cooperative, provisionally approved by the Nebraska Department of Education.
- 003.56 **Special education** means specially designed instruction, at no cost to the parent, to meet the unique needs of a child with a verified disability, including classroom instruction, home instruction, instruction in hospitals and institutions and in other settings and instruction in physical education. The term includes travel training, vocational education, speech-language pathology, occupational therapy and physical therapy if the service consists of specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability.
- 003.56A **Physical Education** means the development of physical and motor fitness; fundamental motor skills and patterns; and skills in aquatics, dance and individual and group games and sports (including intramural and lifetime sports); and includes special physical education, adapted physical education, movement education and motor development.
- 003.56B **Vocational Education** means organized educational programs that are directly related to the preparation of individuals for paid or unpaid employment, or for additional preparation for a career not requiring a baccalaureate or advanced degree.
- 003.57 **Specially designed instruction** means adapting as appropriate to the needs of an eligible child under this Chapter the content, methodology, or delivery of instruction to address the unique needs of the child that result from the child's disability and to ensure access to the general curriculum so that the child can meet the educational standards within the jurisdiction of the public school district or approved cooperative that apply to all children.
- 003.58 **Student assistance team (SAT)** means a group of persons utilizing problem solving and intervention strategies to assist the teacher(s) in the provision of general education.
- 003.59 **Supplementary aids and services** means, aids, services, and other supports that are provided in regular education classes or other education-related settings and in extracurricular and non-academic settings to enable children with disabilities to be educated with nondisabled children to the maximum extent appropriate in accordance with Section 008 of this Chapter.
- 003.60 **Support services** means preventative services for students not identified or verified as having a disability as per Section 006 but who demonstrate a need for specially designed assistance in order to benefit from the school's general education curriculum and to avoid the need for potentially expensive special education placement and services.
- 003.61 **Surrogate parent** means an individual appointed by the school district or approved cooperative to act in place of a parent in safeguarding a child's rights in the special education decision making process.
- 003.62 **Teacher meeting IDEA 2004 criteria**, for any special education teacher, has the meaning given in Section 602(10) of the Individuals with Disabilities Education Act of 2004. (See Appendix A)

TITLE 92
CHAPTER 51

- 003.63 **Transition services** means a coordinated set of activities for a child with a disability that is designed to be within a results-oriented process that is focused on improving the academic and functional achievement of the child with a disability to facilitate the child's movement from school to post-school activities, including post-secondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation; is based upon the individual child's needs, taking into account the child's strengths, preferences, and interests; and includes instruction, related services, community experiences, the development of employment and other post-school adult living objectives, and, when appropriate, acquisition of daily living skills and a functional vocational evaluation. Transition services for children with disabilities may be special education, if provided as specially designed instruction, or related services, if required to assist a child with a disability to benefit from special education.
- 003.64 **Travel training** means providing instruction, as appropriate, to children with significant cognitive disabilities, and any other children with disabilities who require this instruction to enable them to develop an awareness of the environment in which they live; and learn the skills necessary to move effectively and safely from place to place within that environment (e.g., in the school, in the home, at work, and in the community).
- 003.65 **Universal design** has the meaning given the term in Section 3 of the Assistive Technology Act of 1998 (29 U.S.C. 3002).
- 003.66 **Ward of any court** means any minor child who, by virtue of a court order entered by a court of competent jurisdiction, has been adjudicated to be a ward of the court.
- 003.67 **Ward of the State** means a child who, as determined by the State where the child resides, is a foster child, is a ward of the State, or is in the custody of a public child welfare agency. The term does not include a foster child who has a foster parent who meets the definition of a parent in 92 NAC 51-003.44.
- 003.68 **Weapon** means a dangerous weapon as defined in 18 U.S.C. 930(g)(2) to mean a device, instrument, material, or substance, animate or inanimate, that is used for, or is readily capable of, causing death or serious bodily injury, except that such term does not include a pocket knife with a blade of less than 2-1/2 inches in length.

TITLE 92
CHAPTER 51

004 Responsibility for Special Education Programs

004.01 All providers of special education services shall be under the general supervision of the Nebraska Department of Education for the purpose of meeting the standards of this Chapter. School districts and approved cooperatives shall ensure that all children with verified disabilities, from birth through the school year in which the child reaches age twenty-one, including children who have been suspended or expelled from school, have available to them a free appropriate public education (FAPE) which includes special education and related services to meet their unique needs. School districts and approved cooperatives responsibility to ensure the availability of FAPE includes ensuring the availability of FAPE for resident children in detention facilities, correctional facilities, jails, and prisons.

004.02 The school district or approved cooperative shall ensure that FAPE is available to any individual child with a disability who needs special education and related services, even though the child has not failed or been retained in a course or grade and is advancing from grade to grade.

004.02A The determination that a child described in 92 NAC 51-004.02 is eligible under this Chapter must be made on an individual basis by the multidisciplinary evaluation team.

004.03 Exceptions to the Requirement to Provide a Free Appropriate Public Education

004.03A Children with disabilities who have graduated from high school with a regular high school diploma are not eligible to receive a FAPE.

004.03A1 The exception in 92 NAC 51-004.03A does not apply to children who have graduated but have not been awarded a regular high school diploma.

004.03A2 Graduation from high school with a regular diploma constitutes a change in placement, requiring written prior notice in accordance with 92 NAC 51-009.05.

004.03A3 As used in this section, the term *regular high school diploma* does not include an alternative degree that is not fully aligned with the state's academic standards such as a certificate or a general educational developmental credential (GED).

004.04 At the request of a parent or guardian, a school district shall issue a certificate of attendance to a student who receives special education services under 92 NAC 51, who has reached seventeen years of age, and who has not completed his or her individualized education program. A school district shall allow a student who receives a certificate of attendance under this section to participate in the high school graduation ceremony of such high school with students receiving high school diplomas. A student may receive only one certificate of attendance and may participate in only one graduation ceremony based on such certificate. The receipt of a certificate of attendance pursuant to this section shall not affect a school district's obligation to continue to provide special education services to a student receiving such certificate.

TITLE 92
CHAPTER 51

004.04A Section 004.04 does not preclude a student from receiving a high school diploma by meeting the school district's graduation requirements established pursuant to Neb. Rev. Stat. §79-729 or in his or her individualized education program or receiving a diploma of high school equivalency under Neb. Rev. Stat. §79-730 upon completing the requirements of such section. The school district may allow a student who has previously participated in a graduation ceremony based on a certificate of attendance to participate in an additional graduation ceremony when such student receives a high school diploma.

004.05 Participation in Assessments

004.05A School districts shall include all public school children with disabilities in all general state and district-wide assessment programs, including assessments described under section 612(a)(16)(A) of the Individuals with Disabilities Education Act of 2004 (See Appendix A), with appropriate accommodations and alternate assessments where necessary and as indicated in their respective individualized education programs.

004.05B In the case of a district-wide assessment, the school district shall develop guidelines for the provision of appropriate accommodations.

004.05C In the case of a district-wide assessment, the school district shall develop and implement guidelines for the participation of children with disabilities in alternate assessments for those children who cannot participate in regular assessments under 92 NAC 51-004.05A with accommodations as indicated in their respective individualized education programs. The guidelines shall provide for accommodations and alternate assessments that:

004.05C1 Are aligned with the Nebraska Department of Education's challenging academic content standards and challenging student academic achievement standards; and

004.05C2 If the Nebraska Department of Education has adopted alternate academic achievement standards permitted under Section 612(a)(16)(C)(ii)(II) of the Individuals with Disabilities Education Act of 2004 (See Appendix A), measure the achievement of children with disabilities against those standards.

004.05D School districts shall make available to the public, and report to the public with the same frequency and in the same detail as they report on the assessment of nondisabled children, the following:

004.05D1 The number of children with disabilities participating in regular assessments, and the number of those children who were provided accommodations in order to participate in these assessments.

004.05D2 The number of children with disabilities participating in alternate assessments described in 92 NAC 51-004.05C1.

004.05D3 The number of children with disabilities participating in alternate assessments described in 92 NAC 51-004.05C2.

TITLE 92
CHAPTER 51

004.05D4 The performance results of children with disabilities on regular assessments and on alternate assessments (if the number of children with disabilities participating is sufficient to yield statistically reliable information and reporting that information will not reveal personally identifiable information about an individual child), compared with the achievement of all children, including children with disabilities, on those assessments.

004.05E In the case of a district-wide assessment, the school district or approved cooperative shall, to the extent feasible, use universal design principles in developing and administering any assessments under this Section.

004.06 Reporting of Information Regarding Children with Disabilities

004.06A Individual child information shall be reported electronically via the NDE Portal. Each school district or approved cooperative shall maintain and report the following information for children with verified disabilities receiving services according to an individualized education program.

004.06A1 Name (or identifier approved by NDE) and birthdate;

004.06A2 County, district of legal residence and building of attendance;

004.06A3 Program and instructional setting attended;

004.06A4 Type(s) of disability;

004.06A5 Race/ethnicity, gender, and limited English proficiency;

004.06A6 Type(s) of service received;

004.06A7 Indication of percent of time spent receiving special education service (for inclusive and segregated settings) and in regular education;

004.06A8 Date and reason for exiting special education;

004.06A9 State Ward Status and indication of appointment of surrogate if required;

004.06A10 Initial verification date and disability for children verified pursuant to 92 NAC 51-006.04;

004.06A11 Whether the child received a regular diploma based on the same standards as general education peers or based on the goals met in the child's IEP.

004.06B This data shall be updated at least annually to reflect change(s) in the above information.

004.06C Public special purpose school systems accredited under 92 NAC 10 and school districts or approved cooperatives shall prepare an accurate and unduplicated child count as of October 1 of each year. The October 1 child count shall be approved and submitted electronically by the portal administrator or designee via the NDE portal on or before October 31 of each year.

TITLE 92
CHAPTER 51

- 004.06D Public special purpose school systems accredited under 92 NAC 10 and school districts or approved cooperatives shall prepare an accurate and unduplicated year-end child count as of June 30 of each year. The June 30 year-end child count shall be approved and submitted electronically by the portal administrator or designee via the NDE portal on or before June 30 of each year.
- 004.06E School districts and approved cooperatives shall report their incidences, duration, and count of removals, suspensions, and expulsions of children receiving special education services by June 30 of each year. The report must be disaggregated by race/ethnicity, gender, LEP status and disability category.
- 004.07 A school district or approved cooperative shall submit a single district plan, participate in a plan submitted by a cooperative approved by the Department of Education, or any combination thereof. The State Board of Education shall approve or disapprove cooperatives for direct receipt of payment based on the following criteria:
- 004.07A The cooperative must be administered by a school district or an Educational Service Unit;
- 004.07B The participating school districts have certified that the cooperative is authorized to receive special education payments due the districts;
- 004.07C The cooperative provides evidence of agreements and procedures which provide for long term operation;
- 004.07D The cooperative proposes to operate programs which can be expected to increase program and financial efficiency and effectiveness; and
- 004.07E The cooperative provides evidence that the proportionate financial share as determined by the provisions of Sections 011 and 012 of each participating school district can be determined and documented.
- 004.08 School District or Approved Cooperative Special Education Policies and Procedures
- 004.08A The school district or approved cooperative shall develop, adopt and have on file with the Nebraska Department of Education current policies, procedures and forms for special education programs for all resident public and nonpublic school children with disabilities, in accordance with all applicable state and federal requirements. Policies and procedures shall govern identification, evaluation and verification, individualized education program, placement (least restrictive environment), confidentiality, procedural safeguards, comprehensive system of personnel development, transportation, and surrogate parents within the school district or approved cooperative. Additionally, policies and procedures shall govern free appropriate public education, child find, transition from Part C of the IDEA to preschool programs, children in nonpublic schools, personnel standards, performance goals and indicators, participation in assessments, reporting related to assessment results, and suspension and expulsion.

TITLE 92
CHAPTER 51

004.09 Notice and Opportunity for Hearing Before Withholding Funds

004.09A A school district or an approved cooperative shall be notified by certified mail to the head administrator whenever the Office of Special Education intends to recommend to the State Board of Education that funds be withheld from the school district or approved cooperative.

004.09B Within 21 calendar days of the school district's or approved cooperative's receipt of the notice of the Office of Special Education's intention to recommend withholding funds to the State Board of Education, the school district or approved cooperative may request in writing a review by the Commissioner or designee. Following the review, the Commissioner or designee shall:

004.09B1 Notify the school district or approved cooperative by certified mail that, based upon the review, (s)he will recommend to the State Board of Education that funds be withheld from the school district or approved cooperative, or

004.09B2 Notify the school district or approved cooperative that funds will not be withheld.

004.09C Within 30 calendar days of receipt of the notice of the Commissioner's intention to withhold funds, the school district or approved cooperative may request in writing a hearing before the State Board of Education. The hearing shall be conducted in accordance with the hearing procedures of 92 NAC 61, including provisions of that Chapter relating to evidence.

004.10 Children with Disabilities who are Wards of the State or Court

004.10A Responsibility for the provision and payment of a free appropriate public education for wards of the state or court is determined pursuant to Neb. Rev. Stat. §79-215.

004.11 Special Requirements

004.11A Each school district or approved cooperative shall take steps to ensure that its children with verified disabilities have available to them the variety of educational programs and services available to children without disabilities in the areas served by the school district including art, music, industrial arts, family consumer science education, and vocational education.

004.11B Each school district or approved cooperative shall comply with any federal health or safety requirements that apply to the facilities that the school district or approved cooperative uses to provide a free appropriate public education for children with verified disabilities.

004.11C Each school district or approved cooperative shall administer or supervise the administration of all educational programs for children with verified disabilities.

004.11D Prohibition on mandatory medication:

004.11D1 The school districts, approved cooperatives and special education and related services providers are prohibited from requiring parents to obtain a prescription for substances identified under Schedules I, II, III, IV or V in section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)) for the child as a condition of attending school, receiving an evaluation under Section 006 of this Chapter, or receiving services under 92 NAC 51.

TITLE 92
CHAPTER 51

004.11D2 Nothing in 92 NAC 51-004.11D1 shall be construed to create a prohibition against teachers and other school personnel consulting or sharing classroom-based observations with parents or guardians regarding a child's academic and functional performance, or behavior in the classroom or school, or regarding the need for evaluation for special education or related services.

004.12 Innovative Educational Projects

004.12A School districts and approved cooperatives wishing to conduct innovative educational projects for the purpose of improving instruction or increasing educational opportunities for children with disabilities that would result in deviating from the standards in this Chapter, shall submit a detailed written plan to the Commissioner of Education.

004.12A1 The length of the project must be specified in the plan, not to exceed three years, and must provide for an annual review of the progress of the program.

004.12A2 If the submitted project requires a waiver of any of the provisions of this Chapter which are not required by State statute and Federal law or regulation, the Commissioner shall submit the plan to the State Board of Education with recommendations.

004.12A3 The State Board of Education may approve the requested plan if the plan demonstrates that it promotes quality learning, equity, accountability, and that the Commissioner of Education will be informed annually of the progress and the project results.

004.12A4 The State Board of Education shall reject the plan if, in its opinion, the plan would not promote quality learning, equity, accountability or if it does not provide that the Commissioner of Education will be informed annually of the progress of the plan. The State Board of Education shall also reject the plan if, in the State Board of Education's opinion, the plan results in a deviation of standards contained in this Chapter which are specifically required by statute or federal law or regulation.

004.13 All school districts or approved cooperatives shall participate in an ongoing review of their special education programs for purposes of improving outcomes utilizing the Improving Learning for Children with Disabilities self assessment process (ILCD).

004.14 All special education programs shall comply with the requirements of state and federal law and regulation concerning the education of children with disabilities and shall be monitored at least once every five years for compliance with state and federal special education law and regulation.

004.14A Failure to comply with the provisions of state and federal statute and administrative rules concerning education of children with disabilities shall result in notification of school districts or approved cooperatives of the specific program deficiencies by the Office of Special Education.

004.14B School districts or approved cooperatives shall be afforded 45 days to respond to the initial notification with a report of the resolution of the deficiencies or a plan for resolution.

TITLE 92
CHAPTER 51

- 004.14C School districts or approved cooperatives failing to respond as set forth in 92 NAC 51-004.14B shall be afforded an additional 30 days following contact from the Administrator of the Office of Special Education or the designee of the Administrator to submit a plan for resolution of the deficiencies.
- 004.14D Deficiencies must be corrected as soon as possible, and in no case later than one year after the school district or approved cooperative has been notified of the noncompliance. Deficiencies not corrected according to the timelines set forth in 92 NAC 51-004.14 shall be subject to the procedures outlined in 92 NAC 51-004.09.
- 004.14E Any school district or approved cooperative not meeting the requirements of this Chapter shall be in violation of the law. No state or federal funds shall be paid to any school district or approved cooperative as long as such violation exists, but no deduction shall be made from any funds required by the Constitution of the State of Nebraska to be paid to such district or approved cooperative.
- 004.14F The Nebraska Department of Education will monitor school districts and approved cooperatives on the implementation of IDEA as amended in 2004 as required by 34 CFR 300.600 including the enforcement provision contained in 34 CFR 300.604(a)(1) and (a)(3), (b)(2)(i) and (b)(2)(v) and (c)(2) and annually report on the districts' and cooperatives' performance.

004.15 Access to Instructional Materials

- 004.15A A school district or approved cooperative that chooses to coordinate with the National Instructional Materials Access Center (NIMAC) when purchasing print instructional materials shall enter into a written contract with the publisher of the print instructional materials to:
- 004.15A1 Require the publisher to prepare and, on or before the delivery of the print instructional materials, provide to the National Instructional Materials Access Center, electronic files containing the contents of the print instructional materials using the Instructional Materials Accessibility Standard (NIMAS); or
- 004.15A2 Purchase instructional materials from a publisher that are produced in or may be rendered in specialized formats.
- 004.15B Nothing in this section shall be construed to require a school district or approved cooperative to coordinate with the National Instructional Materials Access Center. If a school district or approved cooperative chooses not to coordinate with the National Instructional Materials Access Center, the school district or approved cooperative shall provide an assurance to the Nebraska Department of Education that the school district or approved cooperative will provide instructional materials to children with blindness or other children with print disabilities at the same time as other children.

TITLE 92
CHAPTER 51

005 Early Childhood Services for Children with Disabilities Birth to Age Five

005.01 Each school district or approved cooperative shall demonstrate participation in a plan of services for children with disabilities who are less than five years of age. Such plans shall be prepared by each planning region and be updated annually and shall address:

005.01A Gaps and barriers in service delivery;

005.01B Child Find;

005.01C Training and technical assistance;

005.01D Parent involvement; and

005.01E Resources.

005.02 Annual Meetings

005.02A The annual meeting must be conducted prior to July 1 of each year.

005.02B The date and place of the annual meeting shall be disseminated within the region so that all school districts, approved cooperatives, service providers, parents, and nonpublic agencies serving children below age five have access to the information.

005.02C A written report of the annual meeting shall be prepared, which includes a list of participants and identified gaps and barriers. The written report shall be submitted to the Nebraska Department of Education on a date specified by the Department.

005.03 Transition of Children from the early intervention programs to preschool programs

005.03A The school district or approved cooperative shall have in effect policies and procedures to ensure that:

005.03A1 Children participating in early intervention programs assisted under Part C of the IDEA, and who will participate in preschool programs assisted under Part B of the IDEA, shall experience a smooth and effective transition to those preschool programs in a manner consistent with section 637(a)(9) of the IDEA;

005.03A2 By the third birthday of a child described in 92 NAC 51-005.03A1, an IEP or an IFSP, has been developed and is being implemented for the child; and

005.03A3 The school district or approved cooperative will participate in transition planning conferences.

TITLE 92
CHAPTER 51

006 Identification of Children with Disabilities, Multidisciplinary Teams and Reporting of Diagnostic Data

006.01 Child Find

006.01A All children with disabilities residing in the state, including children with disabilities who are homeless children or wards of the State and children with disabilities attending nonpublic schools, regardless of the severity of their disabilities, and who are in need of special education and related services, shall be identified, located, and evaluated and a practical method shall be developed and implemented to determine which children with disabilities are currently receiving needed special education and related services.

006.01A1 The child find requirements apply to highly mobile children including migrant children.

006.01A2 The child find requirements also apply to a child who is suspected of being a child with a disability under 92 NAC 51-003.08 and in need of special education, even though the child is advancing from grade to grade.

006.01B Student Assistance Team (SAT) or Comparable Problem Solving Team

006.01B1 For a school age student, a general education student assistance team or a comparable problem solving team shall be used prior to referral for multidisciplinary team evaluation.

006.01B2 The SAT or comparable problem solving team shall utilize and document problem solving and intervention strategies to assist the teacher in the provision of general education.

006.01B3 If the student assistance team or comparable problem solving team feels that all viable alternatives have been explored, a referral for multidisciplinary evaluation shall be completed. A referral shall include information from the SAT or comparable problem solving team, meeting the requirements of 92 NAC 51-006.01B and a listing of the members of the SAT or comparable problem solving team.

006.02 General Evaluation Requirements

006.02A The screening of a child by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation shall not be considered to be an evaluation for eligibility for special education and related services.

006.02B Consistent with the consent requirements in 92 NAC 51-009.08A, a parent of a child, the Nebraska Department of Education, another State agency or a local school district or approved cooperative or nonpublic school may initiate a request for an initial evaluation to determine if the child is a child with a disability.

TITLE 92
CHAPTER 51

006.02B1 The resident school district or approved cooperative shall conduct a full and individual initial evaluation for each child being considered for special education and related services before the initial provision of special education and related services to a child with a disability. The initial evaluation shall determine whether a child is a child with a disability, and the educational needs of the child.

006.02B1a In implementing the requirements of 92 NAC 51-006.02B the school district or approved cooperative shall ensure that:

006.02B1a(1) The evaluation is conducted in accordance with the procedures described in Section 006 of this Chapter.

006.02B1a(2) The results of the evaluation are used by the child's IEP team in meeting the requirements of Section 007 of this Chapter.

006.02C Verification criteria and procedures:

006.02C1 School districts and approved cooperatives must ensure assessments and other evaluation materials used to assess a child under this Chapter;

006.02C1a Are selected and administered so as not to be discriminatory on a racial or cultural basis; and

006.02C1b Are provided and administered in the child's native language or other mode of communication and in the form most likely to yield accurate information on what the child knows and can do academically, developmentally and functionally, unless it is clearly not feasible to so provide or administer;

006.02C2 Are used for purposes for which the assessments or measures are valid and reliable.

006.02C3 School districts and approved cooperatives must ensure assessments of children with disabilities who transfer from one school or approved cooperative to another school or approved cooperative in the same academic year are coordinated with such children's prior and subsequent schools, as necessary and as expeditiously as possible, to ensure prompt completion of full evaluations.

006.02C4 School districts and approved cooperatives must ensure materials and procedures used to assess a child with limited English proficiency are selected and administered to ensure that they measure the extent to which the child has a disability and needs special education, rather than measuring the child's English language skills.

006.02C5 School districts and approved cooperatives must ensure a variety of assessment tools and strategies are used to gather relevant functional, developmental and academic information about the child, including information provided by the parent, and information related to enabling the child to be involved in and progress in the general education curriculum (or for a preschool child, to participate in appropriate activities), that may assist in determining:

TITLE 92
CHAPTER 51

- 006.02C5a Whether the child is a child with a disability under 92 NAC 51-003.08; and
- 006.02C5b The content of the child's IEP.
- 006.02C6 School districts and approved cooperatives must ensure any standardized tests that are given to a child:
- 006.02C6a Have been validated for the specific purpose for which they are used; and
- 006.02C6b Are administered by trained and knowledgeable personnel in accordance with any instructions provided by the producer of the assessments.
- 006.02C6b(i) If an assessment is not conducted under standard conditions, a description of the extent to which it varied from standard conditions (e.g., the qualifications of the person administering the test, or the method of the test administration) must be included in the evaluation report.
- 006.02C7 School districts and approved cooperatives must ensure tests and other evaluation materials include those tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient.
- 006.02C8 School districts and approved cooperatives must ensure tests are selected and administered so as best to ensure that if a test is administered to a child with impaired sensory, manual, or speaking skills, the test results accurately reflect the child's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the child's impaired sensory, manual, or speaking skills (unless those skills are the factors that the test purports to measure).
- 006.02C9 School districts and approved cooperatives must ensure no single measure or assessment is used as the sole criterion for determining whether a child is a child with a disability and for determining an appropriate educational program for the child.
- 006.02C10 School districts and approved cooperatives must ensure the child is assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities.
- 006.02C11 School districts and approved cooperatives must ensure in evaluating each child with a disability under Section 006, the evaluation is sufficiently comprehensive to identify all of the child's special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified.
- 006.02C12 The school district or approved cooperative must use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.

TITLE 92
CHAPTER 51

006.02C13 The school district or approved cooperative must use assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child.

006.02C14 In interpreting evaluation data for the purpose of determining if a child is a child with a disability and the educational needs of the child, each school district or approved cooperative shall:

006.02C14a Draw upon information from a variety of sources, including aptitude and achievement tests, parent input, teacher recommendations, physical condition, social or cultural background, and adaptive behavior; and

006.02C14b Ensure that information obtained from all of these sources is documented and carefully considered.

006.03 Multidisciplinary Evaluation Team (MDT) Requirements

006.03A The multidisciplinary evaluation team (including the child's parents) shall be responsible for the analysis, assessment, and documentation of educational and developmental abilities and needs of each child referred for the purpose of individual evaluation. Using the documentation collected and the verification criteria found in Section 006 of this Chapter and the definitions found in 92 NAC 51-006.04, the MDT shall make all verification decisions. Documented information shall be collected to facilitate the development of a statement of present level of development and educational performance on the IEP.

006.03B For children attending nonpublic schools, an administrator of the nonpublic school or a designated representative of the nonpublic school shall be a member of the MDT.

006.03C In making a determination of eligibility, a child shall not be determined to be a child with a disability if the determining factor is lack of appropriate instruction in reading, including the essential components of reading instruction as defined in Section 614(a)(5)(A) of the Individuals with Disabilities Education Act of 2004 (See Appendix A), lack of instruction in math, or limited English proficiency.

006.03D if a determination is made that a child has a disability and needs special education and related services, an IEP must be developed for the child in accordance with Section 007 of this Chapter.

006.03E Multidisciplinary Evaluation Team Written Report (for all suspected disabilities except specific learning disabilities)

006.03E1 The team shall prepare a written report of the results of the evaluation.

006.03E2 The report shall include a statement of:

006.03E2a Whether the child qualifies as a child with a disability based on the criteria and definition contained in 92 NAC 51-006.04;

006.03E2b The child's educational needs;

TITLE 92
CHAPTER 51

- 006.03E2c The basis for making the determination; and
- 006.03E2d A listing of the team members.
- 006.03E3 Each team member shall certify in writing if the report reflects his or her conclusion. If it does not reflect his or her conclusions, the team member shall submit a separate statement presenting his or her conclusion.
- 006.03E4 A copy of the evaluation report and the documentation of determination of eligibility shall be given to the parent at no cost.
- 006.03F Multidisciplinary Evaluation Team Written Report for a Child with a Suspected Specific Learning Disability
- 006.03F1 The MDT shall prepare a written report of the results of the evaluation.
- 006.03F2 The report shall include a statement of:

 - 006.03F2a Whether the child has a specific learning disability based on the criteria and definition contained in 92 NAC 51-006.04K.
 - 006.03F2b The child's educational needs;
 - 006.03F2c The basis for making the determination including an assurance that the determination was made in accordance with 92 NAC 51-006.02C14;
 - 006.03F2d The relevant behavior if any, noted during the observation of the child and the relationship of that behavior to the child's academic functioning;
 - 006.03F2e The educationally relevant medical findings, if any;
 - 006.03F2f Whether the child does not achieve adequately for the child's age or to meet state-approved grade level standards consistent with 92 NAC 51-006.04K3a and the child does not make sufficient progress to meet age or state approved grade level standards consistent with 92 NAC 51-006.04K3b; or whether the child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, state approved grade level standards or intellectual development consistent with 92 NAC 51-006.04K3b(1);
 - 006.03F2g The determination of the team concerning the effects of a visual, hearing, or motor disability; intellectual disability; emotional disturbance; cultural factors; environmental or economic disadvantage; or limited English proficiency on the child's achievement level; and
 - 006.03F2h If the child has participated in a process that assesses the child's response to scientific, research-based intervention, then the instructional strategies used and the student-centered data collected; and the documentation that the child's parents were notified about:

TITLE 92
CHAPTER 51

006.03F2h(1) The school district's or approved cooperative's policies regarding the amount and nature of student performance data that would be collected and the general education services that would be provided;

006.03F2h(2) Strategies for increasing the child's rate of learning; and

006.03F2h(3) The parent's right to request an evaluation.

006.03F2i A listing of the team members.

006.03F3 Each team member shall certify in writing whether the report reflects his or her conclusion. If the report does not reflect his or her conclusions, the team member shall submit a separate statement presenting his or her conclusion.

006.03F4 A copy of the evaluation report and the documentation of determination of eligibility shall be given to the parent at no cost.

006.03G For a school age child who after initial MDT evaluation does not qualify for special education services or for a child with a verified disability who upon reevaluation no longer qualifies for special education services, a problem solving team shall document a plan to assist the teacher(s) in the provision of regular education.

006.04 Eligibility for Special Education

006.04A School districts or approved cooperatives shall provide special education services only to children with verified disabilities.

006.04B Autism

006.04B1 To qualify for special education services in the category of Autism, the child must have a developmental disability which:

006.04B1a Significantly affects verbal and nonverbal communication and social interaction;

006.04B1b Is generally evident before age three; and

006.04B1c That adversely affects the child's educational performance.

006.04B1d Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routine, and unusual responses to sensory experiences.

006.04B2 Autism does not apply if a child's educational performance is adversely affected primarily because the child has an emotional disturbance as defined in 92 NAC 51-006.04E.

006.04B3 A child who manifests the characteristics of autism after age 3 could be verified as having autism if the other criteria in 92 NAC 51-006.04B1 are met.

TITLE 92
CHAPTER 51

006.04C Deaf-Blindness

006.04C1 To qualify for special education services in the category of Deaf-Blindness, the child must have concomitant hearing and visual impairments, the combination of which causes:

006.04C1a Severe communication needs; and

006.04C1b Other developmental and educational needs.

006.04C1c The severity of these needs is such that they cannot be accommodated in special education programs solely for children with deafness or blindness.

006.04D Developmental Delay

006.04D1 To qualify for special education services in the category of developmental delay, the child shall have a significant delay as measured by appropriate diagnostic instruments and procedures in one or more of the following areas and, by reason thereof needs special education and related services:

006.04D1a Cognitive development,

006.04D1b Physical development,

006.04D1c Communication development,

006.04D1d Social or emotional development,

006.04D1e Adaptive behavior or skills development, or

006.04D1f A diagnosed physical or mental condition that has a high probability of resulting in a substantial delay in function in one or more of such areas.

006.04D2 Developmental delay may be considered as one possible eligibility category for children age three through the school year in which the child reaches age eight.

006.04E Emotional Disturbance

006.04E1 To qualify for special education services in the category of emotional disturbance, the child must have a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects the child's educational performance:

006.04E1a An inability to learn that cannot be explained by intellectual, sensory, or health factors;

006.04E1b An inability to build or maintain satisfactory interpersonal relationships with peers and teachers;

TITLE 92
CHAPTER 51

- 006.04E1c Inappropriate types of behavior or feelings under normal circumstances;
- 006.04E1d A general pervasive mood of unhappiness or depression; or
- 006.04E1e A tendency to develop physical symptoms or fears associated with personal or school problems.
- 006.04E2 The term includes schizophrenia. The term does not apply to children with social maladjustments, unless it is determined that they have an emotional disturbance.

006.04F Hearing Impairment

- 006.04F1 To qualify for special education services in the category of Hearing Impairment, a child must have an impairment in hearing which:
 - 006.04F1a Is so severe that the child is impaired in processing linguistic information through hearing with or without amplification, or
 - 006.04F1b Is permanent or fluctuating, and
 - 006.04F1c Adversely affects the child's educational performance.
- 006.04F2 This term combines the state definition of "deaf" contained in Neb. Rev. Stat. §79-1118.01(4), the state definition of "hard of hearing" in Neb. Rev. Stat. §79-1118.01(7), the federal definition of "deafness" in 34 CFR 300.8(c)(3), and the federal definition of "hearing impairment" in 34 CFR 300.8(c)(5).

006.04G Intellectual Disability

- 006.04G1 To qualify for special education services in the category of Intellectual Disability, the child must demonstrate:
 - 006.04G1a Significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period, that adversely affects a child's educational performance.

006.04H Multiple Impairments

- 006.04H1 To qualify for special education services in the category of Multiple Impairments, the child must have concomitant impairments (such as intellectual disability-visual impairment, intellectual disability-orthopedic impairment), the combination of which causes such severe educational needs that they cannot be accommodated in special education programs solely for one of the impairments.
- 006.04H2 This classification does not include children with deaf-blindness.

006.04I Orthopedic Impairment

- 006.04I1 To qualify for services in the category of Orthopedic Impairment, the child must have a severe orthopedic impairment that adversely affects the child's educational performance.

TITLE 92
CHAPTER 51

006.04I2 The category includes children with impairments caused by:

006.04I2a Congenital anomaly,

006.04I2b Impairments caused by disease (e.g., poliomyelitis, bone tuberculosis), and

006.04I2c Impairments from other causes (e.g., cerebral palsy, amputations and fractures or burns that cause contractures).

006.04J Other Health Impairment

006.04J1 To qualify for special education services in the category of Other Health Impairment, the child must have:

006.04J1a Limited strength, vitality or alertness, including a heightened alertness to environmental stimuli that results in limited alertness with respect to the educational environment that is due to chronic or acute health problems which adversely affects the child's educational performance such as:

006.04J1a(1) Asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, and Tourette syndrome.

006.04K Specific Learning Disability

006.04K1 To qualify for special education services in the category of specific learning disability the child must have a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in an imperfect ability to listen, think, speak, read, write, spell or to do mathematical calculations. The category includes conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. The category does not include children who have learning problems that are primarily the result of visual, hearing, or motor disabilities; of intellectual disabilities; of emotional disturbance; or of environmental, cultural, or economic disadvantage.

006.04K2 The MDT of a child suspected of having a specific learning disability shall include at least:

006.04K2a The child's parents;

006.04K2b For a school age child, the child's regular teacher(s) or if a child does not have a regular teacher, a regular classroom teacher qualified to teach a child of that age;

006.04K2c For a child below age 5, a teacher qualified to teach a child below age 5;

006.04K2d Special educator with knowledge in the area of specific learning disabilities;

TITLE 92
CHAPTER 51

- 006.04K2e At least one person qualified to conduct initial individual diagnostic examinations of children, such as a school psychologist, speech language pathologist, or remedial reading teacher; and
- 006.04K2f A school district administrator, or a designated representative.
- 006.04K3 The MDT may determine that a child has a specific learning disability if:
- 006.04K3a The child does not achieve adequately for the child's age or to meet State-approved grade-level standards in one or more of the following areas, when provided with learning experiences and instruction appropriate for the child's age or State-approved grade-level standards: oral expression, listening comprehension, written expression, basic reading skill, reading fluency skills, reading comprehension, mathematics calculation, mathematics problem solving.
- 006.04K3b The child does not make sufficient progress to meet age or State approved grade-level standards in one or more of the areas identified in 92 NAC 51-006.04K3a when using a process based on the child's response to scientific, research-based intervention; or
- 006.04K3b(1) The child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, State-approved grade-level standards, or intellectual development, that is determined by the team to be relevant to the identification of a specific learning disability, using appropriate assessments consistent with 92 NAC 51-006.02.
- 006.04K4 The team determines that its findings under 92 NAC 51-006.04K3a and 006.04K3b are not primarily the result of:
- 006.04K4a A visual, hearing, or motor disability;
- 006.04K4b Intellectual disability;
- 006.04K4c Emotional disturbance;
- 006.04K4d Cultural factors,
- 006.04K4e Environmental or economic disadvantage; or
- 006.04K4f Limited English proficiency.
- 006.04K5 To ensure that underachievement in a child suspected of having a specific learning disability is not due to lack of appropriate instruction in reading or math, the group must consider, as part of the evaluation described in 92 NAC 51-006.02:
- 006.04K5a Data that demonstrate that prior to, or as a part of, the referral process, the child was provided appropriate instruction in regular education settings, delivered by qualified personnel; and

TITLE 92
CHAPTER 51

006.04K5b Data-based documentation of repeated assessments of achievement at reasonable intervals, reflecting formal assessment of student progress during instruction, which was provided to the child's parents.

006.04K6 The school district or approved cooperative must promptly request parental consent to evaluate the child to determine if the child needs special education and related services and must adhere to the timeframes described in 92 NAC 51-009.04A1, unless extended by mutual written agreement of the child's parents and a team of qualified professionals, as described in 92 NAC 51-006.04K2.

006.04K6a If, prior to a referral, a child has not made adequate progress after an appropriate period of time when provided instruction as described in 92 NAC 51-006.04K5a and b; and

006.04K6b Whenever a child is referred for an evaluation.

006.04K7 The school district or approved cooperative must ensure that the child is observed in the child's learning environment (including the regular classroom setting) to document the child's academic performance and behavior in the areas of difficulty.

006.04K8 The MDT, in determining whether a child has a specific learning disability, must decide to:

006.04K8a Use information from an observation in routine classroom instruction and monitoring of the child's performance that was done before the child was referred for an evaluation; or

006.04K8b Have at least one member of the MDT described in 92 NAC 51-006.04K2 conduct an observation of the child's academic performance in the regular classroom after the child has been referred for an evaluation and parental consent, consistent with 92 NAC 51-009.08 is obtained.

006.04K8c In the case of a child of less than school age or out of school, an MDT member must observe the child in an environment appropriate for a child of that age.

006.04L Speech-Language Impairment

006.04L1 To qualify for special education services in the category of Speech-Language Impairment, the child must have:

006.04L1a A communication disorder such as:

006.04L1a(1) Stuttering;

006.04L1a(2) Impaired articulation;

006.04L1a(3) Language impairment; or

006.04L1a(4) A voice impairment.

006.04L2 This disorder must adversely affect the child's educational performance.

TITLE 92
CHAPTER 51

006.04M Traumatic Brain Injury

006.04M1 To qualify for special education services in the category of Traumatic Brain Injury, the child must have:

006.04M1a An acquired injury to the brain caused by external physical force resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects the child's educational performance.

006.04M1b The category includes open or closed head injuries resulting in impairments in one or more areas such as:

006.04M1b(1) Cognition;

006.04M1b(2) Language;

006.04M1b(3) Memory;

006.04M1b(4) Attention;

006.04M1b(5) Reasoning;

006.04M1b(6) Abstract thinking;

006.04M1b(7) Judgment;

006.04M1b(8) Problem solving;

006.04M1b(9) Sensory, perceptual and motor abilities;

006.04M1b(10) Psychosocial behavior;

006.04M1b(11) Physical functions;

006.04M1b(12) Information processing; and

006.04M1b(13) Speech.

006.04M2 The category does not include brain injuries that are congenital or degenerative, or brain injuries induced by birth trauma.

006.04N Visual Impairment including Blindness

006.04N1 To qualify for special education services in the category of Visual Impairment, including blindness, the child must have;

006.04N1a An impairment in vision that, even with correction, adversely affects the child's educational performance.

006.04N2 This category includes children who have partial sight or blindness.

006.05 Reevaluations

006.05A A school district or approved cooperative shall ensure that a reevaluation of each child with a disability is conducted in accordance with the verification procedures in Section 006 of this Chapter:

TITLE 92
CHAPTER 51

006.05A1 If the school district or approved cooperative determines that the educational or related services needs, including improved academic achievement and functional performance, of the child warrant, a reevaluation; or

006.05A2 If the child's parents or teacher requests a reevaluation.

006.05B A reevaluation conducted under subsection 006.05 of this Chapter:

006.05B1 May occur not more than once a year, unless the parent and the school district or approved cooperative agree otherwise; and

006.05B2 Must occur at least once every three years, unless the parent and the school district or approved cooperative agree that a reevaluation is unnecessary.

006.06 Review of Existing Evaluation Data

006.06A As part of an initial evaluation (if appropriate) and as part of any reevaluation, the IEP team and other qualified professionals as appropriate, shall:

006.06A1 Review existing evaluation data on the child, including evaluations and information provided by the parents of the child, current classroom-based local or State assessments and classroom-based observations, and observations by teachers and related services providers; and

006.06A2 On the basis of that review, and input from the child's parents, identify what additional data, if any, are needed to determine:

006.06A2a Whether the child is a child with a disability, as described in 92 NAC 51-003.08, and the educational needs of the child, or, in case of a reevaluation of a child, whether the child continues to have such a disability and such educational needs;

006.06A2b The present levels of academic achievement and related developmental needs of the child;

006.06A2c Whether the child needs special education and related services, or in the case of a reevaluation of a child, whether the child continues to need special education and related services; and

006.06A2d Whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the individualized education program of the child and to participate, as appropriate, in the general education curriculum.

006.06B The school district or approved cooperative shall administer such assessments and other evaluation measures as may be needed to produce the data identified by the IEP team under 92 NAC 51-006.06A2.

006.06C The IEP team and other qualified professionals may conduct its review without a meeting.

TITLE 92
CHAPTER 51

006.06D If the IEP team and other qualified professionals, as appropriate, determine that no additional data are needed to determine whether the child continues to be a child with a disability and to determine the child's educational needs the school district or approved cooperative:

006.06D1 Shall notify the child's parents of:

006.06D1a That determination and the reasons for the determination; and

006.06D1b The right of the parents to request an assessment to determine whether the child continues to be a child with a disability and to determine the child's educational needs.

006.06D2 The school district or approved cooperative shall not be required to conduct such an assessment unless requested to by the child's parents.

006.06E A school district or approved cooperative shall evaluate a child with a disability in accordance with this section before determining that the child is no longer a child with a disability.

006.06E1 The evaluation described in 92 NAC 51-006.06E is not required before the termination of a student's eligibility under this Chapter due to graduation from secondary school with a regular high school diploma, or to exceeding the age eligibility for a free appropriate public education under Neb. Rev. Stat. §79-1126. For a child whose eligibility terminates under these circumstances, a school district or approved cooperative shall provide the child with a summary of the child's academic achievement and functional performance, which shall include recommendations on how to assist the child in meeting the child's postsecondary goals.

006.07 Independent Educational Evaluation

006.07A A parent of a child with a disability has the right to obtain an independent educational evaluation of the child at public expense if the parent disagrees with the evaluation obtained by the school district or approved cooperative, subject to the provisions of 92 NAC 51-006.07.

006.07B Each school district or approved cooperative shall provide to parents, upon request for an independent educational evaluation, information about where an independent educational evaluation may be obtained, and the school district's or approved cooperative's criteria applicable for independent educational evaluations.

006.07C A parent is entitled to only one independent educational evaluation at public expense each time the school district or approved cooperative conducts an evaluation with which the parent disagrees.

006.07C1 Public expense means that the school district or approved cooperative either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parent.

006.07D If a parent requests an independent educational evaluation at public expense, the school district or approved cooperative must, without unnecessary delay, either:

TITLE 92
CHAPTER 51

- 006.07D1 Initiate a hearing under 92 NAC 55 to show that its evaluation is appropriate; or
- 006.07D2 Ensure that an independent educational evaluation is provided at public expense, unless the school district or approved cooperative demonstrates at a hearing under 92 NAC 55 that the evaluation obtained by the parent did not meet school district or approved cooperative criteria.
- 006.07E If the school district or approved cooperative initiates a hearing and the final decision is that the school district's or approved cooperative's evaluation is appropriate, the parent still has the right to an independent educational evaluation, but not at public expense.
- 006.07F If a parent requests an independent educational evaluation, the school district or approved cooperative may ask for the parent's reason why he or she objects to the public evaluation. However, the school district or approved agency may not require the parent to provide an explanation and may not unreasonably delay either providing the independent educational evaluation at public expense or initiating a due process hearing to defend the public evaluation.
- 006.07G If the parent obtains an independent educational evaluation at public expense or shares with the school district or approved cooperative an evaluation obtained at private expense, the results of the evaluation:
- 006.07G1 Must be considered by the school district or approved cooperative, if it meets school district or approved cooperative criteria, in any decision made with respect to the provision of a free appropriate public education to the child; and
- 006.07G2 May be presented by any party as evidence at a hearing under 92 NAC 55 regarding that child.
- 006.07H If a hearing officer requests an independent educational evaluation as part of a hearing, the cost of the evaluation must be at public expense.
- 006.07I If an independent educational evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria that the school district or approved cooperative uses when it initiates an evaluation, to the extent those criteria are consistent with the parent's right to an independent educational evaluation.
- 006.07J Except for the criteria described in 92 NAC 51-006.07I, a school district or approved cooperative may not impose conditions or timelines related to obtaining an independent educational evaluation at public expense.

TITLE 92
CHAPTER 51

007 Individualized Education Program (IEP)

007.01 An IEP shall be developed, reviewed, revised, and implemented for each child who receives special education and related services. In order to fulfill the requirements of 92 NAC 51-007.01 for infants and toddlers, school districts or approved cooperatives shall meet the requirements of 92 NAC 52. FAPE is provided to infants and toddlers with a disability in accordance with an IFSP rather than an IEP. The requirements for contents of the IFSP apply rather than the requirements for the contents of an IEP. All other substantive rights and protections established under special education laws apply to infants and toddlers with disabilities receiving FAPE in accordance with an IFSP.

007.02 School districts or approved cooperatives must provide special education and related services to a child with a disability in accordance with the child's IEP.

007.02A At the beginning of each school year, each school district or approved cooperative shall have an IEP in effect for each child with a verified disability within its jurisdiction.

007.02A1 From the end of the school year in which a child reaches age 3, until the child's sixth birthday, the IEP team must consider an IFSP that contains the IFSP content (including the natural environments statement) described in 92 NAC 52 (including an educational component that promotes school readiness and incorporates pre-literacy, language, and numeracy skills for children with an IFSP who are at least three years of age), and that is developed in accordance with the IEP procedures. The IFSP may serve as the IEP of the child, if using the IFSP as the IEP is agreed to by the school district or approved cooperative and the child's parents.

007.02B Each school district or approved cooperative shall ensure that an IEP is in effect before special education and related services are provided to a child with a verified disability under this Chapter.

007.02C The child's IEP is accessible to each regular education teacher, special education teacher, related service provider, and other service provider who is responsible for its implementation; and

007.02D Each teacher and provider described in 92 NAC 51-007.02C must be informed of his or her specific responsibilities related to implementing the child's IEP; and the specific accommodations, modifications, and supports that must be provided for the child in accordance with the IEP.

007.03 IEP Team Participants

007.03A The school district or approved cooperative shall ensure and document that each IEP team includes the following:

007.03A1 The parents of a child with a disability or documentation of 92 NAC 51-007.06D;

007.03A2 Not less than one regular education teacher of the child (if the child is, or may be, participating in the regular education environment);

TITLE 92
CHAPTER 51

- 007.03A2a The regular education teacher of the child, as a member of the IEP team, shall, to the extent appropriate, participate in the development, review and revision of the IEP of the child, including assisting in the determination of appropriate positive behavioral interventions and supports, and other strategies, and the determination of supplementary aids and services, program modifications, and support for school personnel consistent with 92 NAC 51-007.07A5.
- 007.03A3 Not less than one special education teacher, or where appropriate, not less than one special education provider of the child;
- 007.03A4 A representative of the school district or approved cooperative who:
- 007.03A4a Is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities;
- 007.03A4b Is knowledgeable about the general education curriculum; and
- 007.03A4c Is knowledgeable about the availability of resources of the school district or approved cooperative;
- 007.03A4c(1) A school district or approved cooperative may designate another member of the IEP team to also serve as the school district or approved cooperative representative, if the criteria in 92 NAC 51-007.03A4 are satisfied.
- 007.03A5 An individual who can interpret the instructional implications of evaluation results, who may be a member of the team described in 92 NAC 51-007.03A2 through 007.03A6;
- 007.03A6 At the discretion of the parent or the school district or approved cooperative, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate;
- 007.03A6a The determination of the knowledge or special expertise of any individual described in 92 NAC 51-007.03A6 shall be made by the party (parents or school district or approved cooperative) who invited the individual to be a member of the IEP.
- 007.03A7 Whenever appropriate, the child with a disability;
- 007.03A8 For a child attending a nonpublic school, a representative of the nonpublic school the child attends. If the representative cannot attend, other methods shall be used to ensure participation by the nonpublic school, including individual or conference telephone calls;
- 007.03A9 For children receiving services from an approved service agency, a representative of the service agency. If the representative is not in attendance, other methods shall be used to ensure participation by the approved service agency, including written communication, or individual or conference telephone calls;

TITLE 92
CHAPTER 51

007.03A10 If the purpose of the meeting is to consider postsecondary goals for the child and the transition services needed to assist the child in reaching those goals:

007.03A10a The school district or approved cooperative must invite the child;

007.03A10a(1) If the child does not attend the IEP meeting, the school district or approved cooperative shall take other steps to ensure that the child's preferences and interests are considered.

007.03A10b To the extent appropriate, with the consent of the parents or a child who has reached the age of majority, the school district or approved cooperative must invite a representative of any participating agency that is likely to be responsible for providing or paying for the transition services.

007.03A11 For a child verified in the category of hearing impairment, an educator endorsed to teach a child with hearing impairments.

007.03A12 For a child verified in the category of visual impairment, an educator endorsed to teach a child with visual impairments.

007.04 IEP Team Attendance

007.04A A member of the IEP team described in 92 NAC 51-007.03A2 through 007.03A5 shall not be required to attend an IEP meeting, in whole or in part, if the parent of a child with a disability and the school district or approved cooperative agree, in writing, that the attendance of such member is not necessary because the member's area of the curriculum or related services is not being modified or discussed in the meeting.

007.04B A member of the IEP team in 92 NAC 51-007.04A may be excused from attending an IEP meeting, in whole or in part, when the meeting involves a modification to or discussion of the member's area of the curriculum or related services, if:

007.04B1 The parent, in writing, and the school district or approved cooperative consent to the excusal; and

007.04B2 The member submits, in writing, to the parent and the IEP team, input into the development of the IEP prior to the meeting.

007.05 In the case of a child who was previously served as an infant or toddler under Part C of the Individuals with Disabilities Education Act, an invitation to the initial IEP meeting shall, at the request of the parent, be sent to the Part C services coordinator or other representatives of the Part C system to assist with the smooth transition of services.

007.06 Parent Participation

007.06A The school district or approved cooperative shall take steps to ensure that one or both of the parents of the child with a disability are present at the IEP conference or are afforded the opportunity to participate, including:

TITLE 92
CHAPTER 51

007.06A1 Notifying parents of the IEP conference early enough to ensure that they will have an opportunity to attend; and

007.06A2 Scheduling the meeting at a mutually agreed on time and place.

007.06B The notification under 92 NAC 51-007.06A1 must indicate the purpose, time and location of the meeting and who will be in attendance and inform the parents of the provisions of 92 NAC 51-007.03A6, 007.03A6a, and 007.05.

007.06B1 For a child with a disability beginning not later than the first IEP to be in effect when the child turns 16, or younger if determined appropriate by the IEP team, the notice also must:

007.06B1a Indicate that a purpose of the meeting will be the consideration of the postsecondary goals and transition services for the child in accordance with 92 NAC 51-007.07A9; and

007.06B1b Indicate that the school district or approved cooperative will invite the child to the meeting; and

007.06B1c Identify any other agency that will be invited to send a representative.

007.06C If neither parent can attend the IEP meeting, the school district or approved cooperative shall use other methods to ensure parent participation, including individual or conference telephone calls consistent with 92 NAC 51-007.09H (related to alternate means of meeting participation).

007.06D A meeting may be conducted without a parent in attendance if the school district or approved cooperative is unable to convince the parents they should attend. In this case, the school district must keep a record of its attempts to arrange a mutually agreed on time and place such as:

007.06D1 Detailed records of telephone calls made or attempted and the results of the calls;

007.06D2 Copies of correspondence sent to the parents and any responses received; and

007.06D3 Detailed records of visits made to the parent's home or place of employment and the results of those visits.

007.06E The school district or approved cooperative shall take whatever action is necessary to ensure that the parent understands the proceedings of an IEP conference, including arranging for an interpreter for parents who are deaf or whose native language is other than English.

007.07 IEP Development

007.07A The IEP shall include:

007.07A1 A statement of the child's present levels of academic achievement and functional performance, including:

TITLE 92
CHAPTER 51

- 007.07A1a How the child's disability affects the child's involvement in and progress in the general education curriculum (i.e., the same curriculum as for nondisabled children); or
- 007.07A1b For preschool children, as appropriate, how the disability affects the child's participation in appropriate activities.
- 007.07A2 A statement of measurable annual goals, including academic and functional goals, designed to:
- 007.07A2a Meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum; or for preschool children, as appropriate, to participate in appropriate activities, and
- 007.07A2b Meet each of the child's other educational needs that result from the child's disability;
- 007.07A3 For children with disabilities who take alternate assessments aligned to alternate achievement standards, a description of benchmarks or short-term objectives;
- 007.07A4 A description of how the child's progress toward meeting the annual goals described in 92 NAC 51-007.07A2 will be measured and when periodic reports on the progress the child is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards) will be provided;
- 007.07A5 A statement of the special education and related services and supplementary aids and services based on peer-reviewed research to the extent practicable, to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided to enable the child:
- 007.07A5a To advance appropriately toward attaining the annual goals;
- 007.07A5b To be involved in and progress in the general education curriculum and to participate in extracurricular and other nonacademic activities; and
- 007.07A5c To be educated and participate with other children with disabilities and nondisabled children in the activities described in 92 NAC 51-007.07A5;
- 007.07A6 An explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class and in the activities described in 92 NAC 51-007.07A5;
- 007.07A7 A statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child on state and district-wide assessments; and if the IEP team determines that the child must take an alternate assessment instead of a particular regular state or district-wide assessment of student achievement, a statement of why:

TITLE 92
CHAPTER 51

- 007.07A7a The child cannot participate in the regular assessment; and
- 007.07A7b The particular alternate assessment selected is appropriate for the child; and
- 007.07A8 The projected date for the beginning of the services and modifications described in 92 NAC 51-007.07A5 and the anticipated frequency, location, and duration of those services and modifications;
- 007.07A9 Beginning not later than the first IEP to be in effect when the child turns 16, or younger if deemed appropriate by the IEP team, and updated annually thereafter:

 - 007.07A9a Appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills; and
 - 007.07A9b The transition services (including courses of study) needed to assist the child in reaching those goals; and
 - 007.07A9c If a participating agency, other than the school district or approved cooperative fails to provide the transition services described in the IEP, the school district or approved cooperative shall reconvene the IEP team to identify alternative strategies to meet the transition objectives for the child set out in the IEP.

 - 007.07A9c(i) Nothing in this Chapter relieves any participating agency, including the State Division of Vocational Rehabilitation, of the responsibility to provide or pay for any transition service that the agency would otherwise provide to children with disabilities who meet the eligibility of that agency.
- 007.07A10 Nothing in this section shall be construed to require that additional information be included in a child's IEP beyond what is explicitly required in 92 NAC 51-007.07A, or to require the IEP team to include information under one component of a child's IEP that is already contained in another component of such IEP.
- 007.07B In developing, reviewing or revising each child's IEP:

 - 007.07B1 The IEP team shall consider the strengths of the child and the concerns of the parents for enhancing the education of their child.
 - 007.07B2 The IEP team shall consider the results of the initial evaluation or most recent evaluation of the child, and the academic, developmental, and functional needs of the child.
 - 007.07B3 In the case of a child whose behavior impedes his or her learning or that of others, the IEP team shall consider the use of positive behavioral interventions, and supports and other strategies to address that behavior.

TITLE 92
CHAPTER 51

007.07B4 In the case of a child with limited English proficiency, the IEP team shall consider the language needs of the child as those needs relate to the child's IEP.

007.07B5 In the case of a child who is blind or visually impaired, the IEP team shall provide for instruction in Braille and the use of Braille unless the IEP team determines, after an evaluation of the child's reading and writing skills, needs, and appropriate reading and writing media (including an evaluation of the child's future needs for instruction in Braille or the use of Braille), that instruction in Braille or the use of Braille is not appropriate for the child.

007.07B6 The IEP team shall consider the communication needs of the child, and in the case of a child who is deaf or hard of hearing, shall consider the child's language and communication needs, opportunities for direct communications with peers and professional personnel in the child's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the child's language and communication mode.

007.07B7 The IEP team shall consider whether the child needs assistive technology devices and services.

007.07C Services

007.07C1 Routine checking of hearing aids and external components of surgically implanted medical devices.

007.07C1a Each school district and approved cooperative must ensure that hearing aids worn in school by children with hearing impairments, including deafness, are functioning properly.

007.07C1b Subject to 92 NAC 51-007.07C1b(1) each school district and approved cooperative must ensure that the external components of surgically implanted medical devices are functioning properly.

007.07C1b(1) For a child with a surgically implanted medical device who is receiving special education and related services under this Chapter, a school district and approved cooperative is not responsible for the post-surgical maintenance, programming, or replacement of the medical device that has been surgically implanted (or of an external component of the surgically implanted medical device).

007.07C2 Physical education services, specially designed if necessary, must be made available to every child with a verified disability receiving a free, appropriate public education, unless the school district or approved cooperative enrolls children without disabilities and does not provide physical education to children without disabilities in the same grades.

007.07C2a Each child with a verified disability must be afforded the opportunity to participate in the regular physical education program available to nondisabled children unless:

TITLE 92
CHAPTER 51

- 007.07C2a(1) The child is enrolled full time in a separate facility; or
- 007.07C2a(2) The child needs specially designed physical education as prescribed in the child's individualized education program.
- 007.07C2b If specially designed physical education is prescribed in a child's individualized education program, the school district or approved cooperative responsible for the education of that child shall provide the services directly or make arrangements for it to be provided through other public or nonpublic programs.
- 007.07C2c The school district or approved cooperative responsible for the education of a child with a verified disability who is enrolled in a separate facility shall ensure that the child receives appropriate physical education services.
- 007.07C3 Each school district or approved cooperative shall ensure assistive technology devices or assistive technology services, or both, as defined in 92 NAC 51-003.02 and 003.03 are made available to any child with a disability if required, as part of the child's:
- 007.07C3a Special education under 92 NAC 51-003.56;
- 007.07C3b Related services under 92 NAC 51-003.49; or
- 007.07C3c Supplementary aids and services under 92 NAC 51-003.59 and 008.01A.
- 007.07C3d On a case by case basis, the use of school-purchased assistive technology devices in a child's home or in other settings is required if the child's IEP team determines that the child needs access to those devices in order to receive a free appropriate public education.
- 007.07C4 The school district or approved cooperative shall take steps including the provision of supplementary aids and services determined appropriate and necessary by the child's IEP team to provide nonacademic and extracurricular services and activities in the manner necessary to afford each school age child with a verified disability an equal opportunity for participation in those services and activities.
- 007.07C4a Nonacademic and extra-curricular services and activities may include counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the school district or approved cooperative, referrals to agencies that provide assistance to individuals with disabilities, and employment of students, including both employment by the school district or approved cooperative and assistance in making outside employment available.
- 007.07C5 Extended School Year Services (ESYS)
- 007.07C5a Each school district or approved cooperative shall ensure that extended school year services are available as necessary to provide a free appropriate public education consistent with 92 NAC 51-007.07C5b.

TITLE 92
CHAPTER 51

007.07C5b Extended School Year (ESY) services must be provided only if a child's IEP team determines, on an individual basis, in accordance with Section 007, that the services are necessary for the provision of a free appropriate public education.

007.07C5c In implementing the requirements of this section, a school district or approved cooperative may not limit extended school year services to particular categories of disability or unilaterally limit the type, amount, or duration of those services.

007.07C6 The need for related services of an instructional nature shall be documented on the IEP present level of performance, goals, and objectives, and shall be based on documented diagnostic evidence. Determination of the need for a related service for a child with a verified disability does not require the additional verification of a secondary disability.

007.08 Programs for Children who Transfer School Districts or Approved Cooperatives

007.08A Transfer within the same state – If a child with a disability (who had an IEP that was in effect in a previous school district or approved cooperative in Nebraska) transfers to a new school district or approved cooperative in Nebraska, and enrolls in a new school within the same school year, the new school district or approved cooperative (in consultation with the parents) must provide FAPE to the child (including services comparable to those described in the child's IEP from the previous school district or approved cooperative), until the new school district or approved cooperative either:

007.08A1 Adopts the child's IEP from the previous school district or approved cooperative; or

007.08A2 Develops, adopts, and implements a new IEP that meets the applicable requirements of 92 NAC 51-007.

007.08B Transfer from outside the state – If a child with a disability (who had an IEP that was in effect in a previous public agency in another State) transfers to a school district or approved cooperative in Nebraska, and enrolls in a new school within the same school year, the new school district or approved cooperative (in consultation with the parents) must provide the child with FAPE (including services comparable to those described in the child's IEP from the previous school district or approved cooperative), until the new school district or approved cooperative:

007.08B1 Conducts an evaluation pursuant to Section 006 of this Chapter (determined to be necessary by the new school district or approved cooperative); and

007.08B2 Develops, adopts, and implements a new IEP, if appropriate that meets the requirements of 92 NAC 51-007.

TITLE 92
CHAPTER 51

007.08C Transmittal of records

- 007.08C1 To facilitate the transition for a child who transfers schools the new school in which the child enrolls shall take reasonable steps to promptly obtain the child's records, including the IEP and supporting documents and any other records relating to the provision of special education or related services to the child, from the previous school in which the child was enrolled, pursuant to Section 99.31(a)(2) of Title 34, Code of Federal Regulations.
- 007.08C2 The previous school in which the child was enrolled shall take reasonable steps to promptly respond to such request from the new school.
- 007.08C3 Neb. Rev. Stat. §79-2,105 requires that a copy of a public or private school's files or records concerning a student shall be provided at no charge, upon request, to any public or private school to which the student transfers.

007.09 IEP Meeting

- 007.09A A meeting to develop an IEP for a child must be held within thirty (30) calendar days of a determination that the child needs special education and related services.
- 007.09B After the initial IEP meeting, IEPs must be in effect at the beginning of each school year.
- 007.09C The IEP team shall review the child's IEP periodically, but not less frequently than annually, to determine whether the annual goals for the child are being achieved.
- 007.09D The school district or approved cooperative shall provide a copy of the IEP to parents at no cost.
- 007.09E In making changes to a child's IEP after the annual IEP meeting for a school year, the parent of a child with a disability and the school district or approved cooperative may agree not to convene an IEP meeting for the purposes of making those changes, and instead may develop a written document to amend or modify the child's current IEP.
- 007.09E1 If changes are made to the child's IEP in accordance with 92 NAC 51-007.09E, the school district or approved cooperative must ensure that the child's IEP team is informed of those changes.
- 007.09F Changes to the IEP may be made either by the entire IEP team at an IEP team meeting, or as provided in 92 NAC 51-007.09E of this section, by amending the IEP rather than by redrafting the entire IEP. Upon request, a parent must be provided with a revised copy of the IEP with the amendments incorporated.
- 007.09G To the extent possible, the school district or approved cooperative shall encourage the consolidation of reevaluation meetings for the child and other IEP team meetings for the child.

TITLE 92
CHAPTER 51

007.09H When conducting IEP team meetings and placement meetings and carrying out administrative matters (such as scheduling, exchange of witness lists, and status conferences), the parent of a child with a disability and a school district or approved cooperative may agree to use alternative means of meeting participation, such as video conferences and conference calls.

007.10 The IEP team shall revise the IEP as appropriate to address:

007.10A Any lack of expected progress toward the annual goals described in 92 NAC 51-007.07 and in the general education curriculum, if appropriate;

007.10B The results of any reevaluation conducted under 92 NAC 51-006.05A;

007.10C The information about the child provided to, or by, the parents, as described in 92 NAC 51-006.06A1;

007.10D The child's anticipated needs; or

007.10E Other matters.

007.11 Children with Disabilities in Adult Prisons

007.11A The following requirements do not apply to children with disabilities who are convicted as adults under State law and incarcerated in adult prisons:

007.11A1 The requirements of 92 NAC 51-007.07A7 (relating to participation of children with disabilities in general assessments); and

007.11A2 The requirements of 92 NAC 51-007.07A9 (relating to transition and planning and transition services) do not apply with respect to such children who will reach age 21 before they will be eligible to be released from prison, based on consideration of their sentence and eligibility of early release.

007.11B Subject to 92 NAC 51-007.11B1, the IEP team of a child with a disability who is convicted as an adult under State law and incarcerated in an adult prison may modify the child's IEP or placement if the State has demonstrated a bona fide security or compelling penological interest that cannot otherwise be accommodated.

007.11B1 The requirements of 92 NAC 51-003.31 and 007.07 (relating to IEPs), and 92 NAC 51- 008.01A (relating to LRE), do not apply with respect to the modifications described in 92 NAC 51-007.11B.

TITLE 92
CHAPTER 51

008 Placement of Children With Disabilities

008.01 Least Restrictive Environment (LRE) Requirements

- 008.01A The school district or approved cooperative shall establish policies and procedures to assure that, to the maximum extent appropriate, children with disabilities, including children in public or nonpublic schools and approved service agencies, are educated with children who are not disabled, and that special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.
- 008.01B Before any action is taken with respect to the initial placement of a child with disabilities, the school district or approved cooperative shall be responsible for the provision of a comprehensive individual multidisciplinary evaluation of the child's development and educational needs.
- 008.01C In determining the educational placement of a child with a disability, including a preschool child with a disability, school districts and approved cooperatives must ensure that:
- 008.01C1 The placement decision is made by a group of persons, including the parents and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options; and
- 008.01C2 The placement decision is made in conformity with the least restrictive environment requirements in 92 NAC 51-008.01 and based on the child's unique needs and not on the child's disability.
- 008.01D Each school district or approved cooperative must ensure that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services.
- 008.01D1 The continuum must:
- 008.01D1a Include instruction in regular classes, special classes, special schools, home instruction and instruction in hospitals and institutions; and
- 008.01D1b Make provision for supplementary services (such as resource or itinerant instruction) to be provided in conjunction with regular class placement.
- 008.01E The school district or approved cooperative shall ensure that the educational placement of a child with a verified disability:
- 008.01E1 Is determined at least annually;
- 008.01E2 Is based on his or her individualized education program (IEP); and
- 008.01E3 Is as close as possible to the child's home.

TITLE 92
CHAPTER 51

- 008.01F The various array of placement options included under 92 NAC 51-008.01D must be available to the extent necessary to implement the individualized education program for each child with a verified disability.
- 008.01G Unless a child's IEP requires some other arrangement, the child must be educated in the school which he or she would attend if not disabled.
- 008.01H In selecting the least restrictive environment, consideration must be given to any potential harmful effect on the child or on the quality of services which he or she needs.
-
- 008.01I A child with a disability must not be removed from education in age-appropriate regular classrooms solely because of needed modifications in the general curriculum.

TITLE 92
CHAPTER 51

009 Procedural Safeguards

009.01 Parent Participation in Meetings

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.

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.

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.

009.02 Parent Involvement in Placement Decisions

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.

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.

009.03 Opportunity to Examine Records

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 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.

TITLE 92
CHAPTER 51

- 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.
- 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.

TITLE 92
CHAPTER 51

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.

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.

TITLE 92
CHAPTER 51

- 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.
- 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.
- 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.

TITLE 92
CHAPTER 51

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.

009.04 Procedural Timelines

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.

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.

009.05 Prior Written Notice

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.

TITLE 92
CHAPTER 51

- 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;
 - 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.
- 009.06 Procedural Safeguards Notice
- 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 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;

TITLE 92
CHAPTER 51

- 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 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.

TITLE 92
CHAPTER 51

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.

009.07 A parent of a child with a disability may elect to receive notices required under this section by an electronic mail (e-mail) communication, if the school district or approved cooperative makes such option available.

009.08 Parental Consent

009.08A Parental Consent for Initial Evaluations

009.08A1 The school district or approved cooperative proposing to conduct an initial evaluation to determine if a child qualifies as a child with a disability under 92 NAC 51-003.08 must obtain informed consent, consistent with 92 NAC 51-003.09, from the parent of the child before conducting the evaluation.

009.08A2 Parental consent for initial evaluation must not be construed as consent for initial provision of special education and related services.

009.08A3 The school district or approved cooperative must make reasonable efforts to obtain the informed consent from the parent for an initial evaluation to determine whether the child is a child with a disability.

009.08A4 For initial evaluations only, if the child is a ward of the State and is not residing with the child's parent, the school district or approved cooperative is not required to obtain informed consent from the parent for an initial evaluation to determine whether the child is a child with a disability if:

009.08A4a Despite reasonable efforts to do so, the school district or approved cooperative cannot discover the whereabouts of the parent of the child;

009.08A4b The rights of the parents of the child have been terminated in accordance with the State law; or

009.08A4c The rights of the parent to make educational decisions have been subrogated by a judge in accordance with State law and consent for an initial evaluation has been given by an individual appointed by the judge to represent the child.

009.08A5 If the parent of a child enrolled in public school or seeking to be enrolled in public school does not provide consent for initial evaluation under 92 NAC 51-009.08A1 or the parent fails to respond to a request to provide consent, the school district or approved cooperative may, but is not required to, pursue the initial evaluation of the child by utilizing the procedural safeguards in 92 NAC 51-009 (including the mediation procedures or the due process procedures), if appropriate.

009.08A5a The school district or approved cooperative does not violate its obligation under 92 NAC 51-006 to locate and identify the child as a child with a disability if it declines to pursue the evaluation.

TITLE 92
CHAPTER 51

009.08B Consent for Services

009.08B1 A school district or approved cooperative that is responsible for making FAPE available to a child with a disability must obtain informed consent from the parent of the child before the initial provision of special education and related services to the child.

009.08B1a Participation in or attendance at programs by children with verified disabilities from date of diagnosis to age five shall be voluntary as specified by the parent.

009.08B2 The school district or approved cooperative must make reasonable efforts to obtain informed consent from the parent for the initial provision of special education and related services to the child.

009.08B3 If the parent of a child fails to respond to a request for, or refuses to consent to, the initial provision of special education and related services the school district or approved cooperative:

009.08B3a May not use the procedures in 92 NAC 51-009 (including the mediation procedures or the due process procedures) in order to obtain agreement or a ruling that the services may be provided to the child.

009.08B3b Will not be considered to be in violation of the requirement to make a Free Appropriate Public Education (FAPE) available to the child because of the failure to provide the child with the special education and related services for which the parent refuses to or fails to provide consent; and

009.08B3c Is not required to convene an IEP team meeting or develop an IEP under 92 NAC 51-007 for the child.

009.08B4 If at any time subsequent to the initial provision of special education and related services, the parent of a child revokes consent in writing for the continued provision of special education and related services, the school district or approved cooperative:

009.08B4a May not continue to provide special education and related services to the child, but must provide prior written notice in accordance with 92 NAC 51-009.05 before ceasing the provision of special education and related services.

009.08B4b May not use the procedures in 92 NAC 51-009 (including the mediation procedures and due process procedures) in order to obtain agreement or a ruling that the services may be provided to the child.

009.08B4c Will not be considered to be in violation of the requirement to make a Free Appropriate Public Education (FAPE) available to the child because of the failure to provide the child with further special education and related services; and

009.08B4d Is not required to convene an IEP team meeting or develop an IEP under 92 NAC 51-007 for the child for further provision of special education and related services.

TITLE 92
CHAPTER 51

009.08C Consent for Reevaluations

009.08C1 Subject to 92 NAC 51-009.08C2, each school district or approved cooperative must obtain informed parental consent, in accordance with 92 NAC 51-009.08A1, prior to conducting any reevaluation of a child with a disability.

009.08C1a If the parent refuses to consent to the reevaluation, the school district or approved cooperative may, but is not required to, pursue the reevaluation by using the consent override procedures described in 92 NAC 51-009.08A5. The school district or approved cooperative does not violate its obligation to locate and identify the child as a child with a disability if it declines to pursue the evaluation or reevaluation.

009.08C2 The informed parental consent described in 92 NAC 51-009.08C1 need not be obtained if the school district or approved cooperative can demonstrate that:

009.08C2a It made reasonable efforts to obtain such consent; and

009.08C2b The child's parent has failed to respond.

009.08D Other Consent Requirements

009.08D1 Parental consent is not required before:

009.08D1a Reviewing existing data as part of an evaluation or a reevaluation; or

009.08D1b Administering a test or other evaluation that is administered to all children unless, before administration of that test or evaluation, consent is required of parents of all children.

009.08D2 A school district or approved cooperative may not use a parent's refusal to consent to one service or activity under 92 NAC 51-009.08A, 92 NAC 51-009.08B or 92 NAC 51-009.08C to deny the parent or child any other service, benefit, or activity of the school district or approved cooperative, except as required by this Chapter.

009.08D3 If a parent of a child who is home schooled or placed in a nonpublic school by the parents at their own expense does not provide consent for the initial evaluation or the reevaluation, or the parent fails to respond to a request to provide consent, the school district or approved cooperative may not use the consent override procedures (described in 92 NAC 51-009.08A5 and 009.08C1); and

009.08D3a The school district or approved cooperative is not required to consider the child as eligible for services under 92 NAC 51-015.

009.08D4 To meet the reasonable efforts requirement in 92 NAC 51-009.08A3, 009.08A4a, 009.08B2, and 009.08C2a, the school district or approved cooperative must document its attempts to obtain parental consent using the procedures in 92 NAC 51-007.06.

TITLE 92
CHAPTER 51

009.09 Consent and Insurance (see Section 012.09 for Use of Public Benefits or Insurance)

009.09A Children with Disabilities covered by Public Benefits or Insurance

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;

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.

TITLE 92
CHAPTER 51

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

009.10 Appointment of Surrogates

009.10A Each school district or approved cooperative shall ensure that the rights of a child with a disability are protected if:

009.10A1 No parent can be identified;

009.10A2 The school district or approved cooperative, after reasonable efforts, cannot locate a parent;

009.10A3 The child is an unaccompanied homeless youth; or

009.10A4 The child is a ward of the State or court.

009.10A4a In the case of a child who is a ward of the State, such surrogate may alternatively be appointed by the judge overseeing the child's care provided that the surrogate meets the requirements in 92 NAC 51-009.10D3.

009.10B The duty of the school district or approved cooperative under 92 NAC 51-009.10A includes the assignment of an individual to act as a surrogate for the parents. This must include a method;

009.10B1 For determining whether a child needs a surrogate parent and,

009.10B2 For assigning a surrogate parent to the child.

009.10C The school district or approved cooperative may select a surrogate parent in any way permitted under State law and the district or approved cooperative shall make reasonable efforts to ensure the assignment of a surrogate not more than 30 calendar days after there is a determination that the child needs a surrogate.

009.10D In order to qualify, a surrogate must be a person who:

009.10D1 Has no personal or professional interest that conflicts with the interest of the child he or she represents;

009.10D2 Has knowledge and skills that ensure adequate representation of the child; and

TITLE 92
CHAPTER 51

009.10D3 Is not an employee of any public agency which is involved in the education or care of the child. A person who otherwise qualifies to be a surrogate parent is not an employee of the agency solely because he or she is paid by the agency to serve as a surrogate parent.

009.10D3a In the case of a child who is an unaccompanied homeless youth, appropriate staff of emergency shelters, transitional shelters, independent living programs, and street outreach programs may be appointed as temporary surrogate parents without regard to 92 NAC 51-009.10D3, until a surrogate parent can be appointed that meets all the requirements of 92 NAC 51-009.10D.

009.10E The surrogate may represent the child in all matters relating to:

009.10E1 The identification, evaluation, and educational placement of a child; and

009.10E2 The provision of a free appropriate public education to the child.

009.10F The services of the surrogate parent shall be terminated when:

009.10F1 The child is no longer eligible for a surrogate parent under 92 NAC 51-009.10A;

009.10F2 A conflict of interest develops between the interest of the child and the interest of the surrogate parent; or

009.10F3 The surrogate parent fails to fulfill his or her duties as a surrogate parent.

009.10G Issues arising from the selection, appointment, or removal of a surrogate parent shall be resolved through hearings established under 92 NAC 55.

009.10H The surrogate parent and the school district or approved cooperative which appointed the surrogate parent shall not be liable in civil actions for damages for acts of the surrogate parent unless such acts constitute willful and wanton misconduct.

009.11 State Complaint Procedures

009.11A An organization or individual may file a signed written complaint under the procedures described in 92 NAC 51-009.11B.

009.11B The complaint must include:

009.11B1 A statement that the public agency has violated a requirement of 92 NAC 51, 34 CFR 300 or Part B of the IDEA;

009.11B2 The facts on which the statement is based;

009.11B3 The signature and contact information for the complainant; and

009.11B4 If alleging violations with respect to a specific child –

009.11B4a The name and address of the residence of the child;

TITLE 92
CHAPTER 51

- 009.11B4b The name of the school the child is attending;
- 009.11B4c In the case of a homeless child or youth within the meaning of section 725(2C) 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;
- 009.11B4d A description of the nature of the problem of the child, including facts relating to the problem; and
- 009.11B4e A proposed resolution of the problem to the extent known and available to the party at the time the complaint is filed.
- 009.11B5 The complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received in accordance with 92 NAC 51-009.11.
- 009.11B6 The party filing the complaint must forward a copy of the complaint to the school district or approved cooperative serving the child at the same time the party files the complaint with Nebraska Department of Education Office of Special Education.
- 009.11C If a complaint meeting the requirements of 92 NAC 51-009.11B is received, the following procedures will be carried out:
- 009.11C1 Within fourteen (14) calendar days of receipt of the written, signed complaint, an assigned Office of Special Education official shall notify in writing each complainant and the school district or approved cooperative against which the violation has been alleged, that the complaint has been received. This written notification shall include a copy of the complaint and the substance of the alleged violation. The school district or approved cooperative shall have fourteen (14) calendar days to submit a written response.
- 009.11C2 Office of Special Education officials will provide the school district or approved cooperative with the opportunity to respond to the complaint, including, at a minimum:
- 009.11C2a At the discretion of the school district or approved cooperative, a proposal to resolve the complaint; and
- 009.11C2b An opportunity for a parent who has filed a complaint and the school district or approved cooperative to voluntarily engage in mediation consistent with 92 NAC 51-009.12.
- 009.11C3 Office of Special Education officials will investigate each complaint received from an individual or organization (including an individual or organization from another state) to determine whether there has been a failure to comply with this Chapter and may require further written or oral submission of information by all parties and may conduct an independent on-site investigation if necessary. The complainant will have the opportunity to submit additional information either orally or in writing, about the allegation.

TITLE 92
CHAPTER 51

- 009.11C4 Within sixty (60) calendar days of receipt of a signed written complaint, the Department of Education Office of Special Education will review all relevant information and provide written notification of findings of facts and conclusions and the basis for such findings to all parties involved.
- 009.11C5 An extension of the time limit in 92 NAC 51-009.11C4 will be permitted only if:
- 009.11C5a Exceptional circumstances exist with respect to a particular complaint; or
- 009.11C5b The parent and the school district or approved cooperative involved agree to extend the time to engage in mediation or to engage in other alternative means of dispute resolution.
- 009.11C6 If it is determined there has been a failure to comply, there will be included in the notification of findings the specific steps which must be taken by the school district or approved cooperative to bring the school district or approved cooperative into compliance, including technical assistance, negotiations and corrective actions necessary to achieve compliance. The notification shall also set forth a reasonable period of time to voluntarily comply.
- 009.11C7 If the school district or approved cooperative does not demonstrate compliance within the period of time set forth in the notice of findings, the matter will be subject to the procedures outlined in 92 NAC 51-004.09.
- 009.11C8 If a written complaint is received that is also the subject of a due process hearing under 92 NAC 55, or contains multiple issues of which one or more are part of that hearing, the Office of Special Education officials shall set aside any part of the state complaint that is being addressed in the due process hearing, until the conclusion of the hearing. However, any issue in the state complaint that is not a part of the due process action must be resolved using the time limit and procedures described in 92 NAC 51-009.11.
- 009.11C9 If an issue is raised in a complaint filed under 92 NAC 51-009.11 that has previously been decided in a due process hearing involving the same parties:
- 009.11C9a The hearing decision is binding; and
- 009.11C9b The Nebraska Department of Education must inform the complainant to that effect.
- 009.11C10 A complaint alleging a school district's or approved cooperative's failure to implement a due process decision must be resolved by the Nebraska Department of Education.

009.12 Mediation

- 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.

TITLE 92
CHAPTER 51

- 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.
- 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:
- 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.

TITLE 92
CHAPTER 51

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.

009.13 Resolution Process

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.

TITLE 92
CHAPTER 51

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 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:

TITLE 92
CHAPTER 51

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.

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.

009.14 Special Education Due Process Hearings

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.

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.

TITLE 92
CHAPTER 51

010 Qualifications of Special Education Personnel for Program Approval and Reimbursement

010.01 School districts and approved cooperatives shall ensure that all personnel necessary to carry out this Chapter are appropriately and adequately prepared and trained including that those personnel have the content knowledge and skills to serve children with disabilities, subject to the requirements of Section 2122 of the Elementary and Secondary Education Act of 1965.

010.01A Instructional personnel shall hold valid Nebraska Department of Education certification, be endorsed in the assigned area. Instructional personnel may serve children with visual impairments and children with hearing impairments in a multicategorical program if the instructional personnel have attended training approved by the Department of Education or have received consultation from an individual endorsed in the area of visual hearing impairments. This section does not apply to individuals providing inservice.

010.01B Each person employed as a special education teacher who teaches elementary school, middle school, or secondary school shall be a teacher meeting IDEA 2004 criteria as defined in 92 NAC 51-003.62.

010.01C School districts or approved cooperatives shall take measurable steps to recruit, hire, train, and retain teachers meeting IDEA 2004 criteria to provide special education and related services.

010.01C1 School districts and approved cooperatives shall make positive efforts to employ, and advance in employment, qualified individuals with disabilities in programs assisted under Part B of the IDEA.

010.01D Approvable endorsements for program approval and reimbursement shall include:

	Categorical Assignment	NDE Approvable Endorsement
<u>010.01D1</u>	Adaptive Physical Education	Adaptive Physical Education
<u>010.01D2</u>	Autism	Special Education Functional Academic Skills and Independent Living Specialist Special Education Special Education Inclusion and Collaboration Specialist Special Education Behavior Intervention Specialist Speech-Language Pathologist
<u>010.01D3</u>	Emotional Disturbance	Special Education Behavior Intervention Specialist Special Education
<u>010.01D4</u>	Deaf-Blindness	Special Education Visual Impairment Special Education Functional Academic Skills and Independent Living Specialist

TITLE 92
CHAPTER 51

	Categorical Assignment	NDE Approvable Endorsement
<u>010.01D5</u>	Diagnostic Services	School Psychologist Audiologist Speech-Language Pathologist or any special education endorsement
<u>010.01D6</u>	Early Childhood Special Education in Home and Centerbased Programs for Children Birth-Age Five	Early Childhood plus any Special Education Early Childhood Inclusive Special Education Early Childhood Special Education Special Education Early Intervention Specialist
<u>010.01D7</u>	Hearing Impairments	Deaf or Hard of Hearing
<u>010.01D8</u>	Home (School Age) and Hospital (Birth to 21) Services	Any Teaching endorsement
<u>010.01D9</u>	Home-School Liaison	Any special education endorsement School Counselor
<u>010.01D10</u>	Intellectual Disability	Special Education
<u>010.01D11</u>	Multicategorical Programs	Instructional personnel serving students in a multicategorical program shall be considered to be endorsed in the assigned area if an endorsement is held in at least one of the disability categories served
<u>010.01D12</u>	Multiple Disabilities	Special Education Functional Academic Skills and Independent Living Specialist
<u>010.01D13</u>	Orthopedic Impairments	Special Education
<u>010.01D14</u>	Program Supervision	Administrative or Supervisory certificate and at least one Special Education endorsement or any Special Education Administrative or Supervisory certificate
<u>010.01D15</u>	Learning Disabilities	Special Education Inclusion and Collaboration Specialist Special Education
<u>010.01D16</u>	Speech-Language Impairments	Speech-Language Pathologist

TITLE 92
CHAPTER 51

	Categorical Assignment	NDE Approvable Endorsement
	<u>010.01D17</u> Substitute Teacher	Any Teaching certificate
	<u>010.01D18</u> Traumatic Brain Injury	Special Education Functional Academic Skills and Independent Living Specialist Special Education Special Education Behavior Intervention Specialist Speech-Language Pathologist Special Education Inclusion and Collaboration Specialist
	<u>010.01D19</u> Visual Impairment	Special Education Visual Impairment
	<u>010.01D20</u> Work Study Program or Transition Program	Any special education endorsement School Counselor Vocational Special Needs Cooperative Education – Diversified Occupations Secondary Transition Specialist
<u>010.02</u>	For purposes of 92 NAC 51-010.01D5, 010.01D14 and 010.01D20 “special education endorsement” shall include any approvable endorsement under 92 NAC 51-010.01D except 010.01D8, 010.01D17 and excluding the specific endorsements of guidance and counseling, educational audiologist, vocational special needs, cooperative education diversified occupations and special services certificate for school transition specialist.	
<u>010.03</u>	Related Services Personnel and Paraprofessionals	
	<u>010.03A</u>	Related services personnel and paraprofessionals shall hold any State-approved or State-recognized certification, licensing, registration, or other comparable requirements that apply to the professional discipline in which those personnel are providing special education or related services.
	<u>010.03B</u>	Related services personnel who deliver services in their discipline or profession shall not have had certification or licensure requirements waived on an emergency, temporary, or provisional basis.
	<u>010.03C</u>	Paraprofessionals shall be appropriately trained and supervised by qualified special education personnel to be used to assist in the provision of special education and related services under this Chapter.
	<u>010.03D</u>	A paraprofessional shall not teach, as defined in <u>Neb. Rev. Stat. §79-101.12</u> .
<u>010.04</u>	Personnel providing special education services who do not hold Department of Education certification and endorsement, shall be licensed by the appropriate State of Nebraska Board of Examiners.	
<u>010.05</u>	Personnel employed by approved service agencies shall be certified by the Department of Education or shall hold the credential or training required by the licensing standard under which the service providers operate.	

TITLE 92
CHAPTER 51

010.06 Qualified Educational Sign Language Interpreters

010.06A In order to be a qualified educational sign language interpreter for the purposes of 92 NAC 51-010.06, an individual must have a high school diploma, high school equivalency diploma or higher, and meet the requirements of 92 NAC 51-010.06A1 or 010.06A2:

010.06A1 Receive a passing score on the EIPA written exam, and attain and maintain one or more of the following competency levels as measured by the following assessments:

010.06A1a Educational Interpreter Performance Assessment (EIPA), Competency level 4.0 or above

010.06A1b Registry of Interpreters of the Deaf Certification (RID)

010.06A1c National Association of the Deaf (NAD) Competency level 4.0 or above

010.06A1d National Interpreter Certification (NIC)

010.06A1e Quality Assurance Screening Test (QAST) Competency level 4.0

010.06A2 Educational interpreters providing sign language interpreter services in a school district or approved cooperative for two consecutive school years immediately prior to the effective date of this Rule shall be considered qualified educational sign language interpreters if:

010.06A2a the individual has attained a competency level of 3.5 or higher on the EIPA, and

010.06A2b the individual has met the requirements of 92 NAC 51-010.06F.

010.06B Subject to the exceptions in 92 NAC 51-010.06C, and 010.06D, school districts and approved cooperatives shall ensure that all sign language interpreters employed by such school districts or approved cooperatives to provide special education services are qualified educational sign language interpreters who meet the competency requirements in 92 NAC 51-010.06A.

010.06C If the school district or approved cooperative is unable to find a qualified educational sign language interpreter who meets the requirements of 92 NAC 51-010.06A, the school district or approved cooperative may employ for up to one year an interpreter who has received a "Skills at or above the required level" or a "Hire with Caution" on the EIPA pre-hire screening.

010.06D If a school district or approved cooperative is unable to find a qualified educational sign language interpreter who meets the requirements of 92 NAC 51-010.06A, the school district or approved cooperative may employ for up to two school years, an interpreter who demonstrates the minimum competency level of 3.0 on the EIPA, NAD or QAST. The school district or approved cooperative must require that the interpreter participate in a professional development plan designed to improve his or her skills and enable him or her to become a qualified educational sign language interpreter within two school years. The plan shall include at least 40 clock hours of training in interpreting per year (August 1 to July 31). The plan shall be approved by the school district or approved cooperative. The

TITLE 92
CHAPTER 51

school district or approved cooperative must require that the interpreter attain one or more of the competency levels in 92 NAC 51-010.06A within two school years of employment.

010.06E If an interpreter does not achieve the required competency levels within the time periods as specified in 92 NAC 51-010.06D, the school district or approved cooperative must reopen the position and seek a qualified educational sign language interpreter.

010.06F School districts and approved cooperatives shall require that all sign language interpreters employed by the school districts or approved cooperatives to deliver special education services submit evidence to the school district or approved cooperative of having obtained 24 clock hours of professional development every two years (August 1-July 31). This should include at least 18 hours of training related to sign language interpreting. The remaining six hours of training can be in any of the following areas: history, psychology and sociology of the Deaf and hard of hearing; child development; language development; curriculum development; methods of instruction; interpreting for students who are deaf-blind; legal and ethical issues for educational interpreters.

010.06G If a sign language interpreter cannot provide the evidence required in 92 NAC 51-010.06F of the professional development, the school district or approved cooperative shall require that the sign language interpreter be retested and achieve the applicable competency level specified in 92 NAC 51-010.06A, 010.06C, or 010.06D.

010.07 Notwithstanding any other individual right of action that a parent or student may maintain under this Chapter, nothing in this section or Chapter shall be construed to create a right of action on behalf of an individual student or class of students for the failure of a school district or approved cooperative employee to meet IDEA 2004 criteria or to prevent a parent from filing a complaint about staff qualification pursuant to Section 009 of this Chapter.

TITLE 92
CHAPTER 51

011 School District Budget Development and Reimbursement Process for School Age Programs

011.01 General Information

011.01A The special education assurances and flexible funding application of a school district and approved cooperative shall be submitted electronically via the NDE website to the Office of Special Education. Any amendment to the assurances and flexible funding application shall be subject to the same review as the initial assurances and flexible funding application.

011.01A1 The fiscal year for school age special education programs shall be September 1 to August 31.

011.01B The allowable and reimbursable costs for special education services are restricted to the following items, which shall be documented and are subject to audit;

011.01B1 Salaries of special education personnel as per 92 NAC 51-010 and clerical personnel directly associated with special education services;

011.01B2 School district or approved cooperative share of fringe benefits for the special education staff:

011.01B2a Fringe benefits shall be limited to social security, retirement programs, workers' compensation, health, life, long term disability, and unemployment insurance.

011.01B3 Inservice costs directly related to the special education programs provided that:

011.01B3a Allowable inservice expenditures are costs directly related to special education programs. Allowable activities must be designed to contribute to the professional growth and competence of staff serving children with a disability and their parents through workshops, demonstrations, and school visits. Tuition and expenses of attending special education courses for college credit are not allowed.

011.01B3b Allowable costs include: presenter fees and expenses; mileage; board and room of staff to attend inservice programs; costs of substitutes for staff attending inservice programs; cost of inservice programs which directly assist special and regular educators in providing appropriate programs for children with a verified disability in their classrooms; and costs of special education workshop attendance.

011.01B3c Costs of attending meetings conducted by organizations where only organizational business is conducted is not an allowable reimbursable expense.

011.01B4 Travel costs incurred by the school district or approved cooperative in delivering the special education programs including costs for:

TITLE 92
CHAPTER 51

- 011.01B4a Children attending nonpublic schools who are required to leave the nonpublic school to receive special education and related services; and
- 011.01B4b Children who are assigned to more than one attendance center to receive special education.
- 011.01B5 Travel costs incurred by parents to attend educational planning meetings held outside the resident district which are necessary to provide a free appropriate public education or to visit their child who is assigned to a residential program outside the district as agreed upon through the IEP process.
- 011.01B6 Costs of transporting children with a disability which are authorized under Neb. Rev. Stat. §79-1129 and Section 014 are budgeted and claimed separately;
- 011.01B7 Instructional equipment including assistive technology devices and equipment, supplies and publications necessary to aid the child in accomplishing the goals and objectives of the individual education program (IEP) are allowable reimbursable costs under this Chapter. The equipment, supplies, and publications shall be used by the child in association with the implementation of the child's IEP or evaluation. This shall also include equipment, supplies, and publications used by staff when instructing a child with a verified disability; when evaluating a child who is suspected of having a disability; or when reevaluating a child with a verified disability. Allowable and reimbursable costs shall include printing, publication and postage costs that are necessary to carry out the provisions of this Chapter. This shall not include equipment, supplies, and publications used by staff for administrative purposes. This shall not include personal equipment and supplies or life support equipment. When equipment is used for purposes other than for special education, the school district or approved cooperative shall only claim the applicable prorated portion for special education payment.
- 011.01B8 Those contracted special education services in which children with a disability are served by a service agency whose special education programs and rates have been approved by the Department of Education; and
- 011.01B9 Costs of acquisition (purchase, lease, lease-purchase); renovation and operation of a mobile unit(s) (i.e., trailers, mobile homes, vans, or any combination thereof) used, or to be used, as mobile learning centers for delivery of special education services to any eligible children with a disability. Reimbursement shall be subject to approval by the Nebraska Department of Education and shall be based on allowable depreciation and reimbursement as per Section 014.
- 011.01B9a The maximum number of mobile units a school district or approved cooperative may purchase shall be based on the total enrollment of both public and nonpublic schools as per the following schedule:

TITLE 92
CHAPTER 51

- 011.01B9a(1) 1 to 10,000 total enrollment for the maximum purchase of one (1) mobile unit;
 - 011.01B9a(2) 10,001 to 20,000 total enrollment for the maximum purchase of two (2) mobile units;
 - 011.01B9a(3) 20,001 to 30,000 total enrollment for the maximum purchase of three (3) mobile units;
 - 011.01B9a(4) 30,001 to 40,000 total enrollment for the maximum purchase of four (4) mobile units;
 - 011.01B9a(5) 40,001 to 50,000 total enrollment for the maximum purchase of five (5) mobile units; and
 - 011.01B9a(6) all districts with an enrollment exceeding 50,001 for the maximum purchase of six (6) mobile units.
- 011.01B10 Costs for support services, as defined in Neb. Rev. Stat. §79-1125.01 and 92 NAC 51-003.60, identified in 92 NAC 51-011.05 as the Flexible Funding Option.
- 011.01C The adjusted average per pupil cost of the preceding year or a portion of that cost shall be calculated according to the following criteria:
- 011.01C1 For Level I special education services the school district is considered to have expended its adjusted average per pupil cost for each child with a disability who participates in a special education support service(s) for an aggregate of not more than three hours per week.
 - 011.01C2 For Level II special education classroom services in which a child with a disability participates more than an aggregate of three hours per week, the school district shall pay that portion of the adjusted average per pupil cost for that portion of the instructional time devoted to the special education activity;
 - 011.01C3 For Level III special education contractual services the school district shall pay an amount equal to the average per pupil cost (program per pupil cost) of the service agency of the preceding year to the agency providing the educational program for each child with a disability. In deriving allowable excess cost, the district shall deduct its adjusted average per pupil cost from the cost of the program contracted from the service agency;
 - 011.01C4 When a school district or approved cooperative provides or contracts for a summer school special education program for a child with a verified disability, the cost of such program will be considered for allowable excess cost reimbursement if the child's needs for such program can be verified by review of the IEP.
- 011.01D Student Special Education Full Time Equivalency (FTE) shall be determined by calculating the percent of aggregate time a child receives special education and related services. In calculating student special education full-time equivalency, time spent in transportation, extended school day and extended school year services are excluded from the aggregate time.

TITLE 92
CHAPTER 51

- 011.01D1 The aggregate amount of a child's special education FTE includes:
- 011.01D1a The amount of time the child spends in a separate setting other than the regular classroom; and
 - 011.01D1b The amount of time the child with a disability spends in the regular classroom receiving instruction as indicated in the child's IEP from special education staff.
- 011.01D2 Full-time equivalency (FTE) is calculated each year.

011.02 General Limitation in Budget Development

011.02A Only children with verified disabilities shall receive special education services. This shall include the initial evaluation of a child with a suspected disability, regardless of the outcome of the verification decision. (See Section 006.) Budget development may also include those children receiving support services as defined in 92 NAC 51-003.60.

011.02B Age limits

011.02B1 School age budgets shall be limited to those children with disabilities from age five through the school year in which the child reaches age twenty-one and those children receiving support services as defined in 92 NAC 51-003.60.

011.02B2 A child is age five if that child has reached the age of five years or will reach such an age on or before July 31 of the current school year.

011.02B3 A school district or approved cooperative is eligible for reimbursement for a child's special education program until the end of the school year in which his or her twenty-first birthday occurs.

011.02C Administration and Supervision

011.02C1 Supervision of special education programs is an allowable expenditure for up to an amount not to exceed 8% of the school district's or approved cooperative's allowable school age program costs, minus the cost of program supervision. Administration and supervision includes clerical costs directly associated with the supervision of special education programs.

011.02C2 The cost of a superintendent or principal, hired for the purpose of supervising general education, shall not be included in allowable excess cost for special education.

011.02D Related services for a child with a verified disability are reimbursable if the services are listed in the IEP and are necessary for the achievement of educational goals as stated in the IEP.

011.02E Any program that provides residential care shall show the costs of such care separately from the costs of the education program. (See 92 NAC 53.)

TITLE 92
CHAPTER 51

011.03 Budget Development for Levels I, II, III

011.03A Level I Special Education Services

011.03A1 The expenditures for Level I (not more than an aggregate of three hours per child per week) special education service programs shall be considered for allowable excess cost reimbursement under the following conditions:

011.03A1a The programs are owned and operated by the school district or approved cooperative and the expenditures are within the allowable categories as stated in Section 011; and

011.03A1b The reimbursement to a school district or approved cooperative contracting for Level I services shall be limited to the rates approved by Commissioner or designee.

011.03B Level II Special Education Services

011.03B1 The expenditures for Level II (more than an aggregate of three hours per child per week) special education services shall be considered for allowable excess cost reimbursement under the following conditions:

011.03B1a The school district or approved cooperative has documented and contributed the portion (total or prorated amount for a full day program) of the adjusted average per pupil cost into the program; and

011.03B1b The expenditures are within the allowable categories as stated in Section 011.

011.03C Level III Special Education Contractual Services

011.03C1 The school district or approved cooperative may contract for any or all special education programs with approved service agencies.

011.03C1a Those school districts or approved cooperatives contracting for services shall have the service agency specify the cost for each service being provided by the service agency. Reimbursement to such school districts or approved cooperatives shall be limited to the NDE approved rates and the amount of time such services were provided to children with verified disabilities.

011.04 Final Financial Reports

011.04A General Procedures

011.04A1 Excess cost shall mean the difference between (1) the total allowable cost of the special education programs excluding residential care, and (2) the number of children (full time equivalency) in the special education program multiplied by the adjusted average per pupil cost of the resident school district of each child for the preceding year.

TITLE 92
CHAPTER 51

011.04A2 Each school district shall determine an adjusted average per pupil cost.

011.04A2a The adjusted average per pupil cost is to be determined by subtracting those eligible special education expenditures which were included as costs from the total instructional expenditures shown on the Total Instruction line of the district's Annual Financial Report for the previous school year. Divide the result by the total ADM (Average Daily Membership) as reported in the Annual Financial Report for the same year.

011.04B Payments

011.04B1 Payments shall be made by the Nebraska Department of Education to the school district of residence, cooperative of school districts, or educational service unit each year in a minimum of seven payments between the fifth and twentieth day of each month beginning in December. Additional payments may be made based upon additional valid claims submitted. Such payments will be based upon the final financial reports submitted on forms or in a manner prescribed by the Office of Special Education which shall include the following:

011.04B1a Allowable expenditures for the preceding school fiscal year including any costs for the Flexible Funding Option.

011.04B1b A list of all special education personnel and their FTE;

011.04B1c Tuition received from contracts and other sources;

011.04B1d Certification of authorized officer of the school board or authorized official of an approved cooperative that the reported expenditures have been paid;

011.04B1e A copy of the billings from the service agencies for contracted programs; and

011.04B1f Student Special Education Full Time Equivalency as defined by 92 NAC 51-011.01D for Level II and Level III students.

011.04B2 Such final financial reports shall be submitted electronically via the NDE website to the Department of Education on or before October 31 of each year for the preceding school fiscal year.

011.04B3 A school district or approved cooperative reimbursed for ineligible expenditures, shall be required to return to the Department of Education the amount determined to be ineligible or the amount shall be deducted from subsequent special education payments.

011.04B4 The Department of Education shall withhold any reimbursement provided under Neb. Rev. Stat. §79-1142, to school districts or approved cooperatives which, after final determination by the Department of Education, received funds in excess of the determined allocation for the previous year. Payments which are withheld shall be no greater than the amount of overpayment. The Department of Education shall maintain an accurate account and a record of the reasons for such overpayments and the manner in which adjustments were made.

TITLE 92
CHAPTER 51

011.04B5 Supplementary amendments to any school age final financial report previously approved by the Office of Special Education may be submitted to the Office of Special Education for review and approval within three years of the original due date. Approved amendments may be submitted by the Department of Education to the Legislature for consideration of a supplemental appropriation.

011.04C Determination and Scheduling of Payments

011.04C1 For special education and support services provided, the Nebraska Department of Education shall reimburse each school district in the following school fiscal year a pro rata amount determined by the State Board of Education from appropriations for special education approved by the Legislature and based on allowable excess costs for all special education programs and support services. Cooperatives of school districts or educational service units shall also be eligible for reimbursement for cooperative programs pursuant to this subsection if such cooperatives or educational service units have complied with the reporting and approval requirements of Neb. Rev. Stat. §79-1155 for cooperative programs which were offered the preceding year.

011.04C2 The amount appropriated by the Legislature for special education programs including support services (Flexible Funding Option) shall be the basis for reimbursement. Payments authorized by Neb. Rev. Stat. §79-1142 shall be made only to a school district or approved cooperative.

011.04C3 Whenever there are due dates specified in this Chapter for submission of required documents, the appropriate items shall be submitted to the Department of Education, Office of Special Education on those dates.

011.04C4 All reports required by this Chapter for submission by school districts and approved cooperatives shall be made in accordance with 92 NAC 51-011.04C3. Failure to do so will result in the implementation of the procedures specified in 92 NAC 51-004.14.

011.05 Flexible Funding projects are optional for school districts or approved cooperatives and are intended for students not identified or verified for special education services but who demonstrate a need in the general curriculum. A school district or approved cooperative choosing to exercise the Flexible Funding Option must submit an application containing a narrative and proposed budget. Proposals shall be submitted electronically via the NDE website to the Nebraska Department of Education, Office of Special Education.

011.05A As part of the Flexible Funding Option Application, the narrative shall describe the support services designed for the targeted student subgroup who would benefit from preventative support services within the context of the general curriculum. The narrative must include:

011.05A1 An estimate of the annual number of students to be served;

011.05A2 The process(es) used in identifying the intended target student subgroup;

TITLE 92
CHAPTER 51

- 011.05A3 Methodology to be used including but not limited to:
- 011.05A3a The strategies and interventions to be applied;
 - 011.05A3b The staff development activities to be funded for carrying out activities described in the proposal;
 - 011.05A3c The intended student outcomes resulting from implementation;
 - 011.05A3d How the proposed services are different from services currently available to the targeted student subgroup;
 - 011.05A3e The proposed annual measurements that will be used to document changes in student performance; and
 - 011.05A3f If the proposal is linked to school district or building level school improvement activities, information describing the relationship to the School Improvement Action Plan; and
- 011.05A4 The name of the person(s) responsible for proposal implementation as well as a mailing address, e-mail, fax and phone number.

011.05B Flexible Funding Option Reimbursement

- 011.05B1 Reimbursement for support services as defined in 92 NAC 51-003.60 shall be limited to a percentage established by the State Board of Education not to exceed ten percent of the school district's or approved cooperative's total allowable reimbursable cost for all special education programs and support services.
- 011.05B2 Costs shall be limited to allowable costs as defined in Section 011 and the cost of salary and fringe benefits of general education staff providing support services.
- 011.05B3 Payments will be based upon the costs reported in the Final Financial Report and contingent upon completion and approval of a final report containing actual project costs and a report of student progress including the requirements of 92 NAC 51-012.07D. Payments will be made at the same percentage rate as for all special education reimbursement.

- 011.05C The fiscal year for the Flex Funding Option shall be September 1 to August 31.

011.06 Ward of the State or Court With a Disability

- 011.06A When a ward of the state or court has been placed in a school district other than the district in which he or she resided at the time he or she became a ward and such ward does not reside in a foster family home licensed or approved by the Department of Health and Human Services or a foster home maintained or used by the Department of Correctional Services pursuant to Neb. Rev. Stat. §83-108.04 or has been placed in any institution which maintains a special education program which has been approved by the Nebraska Department of Education and such institution is not owned or operated by the district in which the student resided at the time the student became a ward, the cost of his or her education and the required transportation costs associated with the child's education shall be

TITLE 92
CHAPTER 51

paid by the Nebraska Department of Health and Human Services under rules and regulations prescribed by the Department of Health and Human Services and the student remains a resident of the district in which the student resided at the time he or she became a ward. Any student who is a ward of the state or court who resides in a foster family home licensed or approved by the Department of Health and Human Services or a foster home maintained or used by the Department of Correctional Services pursuant to Neb. Rev. Stat. §83-108.04 is a resident of the district in which the student resided at the time the student became a foster child, unless it is determined under Neb. Rev. Stat. §§43-1311 or 43-1312 that the student will not attend such district in which case the student shall be deemed a resident of the district in which the foster family home or foster family is located and shall be claimed in the final financial report of the school district or approved cooperative in which the foster family home or foster home is located.

TITLE 92
CHAPTER 51

012 School District or Approved Cooperative Application and Payment Process for IDEA Flow-Through Allocations

012.01 General Information

012.01A Except for purposes specified in 92 NAC 51-012.07A and 92 NAC 51-015.03C1b, IDEA allocations are to be used by school districts or approved cooperatives in accordance with state requirements necessary to provide a free appropriate public education to children with disabilities.

012.01B The Special Education Assurances and IDEA Consolidated Application of a school district and approved cooperative shall be submitted electronically via the NDE website to the Office of Special Education. Any amendments in the Assurances and Application shall be subject to the same review as the initial Assurances and Application.

012.01C Maintenance of Effort

012.01C1 A school district or approved cooperative may not use IDEA flow-through funds to reduce the level of expenditures below the preceding year's special education expenditures.

012.01C2 A school district or approved cooperative may use up to 50% of the amount received under IDEA that exceeds the amount received under IDEA the previous year to assist with meeting maintenance of effort.

012.01C3 Exceptions for a school district or approved cooperative not meeting IDEA maintenance of efforts requirements as per federal regulations are:

012.01C3a The school district or approved cooperative has reduced special education personnel costs because staff has been replaced with qualified staff earning lower salaries;

012.01C3b The school district or approved cooperative has a decrease in enrollment of children with disabilities;

012.01C3c The school district or approved cooperative is no longer responsible for a high cost needs child(ren) with a disability; and

012.01C3d The school district or approved cooperative has terminated a long-term special education purchase(s).

012.01D Notice and Opportunity for a Hearing Before Disapproval of an Application for IDEA Flow-through Allocations

012.01D1 The Nebraska Department of Education will provide an opportunity for a hearing prior to disapproving an application for special education funds for failure of the application to meet the requirements of the Individuals with Disabilities Education Act and its implementing regulations.

TITLE 92
CHAPTER 51

012.01D2 The school district or approved cooperative shall request a hearing in writing within 30 calendar days of receipt of the notice provided indicating that the Office of Special Education intends to recommend disapproval of the school district's or approved cooperative's application. Within 30 days after it receives a request, the Nebraska Department of Education shall hold a hearing on the record and shall review its decision.

012.01D3 Not later than 10 days after the hearing, the Nebraska Department of Education shall issue a written ruling, including the findings of fact and reasons for the ruling.

012.01D4 If the Nebraska Department of Education finds the proposed disapproval of the school district's or approved cooperative's application was contrary to the Individuals with Disabilities Education Act and its implementing regulations or the Nebraska Special Education Act and its implementing regulations, the Department shall approve the application.

012.01D5 If the Nebraska Department of Education disapproves the school district's or approved cooperative's application, the school district or approved cooperative may appeal to the U.S. Secretary of Education. The school district or approved cooperative shall file a notice for appeal within 20 days after the school district or approved cooperative has been notified by the Nebraska Department of Education of the results of the hearing. If supported by substantial evidence, the findings of the Nebraska Department of Education shall be final.

012.01D6 The Nebraska Department of Education will make available at reasonable times and places all records of the Department pertaining to any review or appeal the school district is conducting under 34 CFR 76.401 including records of other school districts or approved cooperatives.

012.02 IDEA Base Flow-through Allocation

012.02A First priority for use of the school district or approved cooperative IDEA base flow-through allocation is early childhood special education (Below Age Five programs and transportation).

012.02A1 IDEA base flow-through allocation can be considered in calculating the maximum amount of funds available under 92 NAC 51-012.07A.

012.02B The IDEA base flow-through allocation is distributed to school districts or approved cooperatives based on federal regulations implementing Part B of the IDEA.

012.02C The fiscal year for early childhood special education programs shall be September 1 to August 31.

012.03 The following additional reports shall be submitted to the Nebraska Department of Education for early childhood special education (Below Age Five):

TITLE 92
CHAPTER 51

012.03A Final Financial Reports

012.03A1 The Nebraska Department of Education shall make payments to school districts and approved cooperatives based on an approved IDEA Application and requests for payments submitted and supported with documentation. If applicable, a supplemental final grant payment will be made to qualifying school districts based on the Below Age Five final financial reports submitted to the Nebraska Department of Education which shall include the following:

012.03A1a Allowable expenditures for the appropriate school fiscal year;

012.03A1b A list of all special education staff and their FTE;

012.03A1c Tuition received from contracts and other sources;

012.03A1d Certification of authorized officer of the school board or authorized official of an approved cooperative that the reported expenditures have been paid; and

012.03A1e A copy of the billings from the service agencies for contracted programs.

012.03A2 Final financial reports shall be submitted to the Nebraska Department of Education on or before October 1 of each year for the preceding fiscal year.

012.03A3 A school district or approved cooperative paid for ineligible expenditures shall be required to return to the Nebraska Department of Education the amount determined to be ineligible; repayment of funds equal to the amount determined to be ineligible shall be made with non-federal funds and in no case may federal funds be used to refund the amount found to be misspent or misapplied.

012.03A4 The Nebraska Department of Education shall withhold any payments provided under Neb. Rev. Stat. §79-1132 to school districts or approved cooperatives which, after final determination, received funds in excess of the appropriate allocation for the previous year(s). Payments which are withheld shall be no greater than the amount of overpayment. The Department of Education shall maintain an accurate account and a record of the reasons for such overpayments and the manner in which adjustments were made.

012.03A5 Allowable costs incurred for children with disabilities below age five shall be considered as total excess cost. The Nebraska Department of Education shall provide grants for the costs of the special education programs approved by the Nebraska Department of Education to the school district of residence for children with disabilities who are less than five years of age. The grants shall be one hundred percent of the costs of such programs and shall continue to be one hundred percent as long as the funding for such grants comes from federal funds. If federal funding pursuant to the Individuals with Disabilities Education Act, Part B and section 619 base flow-through allocation funds are inadequate at any time to pay one hundred percent of the allowable costs of such programs and transportation, the amount of the grant payments provided by the

TITLE 92
CHAPTER 51

department shall be a pro rata amount as determined by the State Board of Education from appropriations for special education approved by the Legislature and based on such allowable costs for all special education programs and transportation to children with disabilities who are less than five years of age.

012.03A6 The Nebraska Department of Education may make a supplemental payment to a school district or approved cooperative not able to achieve the Department's annually established Below Age Five funding threshold through a combination of IDEA base and enrollment and poverty flow-through allocations. Contingent upon available federal funds, this annual threshold will be at least the same percentage of funding as is available through state general funds for school age services for that year.

012.04 Allowable Costs

012.04A The allowable costs for special education services are restricted to the following items, which shall be documented and are subject to audit:

012.04A1 Salaries of special education personnel as per 92 NAC 51-010 and clerical personnel directly associated with special education programs;

012.04A2 School district or approved cooperative share of fringe benefits for the special education staff;

012.04A2a Fringe benefits shall be limited to social security, retirement programs, workers' compensation, health, life, long term disability, and unemployment insurance.

012.04A3 Inservice costs directly related to the special education programs, provided that;

012.04A3a Allowable inservice expenditures are costs directly related to special education programs. Allowable activities must be designed to contribute to the professional growth and competence of staff serving children with disabilities and their parents through workshops, demonstrations, and school visits. Tuition and expenses of attending special education courses for college credit are not allowed.

012.04A3b Allowable costs include: presenter fees and expenses, mileage, board and room of staff to attend inservice programs, costs of substitutes for staff attending inservice programs, costs of inservice programs which directly assist regular educators in providing appropriate programs for children with verified disabilities in their classrooms, and costs of special education workshop attendance.

012.04A3c Costs of attending meetings conducted by organizations where only organizational business is conducted is not an allowable expense.

012.04A4 Travel costs incurred by the school district or approved cooperative in delivering the special education programs including costs for:

TITLE 92
CHAPTER 51

- 012.04A4a Children attending nonpublic schools who are required to leave the nonpublic school to receive special education and related services.
- 012.04A4b Children who are assigned to more than one attendance center to receive special education.
- 012.04A5 Travel costs incurred by parents to attend educational planning meetings held outside the resident district which are necessary to provide a free appropriate public education or to visit their child who is assigned to a residential program outside the district as agreed upon through the IEP process;
- 012.04A6 Costs of transporting children with disabilities which are authorized under Neb. Rev. Stat. §79-1129 and Section 014 are budgeted and claimed separately;
- 012.04A7 Instructional equipment including assistive technology devices and equipment, supplies and publications necessary to aid the child in accomplishing the goals and objectives of the individual education program (IEP) or IFSP are allowable under this Chapter. The equipment, supplies, and publications shall be used by the child in association with the implementation of the child's IEP, IFSP or evaluation. This shall also include equipment, supplies, and publications used by staff when instructing children with verified disabilities; when evaluating children who are suspected of having disabilities; or when reevaluating children with verified disabilities. Allowable and reimbursable costs shall include printing, publication and postage costs that are necessary to carry out the provisions of this Chapter. This shall not include personal equipment and supplies or life support equipment and supplies. When equipment is used for purposes other than for special education, the school district or approved cooperative shall only claim the applicable prorated portion for special education payment;
- 012.04A8 Those contracted special education services in which children with disabilities are served by a service provider whose special education programs and rates have been approved by the Commissioner of Education or designee;
- 012.04A9 Facility costs for Below Age Five Programs are limited to plant operations, maintenance, repairs, and lease costs. A total facility square footage cost may also be claimed for facilities owned by the school district or approved cooperative that are being utilized for ECSE programs. When determining square footage costs, expenditures for facility improvements must be excluded;
- 012.04A10 Utilities; and
- 012.04A11 Cost for support services as defined in Neb. Rev. Stat. §79-1125.01 and 92 NAC 51-003.59 and identified in 92 NAC 51-011.05 as the Flexible Funding Option.
- 012.04A11a Allowable support services must meet the requirements of 34 CFR 300.226 (coordinated early intervening services).

TITLE 92
CHAPTER 51

012.05 Program Cost Limitations

012.05A Supervision of early childhood special education programs is allowable as an expenditure for up to an amount not to exceed 8% of the school district's or approved cooperative's allowable special education program costs, minus the cost of program supervision. Supervision of early childhood special education programs includes clerical costs associated with supervision of early childhood special education programs; also refer to Supervision of School Age Special Education programs contained in 92 NAC 51-011.02C.

012.05B The cost of a superintendent or a principal, hired for the purpose of supervising general education, shall not be included in costs for below age five and school age special education programs.

012.05C Any IDEA funds remaining after meeting Below Age Five obligations or at the option of the school district or approved cooperative, funds used for Coordinated Early Intervening Services (CEIS) pursuant to 92 NAC 51-012.07A, may be used by the school district or approved cooperative for other allowable costs associated with serving children with disabilities, ages 5 to 21.

012.06 IDEA Enrollment and Poverty Flow-through Allocation

012.06A As per federal regulations, the enrollment and poverty flow-through allocation is distributed to school districts or approved cooperatives as follows:

012.06A1 85% on the basis of the number of children enrolled in public and nonpublic elementary schools and secondary schools within the jurisdiction of the district; and

012.06A2 15% in accordance with the number of children living in poverty within the jurisdiction of the district as determined by the Nebraska Department of Education.

012.06B A combination of IDEA base and IDEA Enrollment and Poverty allocations will be used by school districts or approved cooperatives to achieve the annual threshold as specified in 92 NAC 51-012.03A6.

012.06C Funds may be used to supplement school age and below age five special education allowable costs not covered by state or federal payments (Refer to 92 NAC 51-012.04 and 012.05).

012.06C1 School districts or approved cooperatives shall complete an annual application and following approval by the Nebraska Department of Education, the school district or approved cooperative may request payment for reimbursement of allowable special education expenditures.

012.06C2 School districts or approved cooperatives may receive funding by submitting requests for payment to NDE supported with documentation.

TITLE 92
CHAPTER 51

012.06C3 Funds shall be used only to pay the excess cost of providing special education and related services to children with disabilities except for purposes specified in 92 NAC 51-012.07A, and shall be used to supplement State, local and other federal funds and not to supplant such funds.

012.06C3a For purposes of 92 NAC 51-012, school district or approved cooperative eligibility for IDEA funds is determined by annually calculating separately both an elementary and secondary average per pupil expenditure (APPE).

012.06C3b A school district or approved cooperative meets the IDEA excess cost requirement if it has spent at least a minimum average elementary or secondary amount (APPE) for the education of its children with disabilities before funds under Part B are used.

012.06C4 Minor building modifications are allowable costs if approved through the Enrollment/Poverty Supplemental application process.

012.06C5 When expenditures are for resources benefiting all children, costs attributed to IDEA shall be on a prorata basis.

012.06C6 IDEA Enrollment and Poverty flow-through allocation can be considered in calculating the maximum amount of funds available under 92 NAC 51-012.07A.

012.06D An educational service unit, cooperative, or regional planning entity recognized by the State Board of Education pursuant to Neb. Rev. Stat. §79-1135 may receive grant funding if a school district or approved cooperative authorizes through a signed certification the release of all or a portion of the school district or approved cooperative IDEA allocation to said entity.

012.07 Special Considerations

012.07A Except as provided in 34 CFR 300.646 provision of IDEA Coordinated Early Intervening Services (CEIS) are voluntary for school districts and approved cooperatives receiving an IDEA allocation. Such services are limited to 15% of the school district or approved cooperative yearly IDEA allocations and are to be designed for students in kindergarten through grade 12 (with a particular emphasis on students in kindergarten through grade 3) who have not been identified as needing special education or related services but who need additional academic and behavioral support to succeed in a general education environment.

012.07B When implementing IDEA CEIS, a school district may carry out activities that include:

012.07B1 Professional development (which may be provided by entities other than a school district or approved cooperative) for teachers and other school staff to enable such personnel to deliver scientifically based academic instruction and behavioral interventions, including scientifically based literacy instruction, and, where appropriate, instruction on the use of adaptive and instructional software; and

TITLE 92
CHAPTER 51

- 012.07B2 Providing educational and behavioral evaluations, services, and supports, including scientifically based literacy instruction.
- 012.07C Each school district or approved cooperative that develops and maintains CEIS shall annually report the following information to the Department of Education:
- 012.07C1 The number of students served; and
- 012.07C2 The number of students served who subsequently receive special education and related services during the preceding two year period.
- 012.07D Payments for CEIS shall be contingent upon meeting the reporting requirements of 92 NAC 51-012.07C.
- 012.07D1 Payments for CEIS will be made according to 92 NAC 51-012.06C2.
- 012.07E Nothing in this subsection shall be construed to limit or create a right to a free appropriate public education under 92 NAC Rule 51.
- 012.07F Related services for children with verified disabilities are allowable if the services are listed in the IEP and are required to assist the child to benefit from his/her special education program.
- 012.07G Payments to a school district or approved cooperative contracting for special education services shall be limited to rates approved by the Commissioner of Education or designee.
- 012.07H Late submission of required forms will be subject to the procedures specified in 92 NAC 51-004.14.
- 012.08 Expenditures for Parentally-Placed Nonpublic School Children
- 012.08A To meet the requirement of 92 NAC 51-015.03C, each school district or approved cooperative must spend at least the following on providing special education and related services (including direct services) to parentally-placed nonpublic school children with disabilities:
- 012.08A1 For children aged 3 through 21, an amount that is the same proportion of the school district's or approved cooperative's total subgrant under section 611(f) of the IDEA as the number of nonpublic school children with disabilities aged 3 through 21 who are enrolled by their parents in nonpublic including religious, elementary schools and secondary schools located in the school district served by the school district or approved cooperative is to the total number of children with disabilities in its jurisdiction aged 3 through 21.
- 012.08A2 For children aged three through five, an amount that is the same proportion of the school district or approved cooperative's total subgrant under section 619(g) of the IDEA as the number of parentally-placed nonpublic school children with disabilities aged three through five who are enrolled by their parents in a nonpublic, including religious, elementary school located in the school district served by the school district or approved cooperative, is to the total number of children with disabilities in its jurisdiction aged three through five.

TITLE 92
CHAPTER 51

012.08A2a Children aged three through five are considered to be parentally-placed nonpublic school children with disabilities enrolled by their parents in nonpublic, including religious, elementary schools, if they are enrolled in a nonpublic school that meets the definition of elementary school in section 34 CFR 300.13.

012.08B If a school district or approved cooperative has not expended all of the funds described in 92 NAC 51-012.08A1 and 012.08A2 by the end of the fiscal year for which Congress appropriated the funds, the school district or approved cooperative must obligate the remaining funds for special education and related services (including direct services) to parentally-placed nonpublic school children with disabilities during a carry-over period of one additional year.

012.08C In calculating the proportionate amount of Federal funds to be provided for parentally-placed nonpublic school children with disabilities, the school district or approved cooperative, after timely and meaningful consultation with representatives of nonpublic schools under 92 NAC 51-015.03D, must conduct a thorough and complete child find process to determine the number of parentally-placed children with disabilities attending nonpublic schools located in the school district or approved cooperative.

012.08D Each school district or approved cooperative must, after timely and meaningful consultation with representatives of parentally-placed nonpublic school children with disabilities (consistent with 92 NAC 51-015.03D) determine the number of parentally-placed nonpublic school children with disabilities attending nonpublic schools located in the school district or approved cooperative. The count is conducted on December 1 of each year.

012.08D1 The count must be used to determine the amount that the school district or approved cooperative must spend on providing special education and related services to parentally-placed nonpublic school children with disabilities in the next subsequent fiscal year.

012.08E State and local funds may supplement and in no case supplant the proportionate amount of Federal funds required to be expended for parentally-placed nonpublic school children with disabilities under this Chapter.

012.08F Eligible school districts and approved cooperatives shall submit a budget and narrative for serving nonpublic school children as part of an approved IDEA Consolidated Application.

012.08F1 Requests for payments may be submitted to NDE with supporting documentation.

012.09 Children with Disabilities Who Are Covered by Public Benefits or Insurance

012.09A A school district or approved cooperative may use the Medicaid or other public benefits or insurance programs in which a child participates to provide or pay for services required under this Chapter, as permitted under the Medicaid in Public Schools (MIPS) (Neb. Rev. Stat. §43-2511), except as provided in 92 NAC 51-012.09B.

TITLE 92
CHAPTER 51

012.09B With regard to services required to provide FAPE to an eligible child under Part B, the school district or approved cooperative:

012.09B1 May not require parents to sign up for or enroll in public benefits or insurance programs in order for their child to receive FAPE under this Chapter;

012.09B2 May not require parents to incur an out-of-pocket expense such as the payment of a deductible or co-pay amount incurred in filing a claim for services provided pursuant to this Chapter, but pursuant to 92 NAC 51-012.10C2 of this section, may pay the cost that the parents otherwise would be required to pay;

012.09B3 May not use a child's benefits under a public benefits or insurance program if that use would:

012.09B3a Decrease available lifetime coverage or any other insured benefit;

012.09B3b Result in the family paying for services that would otherwise be covered by the public benefits or insurance program and that are required for the child outside of the time the child is in school;

012.09B3c Increase premiums or lead to the discontinuation of benefits or insurance; or

012.09B3d Risk loss of eligibility for home and community-based waivers, based on aggregate health-related expenditures.

012.10 Use of Part B Funds

012.10A If a school district or approved cooperative is unable to obtain parental consent to use the parents' private insurance, or public benefits or insurance when the parents would incur a cost for a specified service required under this Chapter, to ensure FAPE the school district or approved cooperative may use its Part B funds to pay for the service.

012.10B To avoid financial cost to parents who otherwise would consent to use private insurance, or public benefits or insurance if the parents would incur a cost, the school district or approved cooperative may use its Part B IDEA funds to pay the cost that the parents otherwise would have to pay to use the parents' benefits or insurance (e.g., the deductible or co-pay amounts).

012.10C Proceeds from public benefits or insurance or private insurance.

012.10C1 Proceeds from public benefits or insurance or private insurance will not be treated as program income for the purposes of 34 CFR 80.25.

012.10C2 If a school district or approved cooperative spends reimbursements from Federal funds (e.g., Medicaid) for services under this part, those funds will not be considered "State or local" funds for purposes of the maintenance of effort provisions in 92 NAC 51-012.01C.

012.11 Prior to accessing Public Benefits or Insurance or Private Insurance, school districts or approved cooperatives must meet requirements contained in 92 NAC 51-009.09A or 009.09B.

TITLE 92
CHAPTER 51

013 Contracted Programs

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.

013.02 The school district of residence or approved cooperative shall be responsible for the development and maintenance of the IEP, and the participation in all IEP meetings and shall assure that IEP meetings are arranged with the contracted program and the parents. Such arrangements may include meetings with the contracted program, the school district, the approved cooperative, and the parent. Meetings may occur within the district, at the contracted program site or another site if more appropriate.

013.02A The parent, the school district, and a contracted program representative shall be involved in any decision about the IEP.

013.02B The expenditures for special education contractual services shall be considered for payment of allowable costs under the following conditions:

013.02B1 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 Nebraska Department of Education.

013.02C The school district or approved cooperative will be allowed a forty-five (45) calendar day grace period when entering into contracts with programs not provisionally approved by the Nebraska Department of Education. Within this forty-five day grace period a school district or approved cooperative is responsible for notifying the program of the application and approval requirements of the Nebraska Department of Education.

013.02C1 If the contracted program, other than a school district or approved cooperative fails to submit an application within the forty-five (45) calendar day grace period, the school district or approved cooperative is required to seek and obtain placement for the child in a provisionally approved program within fourteen (14) calendar days following the expiration of the grace period. If the agency's application for approval is denied by the Nebraska Department of Education, the school district or approved cooperative is required to seek and obtain placement for the child in a provisionally approved program within fourteen (14) calendar days following notification of the denial.

013.02C2 The cost of services provided by a contracted program which is not granted provisional approval by the Nebraska Department of Education will not be reimbursed.

013.02D The school district or approved cooperative and the provisionally approved contracted program shall enter into a contract which shall include but need not be limited to:

TITLE 92
CHAPTER 51

- 013.02D1 A description of the services to be provided;
- 013.02D2 Names of children to be served;
- 013.02D3 A cost schedule for the services; and
- 013.02D4 The Nebraska Department of Education service code and agency code for the service(s) provided.
- 013.02E The school district or approved cooperative shall have on file a signed copy of the contract.
- 013.02F The school district or approved cooperative shall monitor the progress of those children for whom they have contracted. For each child contracted for services, the school district or approved cooperative shall maintain within the school district or approved cooperative all applicable records as follows: 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. School districts or approved cooperatives may elect to enter into agreements with provisionally approved contracted programs for the proper maintenance and protection of personally identifiable data on children with disabilities.
- 013.02G The school district or approved cooperative shall be liable for the payment of the educational costs for the placement of a child in a program not operated by the school district or approved cooperative when:

 - 013.02G1 The school district or approved cooperative initiated the placement; or
 - 013.02G2 The school district or approved cooperative has agreed to the placement; or
 - 013.02G3 The school district or approved cooperative is party to a decision under 92 NAC 55 which requires such placement and which has not been appealed by the school district or approved cooperative; or
 - 013.02G4 The school district or approved cooperative has been a party to litigation resulting in a court order requiring the placement.
- 013.03 Nebraska Department of Education Provisionally Approved Service Provider Responsibility

 - 013.03A With the exception of inservice providers and consultants who provide special education training for parents and staff which directly assist in providing appropriate programs for children with verified disabilities, all service providers contracting with a school district or approved cooperative shall seek approval and obtain a provisionally approved rate, service code, and agency code for such services.
 - 013.03B The school district or approved cooperative shall pay an amount equal to the average per pupil cost (program per pupil cost) of the service agency of the preceding year or the cost as agreed upon pursuant to the contract to the agency providing the educational program for each child with a disability.

TITLE 92
CHAPTER 51

013.03C Service providers who request reimbursable rates exceeding NDE established rates shall submit, on forms provided by the Nebraska Department of Education, the following:

013.03C1 Personnel and their qualifications;

013.03C2 A cost schedule for services (for allowable costs, see Sections 011 and 012);

013.03C3 A written description of services;

013.03C4 Separation of sectarian educational costs and non-sectarian educational costs, if applicable;

013.03C5 Separation of the cost of residential care costs from the cost of the educational program, if applicable;

013.03C6 Documentation of conformance with building codes and safety requirements, if applicable; and

013.03C7 For Educational Service Units, a final report of expenditures which is due within 45 days after the service provider's fiscal year end.

013.03D Service providers who request reimbursable rates at or below NDE established rates shall submit, electronically via the NDE website to the Nebraska Department of Education, the following:

013.03D1 Personnel and their qualifications;

013.03D2 A cost schedule for services;

013.03D3 A written description of services; and

013.03D4 Documentation of conformance with building codes and safety requirements, if applicable.

013.03E Service providers must have on file a copy of the child's current IEP.

013.03F Service providers shall provide reasonable notice to the school district or approved cooperative prior to termination of services by the provider.

013.03G Service providers shall not be considered provisionally approved until the Commissioner of Education or designee grants such approval.

013.03H Service providers shall be considered for provisional approval annually.

013.03I When residential care is required for a child to attend an education program, the education program must be approved by the Commissioner of Education or designee prior to approval for residential care.

TITLE 92
CHAPTER 51

014 Special Education Transportation

014.01 The board of education shall furnish one of the following types of services to children with disabilities who are residents of the school district:

014.01A Provide transportation for any child with a disability who is forced to leave the school district temporarily because of lack of educational services; and

014.01B Provide transportation within the school district for any child with a disability who is enrolled in a special education program of the district when either:

014.01B1 The child is required to attend a facility other than what would be the normal school of attendance of the child to receive appropriate special education services; or

014.01B2 The nature of the child's disability is such that special education transportation is required.

014.01C The board of education shall provide transportation for all children with disabilities birth to age five including children birth to age five who are wards of the court.

014.01D Transportation for Parentally-Placed Non-Public School Children

014.01D1 If necessary for the child to benefit from or participate in the services provided under this Chapter, a parentally-placed nonpublic school child with a disability must be provided transportation:

014.01D1a From the child's school or the child's home to a site other than the nonpublic school; and

014.01D1b From the service site to the nonpublic school, or to the child's home, depending on the timing of the services.

014.01D2 School districts or approved cooperatives are not required to provide transportation from the child's home to the nonpublic school.

014.01D3 The cost of transportation may be included in calculating whether the school district or approved cooperative has met the requirement of 92 NAC 51-012.08.

014.02 Responsibility for Transportation

014.02A The board of education shall be responsible to provide for the transportation expenses of children with disabilities who are residents of the school district under Neb. Rev. Stat. §79-1129 by:

014.02A1 Paying a parent for transporting his or her child for actual miles traveled and claimed; or

014.02A2 Operating vehicles for the purpose of transporting children with disabilities; or

014.02A3 Contracting for transportation services for children with disabilities; or

TITLE 92
CHAPTER 51

014.02A4 Purchasing services from a common carrier; or

014.02A5 Arranging for such other transportation as is proper and necessary to transport children with disabilities.

014.02B The board of education shall select an efficient and effective means of transportation for the child with a disability at a reasonable cost.

014.02C The board of education shall not provide for the transportation expenses of children with a disability who are residents of the school districts under Neb. Rev. Stat. §79-1129 if such children are able to use regular transportation services provided by the district unless:

014.02C1 Alteration of the routes of such regular transportation is required to transport children with a disability; or

014.02C2 Alteration is required of the equipment or vehicles used in such regular transportation in order to accommodate children with a disability.

014.02D The board of education shall provide for expenses equal to the statutory amount for each mile or fraction thereof traveled between the place of residence and the program of attendance when a parent transports his or her child(ren) with a disability. (Refer to Neb. Rev. Stat. §§79-1129 and 81-1176.)

014.02E Except when a parent is transporting only his or her child, the board of education shall require that the driver and vehicle meet the standards required by 92 NAC 91 and 92.

014.02F For students with disabilities participating in the Option Enrollment Program under Neb. Rev. Stat. §§79-232 to 79-246, the transportation services included on the student's IEP shall be provided by the district from which the student optioned. The Department shall reimburse the district from which the student optioned for the cost of transportation in accordance with Section 014.

014.03 Allowable Expenses

014.03A The school district or approved cooperative shall provide for the transportation expenses of children with a disability transported by the parents of such children, upon receipt of claims submitted to the board of education by such parents. Such claims shall be documented and subject to audit. The claims shall:

014.03A1 State the names of the children transported, the dates they were transported, the mileage incurred in such transportation; and

014.03A2 Contain a statement that the claim is a true and correct report of mileage; and

014.03A3 Include the signature of the parent.

TITLE 92
CHAPTER 51

- 014.03B The school district or approved cooperative shall not be relieved of the obligation to provide transportation for an eligible child with a disability because of the inability or unwillingness of the child's parents to provide transportation. No eligible child with a disability may be denied or have limitations placed on the child's receipt of special education services required by an IEP as a result of the inability or unwillingness of parents to provide transportation.
- 014.03C The school district or approved cooperative shall provide for the expenses or the equivalent costs for transportation from the child's legal residence (the residence of the parent(s)) or the Nebraska Department of Education approved residential placement, to the child's program.
- 014.03D A school district or approved cooperative may apply to the Department of Health and Human Services for reimbursement of transportation costs for the school age student who was made a ward of the state or court prior to his or her arrival in that school district.
- 014.03E When the school district or approved cooperative provides for transportation expenses under Neb. Rev. Stat. §79-1129 for children with a disability who are residents of the school district by utilizing vehicles operated by the school district, it shall include those transportation expenses below which are directly related to the vehicles used to transport special education children:
- 014.03E1 Salaries and fixed charges of drivers and necessary aides;
 - 014.03E2 Vehicle operational supplies;
 - 014.03E3 Vehicle repairs and maintenance;
 - 014.03E4 Vehicle lease costs;
 - 014.03E5 Vehicle insurance related to the transportation of children with a disability;
 - 014.03E6 Documented administrative expenses of those engaged or employed for the purpose of supervising the transportation of children with a disability, their assistants, and clerical personnel but not including expenses for those engaged in general school or special education administration;
 - 014.03E7 Such depreciation as is allowed in 92 NAC 51-014.04;
 - 014.03E8 Those expenses attributable to an alteration of routes;
 - 014.03E9 Those expenses attributable to alterations in equipment of vehicles, which must be depreciated; and
 - 014.03E10 Facility expenses relating to the maintenance of vehicles used for transporting children with a disability. Transportation facility expense for purposes other than maintenance are not allowable reimbursable items. Maintenance includes such activities as repair, cleaning, greasing, fueling, and inspecting vehicles for safety. If a facility is used for purposes other than maintenance of vehicles used to transport children with a disability, expenses must be listed separately so that only those costs attributed to the maintenance of special education vehicles are included.

TITLE 92
CHAPTER 51

014.03F If income is derived from a transportation service provided under Neb. Rev. Stat. §79-1129 such income shall be used to offset expenses listed above to the extent of such income.

014.03G The Nebraska Department of Education shall allow a per mile cost for operating vehicles by using the categories of allowable expenses in 92 NAC 51-014.03 divided by the actual mileage the vehicle was driven for each fiscal year or the mileage rate provided in Neb. Rev. Stat. §81-1176. This procedure may be used in lieu of 92 NAC 51-014.03E.

014.03H The costs used must be adequately documented by the school district for review by the Nebraska Department of Education.

014.03I Detailed mileage logs must be maintained by the school district or approved cooperative and be available for review by the Nebraska Department of Education.

014.03J Undocumented expenses or mileage will not be allowed.

014.04 Depreciation

014.04A The school district or approved cooperative shall claim as a depreciation deduction a reasonable allowance for depreciation of:

014.04A1 Vehicles owned by the district, or portion of vehicles, or other capital assets owned by the district used in the transportation of children with a disability under Neb. Rev. Stat. §79-1129; and

014.04A2 Other capital expenditures required in the alteration of vehicles used in the transportation of children with a disability under Neb. Rev. Stat. §79-1129.

014.04B An allowance for depreciation shall be based on a reasonable useful life span of an item at the time of acquisition or for previous district owed vehicles, the fair market value of the item when placed into special education service so that the amount set aside each year for depreciation plus the estimated salvage value, will, at the end of the useful life of the item, equal the cost of the item.

014.04B1 It shall be presumed that the reasonable period of depreciation for a new conventional school bus is seven years and that of a new small vehicle is three years.

014.04B2 If any school district or approved cooperative determines that the periods of depreciation set forth above are not reasonable because of the type of vehicles in use, the school district or approved cooperative may request alternate periods of depreciation for such vehicles, along with supporting reasoning in an application to the Nebraska Department of Education.

014.04B3 Capital expenditures in excess of two thousand dollars (\$2000) require a depreciation schedule approved by NDE.

014.04B4 The allowance for depreciation must be claimed in the fiscal year in which the vehicle was used.

TITLE 92
CHAPTER 51

014.04B5 When equipment is used for purposes other than for special education transportation, the school district or approved cooperative shall only claim the applicable prorated portion for special education payment.

014.04C When a depreciable item is disposed of or used for a purpose other than the transportation of children with a disability under Neb. Rev. Stat. §79-1129, the fair market value of such item shall be considered its actual salvage value.

014.04C1 Any actual salvage in excess of estimated salvage value shall be set off against any payments due to the board under Neb. Rev. Stat. §79-1129 and 79-1144.

014.04C2 When the actual salvage value is less than the estimated salvage value, then an expense for such difference shall be allowable under 92 NAC 51-014.04B.

014.04C3 When vehicles are not disposed of in a cash sale, recognized retail book values, such as the Used Car Guide of the National Automobile Dealers Association shall be evidence of fair market value unless a board of education demonstrates that it is not appropriate to use such recognized book values on a particular vehicle because of the condition or type of the vehicle in question.

014.04C4 A depreciation schedule shall be maintained by the district or approved cooperative as long as they own the vehicle.

014.05 Other Conditions

014.05A The fiscal year for school age and early childhood special education (Below Age Five) transportation shall be from September 1 to August 31.

014.05B Based on claim forms submitted reflecting the allowable costs of transporting children with disabilities, the Nebraska Department of Education will reimburse each school district or approved cooperative a pro rata amount determined by the State Board of Education from appropriations for special education approved by the Legislature. For early childhood special education (Below Age Five) transportation, refer to 92 NAC 51-014.05H. Transportation claim forms shall be submitted on or before September 30 of each year according to the provisions of 92 NAC 51-011.04C3 and 011.04C4. Forms are available at the Nebraska Department of Education.

014.05C Reimbursement to a school district or approved cooperative whose Special Education Transportation Final Claim Form is submitted to the Nebraska Department of Education after the due date shall be subject to the procedures specified in 92 NAC 51-004.14.

014.05D All transportation claims shall be documented and are subject to audit.

014.05E For payment for costs associated with the transportation of children below the age of five with a disability who are wards of the court, refer to 92 NAC 51-014.05H.

TITLE 92
CHAPTER 51

- 014.05F Supplementary amendments to any Special Education School Age Transportation Final Claim Form previously approved by the Nebraska Department of Education may be submitted to the Nebraska Department of Education for review and approval within three years of the original due date. Approved amendments may be submitted by the Nebraska Department of Education to the Legislature for consideration of a supplemental appropriation.
- 014.05G Payments authorized by Neb. Rev. Stat. §79-1144 shall be made only to a school district or approved cooperative.
- 014.05H IDEA Base flow-through allocation (92 NAC 51-012.02) and the IDEA Enrollment and Poverty Allocation (92 NAC 51-012.06) are to be used to fund costs for transporting children with disabilities below the age of five.
- 014.05I Expenditure of IDEA Allocations shall be in accordance with 92 NAC 51-012.06C3, 012.06C4, and 012.06C5.

TITLE 92
CHAPTER 51

015 Children with Disabilities Attending Nonpublic Schools

015.01 Children Placed In or Referred To a Nonpublic School or Facility by the School District or Approved Cooperative As a Means of Providing Special Education and Related Services

015.01A School districts or approved cooperatives shall ensure that a child with a disability who is placed in or referred to a nonpublic school or facility by a school district:

015.01A1 Is provided special education and related services in conformance with an IEP that meets the requirements of Section 007 at no cost to the parents;

015.01A2 Is provided an education that meets the standards that apply to education provided by the school district or approved cooperative including the requirements of this Chapter except 92 NAC 51-003.62; and

015.01A3 Has all of the rights of a child with a disability who is served by a school district or approved cooperative.

015.01B The school district or approved cooperative is responsible for initiating and conducting meetings for the purpose of developing, reviewing and revising an IEP for a child with a verified disability.

015.01B1 Before a school district or approved cooperative places a child with a disability in, or refers a child to, a nonpublic school or facility, the school district or approved cooperative shall initiate and conduct a meeting to develop an IEP for the child in accordance with Section 007.

015.01B2 After a child with a disability enters a nonpublic school or facility, any meetings to review and revise the child's IEP may be initiated and conducted by the nonpublic school or facility at the discretion of the school district or approved cooperative.

015.01B3 If the nonpublic school or facility initiates and conducts these meetings, the school district or approved cooperative shall ensure that the parents and nonpublic representative:

015.01B3a Are involved in any decision about the child's IEP; and

015.01B3b Agree to any proposed changes in the IEP before those changes are implemented.

015.02 Children Placed In a Nonpublic School by Parents As a Means of Obtaining Special Education and Related Services; FAPE is At Issue

015.02A This Chapter does not require a school district or approved cooperative to pay for the cost of education, including special education and related services, of a child with a disability at a nonpublic school or facility if that school district or approved cooperative made FAPE available to the child and the parents elected to place the child in a nonpublic school or facility as a means of obtaining special education and related services. However, the school district or approved cooperative shall include that child in the population whose needs are addressed consistent with 92 NAC 51-015.03.

TITLE 92
CHAPTER 51

015.02B Disagreements between a parent and a school district or approved cooperative regarding the availability of a program appropriate for the child, and the question of financial reimbursement, are subject to the due process procedures of 92 NAC 55.

015.02B1 If the parents of a child with a disability, who previously received special education and related services under the authority of the school district or approved cooperative, enroll the child in a nonpublic preschool, elementary or secondary school as a means of obtaining special education and related services without the consent of or referral by the school district or approved cooperative, a court or a hearing officer may require the school district or approved cooperative to reimburse the parents for the cost of that enrollment if the court or hearing officer finds that the school district or approved cooperative had not made a free appropriate public education available to the child in a timely manner prior to that enrollment and that the private placement is appropriate.

015.02B1a A parental placement may be found to be appropriate by a hearing officer or a court even if it does not meet the State standards that apply to education provided by the school district or approved cooperative.

015.02C The cost of reimbursement described in 92 NAC 51-015.02B1 may be reduced or denied if:

015.02C1 At the most recent IEP team meeting that the parents attended prior to removal of the child from the public school, the parents did not inform the IEP team that they were rejecting the placement proposed by the school district or approved cooperative to provide a free appropriate public education to their child, including stating their concerns and their intent to enroll their child in a nonpublic school at public expense; or

015.02C2 At least 10 business days (including any holidays that occur on a business day), prior to the removal of the child from the public school or approved cooperative, the parents did not give written notice to the school district of the information described in 92 NAC 51-015.02C1; or

015.02C3 If prior to the parents' removal of the child from the public school, the school district or approved cooperative informed the parents, through the notice requirements described in 92 NAC 51-009.05, of its intent to evaluate the child (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parents did not make the child available for such evaluation; or

015.02C4 Upon a judicial finding of unreasonableness with respect to actions taken by the parents.

015.02D Notwithstanding the notice requirement in 92 NAC 51-015.02C1 and 015.02C2, the cost of reimbursement:

015.02D1 Must not be reduced or denied for failure to provide the notice if:

TITLE 92
CHAPTER 51

015.02D1a The school district or approved cooperative prevented the parents from providing the notice;

015.02D1b The parents had not received notice, pursuant to 92 NAC 51-009.06 of the notice requirement in 92 NAC 51-015.02C1 and 015.02C2; or

015.02D1c Compliance with 92 NAC 51-015.02C1 and 015.02C2 would likely result in physical harm to the child; and

015.02D2 May, in the discretion of the court or a hearing officer, not be reduced or denied for failure to provide this notice if:

015.02D2a The parents are not literate or cannot write in English; or

015.02D2b Compliance with paragraph 92 NAC 51-015.02C1 and 015.02C2 of this section would likely result in serious emotional harm to the child.

015.03 Children Enrolled In a Nonpublic School by Parents If FAPE Is Not At Issue

015.03A Parentally-placed nonpublic school children with disabilities means children with disabilities enrolled by their parents in nonpublic, including religious schools or facilities that meet the definition of elementary or secondary school, other than children with disabilities covered in 92 NAC 51-015.01 and 015.02.

015.03A1 For purposes of providing equitable services utilizing IDEA funds described in 92 NAC 51-012.08:

015.03A1a Elementary school shall mean a school system accredited pursuant to 92 NAC 10, a nonpublic school approved pursuant to 92 NAC 14, or an interim-program school approved pursuant to 92 NAC 18 that offers instruction in any or all grades Kindergarten through eighth grade designated by the school as an elementary grades.

015.03A1b Secondary school shall mean a school system accredited pursuant to 92 NAC 10, a nonpublic school approved pursuant to 92 NAC 14 or an interim-program school approved pursuant to 92 NAC 18 that offers instruction in any or all grades seventh through twelfth designated by the school as a secondary grade.

015.03A2 For purposes of providing a Free Appropriate Public Education:

015.03A2a Elementary school shall mean a school system accredited pursuant to 92 NAC 10, a nonpublic school approved pursuant to 92 NAC 14 or an interim-program school approved pursuant to 92 NAC 18 that offers instruction in any or all grades Kindergarten through eighth grade designated by the school as an elementary grades and also includes children attending nonpublic schools that are exempt from approval or accreditation pursuant to 92 NAC 12 and 92 NAC 13.

TITLE 92
CHAPTER 51

015.03A2b Secondary school shall mean a school system accredited pursuant to 92 NAC 10, a nonpublic school approved pursuant to 92 NAC 14 or an interim-program school approved pursuant to 92 NAC 18 that offers instruction in any or all grades seventh through twelfth designated by the school as a secondary grades and also includes children attending nonpublic schools that are exempt from approval or accreditation pursuant to 92 NAC 12 and 92 NAC 13.

015.03B Child find for Parentally-placed Nonpublic School Children with Disabilities

015.03B1 Each school district or approved cooperative must locate, identify, and evaluate all children with disabilities who are enrolled by their parents in nonpublic, including religious, elementary schools and secondary schools located in the school district or approved cooperative, in accordance with 92 NAC 51-015.03B2 through 015.03B5.

015.03B2 The child find process must be designed to ensure:

015.03B2a The equitable participation of parentally-placed nonpublic school children; and

015.03B2b An accurate count of those children.

015.03B3 In carrying out the child find requirements, the school district or approved cooperative must undertake activities similar to the activities undertaken for public school children.

015.03B4 The cost of carrying out the child find requirements in this subsection, including individual evaluations, may not be considered in determining if a school district or approved cooperative has met its obligations under 92 NAC 51-012.08.

015.03B5 The child find process must be completed in a time period comparable to that for children attending public schools in the school district or approved cooperative consistent with 92 NAC 51-006.02.

015.03B6 Each school district or approved cooperative, in which one or more nonpublic, including religious, elementary schools and secondary schools are located must, in carrying out the child find requirements in this subsection, include parentally-placed nonpublic school children who reside in a State other than Nebraska.

015.03C Provision of Services for Parentally-placed Nonpublic School Children

015.03C1 To the extent consistent with the number and location of children with disabilities who are enrolled by their parents in nonpublic including religious elementary schools and secondary schools located in the school district or approved cooperative, provision must be made for the participation of those children in the program assisted or carried out under Part B of the IDEA as amended in 2004 by providing them with special education and related services.

TITLE 92
CHAPTER 51

- 015.03C1a Parentally-placed nonpublic school children with disabilities are eligible for the provision of a free appropriate public education from the school district or approved cooperative in which they reside. Services available under such circumstances are referred to as a Free Appropriate Public Education (FAPE).
- 015.03C1a(1) An IEP shall be developed and implemented in accordance with 92 NAC 51-007 for each resident nonpublic school child receiving FAPE.
- 015.03C1b Parentally-placed nonpublic school children with disabilities who are attending a nonpublic school located outside of their district of residence may receive special education and related services (referred to as equitable services) from the district in which the nonpublic school is located or a free appropriate public education (FAPE) from the district in which they reside, but not both. The decision on whether to receive equitable services or FAPE is at the discretion of the child's parent.
- 015.03C1b(1) In accordance with 92 NAC 51-015.03C1 and 92 NAC 51-015.03G through 015.03I, an equitable services plan must be developed and implemented for each nonresident nonpublic school child with a disability who has been designated by the school district or approved cooperative in which the nonpublic school is located to receive equitable services.
- 015.03C2 Each school district or approved cooperative must maintain in its records, and provide to the Nebraska Department of Education the following information related to parentally-placed nonpublic school children attending nonpublic schools located in the school district or approved cooperative:
- 015.03C2a The number of children evaluated;
- 015.03C2b The number of children determined to be children with disabilities; and
- 015.03C2c The number of children served.
- 015.03C3 Special education and related services (FAPE or equitable services) provided to parentally-placed nonpublic school children with disabilities, including materials and equipment, must be secular, neutral, and nonideological.
- 015.03D Consultation
- 015.03D1 To ensure timely and meaningful consultation, a school district or approved cooperative must consult with representatives of nonpublic schools located in the school district or approved cooperative and representatives of parents of parentally-placed nonpublic school children with disabilities attending such schools during the design and development of special education and related services (FAPE and equitable services) for the children regarding the following:

TITLE 92
CHAPTER 51

- 015.03D1a The child find process, including:
- 015.03D1a(1) How parentally-placed nonpublic school children suspected of having a disability can participate equitably; and
 - 015.03D1a(2) How parents, teachers, and nonpublic school officials will be informed of the process.
- 015.03D1b The determination of the proportionate share of Federal funds available to serve parentally-placed nonpublic school children with disabilities available under 34 CFR 300.133(C), including the determination of how the proportionate share of those funds was calculated.
- 015.03D1c The consultation process among the school district or approved cooperative, nonpublic school officials, and representatives of parents of parentally-placed nonpublic school children with disabilities, including how the process will operate throughout the school year to ensure that parentally-placed children with disabilities identified through the child find process can meaningfully participate in special education and related services (FAPE or equitable services).
- 015.03D1d How, where, and by whom special education and related services (FAPE or equitable services) will be provided for parentally-placed nonpublic school children with disabilities, including a discussion of:
- 015.03D1d(1) The types of services, including direct services and alternate service delivery mechanisms; and
 - 015.03D1d(2) How special education and related services funded by the proportionate amount of federal funds will be apportioned if such funds are insufficient to serve all parentally-placed nonpublic school children; and
 - 015.03D1d(3) How and when those decisions will be made.
- 015.03D1e If the school district or approved cooperative disagrees with the views of the nonpublic school officials on the provision of services or the types of services (whether provided directly or through a contract), the school district or approved cooperative will provide to the nonpublic school officials a written explanation of the reasons why the school district or approved cooperative chose not to provide services directly or through a contract.

015.03E Written Affirmation

- 015.03E1 When timely and meaningful consultation, as required by 92 NAC 51-015.03D has occurred, the school district or approved cooperative must obtain a written affirmation signed by the representatives of participating nonpublic schools.
- 015.03E2 If the representatives do not provide the affirmation within a reasonable period of time, the school district or approved cooperative must forward the documentation of the consultation process to the Nebraska Department of Education.

TITLE 92
CHAPTER 51

015.03F Complaints

015.03F1 A nonpublic school official has the right to submit a complaint to the Nebraska Department of Education that the school district or approved cooperative:

015.03F1a Did not engage in consultation that was meaningful and timely;
or

015.03F1b Did not give due consideration to the views of the nonpublic school official.

015.03F2 If the nonpublic school official wishes to submit a complaint, the official must provide to the Nebraska Department of Education the basis of the noncompliance by the school district or approved cooperative with the applicable school provisions in this Chapter; and

015.03F2a The school district or approved cooperative must forward the appropriate documentation to the Nebraska Department of Education. If the nonpublic school official is dissatisfied with the decision of the Nebraska Department of Education, the official may submit a complaint to the United States Secretary of Education by providing the information on noncompliance described in 92 NAC 51-015.03F2. The Nebraska Department of Education must forward the appropriate documentation to the United States Secretary of Education.

015.03G Equitable Services for Nonresident Nonpublic School Children Determined

015.03G1 No parentally-placed nonresident nonpublic school child with a disability has an individual right to receive some or all of the special education and related services that the child would receive if enrolled in a public school.

015.03G2 Decisions about the equitable services that will be provided to parentally-placed nonresident nonpublic school children with disabilities must be made in accordance with 92 NAC 51-015.03G3 and 015.03D1c.

015.03G2a The school district or approved cooperative must make the final decisions with respect to the equitable services to be provided to eligible parentally-placed nonresident nonpublic school children with disabilities.

015.03G3 If a nonresident nonpublic school child with a disability is enrolled in a religious or other nonpublic school by the child's parents and will receive equitable services from a school district or approved cooperative, the school district or approved cooperative must:

015.03G3a Initiate and conduct meetings to develop, review, and revise an equitable services plan for the child, in accordance with 92 NAC 51-015.03H; and

TITLE 92
CHAPTER 51

015.03G3b Ensure that a representative of the religious or other nonpublic school attends each meeting. If the representative cannot attend, the school district or approved cooperative shall use other methods to ensure participation by the religious or other nonpublic school, including individual or conference telephone calls.

015.03H Equitable Services Provided to Nonresident Nonpublic School Children with Disabilities

015.03H1 The equitable services provided to parentally-placed nonresident nonpublic school children with disabilities must be provided by personnel meeting the same standards as personnel providing services in the public schools, except that nonpublic elementary school and secondary school teachers who are providing equitable services to parentally-placed nonresident nonpublic school children with disabilities do not have to meet the special education teacher requirements of 92 NAC 51-003.62.

015.03H2 Parentally-placed nonresident nonpublic school children with disabilities may receive a different amount of services than resident public and nonpublic school children with disabilities.

015.03H3 Each parentally-placed nonresident nonpublic school child with a disability who has been designated to receive equitable services under 92 NAC 51-015.03C1b must have an equitable services plan that describes the specific special education and related services that the school district or approved cooperative will provide to the child in light of the services that the school district or approved cooperative has determined, through the process described in 92 NAC 51-015.03C and 015.03G, it will make available to parentally-placed nonresident nonpublic school children with disabilities.

015.03H4 The equitable services plan must, to the extent appropriate:

015.03H4a Meet the requirements of 92 NAC 51-007.07A or for a child ages three through five, meet the requirements of 92 NAC 51-007.02A1 with respect to the services provided; and

015.03H4b Be developed, reviewed, and revised consistent with 92 NAC 51-007.

015.03H5 Equitable services must be provided:

015.03H5a By employees of a public school district or approved cooperative;
or

015.03H5b Through contract by the school district or approved cooperative with an individual, association, agency, organization, or other entity.

015.03I Location of Services and Transportation

015.03I1 Services (equitable or FAPE) to parentally-placed nonpublic school children with disabilities may be provided on the premises of nonpublic, including religious, schools, to the extent consistent with law.

TITLE 92
CHAPTER 51

015.03I1a A school district or approved cooperative may lease a classroom in a nonpublic school building. If properly drafted, the lease transforms the classroom into a public school classroom during the times covered by the lease. The board of education of a public school district may offer the special education programs enumerated in Neb. Rev. Stat. §79-1127 in a leased classroom in a nonpublic school building. It does not, however, have an unqualified legal duty to do so.

015.03J Due Process and State Complaints

015.03J1 Except as provided in 92 NAC 51-015.03J2, the procedures in 92 NAC 51-009.06, 009.07, 009.10, 009.12, 009.13, 009.14 and 92 NAC 55 do not apply to complaints that a school district or approved cooperative has failed to meet the requirements of 92 NAC 51-015.03C1 through 015.03I and 92 NAC 51-014.01D and 012.08 including the provision of services indicated on the child's equitable services plan.

015.03J2 The procedures in 92 NAC 51-009.06, 009.07, 009.10, 009.12 through 009.14 and 92 NAC 55 apply to complaints that a school district or approved cooperative has failed to meet the child find requirements in 92 NAC 015.03B1, including the requirements in 92 NAC 51-009.08 and 006.

015.03J3 Any due process complaint regarding the child find requirements (as described in 92 NAC 51-015.03J2) must be served on the school district or approved cooperative in which the nonpublic school is located and filed with the Nebraska Department of Education.

015.03J4 Any complaint that the Nebraska Department of Education or school district or approved cooperative has failed to meet the requirements in 92 NAC 51-015.03C through 015.03E and 012.08 and 92 NAC 51-015.03G through 015.07 must be filed in accordance with the procedures described in 92 NAC 51-009.11.

015.03J5 A complaint filed by a nonpublic school official under 92 NAC 51-015.03F1 must be filed with the Nebraska Department of Education in accordance with the procedures in 92 NAC 51-015.03F2.

015.04 A school district or approved cooperative may not use special education funds for classes that are organized separately on the basis of school enrollment or religion of the children if:

015.04A The classes are at the same site; and

015.04B The classes include children enrolled in public schools and children enrolled in nonpublic schools.

015.05 A school district or approved cooperative may not use special education funds to finance the existing level of instruction in a nonpublic school or to otherwise benefit the nonpublic school.

TITLE 92
CHAPTER 51

- 015.05A A school district or approved cooperative shall use the special education funds provided to meet the special education and related services (FAPE or equitable services) needs of parentally-placed nonpublic school children with disabilities but not for meeting:
- 015.05A1 The needs of a nonpublic school; or
 - 015.05A2 The general needs of the children enrolled in a nonpublic school.
- 015.06 A school district or approved cooperative may use special education funds to make public school personnel available in other than public facilities:
- 015.06A To the extent necessary to provide services designed for parentally-placed nonpublic school children with disabilities; and
 - 015.06B If those services are not normally provided by the nonpublic school.
- 015.07 A school district or approved cooperative may use special education funds to pay for the services of an employee of a nonpublic school to provide special education and related services (FAPE or equitable services) if:
- 015.07A The employee performs the services outside of his or her regular hours of duty; and
 - 015.07B The employee performs the services under public supervision and control.
- 015.08 A school district or approved cooperative may place equipment and supplies in a nonpublic school for the period of time needed for the provision of special education and related services.
- 015.08A The school district or approved cooperative shall ensure that the equipment and supplies placed in a nonpublic school:
 - 015.08A1 Are used only for the purpose of providing special education and related services; and
 - 015.08A2 Can be removed from the nonpublic school without remodeling the nonpublic school facilities.
 - 015.08B The school district or approved cooperative shall remove equipment or supplies from a nonpublic school if:
 - 015.08B1 The equipment and supplies are no longer needed for the purpose of providing special education and related services; or
 - 015.08B2 Removal is necessary to avoid unauthorized use of the equipment and supplies for other than special education purposes.
 - 015.08C No special education funds may be used for repairs, minor remodeling, or the construction of nonpublic school facilities.
- 015.09 A school district or approved cooperative must control and administer the funds used to provide special education and related services under 92 NAC 51-015.03G through 92 NAC 51-015.03I, and hold title to and administer materials, equipment, and property purchased with those funds for those uses and purposes provided in this Chapter.

TITLE 92
CHAPTER 51

016 Disciplinary Removal of Children with Disabilities

016.01 Change of Placement for Disciplinary Removals

016.01A For the purpose of removals of a child with a disability from the child's current educational placement under Section 016, a change of placement occurs if:

016.01A1 The removal is for more than 10 consecutive school days; or

016.01A2 The child is subjected to a series of removals that constitute a pattern:

016.01A2a Because the series of removals total more than 10 school days in a school year;

016.01A2b Because the child's behavior is substantially similar to the child's behavior in previous incidents that resulted in the series of removals; and

016.01A2c Because of such additional factors as the length of each removal, the total amount of time the child has been removed, and the proximity of the removals to one another.

016.01B The school district or approved cooperative determines on a case-by-case basis whether a pattern of removals constitutes a change of placement.

016.01B1 This determination is subject to review through due process and judicial proceedings.

016.02 Authority of School Personnel

016.02A School personnel may consider any unique circumstances on a case-by-case basis when determining whether a change in placement, consistent with the other requirements of subsection 016.02 of this Chapter, is appropriate for a child with a disability who violates a code of student conduct.

016.02B School personnel under subsection 016.02 may remove a child with a disability who violates a code of student conduct from his or her current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than 10 consecutive school days (to the extent these alternatives are applied to children without disabilities) and for additional removals of not more than 10 consecutive school days in the same school year for separate incidents of misconduct (as long as those removals do not constitute a change of placement under 92 NAC 51-016.01).

016.02B1 After a child with a disability has been removed from his or her current placement for 10 school days in the same school year, during any subsequent days of removal the school district or approved cooperative must provide services to the extent required under 92 NAC 51-016.02D.

TITLE 92
CHAPTER 51

016.02C For disciplinary changes in placement that would exceed 10 consecutive school days, if the behavior that gave rise to the violation of the school code is determined not to be a manifestation of the child's disability pursuant to 92 NAC 51-016.02E, school personnel may apply the relevant disciplinary procedures to children with disabilities in the same manner and for the same duration as the procedures that would be applied to children without disabilities, except as provided in 92 NAC 51-016.02D.

016.02D A child with a disability who is removed from the child's current placement pursuant to 92 NAC 51-016.02C or 016.02G must:

016.02D1 Continue to receive educational services, as provided in 92 NAC 51-004.01, so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP; and

016.02D2 Receive, as appropriate, a functional behavior assessment, behavior intervention services and modifications that are designed to address the behavior violation so that it does not recur.

016.02D3 The services described in 92 NAC 51-016.02D1, 016.02D2, 016.02D4, and 016.02D5 may be provided in an interim alternative educational setting.

016.02D4 A school district or approved cooperative is only required to provide services during periods of removal to a child with a disability who has been removed from his or her current placement for 10 school days or less in that school year, if it provides services to a child without disabilities who is similarly removed.

016.02D5 After a child with a disability has been removed from his or her current placement for 10 school days in the same school year, if the current removal is for not more than 10 consecutive school days and is not a change of placement under 92 NAC 51-016.01, school personnel, in consultation with at least one of the child's teachers, determine the extent to which services are needed as provided in 92 NAC 51-004.01, so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP.

016.02D6 If the removal is a change of placement under 92 NAC 51-016.01, the child's IEP team determines appropriate services under 92 NAC 51-016.02D.

016.02E Manifestation Determination

016.02E1 Within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the school district or approved cooperative, the parent, and relevant members of the child's IEP team (as determined by the parent and the school district or approved cooperative) shall review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents to determine:

TITLE 92
CHAPTER 51

- 016.02E1a If the conduct in question was caused by or had a direct and substantial relationship to, the child's disability; or
- 016.02E1b If the conduct in question was the direct result of the school district's or approved cooperative's failure to implement the IEP.
- 016.02E2 The conduct must be determined to be a manifestation of the child's disability if the school district or approved cooperative, the parent, and relevant members of the child's IEP team determine that a condition in either 92 NAC 51-016.02E1a or 016.02E1b was met.
- 016.02E3 If the school district or approved cooperative, the parent, and relevant members of the child's IEP team determine the condition described in 92 NAC 51-016.02E1b was met, the school district or approved cooperative must take immediate steps to remedy those deficiencies.
- 016.02F If the school district or approved cooperative, the parent, and relevant members of the IEP team make the determination that the conduct was a manifestation of the child's disability, the IEP team must:
- 016.02F1 Either conduct a functional behavioral assessment, unless the school district or approved cooperative had conducted a functional behavioral assessment before the behavior that resulted in a change of placement occurred, and implement a behavioral intervention plan for the child; or if a behavioral intervention plan has already been developed, review the behavioral intervention plan and modify it, as necessary, to address the behavior; and
- 016.02F2 Except as provided in 92 NAC 51-016.02G, return the child to the placement from which the child was removed, unless the parent and the school district or approved cooperative agree to a change of placement as part of the modification of the behavioral intervention plan.
- 016.02G School personnel may remove a child to an interim alternative educational setting for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the child's disability, if the child:
- 016.02G1 Carries a weapon to or possesses a weapon at school, on school premises, or to or at a school function under the jurisdiction of the Nebraska Department of Education or a school district or approved cooperative;
- 016.02G2 Knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises, or at a school function under the jurisdiction of the Nebraska Department of Education or a school district or approved cooperative; or
- 016.02G3 Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of the Nebraska Department of Education or a school district or approved cooperative.

TITLE 92
CHAPTER 51

016.02H On the date on which the decision is made to make a removal that constitutes a change of placement of a child with a disability because of a violation of a code of student conduct, the school district or approved cooperative shall notify the parents of that decision, and provide the parents the procedural safeguards in 92 NAC 51-009.

016.03 The interim alternative educational setting in 92 NAC 51-016.02C, 016.02D and 016.02G shall be determined by the child's IEP team.

016.04 Appeals Regarding Placement in an Alternative Education Setting

016.04A The parent of a child with a disability who disagrees with any decision regarding placement, or the manifestation determination under this subsection, or a school district or approved cooperative that believes that maintaining the current placement of the child is substantially likely to result in injury to the child or to others, may request a hearing by filing a petition pursuant to 92 NAC 55.

016.04B A hearing officer shall hear and make a determination regarding an appeal pursuant to 92 NAC 55 requested under 92 NAC 51-016.04A.

016.04C In making the determination under 92 NAC 51-016.04B, the hearing officer may:

016.04C1 Return the child with a disability to the placement from which the child was removed if the hearing officer determines that the removal was a violation of 92 NAC 51-016.02 or that the child's behavior was a manifestation of the child's disability; or

016.04C2 Order a change in placement of the child with a disability to an appropriate interim alternative educational setting for not more than 45 school days if the hearing officer determines that maintaining the current placement of the child is substantially likely to result in injury to the child or to others.

016.04C3 The procedures under 92 NAC 51-016.04 may be repeated, if the school district or approved cooperative believes that returning the child to the original placement is substantially likely to result in injury to the child or to others.

016.04D Whenever a hearing is requested under 92 NAC 51-016.04A, the parents or the school district or approved cooperative involved in the dispute must have an opportunity for an impartial due process hearing consistent with the requirements in 92 NAC 55, except as provided in 92 NAC 51-016.04D1 through 016.04D2b.

016.04D1 The Nebraska Department of Education is responsible for arranging the expedited due process hearing, which must occur within 20 school days of the date the complaint requesting the hearing is filed. The hearing officer must make a determination within 10 school days after the hearing.

016.04D2 Unless the parents and school district or approved cooperative agree in writing to waive the resolution meeting described in 92 NAC 51-016.04D2a, or agree to use the mediation process described in 92 NAC 51-009.12 –

TITLE 92
CHAPTER 51

016.04D2a A resolution meeting must occur within seven days of receiving notice of the due process complaint; and

016.04D2b The due process hearing may proceed unless the matter has been resolved to the satisfaction of both parties within 15 days of the receipt of the due process complaint.

016.04D3 The decisions on expedited due process hearings are appealable consistent with 92 NAC 55.

016.05 When an appeal under 92 NAC 51-016.04 has been requested by either the parent or the school district or approved cooperative:

016.05A The child shall remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the time period provided for in 92 NAC 51-016.02C, whichever occurs first, unless the parent and the school district or approved cooperative agree otherwise.

016.06 Protections for Children Not Yet Eligible for Special Education and Related Services

016.06A A child who has not been determined to be eligible for special education and related services, and who has engaged in behavior that violates a code of student conduct of the school district or approved cooperative, may assert any of the protections provided for in this Chapter if the school district or approved cooperative had knowledge (as determined in accordance with 92 NAC 51-016.06B) that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred.

016.06B A school district or approved cooperative shall be deemed to have knowledge that a child is a child with a disability if, before the behavior that precipitated the disciplinary action occurred:

016.06B1 The parent of the child has expressed concern in writing to supervisory or administrative personnel of the school district or approved cooperative, or a teacher of the child, that the child is in need of special education and related services;

016.06B2 The parent of the child requested an evaluation of the child pursuant to 92 NAC 51-006.02B1; or

016.06B3 The teacher of the child or other personnel of the school district or approved cooperative expressed specific concerns about a pattern of behavior demonstrated by the child, directly to the director of special education of the school district or approved cooperative or to other supervisory personnel of the school district or approved cooperative.

016.06C A school district or approved cooperative shall not be deemed to have the knowledge that the child is a child with a disability if:

016.06C1 The parent of the child has not allowed an evaluation of the child pursuant to 92 NAC 51-006; or

016.06C2 The parent of the child has refused services under this Chapter; or

TITLE 92
CHAPTER 51

016.06C3 The child has been evaluated pursuant to 92 NAC 51-006 and was determined to not be a child with a disability under this Chapter.

016.06D Conditions that Apply if No Basis of Knowledge

016.06D1 If a school district or approved cooperative does not have knowledge that a child is a child with a disability (in accordance with 92 NAC 51-016.06B or 016.06C) prior to taking disciplinary measures against the child, the child may be subjected to the same disciplinary measures applied to children without disabilities who engaged in comparable behaviors consistent with 92 NAC 51-016.06D2.

016.06D2 If a request is made for an evaluation of a child during the time period in which the child is subjected to disciplinary measures under 92 NAC 51-016.02, the evaluation shall be conducted in an expedited manner.

016.06D2a Until the evaluation is completed, the child remains in the educational placement determined by school authorities, which can include suspension or expulsion without educational services.

016.06D2b If a child is determined to be a child with a disability, taking into consideration information from the evaluation conducted by the school district or approved cooperative and information provided by the parents, the school district or approved cooperative must provide special education and related services in accordance with this Chapter, including the requirements of 92 NAC 51-016.

016.07 Referral to and Action by Law Enforcement and Judicial Authorities

016.07A Nothing in this Chapter shall be construed to prohibit school districts or approved cooperatives from reporting a crime committed by a child with a disability to appropriate authorities or to prevent State law enforcement and judicial authorities from exercising their responsibilities with regard to the application of Federal and State law to crimes committed by a child with a disability.

016.07B A school district or approved cooperative reporting a crime committed by a child with a disability shall ensure that copies of the special education and disciplinary records of the child are transmitted for consideration by the appropriate authorities to whom the school district or approved cooperative reports the crime.

016.07C A school district or approved cooperative reporting a crime under 92 NAC 51-016.07 may transmit copies of the child's special education and disciplinary records only to the extent that the transmission is permitted by the Family Education Rights and Privacy Act (FERPA).

Appendix A

Excerpts from the Individuals with Disabilities Education Act 2004 (IDEA 2004)

- 602(4) CORE ACADEMIC SUBJECTS. – The term 'core academic subjects' has the meaning given the term in Section 9101 of the Elementary and Secondary Education Act of 1965.
- (Note: Section 9101 of the Elementary and Secondary Education Act of 1965 defines "core academic subjects" as follows:
Core Academic Subjects means English, reading or language arts, mathematics, science, foreign language, civics and government, economics, arts, history and geography.)*
- 602(10) HIGHLY QUALIFIED. –
- (A) In GENERAL – For any special education teacher, has the meaning given the term "high qualified" in Section 9101 of the Elementary and Secondary Education Act of 1965, except that such term also
- (i) includes the requirements described in Subparagraph (B); and
 - (ii) includes the option for teachers to meet the requirements of Section 9101 of such Act by meeting the requirements of Subparagraph (C) and (D).
- (B) REQUIREMENTS FOR SPECIAL EDUCATION TEACHERS –
When used with respect to any public elementary school or secondary school special education teacher teaching in the State, such term means that –
- (i) the teacher has obtained full State certification as a special education teacher (including certification obtained through alternative routes to certification), or passed the State special education teacher licensing examination, and holds a license to teach in the State as a special education teacher; except that when used with respect to any teacher teaching in a public charter school, the term means that the teacher meets the requirements set forth in the State's public charter school law;
 - (ii) the teacher has not had special education certification or licensure requirements waived on an emergency, temporary, or provisional basis; and
 - (iii) the teacher holds at least a bachelor's degree.
- (C) SPECIAL EDUCATION TEACHERS TEACHING TO ALTERNATE ACHIEVEMENT STANDARDS. – When used with respect to a special education teacher who teaches core academic subjects exclusively to children who are assessed against alternate achievement standards established under the regulations promulgated under Section 1111(b)(1) of the Elementary and Secondary Education Act of 1965, such term means the teacher, whether new or not new to the profession, may either—
- (iii) meet the applicable requirements of Section 9101 of such Act for any elementary, middle, or secondary school teacher who is new or not new to the profession; or
 - (iv) meet the requirements of Subparagraph (B) or (C) of Section 9101(23) of such Act as applied to an elementary school teacher, or, in the case of instruction above the elementary level, has subject matter knowledge appropriate to the level of instruction being provided, as determined by the State, needed to effectively teach to those standards.

TITLE 92
CHAPTER 51

- (D) SPECIAL EDUCATION TEACHERS TEACHING MULTIPLE SUBJECTS – When used with respect to a special education teacher who teaches two or more core academic subjects exclusively to children with disabilities, such term means that the teacher may either –
- (i) meet the applicable requirements of Section 9101 of the Elementary and Secondary Education Act of 1965 for any elementary, middle, or secondary school teacher who is new or not new to the profession;
 - (ii) in the case of a teacher who is not new to the profession, demonstrate competence in all the core academic subjects in which the teacher teaches in the same manner as is required for an elementary, middle, or secondary school teacher who is not new to the profession under Section 9101(23)(c)(ii) of such Act, which may include a single, high objective uniform State standard of evaluation covering multiple subjects; or
 - (iii) in the case of a new special education teacher who teaches multiple subjects and who is highly qualified in mathematics, language arts, or science, demonstrate competence in the other core academic subjects in which the teacher teaches in the same manner as is required for an elementary, middle, or secondary school teacher under Section 9101(23)(c)(ii) of such Act, which may include a single, high objective uniform State standard of evaluation covering multiple subjects, not later than two years after the date of employment.
- (E) RULE OF CONSTRUCTION – Notwithstanding any other individual right of action that a parent or student may maintain under this part, nothing in this section or part shall be construed to create a right of action on behalf of an individual student or class of students for the failure of a school district or approved cooperative employee to be highly qualified.
- (F) DEFINITION FOR PURPOSES OF THE ESEA – A teacher who is highly qualified under this paragraph shall be considered highly qualified for purposes of the Elementary and Secondary Education Act of 1965.

602(18) LIMITED ENGLISH PROFICIENT. – The term ‘limited English proficient’ has the meaning given the term in Section 9101 of the Elementary and Secondary Education Act of 1965.

(Note: Section 9101 of the Elementary and Secondary Education Act of 1965 defines “Limited English Proficient” as follows:

The term “limited English proficient”, when used with respect to an individual, means an individual –

- (A) *who is aged 3 through 21;*
- (B) *who is enrolled or preparing to enroll in an elementary school or secondary school;*
- (C) *(i) who was not born in the United States or whose native language is a language other than English*
(ii)(I) who is a Native American or Alaska Native, or a native resident of the outlying areas; and
(II) who comes from an environment where a language other than English has had a significant impact on the individual’s level of English language proficiency; or
(iii) who is migratory, whose native language is a language other than English, and who comes from an environment where a language other than English is dominant; and
- (D) *Whose difficulties in speaking, reading, writing, or understanding the English language may be sufficient to deny the individual –*

TITLE 92
CHAPTER 51

- (i) *the ability to meet the State's proficient level of achievement on State assessments described in Section 1111(b)(3);*
- (ii) *the ability to successfully achieve in classrooms where the language of instruction is English; or*
- (iii) *the opportunity to participate fully in society.)*

- 612(a)(16) PARTICIPATION IN ASSESSMENTS. –
(A) In General. – All children with disabilities are included in all general State and districtwide assessment programs, including assessments described under Section 1111 of the Elementary and Secondary Education Act of 1965 with appropriate accommodations and alternate assessments where necessary and as indicated in their respective individualized education programs.
- 612(a)(16)(C)(ii)(II) If the State has adopted alternate academic achievement standards permitted under the regulations promulgated to carry out Section 1111(b)(1) of the Elementary and Secondary Education Act of 1965, measure the achievement of children with disabilities against those standards.
- 1413(a)(9) RECORDS REGARDING MIGRATORY CHILDREN WITH DISABILITIES. – The local education agency shall cooperate in the Secretary's efforts under Section 1308 of the Elementary and Secondary Education Act of 1965 to ensure the linkage of records pertaining to migratory children with a disability for the purpose of electronically exchanging, among the States, health and educational information regarding such children. Scientifically based research has the meaning given the term in section 9101(37) of the ESEA.
- 614(a)(5)(A) SPECIAL RULE FOR ELIGIBILITY DETERMINATION. – In making a determination of eligibility under paragraph (4)(A), a child shall not be determined to be a child with a disability if the determinant factor for such determination is –
(A) lack of appropriate instruction in reading, including in the essential components of reading instruction (as defined in Section 1208(3) of the Elementary and Secondary Education Act of 1965;

