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| **Special Education and Related Services** **Title 92, Chapter 51** |
| **Summary**These statutes pertain to Nebraska’s special education and related services, which must be consistent with the federal special education regulations. In keeping with the federal law, the Nebraska statutes outline eligibility for special education and related services; how educational services are determined and delivered; due process; transition services; and identification of students with disabilities.  |
| **Responsible State Department**While special education and related services are the responsibility of local school districts, the Nebraska Department of Education, Office of Special Education is responsible for submitting the state plan and reporting requirements necessary to receive federal funds from the U.S. Department of Education; administers federal and state funds; monitors special education programs for students with disabilities age 2-21, in all public schools; approves service providers to serve students enrolled in public schools; conducts child complaint investigations; and coordinates, analyzes and reports special education data to help districts and the state meet reporting requirements and improve decision-making. |
| **Federal Legislation**On November 29, 1975, President Gerald Ford signed into law the Education for All Handicapped Children Act (Public Law 94-142) to ensure that children with disabilities have the opportunity to receive a free appropriate public education, referred to as FAPE, just like other children, in the least restrictive environment. In 1990, the law changed the title to the Individuals with Disabilities Education Act (IDEA), and added traumatic brain injury (TBI) and autism to the categories of disability eligible for special education and related services. Part C refers to educational services to infants and toddlers, ages birth through age 2, which initially was known as Part H (1986) and changed to Part C in 1997. Part B addresses children ages 3 to 21 years of age.IDEA 2004 added Child Find to ensure that all children with disabilities receive a free appropriate public education, including special education and related services that are "designed to meet their unique needs and prepare them for further education, employment and independent living …" Schools are required to locate, identify and evaluate all children with disabilities from birth through age 21.State statutes and regulations may provide more rights than federal law, but may not take away rights provided by federal law. |
| **How Do the State Statutes Apply to People with Brain Injury**Includes TBI in the listing of disabilities considered as a child with a disability (003.08); defines Traumatic Brain Injury with regard to eligibility (006.04M). |
| **Pertinent Sections**Section 003 defines terms, such as assistive technology device and service (.02 and .03); child find (.07); child with a disability (.08); free and appropriate public education (FAPE) (.24); individualized education program (IEP) (.31); related services (.49); and transition services (.63); and Section 006.04M, which defines a traumatic brain injury. |
| **Web Page Link:**https://cdn.education.ne.gov/wp-content/uploads/2017/10/Rule51\_2017.pdf |
| **Relevant Organizations/Partners:**Nebraska Parent Training and Information that provides training, information and support to Nebraska parents and others who have an interest in children from birth through twenty-six with disabilities and special health care needs; Disability Rights Nebraska (Protection & Advocacy). |

**Title 92 – Department of Education**

**Section 003. Definition of Terms. (selected definitions)**

**Section 003.02.** **Assistive technology device**means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve functional capabilities of a child with a disability. The term does not include a medical device that is surgically implanted, or the replacement of such device.

**Section 003.03.** **Assistive technology service**means any service that directly assists a child with a disability in the selection, acquisition, or use of an assistive technology device. The term includes the evaluation of the needs of a child with a disability, including a functional evaluation of the child in the child's customary environment; purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by children with a disability; selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing or replacing of assistive technology devices; coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs; training or technical assistance for a child with a disability, or if appropriate, that child's family; and training or technical assistance for professionals (including individuals providing education or rehabilitation services), employers, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of the child with a disability.

**Section 003.07.** **Child find**means that all children with disabilities residing in the State, including children with disabilities who are homeless children, or are wards of the State and children with disabilities attending nonpublic schools, regardless of the severity of their disability, and who are in need of special education and related services, are identified, located, and evaluated; and a practical method is developed and implemented to determine which children are currently receiving needed special education and related services (See Section 006).

**Section 003.08.** **Child with a disability**means a child who has been verified pursuant to Section 006 as a child with autism, a behavior disorder (herein referred to as emotional disturbance), deaf-blindness, a developmental delay, a hearing impairment including deafness, an intellectual disability, multiple impairment, an orthopedic impairment, an other health impairment, a specific learning disability, a speech-language impairment, a traumatic brain injury or a visual impairment including blindness, who because of this impairment needs special education and related services. If, under 92 NAC 51-003.56, it is determined, through an appropriate evaluation under Section 006, that a child has one of the disabilities identified above, but only needs a related service and not special education, the child is not a child with a disability under this Chapter. If the related service required by the child is considered special education rather than a related service, the child would be determined to be a child with a disability.

**Section 003.24. Free appropriate public education or FAPE**means special education and related services that are provided at public expense, under public supervision, and direction, and without charge; meet the standards of the state including the requirements of this Chapter; include an appropriate preschool, elementary school, or secondary school education in Nebraska and are provided in conformity with an individualized education program (IEP) that meets the requirements of 92 NAC 51-007.

**Section 003.26.** **Functional behavioral assessment** means the process of gathering information that may be used to maximize the effectiveness and efficiency of behavior support (direct observation must be included). It involves a description of the problem behavior, the identification of antecedents which occasion the behavior and consequences which maintain it, the function the behavior serves (e.g., attention, communication, task avoidance), and the selection of alternative behaviors which will provide the same function.

**Section 003.30.** **Independent educational evaluation**means an evaluation conducted by a qualified examiner who is not employed by the school district or approved cooperative responsible for the education of the child in question.

**Section 003.31. Individualized education program (IEP)** means a written statement for a child with a verified disability that is developed, reviewed and revised in a meeting in accordance with Section 007 which specifies the special education and related services necessary to assure the child a free appropriate public education.

**Section 003.32.** **Individualized education program team or IEP team** means a group of individuals described in Section 007 that is responsible for developing, reviewing, or revising an IEP for a child with a disability.

**Section 003.33.** **Individualized Family Service Plan (IFSP)** means a written plan for providing early intervention services to a child with a disability age birth through the school year in which the child reaches age 3 and the child's family that is developed and implemented in accordance with 92 NAC 52.

**Section 003.34. Level I Special Education Services**means those services provided to children who require an aggregate of not more than three (3) hours of such services per week. Level I special education services may be provided for or contracted for and shall include all administrative, diagnostic, consultative, vocational adjustment counselor services and support services. Administration, diagnostic services, and special education staff consultation with other staff shall not be included in the computation of hours of services provided to a child each week.

**Section 003.35.** **Level I and Level II Combination Special Education Services**means those special education programs which serve both Level I and Level II students in a combined program.

**Section 003.36 Level II Special Education Services** means those special education and related services which are provided for a period of time exceeding an aggregate of three hours per week.

**Section 003.37. Level III Special Education Contractual Services** means those special education and related services provided in an educational setting not operated by the school district or approved cooperative whose rates are approved by the Nebraska Department of Education. This shall mean special education and related services provided for a period of time exceeding an aggregate of three hours per week.

**Section 003.38. Life support equipment** means equipment used to maintain or sustain life functions.

**Section 003.49.** **Related services** means transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education, and includes speech-language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, early identification and assessment of disabilities in children, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services for diagnostic or evaluation purposes. Related services also include school health services and school nurse services, social work services in schools, and parent counseling and training. Related services do not include a medical device that is surgically implanted (including cochlear implants), the optimization of that device’s functioning (e.g., mapping), maintenance of that device, or the replacement of that device. This definition does not limit the right of a child with a surgically planted device (e.g., cochlear implant) to receive related services as listed in this definition that are determined by the IEP team to be necessary for the child to receive FAPE or limits the responsibility of a school district to appropriately monitor and maintain medical devices that are needed to maintain the health and safety of the child, including breathing, nutrition, or operation of other bodily functions, while the child is transported to and from school or is at school; or prevents the routine checking of an external component of a surgically implanted device to make sure it is functioning properly.

**Section 003.51. School age programs** means special education programs and related services designed to serve children with verified disabilities from age five through the school year in which the children reach age twenty-one. Children who have reached their fifth birthday prior to July 31 shall be considered school age.

**Section 003.55.** **Service provide*r*** means an individual or service agency, excluding a school district or approved cooperative, provisionally approved by the Nebraska Department of Education.

**Section 003.56. Special educatio*n*** means specially designed instruction, at no cost to the parent, to meet the unique needs of a child with a verified disability, including classroom instruction, home instruction, instruction in hospitals and institutions and in other settings and instruction in physical education. The term includes travel training, vocational education, speech-language pathology, occupational therapy and physical therapy if the service consists of specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability.

**Section 003.56A.** **Physical Education**means the development of physical and motor fitness; fundamental motor skills and patterns; and skills in aquatics, dance and individual and group games and sports (including intramural and lifetime sports); and includes special physical education, adapted physical education, movement education and motor development.

**Section 003.56B. Vocational Education**means organized educational programs that are directly related to the preparation of individuals for paid or unpaid employment, or for additional preparation for a career not requiring a baccalaureate or advanced degree.

**Section 003.57.** **Specially designed instruction**means adapting as appropriate to the needs of an eligible child under this Chapter the content, methodology, or delivery of instruction to address the unique needs of the child that result from the child’s disability and to ensure access to the general curriculum so that the child can meet the educational standards within the jurisdiction of the public school district or approved cooperative that apply to all children.

**Section 003.58.** **Student assistance team (SAT)** means a group of persons utilizing problem solving and intervention strategies to assist the teacher(s) in the provision of general education.

**Section 003.59. Supplementary aids and services** means, aids, services, and other supports that are provided in regular education classes or other education-related settings and in extracurricular and non-academic settings to enable children with disabilities to be educated with nondisabled children to the maximum extent appropriate in accordance with Section 008 of this Chapter.

**Section 003.60.** **Support services** means preventative services for students not identified or verified as having a disability as per Section 006 but who demonstrate a need for specially designed assistance in order to benefit from the school's general education curriculum and to avoid the need for potentially expensive special education placement and services.

**Section 003.63. Transition services** means a coordinated set of activities for a child with a disability that is designed to be within a results-oriented process that is focused on improving the academic and functional achievement of the child with a disability to facilitate the child’s movement from school to post-school activities, including post-secondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation; is based upon the individual child’s needs, taking into account the child’s strengths, preferences, and interests; and includes instruction, related services, community experiences, the development of employment and other post-school adult living objectives, and, when appropriate, acquisition of daily living skills and a functional vocational evaluation. Transition services for children with disabilities may be special education, if provided as specially designed instruction, or related services, if required to assist a child with a disability to benefit from special education.

**Section 004. Responsibility for Special Education Programs**

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

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

**Section 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.

**Section 004.06** **Reporting of Information Regarding Children with Disabilities**

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

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

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

**004.06A3** Program and instructional setting attended;

**004.06A4** Type(s) of disability;

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

**004.06A6** Type(s) of service received;

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

**004.06A8** Date and reason for exiting special education;

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

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

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

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

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

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

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

**005.01A** Gaps and barriers in service delivery;

**005.01B** Child Find;

**005.01C** Training and technical assistance;

**005.01D** Parent involvement; and

**005.01E** Resources.

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

**Section 006.01 Child Find**

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

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

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

**Section 006.02. General Evaluation Requirements**

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

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

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

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

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

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

**006.02C Verification criteria and procedures:**

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

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

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

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

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

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

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

**006.02C5a. Whether the child is a child with a disability under 92 NAC 51-003.08; and**

**006.02C5b. The content of the child's IEP.**

**006.02C6** School districts and approved cooperatives must ensure any standardized tests that are given to a child:

**006.02C6a** Have been validated for the specific purpose for which they are used; and

**006.02C6b** Are administered by trained and knowledgeable personnel in accordance with any instructions provided by the producer of the assessments.

**006.02C6b(i)** If an assessment is not conducted under standard conditions, a description of the extent to which it varied from standard conditions (e.g., the qualifications of the person administering the test, or the method of the test administration) must be included in the evaluation report.

**006.02C7** School districts and approved cooperatives must ensure tests and other evaluation materials include those tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient.

**006.02C8** School districts and approved cooperatives must ensure tests are selected and administered so as best to ensure that if a test is administered to a child with impaired sensory, manual, or speaking skills, the test results accurately reflect the child's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the child's impaired sensory, manual, or speaking skills (unless those skills are the factors that the test purports to measure).

**006.02C9** School districts and approved cooperatives must ensure no single measure or assessment is used as the sole criterion for determining whether a child is a child with a disability and for determining an appropriate educational program for the child.

**006.02C10** School districts and approved cooperatives must ensure the child is assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities.

**006.02C11** School districts and approved cooperatives must ensure in evaluating each child with a disability under Section 006, the evaluation is sufficiently comprehensive to identify all of the child's special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified.

**006.02C12** The school district or approved cooperative must use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.

**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.

**Section 006.03. Multidisciplinary Evaluation Team (MDT) Requirements**

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

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

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

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

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

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

**006.03E2** The report shall include a statement of:

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

**006.03E2b** The child’s educational needs;

**006.03E2c** The basis for making the determination; and

**006.03E2d** A listing of the team members.

**006.03E3** Each team member shall certify in writing if the report reflects his or her conclusion. If it does not reflect his or her conclusions, the team member shall submit a separate statement presenting his or her conclusion.

**006.03E4** A copy of the evaluation report and the documentation of determination of eligibility shall be given to the parent at no cost.

**Section 006.03F. Multidisciplinary Evaluation Team Written Report for a Child with a Suspected Specific Learning Disability**

**006.03F1** The MDT shall prepare a written report of the results of the evaluation.

**006.03F2** The report shall include a statement of:

**006.03F2a** Whether the child has a specific learning disability based on the criteria and definition contained in 92 NAC 51-006.04K.

**006.03F2b** The child’s educational needs;

**006.03F2c** The basis for making the determination including an assurance that the determination was made in accordance with 92 NAC 51-006.02C14;

**006.03F2d** The relevant behavior if any, noted during the observation of the child and the relationship of that behavior to the child’s academic functioning;

**006.03F2e** The educationally relevant medical findings, if any;

**006.03F2f** Whether the child does not achieve adequately for the child’s age or to meet state-approved grade level standards consistent with 92 NAC 51-006.04K3a and the child does not make sufficient progress to meet age or state approved grade level standards consistent with 92 NAC 51-006.04K3b; or whether the child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, state approved grade level standards or intellectual development consistent with 92 NAC 51-006.04K3b(1);

**006.03F2g** The determination of the team concerning the effects of a visual, hearing, or motor disability; intellectual disability; emotional disturbance; cultural factors; environmental or economic disadvantage; or limited English proficiency on the child’s achievement level; and

**006.03F2h** If the child has participated in a process that assesses the child’s response to scientific, research-based intervention, then the instructional strategies used and the student-centered data collected; and the documentation that the child’s parents were notified about:

**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.

**Section 006.04. Eligibility for Special Education**

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

**Section 006.04B Autism**

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

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

**006.04B1b** Is generally evident before age three; and

**006.04B1c** That adversely affects the child’s educational performance.

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

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

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

**Section 006.04C.** **Deaf-Blindness**

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

**006.04C1a** Severe communication needs; and

**006.04C1b** Other developmental and educational needs.

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

**Section 006.04D.** **Developmental Delay**

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

**006.04D1a** Cognitive development,

**006.04D1b** Physical development,

**006.04D1c** Communication development,

**006.04D1d** Social or emotional development,

**006.04D1e** Adaptive behavior or skills development, or

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

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

**Section 006.04E Emotional Disturbance**

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

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

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

**006.04E1c** Inappropriate types of behavior or feelings under normal circumstances;

**006.04E1d** A general pervasive mood of unhappiness or depression; or

**006.04E1e** A tendency to develop physical symptoms or fears associated with personal or school problems.

**006.04E2** The term includes schizophrenia. The term does not apply to children with social maladjustments, unless it is determined that they have an emotional disturbance.

**Section 006.04F Hearing Impairment**

**006.04F1** To qualify for special education services in the category of Hearing Impairment, a child must have an impairment in hearing which:

**006.04F1a** Is so severe that the child is impaired in processing linguistic information through hearing with or without amplification, or

**006.04F1b** Is permanent or fluctuating, and

**006.04F1c** Adversely affects the child’s educational performance.

**006.04F2** This term combines the state definition of “deaf” contained in Neb. Rev. Stat. §79-1118.01(4), the state definition of “hard of hearing” in Neb. Rev. Stat. §79-1118.01(7), the federal definition of “deafness” in 34 CFR 300.8(c)(3), and the federal definition of “hearing impairment” in 34 CFR 300.8(c)(5).

**Section 006.04G Intellectual Disability**

**006.04G1** To qualify for special education services in the category of Intellectual Disability, the child must demonstrate:

**006.04G1a** Significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period, that adversely affects a child’s educational performance.

**Section 006.04H** **Multiple Impairments**

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

**006.04H2** This classification does not include children with deaf-blindness.

**Section 006.04I Orthopedic Impairment**

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

**006.04I2** The category includes children with impairments caused by:

**006.04I2a** Congenital anomaly,

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

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

**Section 006.04J Other Health Impairment**

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

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

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

**Section 006.04K Specific Learning Disability**

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

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

**006.04K2a** The child’s parents;

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

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

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

**006.04K2e** At least one person qualified to conduct initial individual diagnostic examinations of children, such as a school psychologist, speech language pathologist, or remedial reading teacher; and

**006.04K2f** A school district administrator, or a designated representative.

**006.04K3** The MDT may determine that a child has a specific learning disability if:

**006.04K3a** The child does not achieve adequately for the child’s age or to meet State-approved grade-level standards in one or more of the following areas, when provided with learning experiences and instruction appropriate for the child’s age or State-approved grade-level standards: oral expression, listening comprehension, written expression, basic reading skill, reading fluency skills, reading comprehension, mathematics calculation, mathematics problem solving.

**006.04K3b** The child does not make sufficient progress to meet age or State approved grade-level standards in one or more of the areas identified in 92 NAC 51-006.04K3a when using a process based on the child’s response to scientific, research-based intervention; or

**006.04K3b(1)** The child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, State-approved grade-level standards, or intellectual development, that is determined by the team to be relevant to the identification of a specific learning disability, using appropriate assessments consistent with 92 NAC 51-006.02.

**006.04K4** The team determines that its findings under 92 NAC 51-006.04K3a and 006.04K3b are not primarily the result of:

**006.04K4a** A visual, hearing, or motor disability;

**006.04K4b** Intellectual disability;

**006.04K4**c Emotional disturbance;

**006.04K4d** Cultural factors,

**006.04K4e** Environmental or economic disadvantage; or

**006.04K4f** Limited English proficiency.

**006.04K5** To ensure that underachievement in a child suspected of having a specific learning disability is not due to lack of appropriate instruction in reading or math, the group must consider, as part of the evaluation described in 92 NAC 51-006.02:

**006.04K5a** Data that demonstrate that prior to, or as a part of, the referral process, the child was provided appropriate instruction in regular education settings, delivered by qualified personnel; and

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

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

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

**006.04K6b** Whenever a child is referred for an evaluation.

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

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

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

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

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

**Section 006.04L** **Speech-Language Impairment**

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

**006.04L1a** A communication disorder such as:

**006.04L1a(1)** Stuttering;

**006.04L1a(2)** Impaired articulation;

**006.04L1a(3)** Language impairment; or

**006.04L1a(4)** A voice impairment.

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

**Section 006.04M Traumatic Brain Injury**

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

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

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

**006.04M1b(1)** Cognition;

**006.04M1b(2)** Language;

**006.04M1b(3)** Memory;

**006.04M1b(4)** Attention;

**006.04M1b(5)** Reasoning;

**006.04M1b(6)** Abstract thinking;

**006.04M1b(7)** Judgment;

**006.04M1b(8)** Problem solving;

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

**006.04M1b(10)** Psychosocial behavior;

**006.04M1b(11)** Physical functions;

**006.04M1b(12)** Information processing; and

**006.04M1b(13)** Speech.

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

**006.04N** Visual Impairment including Blindness

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

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

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

**Section 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, of the child warrant, a reevaluation; or

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

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

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

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

**Section 006.06 Review of Existing Evaluation Data**

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

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

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

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

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

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

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

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

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

**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.

**Section 006.07 Independent Educational Evaluation**

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

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

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

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

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

**006.07D1** Initiate a hearing under 92 NAC 55 to show that its evaluation is appropriate; or

**006.07D2** Ensure that an independent educational evaluation is provided at public expense, unless the school district or approved cooperative demonstrates at a hearing under 92 NAC 55 that the evaluation obtained by the parent did not meet school district or approved cooperative criteria.

**006.07E** If the school district or approved cooperative initiates a hearing and the final decision is that the school district's or approved cooperative’s evaluation is appropriate, the parent still has the right to an independent educational evaluation, but not at public expense.

**006.07F** If a parent requests an independent educational evaluation, the school district or approved cooperative may ask for the parent's reason why he or she objects to the public evaluation. However, the school district or approved agency may not require the parent to provide an explanation and may not unreasonably delay either providing the independent educational evaluation at public expense or initiating a due process hearing to defend the public evaluation.

**006.07G** If the parent obtains an independent educational evaluation at public expense or shares with the school district or approved cooperative an evaluation obtained at private expense, the results of the evaluation:

**006.07G1** Must be considered by the school district or approved cooperative, if it meets school district or approved cooperative criteria, in any decision made with respect to the provision of a free appropriate public education to the child; and

**006.07G2** May be presented by any party as evidence at a hearing under 92 NAC 55 regarding that child.

**006.07H** If a hearing officer requests an independent educational evaluation as part of a hearing, the cost of the evaluation must be at public expense.

**006.07I** If an independent educational evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria that the school district or approved cooperative uses when it initiates an evaluation, to the extent those criteria are consistent with the parent's right to an independent educational evaluation.

**006.07J** Except for the criteria described in 92 NAC 51-006.07I, a school district or approved cooperative may not impose conditions or timelines related to obtaining an independent educational evaluation at public expense.

**Section 007 Individualized Education Program (IEP)**

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

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

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

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

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

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

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

**Section 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(1)** A school district or approved cooperative may designate another member of the IEP team to also serve as the school district or approved cooperative representative, if the criteria in 92 NAC 51-007.03A4 are satisfied.

**007.03A5** An individual who can interpret the instructional implications of evaluation results, who may be a member of the team described in 92 NAC 51-007.03A2 through 007.03A6;

**007.03A6** At the discretion of the parent or the school district or approved cooperative, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate;

**007.03A6a** The determination of the knowledge or special expertise of any individual described in 92 NAC 51-007.03A6 shall be made by the party (parents or school district or approved cooperative) who invited the individual to be a member of the IEP.

**007.03A7** Whenever appropriate, the child with a disability;

**007.03A8** For a child attending a nonpublic school, a representative of the nonpublic school the child attends. If the representative cannot attend, other methods shall be used to ensure participation by the nonpublic school, including individual or conference telephone calls;

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

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

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

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

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

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

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

**Section 007.04 IEP Team Attendance**

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

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

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

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

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

**Section 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, 007.03A6a, and 007.05.

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

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

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

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

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

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

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

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

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

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

**Section 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;

**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 92 NAC 51-007.07A, or to require the IEP team to include information under one component of a child’s IEP that is already contained in another component of such IEP.

**007.07B** In developing, reviewing or revising each child's IEP:

**007.07B1** The IEP team shall consider the strengths of the child and the concerns of the parents for enhancing the education of their child.

**007.07B2** The IEP team shall consider the results of the initial evaluation or most recent evaluation of the child, and the academic, developmental, and functional needs of the child.

**007.07B3** In the case of a child whose behavior impedes his or her learning or that of others, the IEP team shall consider the use of positive behavioral interventions, and supports and other strategies to address that behavior.

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

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

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

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

**007.07C Services**

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

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

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

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

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

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

**007.07C2a(1)** The child is enrolled full time in a separate facility; or

**007.07C2a(2)** The child needs specially designed physical education as prescribed in the child’s individualized education program.

**007.07C2b** If specially designed physical education is prescribed in a child’s individualized education program, the school district or approved cooperative responsible for the education of that child shall provide the services directly or make arrangements for it to be provided through other public or nonpublic programs.

**007.07C2c** The school district or approved cooperative responsible for the education of a child with a verified disability who is enrolled in a separate facility shall ensure that the child receives appropriate physical education services.

**007.07C3** Each school district or approved cooperative shall ensure assistive technology devices or assistive technology services, or both, as defined in 92 NAC 51-003.02 and 003.03 are made available to any child with a disability if required, as part of the child’s:

**007.07C3a** Special education under 92 NAC 51-003.56;

**007.07C3b** Related services under 92 NAC 51-003.49; or

**007.07C3c** Supplementary aids and services under 92 NAC 51-003.59 and 008.01A.

**007.07C3d** On a case by case basis, the use of school-purchased assistive technology devices in a child’s home or in other settings is required if the child’s IEP team determines that the child needs access to those devices in order to receive a free appropriate public education.

**007.07C4** The school district or approved cooperative shall take steps including the provision of supplementary aids and services determined appropriate and necessary by the child’s IEP team to provide nonacademic and extracurricular services and activities in the manner necessary to afford each school age child with a verified disability an equal opportunity for participation in those services and activities.

**007.07C4a** Nonacademic and extra-curricular services and activities may include counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the school district or approved cooperative, referrals to agencies that provide assistance to individuals with disabilities, and employment of students, including both employment by the school district or approved cooperative and assistance in making outside employment available.

**Section 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 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.

**Section 007.09 IEP Meeting**

**007.09A** A meeting to develop an IEP for a child must be held within thirty (30) calendar days of a determination that the child needs special education and related services.

**007.09B** After the initial IEP meeting, IEPs must be in effect at the beginning of each school year.

**007.09C** The IEP team shall review the child's IEP periodically, but not less frequently than annually, to determine whether the annual goals for the child are being achieved.

**007.09D** The school district or approved cooperative shall provide a copy of the IEP to parents at no cost.

**007.09E** In making changes to a child’s IEP after the annual IEP meeting for a school year, the parent of a child with a disability and the school district or approved cooperative may agree not to convene an IEP meeting for the purposes of making those changes, and instead may develop a written document to amend or modify the child’s current IEP.

**007.09E1** If changes are made to the child’s IEP in accordance with 92 NAC 51-007.09E, the school district or approved cooperative must ensure that the child’s IEP team is informed of those changes.

**007.09F** Changes to the IEP may be made either by the entire IEP team at an IEP team meeting, or as provided in 92 NAC 51-007.09E of this section, by amending the IEP rather than by redrafting the entire IEP. Upon request, a parent must be provided with a revised copy of the IEP with the amendments incorporated.

**007.09G** To the extent possible, the school district or approved cooperative shall encourage the consolidation of reevaluation meetings for the child and other IEP team meetings for the child.

**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.

**Section 007.11 Children with Disabilities in Adult Prisons**

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

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

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

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

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

**Section 009.02 Parent Involvement in Placement Decisions**

**009.02A** The school district or approved cooperative shall ensure that a parent of each child with a disability is a member of any group that makes decisions on the educational placement of their child.

**009.02B** In implementing the requirements of 92 NAC 51-009.02A, the school district or approved cooperative shall use procedures consistent with the procedures described in 92 NAC 51-007.06A, 007.06B, and 009.01A.

**009.02C** If neither parent can participate in a meeting in which a decision is to be made relating to the educational placement of their child, the school district or approved cooperative shall use other methods to ensure their participation, including individual or conference telephone calls, or video conferencing.

**009.02D** A placement decision may be made by a team without the involvement of the parents if the school district or approved cooperative is unable to obtain the parents’ participation in the decision. In this case, the school district or approved cooperative must have a record of its attempt to ensure their involvement including information that is consistent with the requirements of 92 NAC 51-007.06D.