

# POLICIES AND PROCEDURES FOR SPECIAL EDUCATION

## POLICY

### FREE APPROPRIATE PUBLIC EDUCATION

#### 34 CFR 300.17

ELGIN PUBLIC SCHOOL ENSURES THAT A FREE APPROPRIATE PUBLIC EDUCATION IS AVAILABLE TO ALL CHILDREN WITH DISABILITIES FROM BIRTH THROUGH THE SCHOOL YEAR IN WHICH THE STUDENT REACHES 21 YEARS OF AGE, INCLUDING CHILDREN WHO HAVE BEEN SUSPENDED OR EXPELLED FROM SCHOOL.

## PROCEDURE

### 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 student 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 students in detention facilities, correctional facilities, jails and prisons.

004.02 The school district 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 students 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.

004.04 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.

**PROCEDURE (FREE APPROPRIATE PUBLIC EDUCATION {continued})**

**PERSON(S) RESPONSIBLE:** Board of Education, Superintendent, Special Education Director, Principal, Teachers

**TIMELINE:** Ongoing

**MATERIALS:** District policies and procedures, special education forms, Parent Rights Pamphlets, Parent training information

**METHODS:** Through the implementation of the district's special education policies and procedures, the district provides a free appropriate public education to all children with disabilities including children who have been suspended or expelled from school. It is anticipated that all students with disabilities will receive a regular high school diploma upon completion of their educational program. In those limited cases where it is determined that a student will receive other than a regular diploma the IEP Team, including the parents, will meet to discuss the student's educational programming until age 21.

## **POLICY**

### **FULL EDUCATIONAL OPPORTUNITY GOAL**

#### **34 CFR 300.109**

ELGIN PUBLIC SCHOOL HAS A GOAL OF PROVIDING FULL EDUCATIONAL OPPORTUNITY FOR ALL CHILDREN WITH DISABILITIES BIRTH THROUGH THE SCHOOL YEAR WHEN THE STUDENT REACHES AGES 21 CONSISTENT WITH THE STATE'S FULL EDUCATIONAL OPPORTUNITY GOAL.

## **PROCEDURE**

**004.01** All providers of special education services shall be under the general supervision of the Department of Education for the purpose of meeting the standards of this Chapter. School districts shall ensure that all children with verified disabilities, from birth through the school year in which the student 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' responsibility to ensure the availability of FAPE includes ensuring the availability of FAPE for resident students in detention facilities, correctional facilities, jails and prisons.

**PERSON(S) RESPONSIBLE:** Board of Education, Superintendent, Principal, Director of Special Education, Teachers

**TIMELINE:** Ongoing

**MATERIALS:** Special education procedures and forms. Training and staff development for certified and noncertified staff in the methods of implementation and "best practices" for working with students with disabilities.

**METHODS:** Procedures and forms are implemented on an individual child basis. Staff development activities will be determined by staff needs, and provided on a yearly schedule.

## **POLICY CHILDFIND**

### **34 CFR 300.109**

ALL CHILDREN WITH DISABILITIES RESIDING IN ELGIN PUBLIC SCHOOLS, INCLUDING CHILDREN WITH DISABILITIES WHO ARE HOMELESS CHILDREN OR WARDS OF THE STATE AND CHILDREN WITH DISABILITIES ATTENDING NON-PUBLIC SCHOOLS, REGARDLESS OF THE SEVERITY OF THEIR DISABILITIES, 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 WITH DISABILITIES ARE CURRENTLY RECEIVING NEEDED SPECIAL EDUCATION AND RELATED SERVICES.

## **PROCEDURE**

### **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 of Nebraska, 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. For infants and toddlers, districts shall demonstrate targeted efforts to meet the needs of children from historically underserved populations, particularly minority, low-income, inner-city and rural populations, and children with disabilities who are wards of the state.

**006.01A1** The child find requirements apply to highly mobile children including migrant children and to children under the age of 3 who are involved in a substantiated case of child abuse or neglect; who are identified as affected by illegal substance abuse, or withdrawal symptoms resulting from prenatal drug exposure.

**006.01A2** The child find requirements also apply to a child who is suspected of being a child with a disability under 92 NAC 51-003.10 and in need of special education, even though the child is advancing from grade to grade.

**PERSON(S) RESPONSIBLE:** Superintendent, Director of Special Education, School District Administrators

**TIMELINE:** Print publications will occur each August, with ongoing activities occurring throughout the school year.

**MATERIALS:** Print publications will occur in local newspaper, school calendar and student handbook. Ongoing activities include distribution of pamphlets to doctors' offices, articles in school newspapers, information on school district TV channel, website, etc.

**METHODS:** Efforts to locate and evaluate resident children and students with disabilities who will benefit from special education and related services will be conducted on an ongoing basis in the following ways:

**PROCEDURE (CHILDFIND {continued})**

1. Health and general education screening will be conducted by the district as required by Nebraska state statutes and Nebraska Departments of Education and Health and Human Services regulations.
2. Child find plans will be developed and records maintained to document all such activities of the district and to evaluate their effectiveness. Such records will include a copy of all public announcements. Persons making referrals will be asked where they acquired the information that led them to the school district.
3. The district will accept referrals for evaluation directly from parents, other agencies or school personnel for children below age five who may benefit from the provision of special education services. The district will conduct periodic screening activities to locate children with disabilities.
4. The district will accept referrals for children under the age of 3 who are involved in a substantiated case of child abuse or neglect; who are identified as affected by illegal substance, or withdrawal symptoms resulting from prenatal drug exposure.

## **POLICY**

### **IDENTIFICATION, EVALUATION AND VERIFICATION**

**34 CFR 300.08, 34 CFR 300.304 through 300.311**

**ELGIN PUBLIC SCHOOLS ENSURES THAT CHILDREN WITH DISABILITIES ARE EVALUATED IN ACCORDANCE WITH 92 NAC 51-006.**

PROCEDURES TO ENSURE THAT TESTING AND EVALUATION MATERIALS AND PROCEDURES UTILIZED FOR THE PURPOSES OF EVALUATION AND PLACEMENT OF CHILDREN WITH DISABILITIES WILL BE SELECTED AND ADMINISTERED SO AS NOT TO BE RACIALLY OR CULTURALLY DISCRIMINATORY. SUCH MATERIALS OR PROCEDURES SHALL BE PROVIDED AND ADMINISTERED IN THE CHILD'S NATIVE LANGUAGE OR MODE OF COMMUNICATION, UNLESS IT IS CLEARLY NOT FEASIBLE TO DO SO, AND NO SINGLE PROCEDURE SHALL BE THE SOLE CRITERION FOR DETERMINING AN APPROPRIATE EDUCATIONAL PROGRAM FOR A CHILD.

### **PROCEDURE**

#### **006.01C Student Assistance Team (SAT) or Comparable Problem Solving Team**

**006.01C1** 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.

**006.01C2** 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.

**006.01C3** 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 51-006.01C and a listing of the members of the SAT or comparable problem solving team.

### **STUDENT ASSISTANCE TEAM**

**PERSON(S) RESPONSIBLE:** Director of Special Education, Principals, SAT Chairperson, SAT members

**TIMELINE:** Strategies designed, implemented, and evaluated for approximately 45 school days. Specific number of days may vary depending on individual student needs, availability of data, number of strategies implemented and the success of the strategies.

**MATERIALS:** Student Assistance Team Referral, Student Assistance Team Report, Referral for Initial Evaluation, Notice and Consent for Initial Evaluation

#### **METHODS:**

1. The SAT shall coordinate and review the information from all staff members working with the referred student and the student's parent(s) and guardian(s);
2. A building level SAT chairperson will be designed and shall be responsible for all communication with parents and school personnel regarding the operation of the team and information generated. The SAT chairperson shall ensure that all information is properly documented.

### **PROCEDURE (IDENTIFICATION, EVALUATION AND VERIFICATION (continued))**

3. When appropriate, the SAT will plan, implement and assess the effectiveness of alternative intervention strategies developed to assist the teacher in the provision of general education including:
  - a. Reviewing relevant background information;
  - b. Observing/presenting educational problems/behavior;
  - c. Conferring with teacher(s), parent(s), guardian(s);
  - d. Planning alternative intervention strategies;
  - e. Assisting teachers in implementing interventions;
  - f. Monitoring and evaluating the effectiveness of the intervention;
  - g. Providing written documentation of the above activities; and
  - h. Making recommendations regarding referral distribution which may include referral for a MDT assessment, continuation of classroom interventions and/or utilization of school or community resources.
4. If the SAT determines that appropriate options available in general education have been exhausted and there is a possible need of special education services, the student shall be referred to the multidisciplinary team for evaluation;
5. The SAT report shall be completed within a reasonable time of accepting the referral;
6. Referral information and written documentation of all SAT activities shall be incorporated into the student's records; and
7. All referrals for a MDT evaluation shall be submitted on the appropriate district referral forms and must include information from the SAT including strategies/interventions attempted and a listing of team members.

## **PROCEDURE (IDENTIFICATION, EVALUATION AND VERIFICATION (continued))**

### **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 a nonpublic school may initiate a request for an initial evaluation to determine if the child is a child with a disability.

**006.02B1** Except for infants and toddlers, 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. For infants and toddlers, early intervention services in accordance with 92 NAC 51-007.13, may begin prior to completion of a full and individual initial evaluation.

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

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

**006.02B1a(ii)** 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 language and 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;

**006.02C1c** For infants and toddlers, tests and other evaluation materials and procedures are administered in the native language of the parent or other mode of communication, unless it is clearly not feasible to do so.



**PROCEDURE (IDENTIFICATION, EVALUATION AND VERIFICATION {continued})**

- 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:
- 006.02C5a Whether the child is a child with a disability under ~~92 NAC 51-003.08~~; 92 NAC 51-003.10; 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.
- 006.02C6b9(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.

## **PROCEDURE (IDENTIFICATION, EVALUATION AND VERIFICATION {continued})**

- 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.
- 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.
- 006.02C15 School districts and approved cooperatives must ensure evaluation and assessment for infants and toddlers are:
- 006.02C15a Conducted in accordance with Section 006 of this Chapter to determine eligibility for services including determining the status of the child in each of the developmental domains; and

**PROCEDURE (IDENTIFICATION, EVALUATION AND VERIFICATION {continued})**

006.02C16 After a child has been verified the district must conduct an assessment of the unique needs of the child in terms of each of the developmental areas to identify services appropriate to meet the needs of the child.

**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 definition 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 IFSP or IEP.

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

006.03E4 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 51-006.02D 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(i);

## **PROCEDURE (IDENTIFICATION, EVALUATION AND VERIFICATION {continued})**

**006.03F2g** The determination of the team concerning the effects of a visual, hearing, or motor disability; mental handicap, behavior disorder; 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;

**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. Verifications to be considered are:

**006.04B** Autism

**006.04C** Behavioral Disorder (referred to in the 2004 Amendments to the IDEA as "Emotional Disturbance")

**006.04D** Deaf-Blindness

**006.04E** Developmental Delay

**006.04F** Hearing Impairment

**006.04G** Mental Handicap

**006.04H** Multiple Impairments

## **PROCEDURE (IDENTIFICATION, EVALUATION AND VERIFICATION {continued})**

- 006.04I Orthopedic Impairments
- 006.04J Other Health Impairment
- 006.04K Specific Learning Disability
- 006.04L Speech-Language Impairment
- 006.04M Traumatic Brain Injury
- 006.04N Visual Impairment including Blindness

## **EVALUATION**

**PERSON(S) RESPONSIBLE:** Director of Special Education, MDT Coordinator, MDT members

### **TIMELINE:**

1. Notice and Consent for Evaluation will be completed in a reasonable period of time from the date of referral;
2. MDT Initial Evaluation will be completed within 45 school days of receiving Parental Consent;
3. The MDT Report will be completed within 30 days of completion of the evaluation; and
4. Consent for Reevaluation will be obtained within 90 days prior to the MDT three year expiration date.
5. The district may utilize the September 2008 "Verification Guidelines for Children with Disabilities" a Technical Assistance Document provided by the Nebraska Department of Education to provide assistance to the MDT as they assess each child who is referred for an evaluation to determine if he/she is a child with a disability and in need of special education services.

**MATERIALS:** Notice and Consent for Initial Evaluation or Reevaluation, Parent Rights Pamphlets, Complaint Procedures and Rule 55 (for Initial Evaluation), MDT Written Report Form, Verification Guidelines

**METHODS:** The district will identify children in the following disability categories per 92 NAC 51.

- Autism
- Behavioral Disorder
- Deaf-Blindness
- Developmental Delay
- Hearing Impairment
- Mental Handicap
- Multiple Impairments
- Orthopedic Impairment
- Other Health Impairment
- Specific Learning Disability
- Speech/Language Impairment
- Traumatic Brain Injury
- Visual Impairment including Blindness

## **PROCEDURE (IDENTIFICATION, EVALUATION AND VERIFICATION {continued})**

### **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:

**006.05A1** if the school district or approved cooperative determines that the educational or related services needs, including improved academic achievement and functional performance, or 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 agree otherwise; and

**006.05B2** must occur at least once every three years, unless the parent and the school district 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 51-003.10, 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.

## **PROCEDURE (IDENTIFICATION, EVALUATION AND VERIFICATION {continued})**

**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.

**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.

## **RE-EVALUATION**

**PERSON(S) RESPONSIBLE:** IEP members and other qualified professionals

**TIMELINE:** This process should begin well before the three year re-evaluation date and be timed so that the review of existing evaluation data can be accomplished during the IEP meeting.

**MATERIALS:** Parent Notice and Consent for Re-evaluation Form, Parent Rights Pamphlet, existing evaluation data, "Notice That No Additional Information Is Needed to Determine Continued Eligibility for Special Education" Form

## **PROCEDURE (IDENTIFICATION, EVALUATION AND VERIFICATION {continued})**

### **METHODS:**

1. IEP Team meets to review information available and decides on the nature of the re-evaluation. Parents are a part of the IEP Team, and therefore are part of the meeting.
2. If the IEP Team determines that no additional information is required to determine continued eligibility for special education, the IEP Team documents the decision on the "Notice That No Additional Information is Needed to Determine Continued Eligibility for Special Education Services Form". Parents should receive a copy of the form within **10** school days of the meeting. Parents may request that a comprehensive reevaluation be conducted even if the members of the IEP Team disagree.
3. If the IEP Team decides that additional information is needed to determine continued eligibility in special education, a Referral for Individual Evaluation Form is completed at the IEP meeting. The parents will receive a Parents Rights Pamphlet, a request for Consent to Re-evaluate **90** days prior to the reevaluation date. After the reevaluation is conducted, parents will be contacted to attend the MDT meeting to determine continued eligibility for special education and related services. After the reevaluation the MDT report is written by participating team members. Parents will receive a copy of the written report within **30** school days.
4. If reevaluation results in removing a disability verification, a MDT report is completed indicating that the child no longer qualifies. When the removal of a disability verification results in a dismissal from a special education program, the MDT report shall indicate the same. A copy of the report shall be placed in the student's record and parents shall be afforded all rights under Rule 51 to assist the student in transitioning back to general education
5. Student Assistant Team (SAT) references should be completed to assist the student in transitioning back to general education



## **PROCEDURE (IDENTIFICATION, EVALUATION AND VERIFICATION {continued})**

### **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 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:

**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 districts 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:

## **PROCEDURE (IDENTIFICATION, EVALUATION AND VERIFICATION {continued})**

**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.

## **INDEPENDENT EDUCATION EVALUATION**

**PERSON(S) RESPONSIBLE:** Special Education Director, Special Education Teachers, Superintendent, Principal

**TIMELINE:** The district will respond to a request for an Independent Educational Evaluation within **30 school days**. In the case where the district approves the request for an Independent Educational Evaluation, they will provide parents with the list of the district's criteria for selecting an evaluator and a list of independent evaluators within **30 days**.

**MATERIALS:** District criteria for selecting evaluator, list of independent evaluators, notice of approving request for an Independent Educational Evaluation or notice that district is not approving and filing for a hearing under 92 NAC 55.

**METHODS:** The parent will be requested to document the request through a written statement to the Director of Special Education.

The written request should contain:

1. Parental objections to the results of the district's educational evaluation;
2. Reference to the specific type(s) of evaluation requested; and
3. Consent of the parent(s)/guardian to release the personally identifiable confidential results of the evaluation to the school district.

If the decision is that an independent educational evaluation is appropriate, the parent(s)/guardian will receive written authorization from the Superintendent within **30 school days** of the written request. The parent's failure to provide a written request does not eliminate their right to an Independent Educational Evaluation.

### **PROCEDURE (IDENTIFICATION, EVALUATION AND VERIFICATION {continued})**

If the district refuses to provide an Independent Educational Evaluation, the district will provide the parents with a notice of their decision. The district must file a hearing under 92 NAC 55 to prove the appropriateness of their evaluation.

The qualifications of examiners will be in accordance with 92 NAC 51. Locations of any evaluator shall be within a reasonable distance of the school district. The district will provide the parent(s) with a list of qualified agencies/evaluators within the geographic area. The evaluators will be encouraged to have their rates approved by the Nebraska Department of Education to be authorized to conduct the evaluation(s).

The district will establish maximum allowable charges for each educational assessment. Maximum allowable charges for the assessment allow the parent(s) to select from among qualified and approved professionals which will eliminate unreasonable and/or excessive fees for services. The district will provide for the parent(s) the opportunity to demonstrate that unusual circumstances justify the need for an independent evaluation which is not designated by this procedure.

If the parent(s) obtains an independent evaluation without notifying the district, the district will not assume the financial responsibility for the evaluation if the district's evaluation is determined to be appropriate by the hearing officer appointed under 92 NAC 55.

## **POLICY**

### **INDIVIDUALIZED EDUCATION PROGRAM**

**34 CFR 300.320 through 300.328**

**ELGIN PUBLIC SCHOOLS ENSURES THAT AN INDIVIDUALIZED EDUCATION PROGRAM (IEP), OR AN INDIVIDUALIZED FAMILY SERVICE PLAN (IFSP) IS DEVELOPED, REVIEWED, AND REVISED FOR EACH CHILD WITH A DISABILITY IN ACCORDANCE WITH 92 NAC 51-007.**

## **PROCEDURE**

### **007 Individual Education Program (IEP) and Individualized Family Service Plan (IFSP)**

**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 51-007.13. 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 and make a good faith effort to assist the child to achieve the goals and objectives or benchmarks listed in the IEP.

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

**007.02A1** In the case of a child with a disability age three through five, the IEP team must consider an IFSP that contains the IFSP content (including the natural environments statement) described in 92 NAC 51-007.13B4b (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.

**007.02A2** In implementing the requirements of this section, the school district or approved cooperative must provide to the child's parents a detailed explanation of the differences between an IFSP and IEP and if the parents choose an IFSP, obtain written informed consent from the 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 and is implemented as soon as possible following the IEP meetings.

**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

**PROCEDURE (INDIVIDUALIZED EDUCATION PROGRAM {continued})**

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);

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(i) 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;

**PROCEDURE (INDIVIDUALIZED EDUCATION PROGRAM {continued})**

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 schools the child attends. If the representative cannot attend, other methods shall be used to ensure participation by the nonpublic school, including individual or conference telephone calls;

007.03A9 For children receiving services from an approved service agency, a representative of the service agency. If the representative is not in attendance, other methods shall be used to ensure participation by the approved service agency, including written communication, or individual or conference telephone calls;

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

007.03A10a The school district must invite the child;

007.03A10a(i) 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 impaired, 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 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:

**PROCEDURE (INDIVIDUALIZED EDUCATION PROGRAM {continued})**

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 service 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:

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, and 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 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 ~~insure~~ 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 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;

**PROCEDURE (INDIVIDUALIZED EDUCATION PROGRAM (continued))**

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.

**IEP MEETING**

**PERSON(S) RESPONSIBLE:** Director of Special Education, IEP Case Manager, Special Education Staff

**TIMELINE:** A reasonable time prior to the IEP meeting, the district will provide notice of the IEP meeting.  
The notification of IEP meeting should be made early enough to assure attendance by all participants.

**MATERIALS:** "IEP Meeting Notification" form, documentation of phone contacts or e-mails.

**METHODS:** Parents will be notified of IEP meeting by one of the following methods:

1. Written notification will be sent by U.S. mail.
2. Notification will be made by telephone contact, documented on the phone log.
3. Notification provided via e-mail with a copy placed in the student file.

School district IEP Team members will be notified by the IEP Case Manager.  
Other IEP Team members will be sent a written notification by U.S. mail, e-mail, or by phone,  
documented on the phone log a reasonable time prior to the IEP meeting.



**PROCEDURE (INDIVIDUALIZED EDUCATION PROGRAM (continued))**

**007.07 IEP Development**

**007.07A The IEP shall include:**

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

**007.07A1a** How the child's disability affects the child's involvement in and progress in the general education curriculum (i.e., the same curriculum as for nondisabled children); or

**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;

**PROCEDURE (INDIVIDUALIZED EDUCATION PROGRAM {continued})**

007.07A6 An explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class and in the activities described in 92 NAC 51-007.07A5;

007.07A7 A statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child on state and district-wide assessments; and if the IEP team determines that the child must take an alternate assessment instead of a particular regular state or district-wide assessment of student achievement, a statement of why:

007.07A7a The child cannot participate in the regular assessment; and

007.07A7b The particular alternate assessment selected is appropriate for the child; and

007.07A8 The projected date for the beginning of the services and modifications described in 92 NAC 51-007.07A5 and the anticipated frequency, location, and duration of those services and modifications;

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 subsection 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:

**PROCEDURE (INDIVIDUALIZED EDUCATION PROGRAM {continued})**

- 007.07B1 The IEP team shall consider the strengths of the child and the concerns of the parents for enhancing the education of their child.
- 007.07B2 The IEP team shall consider the results of the initial evaluation or most recent evaluation of the child, and the academic, developmental, and functional needs of the child.
- 007.07B3 In the case of a child whose behavior impedes his or her learning or that of others, the IEP team shall consider the use of positive behavioral interventions, and supports and other strategies to address that behavior.
- 007.07B4 In the case of a child with limited English proficiency, the IEP team shall consider the language needs of the child as those needs relate to the child's IEP.
- 007.07B5 In the case of a child who is blind or visually impaired, the IEP team shall provide for instruction in Braille and the use of Braille unless the IEP team determines, after an evaluation of the child's reading and writing skills, needs, and appropriate reading and writing media (including an evaluation of the child's future needs for instruction in Braille or the use of Braille), that instruction in Braille or the use of Braille is not appropriate for the child.
- 007.07B6 The IEP team shall consider the communication needs of the child, and in the case of a child who is deaf or hard of hearing, shall consider the child's language and communication needs, opportunities for direct communications with peers and professional personnel in the child's language and communication mode, academic level, and 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(i) each school district and approved cooperative must ensure that the external components of surgically implanted medical devices are functioning properly.

**PROCEDURE (INDIVIDUALIZED EDUCATION PROGRAM {continued})**

007.07C1b(i) 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:

007.07C2a(i) The child is enrolled full time in a separate facility; or

007.07C2a(ii) 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 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 shall ensure assistive technology devices or assistive technology services, or both, as defined in 92 NAC 51-003.04 and 003.05 are made available to any child with a disability if required, as part of the child's:

007.07C3a Special education under 92 NAC 51-003.66;

007.07C3b Related services under 92 NAC 51-003.54; or

007.07C3c Supplementary aids and services under 92 NAC 51-003.65 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.

## **PROCEDURE (INDIVIDUALIZED EDUCATION PROGRAM {continued})**

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, referrals to agencies that provide assistance to individuals with disabilities and employment to 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.

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 or IFSP 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

## **PROCEDURE (INDIVIDUALIZED EDUCATION PROGRAM (continued))**

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), until the new school district:

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.

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.

## **PROCEDURE (INDIVIDUALIZED EDUCATION PROGRAM {continued})**

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 92-007.09E 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 re-evaluation meetings for the child and other IEP Team meetings for the child.

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.

**PROCEDURE (INDIVIDUALIZED EDUCATION PROGRAM {continued})**

007.11B1 The requirements of 92 NAC 51-003.34 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.

**IEP DEVELOPMENT**

**PERSON(S) RESPONSIBLE:**

1. Director of Special Education is responsible for all IEP procedures and forms.
2. IEP Case Manager is responsible for facilitating the IEP meeting, recording decisions made by the IEP Team on the IEP form and maintaining notes of the IEP meeting.
3. IEP Team is responsible for the development of IEP.

**TIMELINE:** The IEP must be in effect at the beginning of each school year. The IEP meeting will be conducted within 30 calendar days of the MDT verification decision. A copy of the IEP will be provided to parents within **15** days of the IEP meeting.

**MATERIALS:** IEP Form

**METHODS:** The district will follow the procedures described in 92 NAC 51-007 for the development of the IEPs and conducting of the IEP meetings.



## **POLICY**

### **INDIVIDUALIZED FAMILY SERVICES PLAN (IFSP)**

**34 CFR 300.320; 34 CFR 300.340(b); 480 NAC 10-100**

**ELGIN PUBLIC SCHOOLS ENSURES THAT AN INDIVIDUALIZED EDUCATION PROGRAM (IEP), OR AN INDIVIDUALIZED FAMILY SERVICE PLAN (IFSP) IS DEVELOPED, REVIEWED, AND REVISED FOR EACH CHILD WITH A DISABILITY IN ACCORDANCE WITH 92 NAC 51-007.**

## **PROCEDURE**

### **007.12 Responsibility for Development of IFSP**

**007.12A** In collaboration with the agency contracting for services coordination, an IFSP shall be developed and implemented for each infant or toddler who is determined to be eligible for early intervention services in accordance with Section 006. The plan must be developed in accordance with Section 007 and based on the multidisciplinary evaluation described in 92 NAC 51-006.04 and any other relevant information. The services coordinator, with the family, is responsible for arranging the team meeting, developing the IFSP team and facilitating the development of the IFSP consistent with Department of Health and Human Services' Early Intervention regulations.

**007.12A1** In the event the family declines services coordination, the school district or approved cooperative, with the family, is responsible for the development of the IFSP consistent with the Department of Health and Human Services' Early Intervention regulations and 92 NAC 51-007.13.

**007.12A2** If there is a dispute as to who has responsibility for developing or implementing an IFSP, the Departments of Education and Health and Human Services shall resolve the dispute or assign responsibility.

**007.12B** If a determination is made that an infant or toddler needs early intervention services, an Individualized Family Service Plan (IFSP) shall be developed for the child and the family. The IFSP shall be in writing and shall include:

**007.12B1** A statement of the infant or toddler's present levels of physical development (including vision, hearing, and health status), cognitive development, communication development, social or emotional development, and adaptive development which is based on professionally acceptable objective criteria;

**007.12B2** With the concurrence of the family, a statement of the family's resources, priorities, and concerns relating to enhancing the development of the infant or toddler with a disability;

**007.12B3** A statement of the measurable results or outcomes expected to be achieved for the infant or toddler and the family, including pre-literacy and language skills, as developmentally appropriate for the child, and the criteria, procedures and timelines used to determine the degree to which progress toward achieving the results or outcomes is being made and whether modifications or revisions of the results or outcomes or services are unnecessary;

**007.12B3a** The degree to which progress toward achieving the outcomes is being made; and

**PROCEDURE (INDIVIDUALIZED FAMILY SERVICES PLAN IFSP {continued})**

007.12B3b Whether modifications or revisions of the outcomes or services are necessary.

007.12B4 A statement of the specific early intervention services based on peer-reviewed research, to the extent practicable, necessary to meet the unique needs of the child and the family including:

007.12B4a The frequency, intensity, and method of delivering the services;

007.12B4a(i) Frequency and intensity mean the number of days or sessions that a service will be provided, the length of time the service is provided during each session, and whether the service is provided on an individual or group basis; and

007.12B4a(ii) Method means how a service is provided.

007.12B4b The natural environments in which early intervention services will be provided, including a justification of the extent, if any, to which the services will not be provided in a natural environment;

007.12B4c The location of the services; and

007.12B4c(i) Location means the actual place or places where a service will be provided.

007.12B4d The payment arrangements, if any.

007.12B5 To the extent appropriate, medical and other services the child needs, but that are not required by this Chapter, and the funding sources to be used in paying for those services or the steps that will be taken to secure those services through public or private sources.

007.12B5a This requirement does not apply to routine medical services (e.g. immunizations and "well-baby" care), unless a child needs those services and the services are not otherwise available or being provided.

007.12B6 The projected date(s) for initiation of the service(s) which must begin as soon as possible after the IFSP meeting.

007.12B7 The anticipated duration of those services.

007.12B8 The name of the service coordinator from the profession must immediately relevant to the child's or family's needs (or who is otherwise qualified to carry out all applicable responsibilities under this part), who will be responsible for the implementation of the IFSP and coordination with other agencies and persons, including transition services.

007.12B8a The agency contracting for services coordination may assign the same service coordinator who was appointed at the time that the child was initially referred for evaluation to be responsible for implementing a child's and family's IFSP, or appointment a new service coordinator.

## **PROCEDURE (INDIVIDUALIZED FAMILY SERVICES PLAN IFSP {continued})**

007.12B9 The steps to be taken to support the transition of the child to preschool services to the extent that those services are considered appropriate, or other services that may be available, if appropriate.

007.12B9a The steps include:

007.12B9a(i) Discussions with, and training of, parents regarding future placements and other matters related to the child's transition;

007.12B9a(ii) Procedures to prepare the child for changes in the service delivery, including steps to help the child adjust to, and function in, a new setting; and

007.12B9a(iii) With parental consent, the transmission of information about the child to ensure continuity of services, including evaluation and copies of IFSPs that have been developed and implemented.

007.12B10 A statement of the necessary assistive technology devices and services needed by the infant or toddler.

### **007.13 IFSP Initial and Annual Conferences**

007.13A For an infant or toddler who has been evaluated for the first time and determined to be eligible, a meeting to develop the initial IFSP must be conducted within 45 calendar days of the referral.

007.13B A meeting must be conducted on at least an annual basis to evaluate the IFSP for a child and the child's family, and, as appropriate, to revise its provisions. The results of any current evaluations and other information available from the ongoing assessment of the child and family, must be used in determining what services are needed and will be provided. Parents shall receive a copy of the IFSP within seven calendar days of the IFSP meeting.

007.13C IFSP meeting must be conducted:

007.13C1 In settings and at times that are convenient to families; and

007.13C2 In the native language of the family or other mode of communication used by the family, unless it is clearly not feasible to do so.

007.13D Meeting arrangements must be made with, and written notice provided to, the family and other participants early enough before the meeting date to ensure that they will be able to attend.

007.13E The contents of the IFSP must be fully explained to the parents and informed written consent from the parents must be obtained prior to the provision of early intervention services described in the plan.

007.13E1 If the parents do not provide consent with respect to a particular early intervention service or withdraw consent after first providing it, that service may not be provided.

## **PROCEDURE (INDIVIDUALIZED FAMILY SERVICES PLAN IFSP {continued})**

007.13E2 The early intervention services to which parental consent is obtained must be provided.

### **007.14 IFSP Periodic Reviews**

007.14A A review of the IFSP for a child and the child's family must be conducted every six months, or more frequently if conditions warrant, or if the family requests such a review. The purpose of the periodic review is to determine:

007.14A1 The degree to which progress toward achieving the outcomes is being made; and

007.14A2 Whether modifications or revision of the outcomes or services is necessary.

007.14B The review may be carried out by a meeting or by another means that is acceptable to the parents and other participants.

007.14C The periodic review of the IFSP must provide for the participation of the persons required by 92 NAC 51-007.16A1, 007.16A2, 007.16A3 and 007.16A4. If conditions warrant, provisions must be made for the participation of other representatives identified in 92 NAC 51-007.16A5, 007.16A6 and 007.16A7.

### **007.15 IFSP Team Participants**

007.15A The school district or approved cooperative shall document that each IFSP conference includes at least the following participants:

007.15A1 The parent or parents of the child;

007.15A2 Other family members, as requested by the parent, if feasible to do so;

007.15A3 An advocate or person outside of the family, if the parent requests that the person participate;

007.15A4 The service coordinator who has been working with the family since the initial referral of the child for evaluation, or who has been designated to be responsible for implementation of the IFSP;

007.15A5 A representative of the school district or approved cooperation who has the authority to commit district resources;

007.15A6 As appropriate, persons who will be providing services to the child; and

007.15A7 A person or persons directly involved in conducting the evaluations.

007.15A7a If this person or persons is unable to attend a meeting, arrangements must be made for the person's involvement through other means, including:

007.15A7a(i) Participating in a telephone conference call;

## **PROCEDURE (INDIVIDUALIZED FAMILY SERVICES PLAN IFSP {continued})**

007.15A7a(ii) Having a knowledgeable authorized representative attend the meeting; or

007.15A7a(iii) Making pertinent records available at the meeting.

### **007.17 Provision of Early Intervention Services Before the Evaluation and Assessment is Complete**

007.17A Early intervention services for the purpose of completion of the evaluation and assessment for a child and the child's family may commence before the completion of the evaluation if the following conditions are met:

007.17A1 Parental consent is obtained;

007.17A2 An interim IFSP is developed that includes:

007.17A2a The name of the service coordinator who will be responsible for implementation of the interim IFSP and coordination with other agencies and persons; and

007.17A2b The early intervention services that have been determined to be needed immediately by the child and the child's family.

007.17A3 The evaluation and assessment are completed within the 45 day time period.

### **007.18 Year Round Continuous Services**

007.18A Early Intervention Services may not be interrupted or modified or otherwise changed for reasons unrelated to the child's needs such as service provider availability or scheduling.

## **IFSP MEETING AND DEVELOPMENT**

### **PERSON(S) RESPONSIBLE:**

1. Services Coordinator, Director of Special Education, family and those they invite.
2. Services Coordinator, with the family, arranges the team meeting, develops IFSP team and facilitates the development of the IFSP.
3. If family declines services coordination, District, with the family, is responsible for development of IFSP consistent with Department of Health and Human Services Early Intervention Regulations 480 NAC 10-100 and 92 NAC 51-007.13.

### **TIMELINE:**

1. Initial IFSP must be conducted within 45 calendar days of referral to the Early Development Network.
2. Annual IFSPs
3. Periodic reviews - must be conducted every six months, or more frequently if conditions warrant, or if family requests a review.

**MATERIALS:** IFSP Statewide Form: District may utilize the technical assistance documents found at [www.nde.state.ne.us/edn/](http://www.nde.state.ne.us/edn/) in developing functional, participation-based IFSP/IEP outcomes and goals.

The documents are:

- Preamble: Functional Participation-Based IFSP/IEP Outcomes/Goals
- Assessments: Functional Participation-Based IEP/IEP Outcomes/Goals
- Characteristics of Functional Participation-Based IFSP/IEP Outcomes/Goals
- Meetings: Functional Participation-Based IFSP/IEP Meetings

**METHODS:** District will follow the procedures in 92 NAC 51-007.

## **POLICY**

### **EARLY INTERVENTION TRANSITION**

**34 CFR 303.148**

**ELGIN PUBLIC SCHOOLS ENSURES THAT CHILDREN PARTICIPATING IN EARLY INTERVENTION SERVICES EXPERIENCE A SMOOTH AND EFFECTIVE TRANSITION TO SERVICES PROVIDED UNDER PART B OF THE IDEA.**

## **PROCEDURE**

### 007.16 Early Intervention Transition

007.16A The agency contracting for services coordination is responsible for convening, with the approval of the child's family, a conference including the family, school district or approved cooperative and other agencies as needed at least 90 days (and at the discretion of all such parties, up to nine months) before the child's third birthday or at least 90 days before completion of the early intervention program. The purpose of the meeting is to:

007.16A1 Ensure a smooth and effective transition to preschool programs assisted under Part B of the IDEA to the extent those services are appropriate, or other services that may be available, if appropriate;

007.16A2 Review the child's program options for the period from the child's third birthday through the remainder of the school year;

007.16A3 Describe how the family will be included in the transition plans; and

007.16A4 Establish a transition plan.

007.16B In the case of a child who has reached his or her third birthday, an IFSP that contains the material described in 92 NAC 51-007.13 and that is developed in accordance with 92 NAC 51-007.02, 007.03, 007.06, 007.07B, 007.09, 007.10 and 007.11 may serve as the IEP of the child if using that plan is agreed to by the school district or approved cooperative and the child's parents.

007.16B1 In implementing the requirements of 92 NAC 51-007.16B the school district or approved cooperative shall;

007.16B1a Provide the child's parents a detailed explanation of the differences between an IFSP and an IEP; and

007.16B1b If the parents choose an IFSP, obtain written informed consent from the parents.

**PERSON(S) RESPONSIBLE:** The Services Coordinator in conjunction with the Early Childhood Teacher

**TIMELINE:** The district will convene a meeting, including the family and district, at least 90 days and at the discretion of all parties, up to six months before the child's third birthday or at least 90 days before completion of the early intervention program.

**MATERIALS:** IFSP Form and the IEP Form

**METHODS:** The district will follow the procedures described in 92 NAC 51-007.16 when transitioning children from early intervention to preschool programs.

## **POLICY**

### **PARTICIPATION IN ASSESSMENTS**

#### **34 CFR 300.160**

**ELGIN PUBLIC SCHOOLS ENSURES THAT CHILDREN WITH DISABILITIES ARE INCLUDED IN DISTRICT-WIDE ASSESSMENT PROGRAMS, WITH APPROPRIATE ACCOMMODATIONS, WHERE NECESSARY. AS APPROPRIATE, THE SCHOOL DISTRICT DEVELOPS GUIDELINES FOR THE PARTICIPATION OF CHILDREN WITH DISABILITIES IN ALTERNATE ASSESSMENTS FOR THOSE CHILDREN WHO CANNOT PARTICIPATE IN DISTRICT-WIDE ASSESSMENTS AND DEVELOPS AND CONDUCTS THOSE ALTERNATE ASSESSMENTS. ELGIN PUBLIC SCHOOLS WILL MAKE AVAILABLE TO THE NEBRASKA DEPARTMENT OF EDUCATION THE INFORMATION NECESSARY TO CARRY OUT ITS DUTIES RELATING TO THE REPORTING OF CHILDREN WITH DISABILITIES PARTICIPATION IN ASSESSMENTS.**

### **PROCEDURE**

#### **004.05 Participation in Assessments**

**004.05A** School districts shall include all public school students 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.



## **PROCEDURE (PARTICIPATION IN ASSESSMENTS {continued})**

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

**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 student), compared with the achievement of all children, including children with disabilities, on those assessments.

**PERSON(S) RESPONSIBLE:** Superintendent, Special Education Director, Principal and IEP Team

**TIMELINE:** Administration of student assessments will follow the timeline used for the assessment of all students in the district.

**MATERIALS:** Student's IEP, District-wide Assessment Forms

**METHODS:** All students will have the opportunity to attempt any or all portions of the district-wide assessments. Students with disabilities will participate in one of the following ways:

1. District-wide and state assessment with no accommodations; or
2. District-wide and state assessment with accommodations.
3. Use of an alternate assessment.

Alternate assessment will be determined by the IEP Team. Alternate assessments will be conducted to correspond with the timeline of state and district-wide assessment for each grade level.

The individual student's IEP Team will determine how the student will participate in district-wide assessment. If necessary, the IEP Team will list the appropriate accommodations necessary for the student to participate.

## **REPORTING PRODEDURES**

**PERSON(S) RESPONSIBLE:** Superintendent, Principal, Special Education Director

**TIMELINE:** Reports will be completed and submitted to NDE on a timeline determined by NDE. Reports to the public will be made available on the same timeline as for reporting general education results.

**MATERIALS:** Reporting format developed by NDE made annually. Reports to newspapers and school publications sent to parents.

**METHODS:** Assessment information for all students will be reported in two ways. First, data on the student with disabilities will be aggregated with all other student data. Second, data for students with disabilities and students without disabilities will be reported separately.

## **POLICY**

### **LEAST RESTRICTIVE ENVIRONMENT (34 CFR 300.114);**

### **NATURAL ENVIRONMENTS (34 CFR 303.18)**

TO THE MAXIMUM EXTENT APPROPRIATE, CHILDREN WITH DISABILITIES, INCLUDING CHILDREN IN PUBLIC AND NONPUBLIC INSTITUTIONS OR OTHER CARE FACILITIES, ARE EDUCATED WITH CHILDREN WHO ARE NOT DISABLED, AND SPECIAL CLASSES, SEPARATE SCHOOLING, OR OTHER REMOVAL OF CHILDREN WITH DISABILITIES FROM THE REGULAR EDUCATION ENVIRONMENT OCCURS ONLY WHEN THE NATURE OR SEVERITY OF THE DISABILITY OF A CHILD IS SUCH THAT EDUCATION IN REGULAR CLASSES WITH THE USE OF SUPPLEMENTARY AIDS AND SERVICES CANNOT BE ACHIEVED SATISFACTORILY.

IF PLACEMENT IN A PUBLIC OR NON-PUBLIC RESIDENTIAL PROGRAM IS NECESSARY TO PROVIDE SPECIAL EDUCATION AND RELATED SERVICES TO A CHILD WITH A DISABILITY, THE PROGRAM INCLUDING NON-MEDICAL CARE AND ROOM AND BOARD, MUST BE AT NO COST TO THE PARENTS OF THE CHILD.

ELGIN PUBLIC SCHOOLS ENSURES THAT CHILDREN WITH DISABILITIES HAVE AVAILABLE TO THEM THE VARIETY OF EDUCATIONAL PROGRAMS AND SERVICES AVAILABLE TO NON-DISABLED CHILDREN, INCLUDING ART, MUSIC, INDUSTRIAL ARTS, CONSUMER AND HOMEMAKING EDUCATION AND VOCATIONAL EDUCATION. FOR INFANTS AND TODDLERS, SERVICES WILL BE PROVIDED IN THE CHILD'S NATURAL ENVIRONMENTS, INCLUDING HOME AND COMMUNITY SETTINGS THAT ARE NATURAL OR NORMAL FOR THE CHILD'S AGE PEERS WHO HAVE NO DISABILITIES.

## **PROCEDURE**

### **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. For infants and toddlers, early intervention services may begin prior to completion of a full and individual initial evaluation in accordance with 92 NAC 51-007.17.

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

## **PROCEDURE (LEAST RESTRICTIVE ENVIRONMENT {continued})**

008.01C2 The placement decision is made in conformity with the least restrictive environment requirements in 92 NAC 51- 008.01 and based on the child's unique needs and not on the child's disability.

008.01D Each school district or approved cooperative must ensure that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services.

008.01D1 The continuum must:

008.01D1a Include instruction in regular classes, special classes, special schools, home instruction and instruction in hospitals and institutions; and

008.01D1b Make provision for supplementary services (such as resource or itinerant instruction) to be provided in conjunction with regular class placement.

008.01E The school district or approved cooperative shall ensure that the educational placement of a child with a verified disability:

008.01E1 Is determined at least annually;

008.01E2 Is based on his or her individualized education program (IEP); and

008.01E3 Is as close as possible to the child's home.

008.01F The various arrays 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 or IFSP 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.

### **008.02 Natural Environments**

008.02A To the maximum extent appropriate to the needs of the child, early intervention services must be provided in natural environments including home and community settings in which children without disabilities participate.

008.02B The provision of early intervention services for any infant or toddler may occur in a setting other than a natural environment only if early intervention cannot be achieved satisfactorily for the infant or toddler in a natural environment.

## **LEAST RESTRICTIVE ENVIRONMENT, NATURAL ENVIRONMENTS**

**PERSON(S) RESPONSIBLE:** Director of Special Education and IEP/IFSP Team

**TIMELINE:** Students will begin receiving special education and related services within 7 days of receipt of Parental Consent for Placement based upon the IEP/IFSP.

**MATERIALS:** IEP/IFSP Form, Parental Notice and Consent for Initial Placement Form

**METHODS:** The IEP/IFSP Team will consider all placement options prior to the placement of a student.

The placements may range from regular classroom instruction for the entire school day with modifications to the regular instructional program to other settings dictated by student needs. The district may also develop additional placement alternatives within the overall school program that are tailored to the needs of the individual student with disabilities. This placement may be developed by adapting or modifying existing placement alternatives based on the needs of the individual student with disabilities.

For infants and toddlers, service must be provided in natural environments except for those limited situations in which the child's needs dictate a different environment.

When making the placement decision the team shall:

1. Review and discuss past educational experiences;
2. Review current levels of educational performance;
3. Review current education needs as documented on the IEP/IFSP; and
4. Review and formulate a preliminary configuration of special education and related service options.
5. Review and compare the options identified in (4) above with the need for LRE. To achieve this, the IEP/IFSP Team will select the special education placement that allows for the implementation of the IEP/IFSP while educating the student to the maximum extent appropriate with non-disabled peers. The team shall prepare written justification for the appropriate placement selected and document in writing why other options were not selected.
6. When an infant or toddler is placed in an environment other than the child's natural environment, a plan and timeline for returning to the child's natural environment will be in place.

The district will provide written notice to parents and obtain written consent from parents prior to initial placement. If the district has made available an appropriate special education program in accordance with Rule 51 for a student with a disability, and the student's parents choose to unilaterally place the child in a different setting, the district is not required to pay for the child's education in the alternative setting.

## **PROCEDURE**

### **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 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. For infants and toddlers the school district of residence or approved cooperative shall be responsible for meeting the requirements of 92 NAC 51-007.12 through 92 NAC 51-007.18.

## **CONTRACTED PROGRAMS**

**PERSON(S) RESPONSIBLE:** Director of Special Education, IEP Case Manager, Special Education Teacher

**TIMELINE:** Ongoing

**MATERIALS:** Contract with the nonpublic school, district forms

**METHODS:** The district has adopted the state standards and will provide the contracted agency all current information. Once a contract has been arranged, a case manager from the district is designated who will arrange meetings with parents, district representative and the contracting agency. All necessary paperwork and proper procedures are completed through the direction of the case manager, the IEP Team, and the contracted school representative.

## **POLICY**

### **CHILDREN IN NONPUBLIC SCHOOLS**

#### **34 CFR 300.130 through 300.148**

TO THE EXTENT CONSISTENT WITH THE NUMBER AND LOCATION OF CHILDREN WITH DISABILITIES WHO ARE ENROLLED BY THEIR PARENTS IN NONPUBLIC ELEMENTARY AND SECONDARY SCHOOLS, PROVISION IS MADE FOR THE PARTICIPATION OF THOSE CHILDREN IN SPECIAL EDUCATION AND RELATED SERVICES IN ACCORDANCE WITH THE REQUIREMENTS CONTAINED IN 92 NAC 51.

ELGIN PUBLIC SCHOOL'S POLICY RELATING TO CHILD FIND ACTIVITIES APPLIES WITH RESPECT TO CHILDREN WITH DISABILITIES WHO ARE ENROLLED IN NONPUBLIC, INCLUDING PAROCHIAL, ELEMENTARY AND SECONDARY SCHOOLS.

CHILDREN WITH DISABILITIES IN NONPUBLIC SCHOOLS AND FACILITIES ARE PROVIDED SPECIAL EDUCATION AND RELATED SERVICES IN ACCORDANCE WITH AN INDIVIDUALIZED EDUCATION PROGRAM, AT NO COST TO THEIR PARENTS, IF THE CHILD IS PLACED IN, OR REFERRED TO NONPUBLIC SCHOOLS OR FACILITIES BY ELGIN PUBLIC SCHOOLS AS A MEANS OF CARRYING OUT THE REQUIREMENTS OF IDEA OR ANY OTHER APPLICABLE LAW REQUIRING THE PROVISION OF SPECIAL EDUCATION AND RELATED SERVICES TO ALL CHILDREN WITH DISABILITIES. CHILDREN SERVED BY NONPUBLIC SCHOOLS OR FACILITIES AS A RESULT OF A REFERRAL BY THE ELGIN PUBLIC SCHOOLS WILL HAVE ALL THE RIGHTS THEY WOULD HAVE IF SERVED BY THE ELGIN PUBLIC SCHOOLS.

ELGIN PUBLIC SCHOOLS IS NOT REQUIRED 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 ELGIN PUBLIC SCHOOLS MADE A FREE APPROPRIATE PUBLIC EDUCATION AVAILABLE TO THE CHILD AND THE PARENTS ELECTED TO PLACE THE CHILD IN SUCH NONPUBLIC SCHOOL OR FACILITY.

IF THE PARENTS OF A CHILD WITH A DISABILITY, WHO PREVIOUSLY RECEIVED SPECIAL EDUCATION AND RELATED SERVICES UNDER THE AUTHORITY OF THE ELGIN PUBLIC SCHOOLS, ENROLL THE CHILD IN A NONPUBLIC PRESCHOOL, ELEMENTARY OR SECONDARY SCHOOL WITHOUT THE CONSENT OF OR REFERRAL BY THE ELGIN PUBLIC SCHOOLS, OR A COURT OR A HEARING OFFICER MAY REQUIRE THE ELGIN PUBLIC SCHOOLS TO REIMBURSE THE PARENTS FOR THE COST OF THE ENROLLMENT IF THE COURT OR HEARING OFFICER FINDS THAT THE ELGIN PUBLIC SCHOOLS HAD NOT MADE AVAILABLE A FREE APPROPRIATE PUBLIC EDUCATION TO THE CHILD IN A TIMELY MANNER PRIOR TO THAT ENROLLMENT.

THE COST OF THE REIMBURSEMENT MAY BE REDUCED OR DENIED IF AT THE MOST RECENT IEP TEAM MEETING THAT THE PARENTS ATTENDED PRIOR TO THE REMOVAL OF THE CHILD FROM THE ELGIN PUBLIC SCHOOLS, THE PARENTS DID NOT INFORM THE IEP TEAM THAT THEY WERE REJECTING THE PLACEMENT PROPOSED BY THE DISTRICT 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 AT LEAST 10 BUSINESS DAYS (INCLUDING ANY HOLIDAYS THAT OCCUR ON A BUSINESS DAY), PRIOR TO THE REMOVAL OF THE CHILD FROM THE SCHOOL DISTRICT, THE PARENTS DID NOT GIVE WRITTEN NOTICE TO THE ELGIN PUBLIC SCHOOLS OF THE INFORMATION REQUIRED ABOVE. THE COST OF REIMBURSEMENT WILL NOT BE REDUCED OR DENIED FOR FAILURE TO PROVIDE THE INFORMATION REQUIRED ABOVE. THE COST OF REIMBURSEMENT WILL NOT BE REDUCED OR DENIED FOR FAILURE TO PROVIDE THE INFORMATION REQUIRED IF THE PARENT IS ILLITERATE AND CANNOT WRITE IN ENGLISH, IF COMPLIANCE WITH THE REQUIREMENT WOULD LIKELY RESULT IN PHYSICAL OR SERIOUS EMOTIONAL HARM TO THE CHILD, IF THE SCHOOL PREVENTED THE PARENT FROM PROVIDING THE INFORMATION OR IF THE PARENTS HAD NOT RECEIVED NOTICE REQUIRED BY 92 NAC 51-009 OF THE PARENTS RESPONSIBILITY TO PROVIDE NOTICE TO THE ELGIN PUBLIC SCHOOLS.

THE REIMBURSEMENT MAY ALSO BE REDUCED OR DENIED IF PRIOR TO THE PARENTS REMOVAL OF THE CHILD FROM ELGIN PUBLIC SCHOOLS, THE SCHOOL DISTRICT INFORMED THE PARENTS, THROUGH THE NOTICE REQUIREMENTS DESCRIBED IN 92 NAC 51-009, OF ITS INTENT TO EVALUATE THE CHILD (INCLUDING A STATEMENT OF THE PURPOSE OF THE EVALUATION WAS THAT APPROPRIATE AND REASONABLE), BUT THE PARENTS DID NOT MAKE THE CHILD AVAILABLE FOR THE EVALUATION.

THE REIMBURSEMENT MAY ALSO BE REDUCED OR DENIED UPON A JUDICIAL FINDING OF UNREASONABLENESS WITH RESPECT TO ACTIONS TAKEN BY THE PARENTS.

<b>PROCEDURE (CHILDREN IN NONPUBLIC SCHOOLS {continued})</b>
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**015 Children with Disabilities Attending Nonpublic Schools**

**015.01 Children Placed In or Referred To a Nonpublic School or Facility by the School District 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 51-003.69; 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.

**015.02 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.

**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

**PROCEDURE (CHILDREN IN NONPUBLIC SCHOOLS {continued})**

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:

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 paragraph 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.

## **CHILDREN ATTENDING NON-PUBLIC (AS MEANS OF PROVIDING FAPE)**



**PERSON(S) RESPONSIBLE:** Director of Special Education, IEP Case Manager, Special Education Teacher

**TIMELINE:** Ongoing

**MATERIALS:** Appropriate district forms

**METHODS:** Disagreement between parents and the school district whether or not the school district has a program available, or regarding the question of responsibility, are subject to the appeal procedures established in Rule 55.

## **PROCEDURE (CHILDREN IN NONPUBLIC SCHOOLS (continued))**

### **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 grades.

**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.

**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 grade 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** Childfind for Parentally-placed Nonpublic School Children with Disabilities

**015.03B1** Each school district 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 childfind process must be designed to ensure:

## **PROCEDURE (CHILDREN IN NONPUBLIC SCHOOLS (continued))**

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 childfind requirements, the school district must undertake activities similar to the activities undertaken for public school children.

015.03B4    The cost of carrying out the childfind 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 childfind process must be completed in a time period comparable to that for students attending public schools in the school district or approved cooperative consistent with 92 NAC 51-006.02.

015.03B6    Each school district, in which one or more nonpublic, including religious, elementary schools and secondary schools are located must, in carrying out the childfind 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 will special education and related services.

015.03C1a    Parentally-placed nonpublic school children with disabilities are eligible for the provision of a free appropriate public education from the school district in which they reside. Services available under such circumstances are referred to as a Free Appropriate Public Education (FAPE).

015.03C1a(i)    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.

## **PROCEDURE (CHILDREN IN NONPUBLIC SCHOOLS {continued})**

015.03C1b(i) 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 or approved cooperative 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:

015.03D1a The childfind process, including:

015.03D1a(i) How parentally-placed nonpublic school children suspected of having a disability can participate equitably; and

015.03D1a(ii) 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.

## **PROCEDURE (CHILDREN IN NONPUBLIC SCHOOLS {continued})**

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 childfind 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(i) The types of services, including direct services and alternate service delivery mechanisms; and

015.03D1d(ii) 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; and

015.03D1d(iii) How and when those decisions will be made.

015.03D1e How, 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.

### **015.03F Compliance**

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.

## **PROCEDURE (CHILDREN IN NONPUBLIC SCHOOLS {continued})**

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 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

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

## **PROCEDURE (CHILDREN IN NONPUBLIC SCHOOLS {continued})**

- 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 Section 003.69.
- 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 902 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;
- 015.03H4b    By 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 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.
- 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.

## **PROCEDURE (CHILDREN IN NONPUBLIC SCHOOLS {continued})**

### **015.03J Due Process and State Compliance**

- 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 childfind 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 childfind 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 district official under 92 NAC 51-015.03F1 must be filed within the Nebraska Department of Education in accordance with the procedures in 92 NAC 51-015.03F2.

## **CHILDREN PLACED IN NONPUBLIC SCHOOL BY PARENTS (FAPE IS NOT AN ISSUE)**

**PERSON(S) RESPONSIBLE:** Director of Special Education, IEP Case Manager, Special Education Teacher, Nonpublic School Representative

**TIMELINE:** Ongoing

**MATERIALS:** Appropriate district forms

**METHODS:** A nonpublic school student may participate in the public school's special education programs provided the student has been verified by a MDT and the parent is a resident of the district. The IEP for nonpublic school students shall be developed according to the policies and procedures adopted by the district. Services (equitable or FAPE) to nonpublic school students with disabilities may be provided at the public school, the nonpublic school, or a neutral site.

Students who attend nonpublic schools, but receive special education at the public school or a neutral site other than the public school, will be transported by district vehicles. If district vehicle service is not available, the school district will contract with a licensed common carrier for transportation services. If the parents select to transport eligible students, the district will reimburse parents at the rate approved by the Nebraska Department of Education for actual miles traveled from the nonpublic school to the school district site or a neutral site, following the most direct route. The district will not provide transportation to a nonpublic school enrolled child from child's home to the nonpublic school. Transportation eligibility will be determined by the student's IEP Team. The plan for transportation for the student shall be part of the IEP.



Childfind activities for all children with disabilities who are enrolled by their parents in non public, including religious, elementary schools and secondary schools located in \_\_\_\_\_ School District.  
The process used by \_\_\_\_\_ School District will include requirements of 015.03D1a through 015.03D1e of Rule 51.

District will consult with nonpublic schools located in \_\_\_\_\_ School District during the design and development of special education and related services (FAPE and equitable services).

Written affirmation of timely and meaningful consultation provided to nonpublic schools will be maintained according to 015.03E of Rule 51.

Special Education and related services (FAPE or equitable services) including materials and equipment, must be secular, neutral and nonideological.

Decisions about equitable services for Nonresident Nonpublic parentally-placed students will be made in accordance with 015.03G through 015.03H5b.

Disagreements between parents and the school district whether or not the school district has a program available, or regarding the question of responsibility, are subject to the appeal procedures established in Rule 55.

**PROCEDURE (CHILDREN IN NONPUBLIC SCHOOLS {continued})**

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.

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 to provide special education and related services (FAPE or equitable services) if:

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

### **PROCEDURE (CHILDREN IN NONPUBLIC SCHOOLS (continued))**

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 or 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.

### **USE OF SPECIAL EDUCATION FUNDS**

**PERSON(S) RESPONSIBLE:** Superintendent, Director of Special Education

**TIMELINE:** Ongoing

**MATERIALS:** Lease Form, list of equipment and supplies provided to nonpublic school

**METHODS:** The district will follow the procedure described in 92 NAC 51-015 when providing services to and using special education funds children attending nonpublic school.

## **POLICY**

### **PROCEDURAL SAFEGUARDS**

#### **34 CFR 501**

ELGIN PUBLIC SCHOOLS ENSURES THAT CHILDREN WITH DISABILITIES AND THEIR PARENTS ARE AFFORDED THE PROCEDURAL SAFEGUARDS REQUIRED IN 92 NAC 51-009.

#### **CONFIDENTIALITY**

#### **34 CFR 300.610 AND §§300.611 THROUGH 300.627**

ELGIN PUBLIC SCHOOLS COMPLIES WITH THE REQUIREMENTS CONTAINED IN 92 NAC 51-009 RELATING TO THE CONFIDENTIALITY OF RECORDS AND INFORMATION.

## **PROCEDURE**

### **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 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'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 007.06D.

## **PROCEDURE (PROCEDURAL SAFEGUARDS AND CONFIDENTIALITY {continued})**

### **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.

**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.

**PROCEDURE (PROCEDURAL SAFEGUARDS AND CONFIDENTIALITY {continued})**

**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.

**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.

## **PROCEDURE (PROCEDURAL SAFEGUARDS AND CONFIDENTIALITY (continued))**

**009.03I3** Any explanation placed in the records of the child must:

**009.03I3a** Be maintained by the participating agency as part of the records of the child as long as the record or contested portion is maintained by the participating agency; and

**009.03I3b** If the records of the child or the contested portion is disclosed by the participating agency to any party, the explanation must also be disclosed to the party.

**009.03J** Consent for Release of Records

**009.03J1** Parental consent must be obtained before personally identifiable information is disclosed to parties other than officials of participating agencies in accordance with 92 NAC 51-009.03H1 unless the information is contained in education records and the disclosure is authorized without parental consent under 34 CFR Part 99.

**009.03J2** Except as provided in 92 NAC 51-009.03J3 and 009.03J4, parental consent is not required before personally identifiable information is released to officials of participating agencies for purposes of meeting a requirement of this chapter.

**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

## **PROCEDURE (PROCEDURAL SAFEGUARDS AND CONFIDENTIALITY {continued})**

**009.03L1** The school district or approved cooperative shall cooperate in the Federal Secretary of Education's efforts under section 613(a)(9) of the Individuals with Disabilities Education Act of 2004 (See Appendix A) to ensure the linkage of records pertaining to migratory children with a disability for the purpose of electronically exchanging among the States, health and education information regarding such children.

### **009.03M Retention and Destruction of Information and Records**

**009.03M1** The school district or approved cooperative shall retain special education records for five (5) years after the completion of the activities for which special education funds were used.

**009.03M2** The school district or approved cooperative shall inform parents when personally identifiable information collected, maintained, or used is no longer needed to provide educational services to the child.

**009.03M3** The information which is no longer necessary to provide educational services to the child, must be destroyed at the request of the parents. However, a permanent record of a student's name, address, and phone number, his or her grades, attendance record, classes attended, grade level completed, and year completed may be maintained without time limitation.

## **PARENT PARTICIPATION/STUDENT RECORDS/CONFIDENTIALITY**

**PERSON(S) RESPONSIBLE:** Director of Special Education, Teaching Staff, Principal

**TIMELINE:** Ongoing

**MATERIALS:** Individuals with Disabilities Education Act (IDEA), Family Educational Rights and Privacy Act (FERPA), School Handbook, List of staff with access to personally identifiable student information

**METHODS:** The district will maintain all personally identifiable student information in conformance with FERPA and 92 NAC 51. If a parent requests a hearing to challenge the content of a student record, the Superintendent will identify a hearing officer and arrange for a hearing. All staff will receive annual training regarding the confidentiality requirements contained in FERPA, 92 NAC 51 and the district's policies and procedures.



## **PROCEDURE (PROCEDURAL SAFEGUARDS AND CONFIDENTIALITY {continued})**

### **009.04 Procedural Timelines**

**009.04A** For all children except for infants and toddlers, 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(i)** 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(ii)** 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.

**009.04B** For infants and toddlers each of the procedural steps necessary to provide early intervention services shall be carried out within the specific time periods.

**009.04B1** A referral must be made by the school district or approved cooperative to the agency responsible for providing services coordination in the Planning Region within two working days of the district becoming aware of an infant or toddler who may be eligible for services.

**009.04B2** Notice to parents (See 92 NAC 51-009.05) and parental consent shall be completed within a reasonable period of time.

**PROCEDURE (PROCEDURAL SAFEGUARDS AND CONFIDENTIALITY (continued))**

009.04B3 A multidisciplinary team evaluation must be completed within 45 calendar days from the date of referral. In the event of exceptional circumstances of the family that make it impossible to complete the evaluation within the 45 days, the school district or approved cooperative will document those circumstances, inform the parent of the time estimated by the district to complete the evaluation, and develop and implement an interim IFSP as necessary.

009.04B4 Upon completion of a multidisciplinary team verification decision, and within 45 days of the referral, school districts and approved cooperatives shall participate in an individualized family service plan (IFSP) conference.

009.04B5 Special education placement shall be completed within five school days of receipt of parental consent.

**TIMELINES**

**PERSON(S) RESPONSIBLE:** Director of Special Education, Principal, IEP Case Manager, Special Education Teacher, for infants and toddlers, if the family chooses Services Coordination, the family's services coordinator.

**TIMELINE:** As specified in 92 NAC 51-009

**MATERIALS:** District Forms

**METHODS:** The district will follow the procedures specified in 92 NAC 51-009.02 when determining appropriate timelines.

## **PROCEDURE (PROCEDURAL SAFEGUARDS AND CONFIDENTIALITY {continued})**

### **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.

**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 district or approved cooperative proposes or refuses to take the action;

**009.05B3** A description of a 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 part.

**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

**PROCEDURE (PROCEDURAL SAFEGUARDS AND CONFIDENTIALITY {continued})**

009.05D3 That there is written evidence that the requirements of this section have been met.

**PRIOR WRITTEN NOTICE**

**PERSON(S) RESPONSIBLE:** Director of Special Education, Principal, IEP/IFSP Case Manager, Special Education Teacher, Early Development Network Services Coordinator

**TIMELINE:** Notice will be provided 10 days prior to taking the proposed action

**MATERIALS:** Written Notice Forms for Evaluation, Placement, Reevaluation, Termination

**METHODS:** The IEP/IFSP Case Manager is responsible for collecting information and drafting the Prior Written Notice to be sent to parents. Prior Written Notice will be sent prior to proposing or refusing any action with regard to special education.

## **PROCEDURE (PROCEDURAL SAFEGUARDS AND CONFIDENTIALITY {continued})**

### **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 parent; and

**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 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;

**PROCEDURE (PROCEDURAL SAFEGUARDS AND CONFIDENTIALITY {continued})**

009.06B10 Due process hearings, including requirements for disclosure of evaluation results and recommendations;

009.06B11 Civil actions, including the time period in which to file such actions; and

009.06B12 Attorney's fees.

009.06C The notice of the procedural safeguards provided to the parent must be written in language understandable to the general public and provided in the native language of the parent as required by 92 NAC 51-009.05C and 009.05D.

009.06D The school district or approved cooperative may place a current copy of the procedural safeguards notice on its Internet website if such website exists.

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 makes such option available.

**PROCEDURAL SAFEGUARDS**

**PERSON(S) RESPONSIBLE:** Special Education Director, IEP Case Manager, Early Development Network Services Coordinator

**TIMELINE:** A copy of the procedural safeguards will be provided prior to initial referral for evaluation, upon parental request, or upon filing a due process appeal.

**MATERIALS:** Parent Rights Pamphlet, which may be downloaded at  
<http://www.nde.state.ne.us/SPED/parent/parenthp.html>

**METHODS:** A copy of the Parent Rights Pamphlet will be provided; or a copy of the procedural safeguards is on the district website.

## **PROCEDURE (PROCEDURAL SAFEGUARDS AND CONFIDENTIALITY (continued))**

### **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 51-003.10 must obtain informed consent, consistent with 92 NAC 51-003.11, 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.

#### **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.

## **PROCEDURE (PROCEDURAL SAFEGUARDS AND CONFIDENTIALITY {continued})**

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 or refuses to consent to services under 92 NAC 51-009.08B1, the school district or approved cooperative may not use the procedures in 92 NAC 51-009 (including the mediation procedures or the due process procedure) in order to obtain agreement or a ruling that the services may be provided to the child.

009.08B4 If the parent of the child refuses to consent to the initial provision of special education and related services, or the parent fails to respond to a request to provide consent for the initial provision of special education and related services, the school district or approved cooperative:

009.08B4a Will not be considered to be in violation of the requirement to make available FAPE to the child for the failure to provide the child with special education and related services for which the school district or approved cooperative requests consent; and

009.08B4b Is not required to convene an IEP Team meeting or develop an IEP under 92 NAC 51-007 for the child for the special education and related services for which the school district or approved cooperative request such consent.

### 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 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



## **PROCEDURE (PROCEDURAL SAFEGUARDS AND CONFIDENTIALITY (continued))**

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 to deny the parent or child any other service, benefit, or activity of the school district or approved cooperative, except as required by the Rule.

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.

009.08D5 For infants and toddlers, if consent is not given, the school district or approved cooperative shall make reasonable efforts to ensure that the parents:

009.08D5a Are fully aware of the nature of the evaluation or the services that will be available; and

009.08D5b Understand that the child will not be able to receive the evaluation or services unless consent is given.

009.09 The parents of an infant or toddler may determine that they, their child, or other family members will accept or decline any early intervention service, and may decline such a service after first accepting it, without jeopardizing other early intervention services.

## **CONSENT/PARENT REVOCATION OF CONSENT**

**PERSON(S) RESPONSIBLE:** IEP Case Manager, Special Education Director; for infants and toddlers Early Development Network Services Coordinator

**TIMELINE:** Written parental consent will be obtained prior to conducting an evaluation, reevaluation, or placement of a child in special education.

Written revocation of consent for special education and related services will be obtained from parent if parent requests their child no longer receive services.

**MATERIALS:** Parent Consent Forms

**METHODS:** The school district will provide parents with a notice explaining the action to be taken and a request for written parent consent. If the parent does not give consent, the district may pursue mediation and for an initial evaluation, file for a due process hearing.

If the parent does not consent to services, the school district will not use complaint, mediation, or due process to obtain agreement or a ruling that services be provide to the child.

If the parent does not consent to provision of services, the district is not required to convene an IEP Team meeting or develop an IEP.

If the parent revokes consent for special education and related services, the district will provide parents with written notice regarding the changes in educational placement and services. The notice will include information on sources for the parents to contact that can assist the parents in understanding the requirements of Part B of IDEA. Services will be provided to the child until the school district receives written notice from the parent stating they (the parent) is revoking consent for services.

**PROCEDURE (PROCEDURAL SAFEGUARDS AND CONFIDENTIALITY {continued})**

**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

**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.

## **PROCEDURE (PROCEDURAL SAFEGUARDS AND CONFIDENTIALITY {continued})**

009.10D3a For infants and toddlers, a person assigned as a surrogate parent may not be an employee of any State agency; or a person, or an employee of a person, providing early intervention services to the child or to a family member of the child. A person who otherwise qualifies to be a surrogate parent under this Subsection is not an employee solely because he or she is paid by a public agency to serve as a surrogate parent.

009.10D3b 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.

009.10E3 For infants and toddlers, a surrogate parent may represent a child in all matters related to:

009.10E3a The evaluation and assessment of the child;

009.10E3b Development and implementation of the child's IFSP including annual evaluations and periodic review;

009.10E3c The ongoing provision of early intervention services to the child; and

009.10E3d Any other rights established under this Chapter.

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 51-009.08A;

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.

## **SURROGATE PARENTS**

**PERSON(S) RESPONSIBLE:** Director of Special Education, Principal, IEP Case Manager, Surrogate Parent(s) (NOTE: Personnel from the Department of Health and Human Services may not serve as a surrogate parent(s) under the Special Education Act.) In the case of a State ward, the judge overseeing the child's case may appoint the surrogate parent.

**TIMELINE:** Within 30 days of identification of need to appoint a surrogate/surrogate parent. Appointments shall last one (1) year. The appointment may be renewed.

**MATERIALS:** Request to Director of Special Education for the appointment of a Surrogate, Surrogate Training, Agreements and Training Materials, Rule 51 and 55, Policies and Procedures, other materials as required

**METHODS:** If the district identifies students who may be in need of a surrogate parent, the district will:

1. Attempt to identify and locate the parent;
2. Investigate the legal status of those student(s); and
3. If after a reasonable effort, the parents cannot be located, the school district shall ensure that the rights of students with disabilities are protected by appointing a surrogate.
4. Surrogates will be provided sufficient training to assure they are knowledgeable as to the legal rights and educational needs of the student they are to represent. Training will be conducted as needed.
5. Surrogates will be appointed by the director of special education following documentation that no conflict of interest exists and completion of appropriate training or assurance that the surrogate is knowledgeable in order to represent the student.
6. Surrogates will be monitored on a regular basis to ensure effective performance. Should a surrogate be unable or unwilling to discharge his or her duties, a new surrogate will be appointed by the director.
7. The surrogate parent shall continue to represent the student until one of the following occurs:
  - a. The student is determined to no longer be eligible for, or in need of, special education or related services except when termination from such programs is being contested;
  - b. The parent, who was previously unknown, or whose whereabouts were previously unknown or a guardian or person acting as the student's parents becomes known; and/or,
  - c. It is determined that the appointed surrogate parent no longer adequately represents the student.
  - d. The surrogate parent's term has expired.

## **PROCEDURE (PROCEDURAL SAFEGUARDS AND CONFIDENTIALITY {continued})**

### **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 school district or approved cooperative has violated a requirement of 92 NAC 51:

**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;

**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. 1143a(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, Special Populations Office.

**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 Special Education Office 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.

**PROCEDURE (PROCEDURAL SAFEGUARDS AND CONFIDENTIALITY (continued))**

009.11C2 Special Education Office 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 Special Education Office 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 these rules 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.

009.11C4 Within sixty (60) calendar days of receipt of a signed written complaint, the Department of Education Special Education Office 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.

## **PROCEDURE (PROCEDURAL SAFEGUARDS AND CONFIDENTIALITY (continued))**

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 Special Education Office 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 this 92 NAC 51-009.11 that has previously been decided in a due process hearing involving the same parties:

009.11C9(a) The hearing decision is binding; and

009.11C9(b) 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.

## **COMPLAINT PROCEDURES**

**PERSON(S) RESPONSIBLE:** Director of Special Education, Superintendent

**TIMELINE:** The district will observe all timelines in 92 NAC 51-009.11

**MATERIALS:** Copy of letter of complaint, support documentation, district policies and procedures and letter of response to NDE

**METHODS:** The Director of Special Education will serve as the liaison between the school district and the NDE complaint investigator throughout the complaint process. The Special Education Director will facilitate site and file reviews. The Special Education Director will be responsible for the implementation of any corrective action plan designed to bring the district into compliance.



**PROCEDURE (PROCEDURAL SAFEGUARDS AND CONFIDENTIALITY (continued))**

**009.12 Mediation**

**009.12A** School districts or approved cooperative shall implement the procedures established in Section 009 to allow parties to resolve disputes involving any matter described in 92 NAC 51-009.05A1 and 009.05A2 including matters arising prior to the filing of a due process hearing petition through a mediation process which, at a minimum, shall be available whenever a hearing is requested under 92 NAC 55.

**009.12A1** The procedures for seeking mediation initiated by either the parent(s) or school district or approved cooperative include:

**009.12A1a** Contacting the Nebraska Office of Dispute Resolution who will

**009.12A1b** Arrange a meeting, invite both parties and conduct the mediation in an attempt to resolve the dispute.

**009.12B** The procedures shall ensure that the mediation process:

**009.12B1** Is voluntary on the part of the parties;

**009.12B2** Is not used to deny or delay a parent's right to a due process hearing under 92 NAC 55, or to deny any other rights afforded under this Chapter; and

**009.12B3** Is conducted by a qualified and impartial mediator who is trained in effective mediation techniques.

**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, and 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 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.

## **PROCEDURE (PROCEDURAL SAFEGUARDS AND CONFIDENTIALITY (continued))**

**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.

**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.

## **MEDIATION**

**PERSON(S) RESPONSIBLE:** Special Education Director, Superintendent, Staff

**TIMELINE:** Ongoing

**MATERIALS:** Parent Rights Pamphlet, Mediation Brochure Information. These materials are available at: <http://www.nde.state.ne.us/SPED/mediation/index.html>

**METHODS:** Either the parent or the school district may initiate mediation to resolve special education disputes by making contact with the Nebraska Office of Dispute Resolution (402) 471-2766. The Office of Dispute Resolution will arrange for all meetings related to the mediation process. Mediation is voluntary on the parts of the parent and the school district.

## **PROCEDURE (PROCEDURAL SAFEGUARDS AND CONFIDENTIALITY (continued))**

### **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.

**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 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.

## **PROCEDURE (PROCEDURAL SAFEGUARDS AND CONFIDENTIALITY (continued))**

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:

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 Section 009.13 of this Chapter.

### **PROCEDURE (PROCEDURAL SAFEGUARDS AND CONFIDENTIALITY {continued})**

- 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.

### **RESOLUTION PROCESS AND DUE PROCESS HEARINGS**

**PERSON(S) RESPONSIBLE:** Director of Special Education, Superintendent, School District Attorney;  
Resolution Process: Special Education and Superintendent.

**TIMELINE:** Follow timelines specified in 92 NAC 55 for due process; Resolution Process Timelines in Rule 51

**MATERIALS:** 92 NAC 55, all documentation regarding dispute and district's action

**METHODS:** A due process hearing is initiated by filing a petition with the Nebraska Department of Education. The content of the petition and the procedures to be followed are specified in 92 NAC 55.

Before a due process hearing, the district must convene a meeting with the parents and relevant IEP/IFSP team members pursuant to 92 NAC 51-009.14.

A resolution meeting will not be held if the parent and school district agree in writing to waive the meeting, or if they agree to use the mediation process.

## **POLICY**

### **TRANSPORTATION**

**34 CFR 300.34(c)(1b); 34 CFR 300.107; 34 CFR 300.8(c)(12)**

**ELGIN SCHOOL DISTRICT ENSURES THAT TRANSPORTATION WILL BE PROVIDED TO ANY SPECIAL EDUCATION STUDENT WHO QUALIFIES FOR SPECIAL EDUCATION TRANSPORTATION UNDER NEB. REV. STAT. 79-1129.**

### **PROCEDURE**

#### **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

## **PROCEDURE (TRANSPORTATION {continued})**

**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

**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 91and 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:

**PROCEDURE (TRANSPORTATION {continued})**

- 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.
- 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 or IFSP 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 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.
- 014.03D 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 drives and necessary aides;
- 014.03E2 Vehicle operational supplies
- 014.03E3 Vehicle repairs and maintenance
- 014.03E4 Vehicle least 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 of these rules;
- 014.03E8 Those expenses attributable to an alteration of routes;



## **PROCEDURE (TRANSPORTATION {continued})**

- 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.
- 014.03F** If income is derived from transportation services 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 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 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 Department of Education.
- 014.03J** Undocumented expenses or mileage will not be allowed.

## **TRANSPORTATION**

**PERSON(S) RESPONSIBLE:** Director of Special Education, IEP Case Manager, Transportation Supervisor

**TIMELINE:** Ongoing

**MATERIALS:** IEP/IFSP Form, route schedules, Parent Procedures-Reimbursement Claim Forms, Rules for Safe Transportation of Students

**METHODS:** The student will be transported by district vehicle, or if district vehicle service is not available, the school district will contract with a licensed common carrier for transportation services. If the parent provides transportation as included on the student's IEP/IFSP, the district will reimburse parents at the rate approved by the Nebraska Department of Education for actual miles traveled from place of residence to school of attendance and return by the most direct route. Transportation eligibility will be determined by the student's IEP Team. The plan for transportation for the student shall be part of the IEP/IFSP.

## **POLICY**

### **PERSONNEL STANDARDS**

#### **34 CFR 300.156**

**ELGIN PUBLIC SCHOOLS ENSURES THAT ALL PERSONNEL ARE APPROPRIATELY AND ADEQUATELY PREPARED SUBJECT TO IDEA REQUIREMENTS AND ELGIN PUBLIC SCHOOLS WILL TAKE MEASURABLE STEPS TO RECRUIT, HIRE, TRAIN AND RETAIN PERSONNEL MEETING THE REQUIREMENTS OF IDEA TO PROVIDE SPECIAL EDUCATION AND RELATED SERVICES TO CHILDREN WITH DISABILITIES.**

### **PROCEDURE**

#### **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 51-003.69.

**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.

**010.01D** Approvable endorsements for program approval and reimbursement shall include those in 92 NAC 51.010D1 through 51.01D20

**010.02** 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, 010.01D16 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.

#### **010.03 Related Services Personnel and Paraprofessionals**

**010.03A** 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.

**PROCEDURE (PERSONNEL STANDARDS {continued})**

**010.03B** 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.

**010.03C** 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.

**010.03D** A paraprofessional shall not teach, as defined in Neb. Rev. Stat. 79-101.12.

**010.04** 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.

**010.05** 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.

**010.06** Educational Interpreters

**010.06A** In order to be a qualified educational sign language interpreter for the purpose of 92 NAC 51-010.06, an individual must attain and maintain one or more of the following competency levels as measured by the following assessments:

**010.06A1** Educational Interpreter Performance Assessment (EIPA), Competency level 3.5 or above

**010.06A2** Registry of Interpreters of the Deaf Certifications (RID)

**010.06A3** National Association of the Deaf (NAD) Competency level 4.0 or above

**010.06A4** National Interpreter Certification (NIC)

**010.06A5** American Consortium of Certified Interpreters (ACCI) exam Competency level 4.0

**010.06A6** Quality Assurance Screening Test (QAST) Competency level 4.0

**010.06B** Subject to the exceptions in 92 NAC 51-010.06C, 010.06D and 010.06F, school districts and approved cooperatives shall ensure that all sign language interpreters employed by such 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.

## **PROCEDURE (PERSONNEL STANDARDS {continued})**

**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 2.5 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 be approved by the school district or approved cooperative. The school district or approved cooperative must require that the interpreter attain one 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 district or approved cooperative must reopen the position and seek a qualified educational sign language interpreter.

**010.06F** A school district or approved cooperative may re-employ an interpreter previously employed pursuant to the provisions of 92 NAC 51-010.06D for additional two year periods only if the district or approved cooperative requests and receives from the Commissioner or his or her designee a waiver of the employment-period in those Subsections. The request for a waiver of employment-period limits shall contain documentation of efforts to find a qualified educational sign language interpreter, documentation of the interpreter's progress on the professional development plan and an assurance that the previously employed interpreter is the best applicant for the position. Following receipt of the request for waiver, documentation and assurance, the Commissioner or his or her designee shall grant or deny the waiver based on the adequacy of the documentation and assurances. If the waiver is granted, the school district or approved cooperative may re-employ the interpreter for an additional one year period subject to the applicable requirements for gaining competency in 92 NAC 51-010.06D. Waivers must be requested annually.

**010.06G** School districts or approved cooperatives shall require that all sign language interpreters employed by the districts or approved cooperatives to deliver special education services submit evidence to the district or approved cooperative of having obtained 20 clock hours of educationally related professional development every two years.

**010.06H** If a sign language interpreter cannot provide the evidence required in 92 NAC 51-010.06G of the continuing education and work experience, 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 nothing in this part, 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 meet IDEA 2004 criteria or to prevent a parent from filing a complaint about staff qualification pursuant to Section 009 of this Rule.

## **PERSONNEL STANDARDS/HIGHLY QUALIFIED (IDEA 2004)**

**PERSON(S) RESPONSIBLE:** The Superintendent, Principal, or Designee will advertise, interview, hire and retain appropriate professional staff.

**TIMELINE:** As soon as a position requiring special education and/or related services endorsement is approved by the Board of Education, advertisements in local and regional papers, college publications and other avenues will be completed and documented.

**MATERIALS:** Ads listing the positions and requirements, applicant files requiring completed application form, transcripts, credentials, required state background checks

**METHODS:** After a position is posted and advertised, candidates for interviews are selected by the Superintendent, Principal or Designee. Candidates are selected on the basis of having a completed applicant file, appropriate qualifications and credentials for the position.

### **Excerpts from the Individuals with Disabilities Act of 2004 (IDEA 2004)**

602(10) HIGHLY QUALIFIED. –

- (A) In GENERAL – For any special education teacher, has the meaning given the term “highly 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

**Excerpts from the Individuals with Disabilities Act of 2004 (IDEA 2004) (continued)**

- (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.
- (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 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.

## **POLICY**

### **PERFORMANCE GOALS AND INDICATORS**

#### **34 CFR 300.157**

ELGIN PUBLIC SCHOOLS WILL USE PERFORMANCE GOALS AND INDICATORS ESTABLISHED BY THE STATE TO ASSESS PROGRESS TOWARD ACHIEVING THOSE GOALS THAT ARE CONSISTENT TO THE EXTENT APPROPRIATE WITH ANY OTHER GOALS AND ACADEMIC STANDARDS FOR CHILDREN.

ELGIN PUBLIC SCHOOLS WILL PROVIDE THE NEBRASKA DEPARTMENT OF EDUCATION WITH INFORMATION NECESSARY TO ENABLE THE STATE TO ASSESS PROGRESS TOWARD ACHIEVING THE GOALS ESTABLISHED BY THE STATE.

### **PROCEDURE**

004.14 F 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.

The school district will use performance indicators established by the state:

1. to assess progress of children with disabilities in Nebraska in achieving goals;
2. that ensure free appropriate public education (FAPE) designed to meet their unique needs and prepare them for employment and adult living;
3. that ensure that the rights of children with disabilities and their parents are protected; and
4. that ensure educators and parents have the necessary tools to improve educational results for children with disabilities and to ensure the effectiveness of efforts to educate children with disabilities.

The district ensures that the goals are consistent, to the maximum extent appropriate, with other goals and standards for children established by the state.

The state assesses progress toward achieving those goals that address the performance of children with disabilities on assessment, and on drop-out rates and graduation rates. The district will report to the Nebraska Department of Education on the progress of children with disabilities toward these goals, and on assessment, drop-out rates and graduation rates.

### **PROCEDURE**

**PERSON(S) RESPONSIBLE:** Superintendent, Principal, or Designee

**TIMELINE:** Annually as requested by NDE

**MATERIALS:** Performance Goals and Indicators, Measurement Data

**METHODS:** The district will follow the procedures outlined above in carrying out the provisions of Performance Goals and Indicators.

## **POLICY**

### **SUSPENSION AND EXPULSION REPORTING**

#### **34 CFR 300.170**

ELGIN PUBLIC SCHOOLS WILL REPORT DATA TO THE NEBRASKA DEPARTMENT OF EDUCATION TO DETERMINE IF SIGNIFICANT DISCREPANCIES ARE OCCURRING IN THE RATE OF LONG-TERM SUSPENSION AND EXPULSIONS OF CHILDREN WITH DISABILITIES.

### **PROCEDURE**

004.06A10 The incidence and duration of disciplinary actions by race, ethnicity, limited English proficiency status, gender, and disability category, of children with disabilities, including suspensions of one day or more.

004.06A11 The number and percentage of children with disabilities who are removed to alternative educational settings or expelled as compared to children without disabilities who are removed to alternative educational settings or expelled.

**PERSON(S) RESPONSIBLE:** Superintendent, Principal, or Designee

**TIMELINE:** Annually as requested by NDE

**MATERIALS:** NDE Suspension and Expulsion Rate Forms

**METHODS:** The district shall submit electronically via the NDE website to the state the number of suspensions and expulsions of children with disabilities. If significant discrepancies are occurring, the district will review and revise its policies, procedures and practices relating to the development and implementation of IEPs, the use of behavioral interventions, and procedural safeguards, to ensure that these policies, procedures, and practices comply with IDEA.

The district will maintain the data regarding suspensions and expulsions of children with disabilities as required by the state report. Data will include number of children listed by disability and race/ethnicity, subject to unilateral removal by school personnel following a drug or weapon offense, number of children subject to removal based on a hearing officer determination regarding likely injury, number of children subject to suspension/expulsion greater than 10 days or multiple short-term suspensions adding up to greater than 10 days.