

LCB File No. R071-05

**PROPOSED REGULATION OF THE
STATE BOARD OF EDUCATION**

Public hearing scheduled August 20, 2005.

SPECIAL INSTRUCTIONAL SERVICES AND PROGRAMS

General Provisions

NAC 388.001 Definitions. (NRS 385.080) As used in NAC 388.001 to 388.655, inclusive, unless the context otherwise requires, the words and terms defined in NAC 388.005 to 388.141, inclusive, have the meanings ascribed to them in those sections.

NAC 388.005 “Academic achievement” defined. (NRS 385.080) Except as otherwise provided in this section, “academic achievement” means the possession of basic reading skills and skills relating to oral expression, listening comprehension, written expression, reading comprehension, mathematics calculation and mathematics reasoning. In the case of a pupil under the age of 6, the term means academic readiness and the mastery of language concepts.

NAC 388.015 “Adaptive skills” defined. (NRS 385.080) “Adaptive skills” include communication, self-care, home living, social skills, community use, self-direction, health and safety, functional academics, leisure and work.

NAC 388.023 “Assistive technology device” defined. (NRS 385.080) “Assistive technology device” has the meaning ascribed to it in 34 C.F.R. § 300.5. *The term does not include a medical device that is surgically implanted, or the replacement of such device.*

NAC 388.024 “Assistive technology service” defined. (NRS 385.080) “Assistive technology service” has the meaning ascribed to it in 34 C.F.R. § 300.6.

NAC 388.028 “Autism” defined. (NRS 385.080) “Autism” means a spectrum disorder which:

1. Significantly affects the verbal and nonverbal communication and social skills of a person and is often characterized by repetitive activities and stereotyped movements, resistance to changes in environment or daily routine and responding to sensory experiences in an unusual manner;
2. Is usually apparent before the age of 3 years; and
3. Adversely affects the educational performance of a pupil causing significant delays or irregular patterns in learning, or both.

The term includes, without limitation, a group of developmental disorders such as autistic disorder, ~~Asperger's~~ *Asperger's* disorder, atypical autism, pervasive developmental disorder and other disorders that share the characteristics described in subsections 1, 2 and 3.

NAC 388.029 “Classroom-based assessment” defined. (NRS 385.080) “Classroom-based assessment” means an assessment of the academic work of a pupil produced in a classroom, including, without limitation, samples of the pupil’s work, pupil portfolios, progress reports, reports of teachers, curriculum-based measurements, locally normed instruments and tests taken by the pupil which were created by the pupil’s teacher.

NAC 388.031 “Cognitive abilities” defined. (NRS 385.080) “Cognitive abilities” means those abilities involving the processes of thinking, reasoning and problem solving.

NAC 388.033 “Collaborative or consulting services” defined. (NRS 385.080) “Collaborative or consulting services” means the assistance provided by special education personnel or other professionals to regular classroom teachers regarding the assessment, teaching and evaluation of a pupil with a disability in a regular educational environment.

NAC 388.034 “Day” defined. (NRS 385.080) “Day” means a calendar day.

NAC 388.0345 “Deaf-blindness” defined. (NRS 385.080) “Deaf-blindness” means concomitant hearing and visual impairments, the combination of which causes severe communication and other developmental and educational needs that cannot be accommodated in special education programs that are solely for pupils who are deaf or pupils who are blind.

NAC 388.035 “Department” defined. (NRS 385.080) “Department” means the Department of Education.

NAC 388.041 “Developmental functioning” defined. (NRS 385.080) “Developmental functioning” means cognitive abilities, gross and fine motor skills, self-help, social and emotional condition, and skill in the use of receptive and expressive language.

NAC 388.042 “General *education* curriculum” defined. (NRS 385.080) “General *education* curriculum” means the goals and objectives defined by the public agency and the corresponding materials, equipment and instructional strategies to accomplish the educational functions of the public agency for all enrolled pupils.

NAC 388.043 “Gifted and talented” defined. (NRS 385.080) “Gifted and talented” means a person who possesses or demonstrates outstanding ability in one or more of the following:

1. General intelligence;
2. Academic aptitude in a specific area;
3. Creative thinking;
4. Productive thinking;
5. Leadership;
6. The visual arts; or
7. The performing arts.

NAC 388.045 “Health” defined. (NRS 385.080) “Health” means the general physical condition of a person.

NAC 388.046 “Health impairment” defined. (NRS 385.080) “Health impairment” means an impairment that limits the strength, vitality or alertness of the pupil, including, without limitation, a heightened alertness to environmental stimuli which results in limited alertness with respect to the educational environment and which:

1. Is caused by chronic or acute health problems such as asthma, attention deficit disorder or attention deficit hyperactivity disorder, childhood disintegrative disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, Rett’s disorder and sickle-cell anemia; and
2. Adversely affects the educational performance of the pupil.

NAC 388.047 “Hearing impairment” defined. (NRS 385.080) “Hearing impairment” means an impairment of the hearing mechanism which affects sound integration and prevents or delays the normal development of speech and language.

NAC 388.055 “Mental retardation” defined. (NRS 385.080) “Mental retardation” means a condition that:

1. Is characterized by intellectual functioning at a level that is significantly below average, and which exists concurrently with related limitations in two or more of the following adaptive skill areas:

- (a) Communication skills;
- (b) Self-care;
- (c) Home living;
- (d) Social skills;
- (e) Use of the community;
- (f) Self-direction;
- (g) Health and safety;
- (h) Functional academics;
- (i) Leisure; and
- (j) Work;

2. Manifests before the age of 18 years; and

3. Adversely affects the educational performance of a pupil.

NAC 388.065 “Multiple impairments” defined. (NRS 385.080) “Multiple impairments” means the occurrence of mental retardation with another disability, the combination of which causes severe educational needs for the pupil.

NAC 388.067 “Orthopedic impairment” defined. (NRS 385.080) “Orthopedic impairment” means a severe impairment which adversely affects the educational performance of a pupil and which results from:

1. A congenital anomaly, including, without limitation, clubfoot and absence of a member;
2. A disease, including, without limitation, bone tuberculosis and poliomyelitis; ~~and~~ *or*
3. Any other cause, including, without limitation, cerebral palsy, an amputation and a fracture or burn causing a contracture.

NAC 388.071 “Parent” defined. (NRS 385.080) “Parent” means:

1. A natural ~~or~~, adoptive, *or foster* parent;
2. A guardian, ~~[other than this]~~ *but not the State if the pupil is a ward of the State;*
3. A person acting in the place of a *natural or adoptive* parent *including a grandparent, stepparent, or other relative with whom the child lives, or an individual who is legally responsible for the pupil’s welfare; or*
4. A surrogate parent appointed pursuant to NAC 388.283. ~~[-; and~~
- ~~5. A foster parent, if:~~
- ~~(a) The natural parent’s authority to make educational decisions on the pupil’s behalf has been extinguished under state law; and~~
- ~~(b) The foster parent:~~
- ~~(1) Has an ongoing, long-term parental relationship with the pupil;~~
- ~~(2) Is willing to make the educational decisions required of parents pursuant to 20 U.S.C. §§ 1400 et seq.; and~~
- ~~(3) Has no interest that would conflict with the interests of the pupil.]~~

NAC 388.073 “Participating agency” defined. (NRS 385.080) “Participating agency” means any institution, entity or person that is likely to provide transition services to a pupil because the services will have an impact on the pupil’s adult life.

NAC 388.075 “Performance in the current educational setting” defined. (NRS 385.080) “Performance in the current educational setting” means the behavioral and academic functioning of a pupil in the environment in which the majority of the pupil’s education occurs.

NAC 388.077 “Positive behavioral supports” defined. (NRS 385.080) “Positive behavioral supports” means a process for integrating behavior analysis with person-center planning to design individualized interventions for pupils which focus on promoting positive changes in behavior and enhancing the overall quality of life for pupils in schools, homes and community environments without the use of negative or aversive means.

NAC 388.085 “Previous educational intervention” defined. (NRS 385.080) “Previous educational intervention” means a strategy, developed on the basis of individual need, designed to have a remediate effect upon any academic or behavioral difficulties of a pupil. The term does not include disciplinary procedures applied to a group of pupils unless, giving consideration to the individual needs of a pupil, such procedures are demonstrably more appropriate than other strategies.

NAC 388.087 “Prior intervention” defined. (NRS 385.080) “Prior intervention” means the provision of an intervention to a pupil in a regular classroom before the public agency suspects that the pupil has a disability.

NAC 388.091 “Program of instruction” defined. (NRS 385.080) “Program of instruction” means a program of related or other educational services provided to a pupil with a disability.

NAC 388.092 “Public agency” defined. (NRS 385.080) “Public agency” means any school district or other governmental entity responsible for providing education to a pupil with a disability.

NAC 388.093 “Pupil with a disability” defined. (NRS 385.080) “Pupil with a disability” has the meaning ascribed to it in NRS 388.440, but the term does not include pupils who are gifted and talented.

NAC 388.095 “Regular classroom teacher” defined. (NRS 385.080) “Regular classroom teacher” means a teacher who knows the developmental and curricular needs of the pupil and who is licensed to teach in the general education program.

NAC 388.101 “Related services” defined. (NRS 385.080) “Related services” has the meaning ascribed to it in 34 C.F.R. § 300.24. *The term does not include a medical device that is surgically implanted, or the replacement of such device.*

NAC 388.105 “Serious emotional disturbance” defined. (NRS 385.080) “Serious emotional disturbance” means a severe emotional disorder that:

1. Is exhibited by a person for at least 3 months;
2. Adversely affects academic performance; and
3. Includes one or more of the following:
 - (a) An inability to learn which is not caused by an intellectual, sensory or health factor;
 - (b) An inability to engage in or to maintain interpersonal relationships with peers and teachers;
 - (c) Inappropriate behavior or feelings;
 - (d) A general and pervasive mood of unhappiness or depression;
 - (e) A physical symptom associated with a personal or academic problem; or
 - (f) The expression of fears regarding personal or academic problems.

NAC 388.111 “Social and emotional condition” defined. (NRS 385.080) “Social and emotional condition” means the present thoughts, feelings and interactive behavior of a person.

NAC 388.115 “Special education” defined. (NRS 385.080) “Special education” means instruction designed to meet the unique needs of a pupil with a disability at no cost to the parent, including, without limitation, instruction conducted in a classroom, at the pupil’s home or in a hospital, institution or other setting. The term includes instruction in physical education and includes speech and language services, travel training and vocational education if these services are specifically designed for instruction of the particular pupil to meet the needs of the pupil.

NAC 388.117 “Specific learning disability” defined. (NRS 385.080) “Specific learning disability” means a disorder in one or more of the basic psychological processes involved in understanding or using spoken or written language ~~[which is characterized by a severe discrepancy between predicted and actual academic achievement]~~, which is not primarily the result of a visual, hearing or motor impairment, mental retardation, serious emotional disturbance, or an environmental, cultural or economic disadvantage. The disorder may manifest itself in an imperfect ability to listen, think, speak, read, write, spell or perform mathematical calculations. *The disorder includes such conditions as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia.*

NAC 388.121 “Speech and language” defined. (NRS 385.080) “Speech and language” means skills relating to articulation, phonology, receptive language, expressive language, syntax, semantics, morphology, fluency and the use of the voice.

NAC 388.125 “Speech and language impairment” defined. (NRS 385.080) “Speech and language impairment” means a disorder relating to language, articulation, fluency or the use of the voice which:

1. Is outside the range of acceptable variation in a given environment;
2. Is inconsistent with the chronological or mental age of the person with the disability; or
3. Affects the emotional, social or educational adjustment of the person with the disability.

NAC 388.131 “Superintendent” defined. (NRS 385.080) “Superintendent” means the Superintendent of Public Instruction.

NAC 388.132 “Supplementary aids and services” defined. (NRS 385.080) “Supplementary aids and services” means aids, services and other supports that are provided in regular educational classes or other education-related settings to enable pupils with disabilities to be educated with pupils who are not disabled to the maximum extent appropriate.

NAC 388.133 “Transition services” defined. (NRS 385.080) “Transition services” means a coordinated set of activities which:

1. Is designed within a process that is ~~[outcome]~~ *results*-oriented and ~~[which promotes]~~ *focused on improving the academic and functional achievement of the pupil with a disability to facilitate* movement from school to postschool activities, including, without limitation, postsecondary education, vocational training, integrated employment, continuing and adult education, adult services, independent living ~~[and]~~ *or* community participation;
2. Is based on the needs of the pupil, taking into account the pupil’s preferences and interests; and
3. Includes, without limitation:
 - (a) Instruction;
 - (b) Related services;
 - (c) Community experiences;
 - (d) The development of employment and other objectives for living as an adult after the completion of school; and
 - (e) If appropriate, acquisition of daily living skills and functional vocational evaluation.

The term includes special education, if provided as specially designed instruction or related services, and if required to assist a pupil with a disability to benefit from special education.

NAC 388.134 “Traumatic brain injury” defined. (NRS 385.080) “Traumatic brain injury” means an injury to the brain caused by an external force that results in the total or partial functional disability or psychosocial impairment of a person, or both. Except as otherwise provided in this section, the term applies to any injury to the brain which adversely affects educational performance including, without limitation, injuries affecting the:

1. Cognitive abilities;
2. Speech;
3. Language;
4. Information processing;
5. Memory;
6. Attention;
7. Reasoning;
8. Abstract thinking;
9. Judgment;
10. Problem solving abilities;
11. Sensory, perceptual and motor skill abilities;
12. Psychosocial behavior; and
13. Physical functions,

of a person. The term does not include injuries to the brain that are congenital or degenerative or which are induced by trauma during birth.

NAC 388.1345 “Travel training” defined. (NRS 385.080) “Travel training” means instruction that:

1. Is provided to pupils with significant cognitive disabilities and to any other pupils with disabilities who require this instruction; and
2. Enables the pupils to:
 - (a) Develop an awareness of the environment in which the pupils live; and
 - (b) Learn the skills necessary to move effectively and safely from place to place within the environment.

NAC 388.135 “Unit” defined. (NRS 385.080) “Unit” means a special education program unit as defined in subsection 3 of NRS 387.1211.

NAC 388.141 “Visual impairment” defined. (NRS 385.080) “Visual impairment” means an impairment which, despite correction, adversely affects or will adversely affect the ability of a pupil to benefit from or participate in an educational program without the assistance of special education.

NAC 388.145 Educational programs for pupils with disabilities must comply with chapter. (NRS 385.080, 388.520) Any educational program for pupils with disabilities in this State, including, without limitation, a program of special education in a private school that provides special education to a pupil who is placed in the private school by a public agency, must be administered in accordance with the provisions of this chapter.

Administration of Programs for Pupils With Disabilities and Gifted and Talented Pupils

NAC 388.150 Maximum number of cases per teacher in unit; maximum size of class; exceptions. (NRS 385.080, 388.520)

1. Except as otherwise provided in this section, the maximum number of cases per teacher in a unit for:

(a) School-age pupils who are placed in programs for mild to moderate disabilities, who receive instruction from a generalist and who receive special education services through a consultative method, resources method or any combination of methods of instruction is:

- (1) Twenty-two for pupils with specific learning disabilities.
- (2) Twenty-two for pupils with serious emotional disturbance.
- (3) Twenty-two for pupils with mild mental retardation.

(b) School-age pupils who are placed in programs for moderate to severe disabilities, who receive instruction from a specialist and who receive special education services primarily in a self-contained classroom is:

- (1) Twenty for pupils with specific learning disabilities.
- (2) Fifteen for pupils with serious emotional disturbance.
- (3) Twenty for pupils with moderate mental retardation.
- (4) Twelve for pupils with severe to profound mental retardation.

(c) All other school-age pupils who are placed in specialized programs and who receive instruction from a specialist is:

- (1) Twenty for pupils with hearing impairments.
- (2) Fifteen for pupils with multiple impairments.
- (3) Four for pupils with deaf-blindness.
- (4) Twenty for pupils with orthopedic impairments and health impairments.
- (5) Ten for pupils with orthopedic impairments and health impairments receiving special education services in a home or hospital.

(6) Fifteen for pupils with orthopedic impairments and health impairments receiving special education services through the teleteaching method of instruction.

(7) Fifty for pupils with speech and language impairments receiving speech and language therapy services.

(8) Twelve for pupils with speech and language impairments receiving special education services in a self-contained classroom.

(9) Sixteen for pupils with visual impairments.

(10) Fifteen for pupils with traumatic brain injury.

(11) Twelve for pupils with autism.

(12) Sixty-five for pupils who are gifted and talented.

(d) Pupils under the age of 6 years who are placed in early childhood nonspecialized programs and who receive special education services in a center-based classroom, integrated setting or through a consultative method of instruction is 22.

2. Except as otherwise provided in this section, the maximum size of a class per instructional period for:

(a) School-age pupils who are placed in programs for mild to moderate disabilities, who receive instruction from a generalist and who receive special education services through a consultative method, a resources method or any combination of methods of instruction is:

- (1) Twelve for pupils with specific learning disabilities.
- (2) Twelve for pupils with serious emotional disturbance.
- (3) Twelve for pupils with mild mental retardation.

(b) School-age pupils who are placed in programs for moderate to severe disabilities, who receive instruction from a specialist and who receive special education services primarily in a self-contained classroom is:

- (1) Twelve for pupils with specific learning disabilities.
- (2) Six for pupils with serious emotional disturbance.
- (3) Ten for pupils with moderate mental retardation.
- (4) Six for pupils with severe to profound mental retardation.

(c) All other school-age pupils who are placed in specialized programs and who receive instruction from a specialist is:

- (1) Six for pupils with hearing impairments.
- (2) Six for pupils with multiple impairments.
- (3) Four for pupils with deaf-blindness.

- (4) Six for pupils with orthopedic impairments and health impairments.
 - (5) Fifteen for pupils with orthopedic impairments and health impairments receiving special education services through a teleteaching method of instruction.
 - (6) Eight for pupils with speech and language impairments receiving special education services in a self-contained classroom.
 - (7) Six for pupils with visual impairments.
 - (8) Eight for pupils with traumatic brain injury.
 - (9) Six for pupils with autism.
 - (10) Twenty for pupils who are gifted and talented.
- (d) Pupils under the age of 6 years who are placed in early childhood nonspecialized programs and who receive special education services in a center-based classroom, integrated setting or through a consultative method of instruction is 12.
- (e) Pupils under the age of 6 years who are placed in early childhood specialized programs is 6.
3. In the case of a heterogeneous program, the maximum number of cases per teacher and the maximum size of the class is to be determined according to the area of disability represented by the majority of the pupils in the program.
4. The maximum enrollment in a unit may be increased by 10 percent, or at least one pupil, without the approval of the Department.
5. If a teacher's aide is used in a unit, the maximum size of a class in the unit for:
- (a) School-age pupils who are placed in programs for mild to moderate disabilities, who receive instruction from a generalist and who receive special education services through a consultative method, resources method or any combination of methods of instruction is:
 - (1) Sixteen for pupils with specific learning disabilities.
 - (2) Sixteen for pupils with serious emotional disturbance.
 - (3) Sixteen for pupils with mild mental retardation.
 - (b) School-age pupils who are placed in programs for moderate to severe disabilities, who receive instruction from a specialist and who receive special education services primarily in a self-contained classroom is:
 - (1) Sixteen for pupils with specific learning disabilities.
 - (2) Ten for pupils with serious emotional disturbance.
 - (3) Fourteen for pupils with moderate mental retardation.
 - (4) Eight for pupils with severe to profound mental retardation.
 - (c) All other school-age pupils who are placed in specialized programs and who receive instruction from a specialist is:
 - (1) Ten for pupils with hearing impairments.
 - (2) Ten for pupils with multiple impairments.
 - (3) Five for pupils with deaf-blindness.
 - (4) Ten for pupils with orthopedic impairments and health impairments.
 - (5) Nineteen for pupils with orthopedic impairments and health impairments receiving special education services in the home or at a hospital.
 - (6) Twelve for pupils with speech and language impairments receiving special education services in a self-contained classroom.
 - (7) Ten for pupils with visual impairments.
 - (8) Ten for pupils with traumatic brain injury.
 - (9) Eight for pupils with autism.
 - (10) Twenty-four for pupils who are gifted and talented.
 - (d) Pupils under the age of 6 years who are placed in early childhood nonspecialized programs and who receive special education services in a center-based classroom, integrated setting or through a consultative method of instruction is 14.
 - (e) Pupils under the age of 6 years who are placed in early childhood specialized programs is 8.
6. The maximum number of cases per teacher in each unit for a specific disability must not exceed the number prescribed pursuant to this section for the disability represented by the

majority of pupils in the unit even if some or all of the pupils in the unit attend classes in a regular educational environment and the special education teacher only provides collaborative or consulting services regarding such pupils.

7. Exceptions to the maximum enrollments prescribed in this section may be made with the written approval of the Department. A request for an exception must be submitted to the Department within 30 days after the limit set forth in subsection 4 is exceeded.

NAC 388.165 Required licensing of teachers; exception. (NRS 385.080, 388.520)

1. Except as otherwise provided in this section, a teacher:

(a) In a unit must be licensed in the area of special education, with an endorsement in the area of disability represented by the majority of the pupils in the unit.

(b) Of the gifted and talented must meet the requirements for licensure for teaching in a program for the gifted and talented.

2. An exception to the requirements of this section may be made with the written approval of the Department.

NAC 388.180 Length of school day. (NRS 385.080, 388.090, 388.520) Except as otherwise provided by NAC 387.125, subsection 2 of NAC 387.131 and NAC 387.286, a school day in session for a unit must consist of the minimum daily periods established for the grade by subsection 1 of NAC 387.131.

NAC 388.195 Transfer of rights to pupil who attains age of majority. (NRS 385.080, 388.520)

1. Except as otherwise provided in subsection 3, any right accorded a parent of a pupil under the provisions of this chapter transfers to the pupil when the pupil attains the age of 18 years. The public agency shall notify the pupil and parent that a transfer of rights has occurred in accordance with this subsection.

2. After the transfer of rights to the pupil, the public agency shall provide any notice required pursuant to this chapter to the pupil and the pupil's parents.

3. If the pupil is adjudged incompetent and a guardian is appointed for the pupil by a court of competent jurisdiction, any right which would otherwise transfer to the pupil pursuant to subsection 1 transfers to the pupil's guardian.

NAC 388.215 Measures to identify, evaluate and serve pupils with disabilities. (NRS 385.080, 388.520) Each public agency shall take measures to ensure that every pupil with a disability who resides within the district is identified, evaluated and served in the manner appropriate to the unique needs of the pupil. These measures must include, without limitation:

1. The organization of a program for screening pupils within the jurisdiction of the public agency;

2. The posting or publication of public notices within the district concerning the program for screening and the availability of special services and programs of instruction for pupils with disabilities;

3. The establishment of procedures for the referral of pupils with disabilities to agencies of state and local government providing services for those pupils;

4. Communication with such agencies; and

5. The establishment of a system of records for the purpose of verifying:

(a) The implementation of the foregoing measures; and

(b) That each pupil identified as disabled is receiving services appropriate to the pupil's disability.

NAC 388.XXX Prohibition on mandatory medication.

1. No public agency personnel shall require a pupil to obtain a prescription for a substance covered by the Controlled Substances Act (21 U.S.C. § 801 et seq.) as a condition of attending school, receiving an evaluation, or receiving special education services.

2. This provision shall not be construed to create a federal prohibition against teachers and other school personnel consulting or sharing classroom-based observations with parents or guardians regarding a student's academic and functional performance, or behavior in the classroom or school, or regarding the need for evaluation for special education and related services.

NAC 388.245 Restrictions on placement of pupil with disability; continuum of alternative placements; annual determination of placement of pupil. (NRS 385.080, 388.520)

1. A pupil with a disability may not be placed in a special class or in a school different than the one the pupil would normally attend, or otherwise removed from the regular educational environment unless:

(a) The pupil's individualized educational program otherwise provides; and

(b) The nature or severity of the pupil's disability is such that, even with the use of supplementary aids and services, the pupil cannot be educated satisfactorily in the regular educational environment.

A pupil with a disability, including a pupil in a public or private institution or other care facility, must be educated with pupils who are not disabled to the maximum extent appropriate.

2. A public agency shall provide a continuum of alternative placements to meet the needs of any pupil with a disability for special education and related services necessary to implement the individualized educational program for each pupil with a disability. This continuum must include, as appropriate:

(a) Consultative and supplementary services provided with regular class placement; and

(b) Instructing the pupil in:

(1) A regular class;

(2) A special class;

(3) A special school;

(4) A community-based program;

(5) The pupil's home;

(6) A hospital; or

(7) An institution.

3. In the case of a program of early childhood special education, the continuum of alternative placements required by subsection 2 may include, as appropriate:

(a) An integrated or self-contained center-based program in a regular or special school;

(b) A home-based program;

(c) An itinerant consultant working with a community-based facility; or

(d) Instruction of the pupil in a hospital or institution.

As used in this subsection, "center-based program" means a program in which a group of pupils receives services at a central location.

4. In developing a pupil's individualized educational program, the committee which develops the program shall provide for the least restrictive environment to the maximum extent appropriate. In making this determination, the committee shall consider any potential harmful effects on the pupil and the quality of services required by the pupil. The committee shall provide for the placement of the pupil in a regular class unless the committee determines that the pupil cannot receive an appropriate education in a regular class, even with supplementary aids and services. The basis for any such determination must be clearly set forth in the individualized educational program of the pupil.

5. Unless the needs or performance of the pupil preclude such participation, a pupil with a disability must be allowed to participate with pupils who are not disabled at mealtime, recess, or any other nonacademic or extracurricular activity occurring at school for the maximum extent appropriate. If a pupil with a disability is excluded from such participation because of the pupil's needs or performance, the basis for the exclusion must be clearly set forth in the individualized educational program of the pupil.

6. The placement of a pupil with a disability must be determined at least annually by a group of persons, including, without limitation, the parents of the pupil and other persons who are knowledgeable about the pupil, the meaning of the evaluation data and the placement options. A pupil must be placed in the school that the pupil would normally attend if possible, or in the school closest to the pupil's home which is capable of providing the services required by the pupil's individualized educational program.

NAC 388.255 Basis for change in placement of pupil with disability. (NRS 385.080, 388.520) Except as otherwise provided in NAC 388.265, any change in the placement of a pupil with a disability must be based upon:

1. The current individualized educational program of the pupil;
2. ~~[An assessment of the pupil made within the preceding 3 years]~~ *The most recent evaluation of the pupil*; and
3. Information relating to the current educational performance of the pupil.

NAC 388.261 Transmittal of educational records of pupil with disability upon enrollment in different school or public agency. (NRS 385.080, 388.520)

1. Except as otherwise provided in subsection 2, if a pupil with a disability who was enrolled in a school or public agency subsequently enrolls in another school or public agency, the school or public agency in which the pupil was enrolled shall, not later than 10 school days after receipt of notice of the pupil's enrollment in another school or public agency, transmit the educational records of the pupil to the school or public agency in which the pupil is currently enrolled.

2. If a school or public agency requires the consent of the parent or guardian of a pupil before transmitting educational records of the pupil, the school or public agency shall transmit the educational records of the pupil pursuant to subsection 1 not later than 10 school days after it receives such consent.

NAC 388.265 Suspension, expulsion or exclusion of pupil with disability. (NRS 385.080, 388.520)

1. No pupil with a disability may be suspended, expelled or excluded from attendance by a public agency if such suspension, expulsion or exclusion results in a change of placement of the pupil during any school year except upon compliance with the provisions of this section and 20 U.S.C. § 1415(k). *School personnel may consider any unique circumstances on a case-by-case basis when determining whether to order a change of placement for a pupil with a disability who violates a code of student conduct.*

2. Before initiating any suspension, expulsion or exclusion that will result in a change of placement for the pupil, the public agency shall convene a meeting of *relevant members of the committee, as determined by the parent and the public agency*, that developed the pupil's individualized educational program pursuant to NAC 388.281. The public agency may appoint other qualified personnel to meet with the committee.

3. The *relevant members of the* committee and any other qualified personnel appointed by the public agency to meet with the committee shall:

(a) Consider all information relevant to the behavior subject to disciplinary action, including, without limitation:

- (1) Evaluations and diagnostic results, including, without limitation, relevant information supplied by the parents of the pupil;
- (2) Observations of the pupil; and
- (3) The pupil's individualized educational program and placement.

(b) Determine whether the behavior of the pupil was a manifestation of the pupil's disability. The committee and appointed personnel ~~[may determine that the behavior of the pupil is not a manifestation of the pupil's disability if the committee determines that]~~ *will determine:*

- (1) ~~[In relationship to the behavior subject to disciplinary action, the pupil's individualized educational program and placement were appropriate and the special education services,~~

~~supplementary aids and services, and behavior intervention strategies were provided consistent with the pupil's individualized educational program and placement]~~ *If the conduct in question was caused by, or had a direct and substantial relationship to, the pupil's disability; or*

(2) ~~[The pupil's disability did not impair the ability of the pupil to understand the effect and consequences of the behavior subject to disciplinary action; and]~~ *If the conduct in question was the direct result of the public agency's failure to implement the individualized educational program.*

~~[(3) The pupil's disability did not impair the ability of the pupil to control the behavior subject to disciplinary action.]~~

(c) Prepare a report containing their findings and conclusions.

If the public agency, the parent, and relevant members of the individualized educational program committee determine that either paragraph (1) or (2) of this subsection is applicable for the pupil, the conduct shall be determined to be a manifestation of the pupil's disability.

4. The public agency shall provide to a pupil with a disability who is suspended, expelled or excluded ~~[in a manner that constitutes a change of placement of the pupil,]~~ a free appropriate public education in accordance with the Individuals with Disabilities Education Act, 20 U.S.C. §§ 1400 et seq., on the 11th school day that a pupil is removed and during any subsequent school day in which the pupil is removed from school.

5. As used in this section:

(a) "Change of placement" has the meaning ascribed to it in 34 C.F.R. § 300.519.

(b) "School day" means any day, including a partial day, that pupils are in attendance at school for instructional purposes.

NAC 388.XXX Pupils who transfer school districts.

1. In the case of a pupil with a disability who transfers school districts within the same academic year, who enrolls in a new school, and who had an individualized educational program that was in effect in Nevada, the public agency shall provide such pupil with a free appropriate public education, including services comparable to those described in the previously held individualized educational program, in consultation with the parents until such time as the public agency adopts the previously held individualized educational program or develops, adopts, and implements a new individualized educational program that is consistent with federal and state law.

2. In the case of a pupil with a disability who transfers school districts within the same academic year, who enrolls in a new school, and who had an individualized educational program that was in effect in another state, the public agency shall provide such child with a free appropriate public education, including services comparable to those described in the previously held individualized educational program, in consultation with the parents until such time as the public agency conducts an evaluation pursuant to NAC 388.330 to 388.440, inclusive, and develops a new individualized educational program, if appropriate, that is consistent with federal and state law.

NAC 388.275 Development of interim individualized educational program. (NRS 385.080, 388.520)

1. An interim individualized educational program may be developed by a public agency for a pupil with a disability, other than a gifted and talented pupil, who is being considered for special education services if the pupil was determined to be eligible for special education by another public agency or in another state. If the pupil was determined to be eligible for special education in another state, a determination of eligibility pursuant to this chapter must be made before the pupil is eligible to receive special education in this State.

2. Upon the expiration of 30 days after the development of an interim individualized educational program pursuant to this section, an individualized educational program must be developed for a pupil who is eligible to receive special education in this State in the manner provided by NAC 388.281.

NAC 388.281 Development, implementation, review and revision of individualized educational program. (NRS 385.080, 388.520) Except as otherwise provided in NAC 388.282:

1. Before providing special services and programs of instruction for pupils with disabilities, other than gifted and talented pupils, a public agency shall adopt a procedure whereby an individualized educational program is developed for each such pupil. The procedure adopted must ensure that an individualized educational program is in effect at the beginning of each school year and before the initiation of special education or related services. For eligible pupils making the transition from programs operated pursuant to 20 U.S.C. §§ 1431 to 1445, inclusive, an individualized educational program must be developed and implemented by the pupil's third birthday. *In the case of a pupil with a disability aged 3 through 5, the initial individualized educational program committee shall consider the student's individualized family service plan.* ~~[An individualized family service plan may serve as the individualized educational program for pupils who are between 3 and 5 years of age if the agency complies with the provisions of 34 C.F.R. § 300.132. As used in this subsection, the term "individualized family service plan" has the meaning ascribed to it in 34 C.F.R. § 303.340(b).]~~

2. The individualized educational program for a pupil must be developed, reviewed and revised by a committee which includes at least:

- (a) One representative of the public agency who is:
 - (1) Qualified to provide or supervise the provision of specially designed instruction to meet the unique needs of pupils with disabilities;
 - (2) Knowledgeable about the general curriculum of the public agency; and
 - (3) Knowledgeable about the availability of resources of the public agency;
- (b) If the pupil participates in a regular educational environment, one regular classroom teacher who teaches the pupil, or if the pupil may participate in a regular educational environment, one regular classroom teacher;
- (c) One special education teacher who teaches the pupil, or if appropriate, one person who provides special educational services to the pupil;
- (d) Except as otherwise provided in subsections 6 and 7, one or both of the pupil's parents;
- (e) If not otherwise a member of the committee, a person who is familiar with the tests and other assessments performed on or by the pupil and their results and who can interpret the instructional implications of the results of the evaluation;
- (f) Except as otherwise provided in subsection 8, if the committee is meeting to develop an individualized educational program which includes needed transition services, or to consider the pupil's transition services needs, the pupil and a representative of the participating agency; and
- (g) At least one member of the committee must have personal knowledge about the personnel and options for placement available to provide special education and related services to the pupil.

3. A member of the individualized educational program committee shall not be required to attend an individualized educational program meeting, in whole or in part, if the parent of a pupil with a disability and the public agency agree 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. The parent's agreement must be in writing.

4. A member of the individualized educational program committee may be excused from attending an individualized educational program 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 the parent and the public agency consent to the excusal, and the member submits, in writing to the parent and the individualized educational program committee, input into the development of the individualized educational program prior to the meeting. The parent's consent must be in writing.

~~[3.]5.~~ The parents or their representative and the representative of the public agency may each ask such other persons who have knowledge or special expertise concerning the pupil,

including the pupil and persons who provide related services to the pupil, as the parents or the representative of the public agency deem appropriate to join the committee.

~~[4.]~~6. The public agency shall:

(a) At least annually, initiate and conduct the meetings of the committees formed to develop the individualized educational programs;

(b) Maintain detailed records of each such program and the procedure followed in developing it;

(c) Ensure that each regular classroom teacher, special education teacher, persons who provide related services, and any other provider of services to the pupil who is responsible for carrying out the pupil's individualized educational program has access to the pupil's individualized educational program and is informed of any specific responsibilities related to carrying out the pupil's individualized educational program;

(d) Ensure that each regular classroom teacher, special education teacher, persons who provide related services and any other provider of services to the pupil who is responsible for carrying out the pupil's individualized educational program is informed of any specific accommodation, modification or support that must be provided to the pupil in accordance with the pupil's individualized educational program;

(e) Implement each program as soon as possible after it is developed;

(f) Take whatever action is necessary, including arranging for an interpreter for parents who are deaf or whose native language is other than English, to ensure that parents who attend a committee meeting understand the proceedings;

(g) Provide the services and instruction deemed necessary for the pupil by the committee; and

(h) Initiate and conduct additional meetings of the committees formed to develop the individualized educational programs to identify alternative methods of providing transition services or to revise the individualized educational program of a pupil with a disability when a participating agency fails to provide an agreed upon service.

(i) In making changes to a pupil's individualized educational program after the annual individualized educational program meeting for a school year, the parent of a pupil with a disability and the public agency may agree not to convene an individualized educational program meeting for the purposes of making such changes, and instead may revise the pupil's current individualized educational program.

(j) Changes to the individualized educational program may be made either by the entire individualized educational program committee or, as provided in paragraph (i), by revising the individualized educational program rather than by redrafting the entire individualized educational program. A parent shall be provided with a revised copy of the individualized educational program with the revisions incorporated.

~~[5.]~~7. The public agency shall:

(a) Schedule the meeting for a time and at a place that is mutually agreed upon by the parents of the pupil and the public agency;

(b) Provide the parents of the pupil written notice of the purpose, date, time and location of the committee meeting and a list of the persons who will attend the meeting;

(c) Inform the parents of their right to invite persons who have knowledge or special expertise regarding the pupil, including, without limitation, related service personnel, to participate as a member of the committee that will develop the pupil's individualized educational program;

~~[(d) Provide the parents with a statement of parental rights; and]~~

~~[(e)]~~ (d) If ~~[needed transition services for a pupil, transition services needs for a pupil or both needed transition services and]~~ transition services ~~[needs of a pupil]~~ will be discussed at the meeting:

(1) Provide notice pursuant to paragraph (b) to the pupil and the parent and include in the notice to the pupil an invitation to the pupil to attend the meeting and include in the notice to the parent a statement that the pupil will be invited to attend the meeting; and

(2) Specifically state in the notice provided pursuant to paragraph (b) ~~[that needed transition services, transition services needs or both needed transition services and]~~ transition services ~~[needs, as applicable,]~~ will be discussed at the meeting. The notice must be given sufficiently far in advance of the meeting to enable the parents to make arrangements to attend.

(e) In the case of a pupil who was previously served under Part C, an invitation to the initial individualized educational program 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.

~~[6.]8.~~ If the parents do not acknowledge receipt of the notice given pursuant to subsection ~~[5.]7,~~ the public agency shall make additional attempts to notify them, which may include, without limitation, attempts to notify them by telephone or through a visit to their home or place of employment. ~~[If, after consultation concerning the time and place of the meeting, the parents are unable to attend the committee meeting in person, the public agency shall use reasonable efforts to secure their participation in the meeting by written, telephonic or other means.]~~ The public agency shall keep detailed records of any telephone calls, correspondence or visits made to the parent's home or place of employment or had pursuant to this section and their results, if any. *The parent of a pupil with a disability and a public agency may agree to use alternative means of meeting participation, such as video conferences and conference calls.*

~~[7.]9.~~ If the reasonable efforts of the public agency to involve the pupil's parents are unsuccessful, the parents shall be deemed unavailable and the public agency shall develop an individualized educational program without the parents.

~~[8.]10.~~ If the individualized educational program includes ~~[needed]~~ transition services, ~~[transition services needs or both needed transition services and a statement of transition services needs,]~~ and a representative of the participating agency does not attend the meeting, the public agency shall consult with the participating agency regarding the planning of such services. If the pupil for whom the individualized educational program is being developed does not attend the meeting and the program includes ~~[needed]~~ transition services, ~~[transition services needs or both needed transition services and transition services needs,]~~ the public agency shall use alternative methods to ascertain the preferences and interest of the pupil and document the alternative methods that were used.

~~[9.]11.~~ The committee shall:

(a) Meet to develop the pupil's program no later than 30 days after it is determined that the pupil is eligible for special services and programs of instruction.

(b) Base the program it develops on the results of an evaluation made in accordance with NAC 388.330 to 388.440, inclusive.

(c) Review the program at least annually and revise it as necessary.

(d) Provide a copy of the program and any revisions to the parents.

NAC 388.282 Placement of pupil with disability in private school or facility. (NRS 385.080, 388.520)

1. A public agency shall provide a pupil with a disability, other than a gifted and talented pupil, who is placed in or referred to a private school or facility by the Department or the public agency with special education and related services at no cost to the parents and in accordance with the pupil's individualized educational program.

2. Except as otherwise provided in subsection 3, before a public agency places a pupil with a disability in or refers such a pupil to a private school or facility, the public agency shall initiate and conduct a meeting to develop an individualized educational program for the pupil. The public agency shall request the presence of a teacher or other representative of the private school at the meeting. If a representative is unable to attend the meeting, the public agency shall include the representative with written or telephone communication.

3. Notwithstanding the placement of a pupil in a private school or facility as provided in this section, the public agency:

- (a) Remains responsible for implementing the individualized educational program of the pupil; and
- (b) Must serve the pupil as it serves pupils with disabilities in public schools.

NAC 388.283 Appointment of surrogate parent for pupil with disability. (NRS 385.080, 388.520)

1. A public agency shall appoint or petition the Superintendent to appoint a surrogate parent for a pupil with a disability, other than a gifted and talented pupil, when the:

- (a) Parents cannot be identified;
- (b) Location of a parent is not discovered after reasonable efforts; or
- (c) Pupil is a ward of the State.

2. A person selected as such a surrogate parent must have no interest that conflicts with the interests of the pupil and have knowledge and skills that ensure the adequate representation of the pupil's interests. The surrogate parent must not be an employee of the public agency which is involved in the education or care of the pupil, but he may be paid by the public agency to serve as the surrogate parent.

3. In the case of:

(a) A pupil who is a ward of the State, such surrogate may alternatively be appointed by a judge overseeing the pupil's care provided that the surrogate meets the requirements of this section; and

(b) An unaccompanied homeless youth as defined in § 725(6) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(6)), the public agency shall appoint a surrogate in accordance with this section.

4. The public agency or the Superintendent shall make reasonable efforts to ensure the assignment of a surrogate no more than 30 days after there is a determination by the agency that the pupil needs a surrogate.

~~3.~~**5.** The surrogate parent shall represent the pupil in all matters relating to the identification of a pupil, the assessment of any special educational needs of the pupil, the educational placement of the pupil and the provision of a free appropriate program of public education to the pupil. The program must be provided for the pupil without any cost to the parent.

NAC 388.284 Individualized educational program: Contents; considerations when developing. (NRS 385.080, 388.520)

1. Each committee shall include in the individualized educational program it develops:

(a) A statement of the pupil's present levels of ~~educational~~ *academic achievement and functional* performance, including, without limitation:

(1) If the pupil is preschool age, a description of how the disability of the pupil affects the participation of the pupil in appropriate activities.

(2) If the pupil is above preschool age, a description of how the disability of the pupil affects the involvement and progress of the pupil in the general *education* curriculum.

(3) For pupils who take alternate assessments aligned to alternate achievement standards, a description of benchmarks or short-term objectives.

(b) A statement of the measurable annual goals, including benchmarks or the short-term instructional objectives, *academic and functional goals* related to meeting the needs of the pupil that result from the pupil's disability. Such goals must enable the pupil to ~~participate~~ *be involved in* and *make* progress in the general *education* curriculum and meet the other educational needs of the pupil that result from the pupil's disability.

(c) A statement of the specific special education, supplementary aids and services, and related services, *based on peer-reviewed research to the extent practicable*, to be provided to the pupil, or on behalf of the pupil, and a statement of the modifications to the regular educational program or support for school personnel that must be provided for the pupil to:

- (1) Advance appropriately toward attaining the annual goals set forth in paragraph (b);
- (2) Participate and progress in the general curriculum;

- (3) Participate in extracurricular activities and other nonacademic activities; and
- (4) Participate with other pupils with disabilities and pupils who are not disabled in the activities described in this paragraph.

(d) A statement of the assistive technology devices and services necessary for the pupil to be able to receive a free appropriate public education.

(e) If the pupil is 14 years of age or older, a statement of ~~[the needs of the pupil for]~~ transition services with regard to the pupil's courses of study, including, without limitation, participation in advanced placement courses or a vocational educational program. The committee may prepare such a statement before the pupil is 14 years of age if the committee determines that the statement is appropriate for the pupil. The statement required by this paragraph must be updated annually.

(f) ~~[If the pupil is 16 years of age or older, a statement of the transition services needed by the pupil, including, if appropriate, a statement of interagency responsibilities or any other linkages needed. The committee may prepare such a statement before the pupil is 16 years of age if the committee determines that the statement is appropriate for the pupil. The statement required by this paragraph must be updated annually.]~~ *Beginning not later than the first individualized educational program to be in effect when the pupil is 16, and updated annually thereafter:*

(1) Appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills; and

(2) The transition services including courses of study needed to assist the pupil in reaching those goals.

(g) The projected dates for the initiation of the modifications and services described in paragraphs (c) to (f), inclusive, and the anticipated frequency, location and duration of such modifications and services.

(h) A statement that describes the method by which the progress of the pupil toward the annual goals will be measured ~~[and the method by which the parents of the pupil will be regularly informed, by]~~ *and when* periodic reports ~~[of progress or otherwise, at least as often as a parent of a pupil who is not disabled is informed of the progress of his pupil. The report of progress must adequately inform the parent of:~~

- ~~— (1) The progress of the pupil; and~~
- ~~— (2) The extent to which the progress is sufficient to enable the pupil to achieve the goals set forth in paragraph (b) on or before the completion of the academic year.]~~ *on the progress the pupil is making toward meeting the annual goals, such as through the use of quarterly or other period reports, concurrent with the issuance of report cards, will be provided.*

(i) ~~[A statement of the modifications that are necessary, if any, for the pupil to participate in examinations which are required by this State or the public agency. If the committee determines that the pupil must not participate in a particular examination or a particular part of an examination, the committee shall include a statement describing the reason why the examination or the particular part of an examination is not appropriate for the pupil and the method by which the pupil will be otherwise tested.]~~ *A statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the pupil on state and districtwide assessments. If the individualized educational program committee determines that the pupil shall take an alternate assessment on a particular state or districtwide assessment of student achievement, the individualized educational program shall include a statement of why the pupil cannot participate in the regular assessment, and why the particular alternate assessment selected is appropriate for the pupil.* The committee shall not base its determination of whether a pupil may participate in such examinations upon the fact that the pupil has already been labeled as having a disability, or upon the placement of the pupil or other categorical factors.

(j) If the pupil is entering the public agency from another public agency, provisions relating to case management and interagency transition services.

(k) A statement of the reasons for the placement of the pupil, including a statement of the other placements considered by the team and the reasons why the team rejected a less restrictive placement.

(l) An explanation of the extent, if any, to which the pupil will not participate in a regular class or in extracurricular or other nonacademic activities with pupils who are not disabled.

(m) On or before the date on which the pupil attains the age of 17 years, a statement that the pupil has been informed of the rights that will devolve upon the pupil when the pupil attains the age of 18 years. The statement must be updated annually.

2. When developing a pupil's individualized educational program, the committee shall:

(a) Consider the strengths of the pupil; the concerns of the parents for enhancing the education of their child; the results of the initial evaluation or most recent evaluation of the pupil; and the academic, developmental, and functional needs of the pupil.

~~[(a)]~~ *(b) If the behavior of the pupil impedes the learning of the pupil or other pupils, consider ~~[, if appropriate, strategies to address such behavior, including, without limitation,]~~ the use of positive behavioral supports and interventions, and other strategies, to address that behavior;*

~~[(b)]~~ *(c) If the pupil has limited proficiency in English, consider the language needs of the pupil as those needs relate to the pupil's individualized educational program;*

~~[(e)]~~ *(d) If the pupil is blind or visually impaired, provide for instruction in Braille and the use of Braille unless the committee determines, after an evaluation of the pupil's reading and writing skills, needs and appropriate reading and writing media, including, without limitation, an evaluation of the pupil'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 pupil;*

~~[(d)]~~ *(e) Consider the communication needs of the pupil, and in the case of a pupil who is deaf or hard-of-hearing, consider the pupil's language and communication needs, opportunities for direct communications with other pupils and professional personnel in the pupil's language and communication mode, academic level and full range of needs, including, without limitation, opportunities for direct instruction in the pupil's language and communication mode; and*

~~[(e)]~~ *(f) Consider whether the pupil requires assistive technology devices and services.*

3. When developing a pupil's individualized educational program, the public agency:

(a) May include goals and objectives of the general curriculum in the individualized educational program of the pupil if the pupil's disability affects participation, involvement and progress in the general curriculum and if the individualized educational committee determines that the inclusion of such goals and objectives is appropriate for that pupil;

(b) Shall not limit the availability of extended school year programs to pupils with a particular category of disability or unilaterally limit the type, amount or duration of those programs; and

(c) Shall include in the individualized educational program of a pupil who requires positive behavioral interventions, strategies and supports:

(1) Positive methods to modify the environment of pupils with disabilities to promote adaptive behavior and reduce the occurrence of inappropriate behavior;

(2) Methods to teach skills to pupils with disabilities so that the pupils can replace inappropriate behavior with adaptive behavior;

(3) Methods to enhance the independence and quality of life of pupils with disabilities;

(4) The use of the least restrictive methods to respond to and reinforce the behavior of pupils with disabilities; and

(5) A process of designing interventions based on the pupil that are focused on promoting appropriate changes in behavior as well as enhancing the overall quality of life for the pupil without the use of aversive or negative means.

4. If both an individualized educational program and another individualized plan or program of services are required to be prepared for a pupil, the latter plan or program may be incorporated in the individualized educational program.

5. As used in this section, "extended school year programs" means special education and related services that:

- (a) Are provided to a pupil with a disability outside the normal school year of the public agency;
- (b) Are in accordance with the pupil's individualized educational program;
- (c) Are provided at no cost to the parents of the pupil; and
- (d) Comply with the requirements of this chapter.

NAC 388.287 Inspection and review of educational records of pupil. (NRS 385.080, 388.520)

1. The parents of a pupil must be allowed to inspect and review any educational records relating to their child which are collected, maintained or used by a public agency. The public agency shall comply with such request without unnecessary delay and in any event:

- (a) Before any meeting regarding an individualized educational program or any hearing relating to the identification, evaluation or placement of the pupil or the provision of a free appropriate public education; and
- (b) Not later than 45 days after the request has been made.

Both the parents and the public agency may obtain and respond with reasonable interpretations and explanations of the information contained in the educational records.

2. The parents may:

- (a) Make reasonable requests for the public agency to explain and interpret the records;
- (b) Have their representative inspect and review the records; and
- (c) Request that the public agency provide them with copies of the records if, without the copies, any meaningful review of the records is impractical.

3. A public agency may presume that the parent has authority to inspect and review records relating to the pupil unless the public agency has been advised that the parent does not have the authority under applicable state law governing such matters as guardianship, separation or divorce.

4. Each public agency shall keep a record of the persons other than parents and authorized employees given access to educational records it collects, maintains or uses. The record must include the:

- (a) Name of the person;
- (b) Date access was given;
- (c) Purpose for which the person is authorized to use the records; and
- (d) List required by subsection 6.

5. If any educational record contains information on more than one pupil, the parents may inspect and review only the information relating to their child or be informed of that specific information.

6. The public agency shall maintain and provide to parents on request a list of the types and locations of educational records it collects, maintains or uses relating to pupils.

7. If the public agency charges a fee for copies of records which are made for parents, the amount of the fee must not effectively prevent the parents from exercising their right to inspect and review those records. No fee may be charged for the search or retrieval of the information.

NAC 388.288 Amendment of educational records; hearing. (NRS 385.080, 388.520)

1. A parent who believes that information in educational records is inaccurate, misleading or violates the privacy or other rights of the pupil may request an amendment of the information. The public agency shall determine whether to amend the information in accordance with the request within a reasonable period of time after the receipt of the request. If the decision is to refuse to amend the information, the public agency shall inform the parent of the refusal in writing and shall include the reason for the refusal and advise the parent that the parent has a right to a hearing.

2. The public agency shall, upon request, provide an opportunity for a hearing to challenge information in educational records to ensure that the information is not inaccurate, misleading or otherwise in violation of the privacy or other rights of the pupil. If, as a result of the hearing, it is decided that the information is:

(a) Inaccurate, misleading or otherwise in violation of the privacy or other rights of the pupil, the public agency shall amend the information accordingly and so inform the parents in writing.

(b) Not inaccurate, misleading or otherwise in violation of the privacy or other rights of the pupil, the parent may place in the records a statement commenting on the information or setting forth any reasons for disagreeing with the decision. The public agency shall notify the parent that the parent has a right to include such a statement in the record. The public agency shall retain any such explanation placed in the records of the pupil as part of the records of the pupil as long as the record or contested portion is maintained. If the records of the pupil are disclosed to any person, the explanation must also be disclosed.

3. A hearing held pursuant to subsection 2 must be conducted in accordance with the applicable procedures set forth in the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. § 1232g, and the regulations adopted thereunder.

NAC 388.289 Confidentiality of records. (NRS 385.080, 388.520)

1. Each public agency shall:

(a) Protect the confidentiality of personally identifiable information at its collection, storage, disclosure and destruction;

(b) Appoint one official to assume responsibility for ensuring the confidentiality of any personally identifiable information;

(c) Train or instruct all persons collecting or using personally identifiable information regarding these policies and procedures; and

(d) Maintain a current listing for public inspection of the names and positions of those employees within the district who may have access to personally identifiable information.

2. Each public agency shall:

(a) Inform the parents when the personally identifiable information is no longer needed to provide educational services to the pupil;

(b) Maintain a permanent record of the pupil's name, address, telephone number, grades, attendance, classes he attended, grades he completed and the year he completed them; and

(c) Upon the request of the parent of a pupil, destroy any personally identifiable information, except the information listed in paragraph (b), which is no longer necessary to provide educational services.

3. A public agency shall not disclose personally identifiable information except as authorized by law.

4. A public agency may include student teachers and related service interns among those persons who have a legitimate educational interest in accessing educational records pursuant to policies developed in accordance with the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. § 1232g, and the related regulations.

NAC 388.290 Required facilities and space. (NRS 385.080, 388.520) The facilities and the assignment of space to special programs for pupils with disabilities must be comparable to the facilities and space assigned for regular programs in the school. For the purposes of this subsection, "comparable" means substantially equivalent, giving consideration to lighting, acoustics, ventilation, furnishings, materials and the special needs of the pupils enrolled.

NAC 388.292 Notice of project to identify, locate or evaluate pupils or educational data. (NRS 385.080, 388.520)

1. Before a public agency begins a major project involving the identification, location or evaluation of pupils or educational data, it must publish a notice in newspapers or by other communication media with circulation adequate to notify parents throughout the State of the proposed project.

2. The notice must include:

(a) A description of the extent to which the notice is given in the native languages of the various population groups in the State;

(b) A description of the pupil on whom personally identifiable information is maintained;

- (c) The types of information sought;
- (d) A description of the methods and sources to be used in gathering the information;
- (e) The uses to be made of the information;
- (f) A summary of the policies and procedures to be followed regarding the storage, disclosure to any interested third parties, retention and destruction of personally identifiable information; and
- (g) A description of all of the rights of parents and pupils regarding this information, including, without limitation, the rights pursuant to the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. § 1232g, and the related regulations.

NAC 388.294 Monitoring of units and programs. (NRS 385.080, 388.520)

1. The Department will monitor each unit to determine whether the unit is in compliance with this chapter.
2. Each public agency which provides an educational program for pupils with disabilities shall establish a procedure for monitoring the program to ensure that it complies with the provisions of this chapter.

NAC 388.296 Reports to Department concerning programs and units. (NRS 385.080, 388.520)

1. Any information or report required to be furnished to the Department by a public agency providing an educational program for pupils with disabilities must be furnished in the form and manner prescribed by the Department.
2. A public agency shall submit the requested information regarding each unit receiving apportionment to the Special Education Branch of the Department at the beginning of each school year and as changes occur.

NAC 388.300 Parental consent; notice to parents of proposed or refused action; statement of parental rights; request for hearing; appointment of hearing officer; placement of pupil pending completion of proceedings. (NRS 385.080, 388.520)

1. Except as otherwise provided in this section or NAC 388.440, informed written consent must be obtained from the parents of the pupil before conducting an initial evaluation ~~for~~, *before conducting additional assessments in a* reevaluation, and before special education and related services are initially provided to a pupil with a disability.

(a) If a parent does not provide written consent for the initial evaluation ~~for reevaluation or the initial provision of special education~~ or fails to respond to a request to provide the consent for an initial evaluation, the public agency may request mediation pursuant to NAC 388.305 or a hearing pursuant to this section.

(1) If the pupil is a ward of the state and is not residing with the pupil's parent, the public agency shall make reasonable efforts to obtain the informed consent from the parent of the pupil as defined in NAC 388.071 for an initial evaluation to determine whether the pupil is a pupil with a disability. The public agency shall not be required to obtain informed consent from the parent of a pupil for an initial evaluation to determine whether the pupil is a pupil with a disability if:

(I) Despite reasonable efforts to do so, the agency cannot discover the whereabouts of the parent of the pupil;

(II) The rights of the parents of the pupil have been terminated in accordance with state law; or

(III) 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 pupil.

(b) If the parent of a pupil refuses to consent to the initial receipt of special education and related services, or the parent fails to respond to a request to provide such consent, the public agency shall not provide special education and related services to the pupil by utilizing mediation pursuant to NAC 388.305 or a hearing pursuant to this section:

(1) The public agency shall not be considered to be in violation of the requirement to make available a free appropriate public education to the pupil for the failure to provide such pupil with the special education and related services for which the public agency request such consent; and

(2) The public agency shall not be required to convene an individualized educational program meeting or develop an individualized educational program for the pupil for the special education and related services for which the public agency requests such consent.

(c) If the public agency can demonstrate that it has taken reasonable measures to obtain consent for conducting additional assessments in a reevaluation, and the pupil's parent has failed to respond, consent need not be obtained to conduct the additional assessments.

2. Parental consent is not required:

(a) Before existing data is reviewed as part of an initial evaluation or reevaluation;

(b) Before a test or other assessment is administered to all pupils unless before administration of that test or assessment, consent is required of the parents of all pupils; or

(c) If the public agency demonstrates that it has taken reasonable measures to obtain consent for an additional assessment to be conducted as part of a reevaluation and the pupil's parents have failed to respond.

3. Except as otherwise provided in this subsection, a public agency shall notify the parents of a pupil with a disability, other than a gifted and talented pupil, within a reasonable time before any proposed or refused action regarding the:

(a) Placement of the pupil;

(b) Identification or evaluation of any special educational needs of the pupil; or

(c) Provision of a free appropriate public education to the pupil. If a parent does not agree to the proposed or refused action of the public agency, the public agency or the parent may request mediation pursuant to NAC 388.305 or may request a hearing on the proposed action, or the parent may withhold the consent required by subsection 1, if that subsection applies.

4. The notice of the public agency's action must be written in language understandable to the general public and in the native language of the parent unless that is clearly not feasible. If the native language or other method of communication that is used in the home is not written, the public agency shall ensure that the notice is read to the parent in the native language or communicated to the parent by another method of communication and that the parent understands the notice. The public agency shall maintain written evidence of the parent's understanding of the translated notice.

5. The public agency shall include in the notice:

(a) A description of the action proposed or refused by the public agency;

(b) The reasons for the proposal or refusal;

(c) A description of ~~any~~ other options the public agency considered and the reasons why those options were rejected;

(d) A description of ~~the~~ each evaluation procedure, assessment ~~procedures, tests~~, record~~s~~ or report~~s~~ upon which the action is based;

(e) A description of ~~Any other~~ the factors which are relevant to the public agency's proposal or refusal;

(f) A statement that the parents have rights in the matter, and if the notice is not notice of an initial referral for evaluation, the means by which a statement of parental rights can be obtained; and

(g) Sources for parents to contact to obtain assistance in understanding the provisions of state and federal law relating to special education.

6. A public agency shall provide the parents of a pupil with a statement of parental rights *only one time a year, except that a copy also shall be given to parents:*

(a) When the pupil is initially referred for evaluation *or upon parental request for an evaluation;*

(b) ~~When notice of a meeting relating to the pupil's individualized educational program is provided to the parents;~~

~~(c) When the pupil is being reevaluated; and~~

~~(d) When the public agency receives [a] the first request for a hearing pursuant to this section from the parents[.]; and~~

(c) Upon request by the parents.

The statement of parental rights must explain fully the procedural safeguards listed in 20 U.S.C. § 1415(d)(2) that are available to the parents and the procedures for filing a complaint pursuant to NAC 388.318.

7. If the parent desires a hearing regarding the public agency's proposal or refusal, the parent must submit a written request for the hearing to the head of the public agency.

8. Either party requesting a hearing, or the attorney representing a party, must provide a due process notice to the other party, and forward a copy of such notice to the Nevada Department of Education. The [request] notice must include:

(a) The name of the pupil;

(b) The address of the residence of the pupil *or available contact information in the case of a homeless pupil;*

(c) The name of the school the pupil is attending;

(d) A description of the nature of the problem of the pupil relating to the public agency's proposal or refusal, including, without limitation, the facts relating to the problem; and

(e) A proposed resolution of the problem to the extent known and available to the ~~[parents]~~ *party* at the time.

~~[A public agency may not deny or delay a parent's right to a hearing pursuant to this section for failure to provide the request in the manner required pursuant to this section.] A party may not have a due process hearing until the party, or the attorney representing the party, files a notice that meets the requirements of paragraph 8. Responses to a due process notice shall be in accordance with 20 U.S.C. § 1415(c)(2).~~

~~[8] 9.~~ Within 5 days after receipt of a request pursuant to subsection 7, the head of the public agency shall request the Superintendent to appoint a hearing officer. The Superintendent, upon receiving such a request, shall:

(a) Appoint an impartial hearing officer from the list of hearing officers maintained by the Department; and

(b) Notify the parties of the appointment.

The hearing officer appointed must not have a conflict of interest or be an employee of any public agency involved in the education or care of the pupil. For the purposes of this subsection, a person is not an employee of a public agency solely because the public agency compensates the person for the person's services as a hearing officer.

~~[9] 10.~~ Except as otherwise provided in this subsection, ~~[NAC 388.265] in 20 U.S.C. § 1415(k)~~, or as the parties otherwise agree, the pupil must remain in the pupil's current placement until completion of any administrative or judicial proceedings or a decision is rendered by the hearing officer or, if an appeal is taken pursuant to NAC 388.315, the review officer. If the hearing involves an application for the pupil's initial admission to a program of a public school, the pupil, with the consent of the parent, must be placed in a public school until the completion of all the proceedings. If, in an appeal taken pursuant to NAC 388.315, the review officer agrees with the parents of the pupil that a particular change in the pupil's current placement is appropriate, the change in placement must be treated as an agreement between the public agency and the parents for the purposes of this subsection.

11. A parent or public agency shall request an impartial due process hearing within 2 years of the date the parent or agency knew or should have known about the alleged action that forms the basis of the hearing. The timeline shall not apply to a parent if the parent was

prevented from requesting the hearing due to specific misrepresentations by the public agency that it had resolved the problem forming the basis of the request for the hearing, or due to the public agency's withholding of information from the parent that was required under 20 U.S.C. §§ 1400 et seq. to be provided to the parent.

NAC 388.305 Resolution of dispute by mediation. (NRS 385.080, 388.520)

1. If a parent of a pupil does not agree with the identification, evaluation or educational placement of the pupil or the provision of a free appropriate public education to the pupil, the parent or the public agency may request the Department to provide mediation.
2. If mediation is requested, the parent involved in the dispute must not be denied the parent's right to a hearing and the process of mediation must not be used to delay a hearing.
3. The Department will maintain a list of persons who are qualified mediators and knowledgeable in the laws and regulations relating to the provision of special educational services and related services. If mediation is requested, the mediation must be conducted by an impartial mediator who is included on the list maintained by the Department.
4. If mediation is requested:
 - (a) The Department will pay for the costs incurred by the mediation;
 - (b) Each session of mediation must be scheduled in a timely manner and must be held at a location that is convenient for the parties to the dispute; and
 - (c) Each party to the dispute must sign a confidentiality agreement before the mediation begins. The agreement must state that all discussions which occur during the mediation are confidential and may not be used as evidence in a hearing or civil proceeding.
5. If the parties to mediation reach an agreement, the agreement must be set forth in writing.

NAC 388.308 Expedited hearing. (NRS 385.080, 388.520)

1. A parent may request an expedited hearing if the hearing is to resolve a dispute concerning:
 - (a) A determination of whether the behavior of the pupil is a manifestation of the disability of the pupil which is made pursuant to paragraph (b) of subsection 3 of NAC 388.265; or
 - (b) A determination regarding the placement of a pupil pursuant to 20 U.S.C. § 1415(k) in an appropriate interim alternative educational setting.
2. A public agency may request an expedited hearing for ~~†~~
~~—(a) A† a~~ determination regarding the placement of a pupil in an appropriate interim alternative educational setting pursuant to 20 U.S.C. § 1415(k), if the public agency determines that the current placement of the pupil is substantially likely to result in injury to the pupil or others~~†; or~~
~~—[(b) An extension of the placement of a pupil in an interim alternative educational setting for:~~
~~—(1) The duration of administrative proceedings relating to a determination described in paragraph (a) or (b) of subsection 1; or~~
~~—(2) Forty five days,~~
~~whichever is shorter.] .~~
3. An expedited hearing must be conducted in accordance with the provisions of NAC 388.300 and 388.310, except that ~~[a request for an extension of time will not be granted]~~ *the hearing must be conducted within 20 school days of the date the hearing is requested and shall result in a determination within 10 school days after the hearing.*

NAC 388.310 Resolution of dispute by hearing. (NRS 385.080, 388.520)

1. If a parent, guardian or public agency requests a hearing pursuant to NAC 388.300, the public agency shall *comply with the provisions in 20 U.S.C. § 1415(f), including requirements to:*
 - (a) Notify the parent, by certified mail, of the time and place set for the hearing;
 - (b) Inform the parent of any free or inexpensive legal services and other relevant services available in the area;

- (c) Inform the parent of the right to request a resolution of the dispute through a mediation process pursuant to NAC 388.305; and
- (d) Inform the parent of the provisions of this section.
- 2. At the hearing, a party to the hearing may:
 - (a) Be represented by counsel;
 - (b) Be accompanied by and advised by persons who have special knowledge of or training regarding the problems of pupils with disabilities;
 - (c) Present evidence;
 - (d) Call, examine and compel the attendance of witnesses; and
 - (e) Cross-examine witnesses.
- 3. At the hearing, the parent has the right to:
 - (a) Have the pupil present; and
 - (b) Have the hearing open to the general public.
- 4. The parent may examine all pertinent school records before the hearing.
- 5. A party to the hearing may object to the introduction of:
 - (a) Evidence; or
 - (b) Evaluations, including recommendations based upon evaluations, that have not been disclosed to the opposing party at least 5 business days before the hearing.
- 6. The public agency shall make a verbatim record of the hearing either in writing or, at the option of the parent, by electronic means. The record must be made available to any party to the hearing.
- 7. The public agency shall take whatever action is necessary to ensure that the parent understands the written notice and the proceedings at the hearing, including arranging for an interpreter for a parent who is deaf or whose native language is not English.
- 8. The public agency shall transmit the written findings of fact and decisions prepared pursuant to subsection 11 and transmit them to the Special Education Advisory Council of the Department. The findings and decisions must be available for public inspection after removing any personally identifiable information of the pupil.
- 9. The hearing must be held at a time and place reasonably convenient to the parent and the pupil involved.
- 10. The hearing officer shall base the decision solely on the evidence presented at the hearing.
- 11. Except as otherwise provided in this subsection, the hearing officer shall render the findings of fact and decision in writing and mail a copy of the decision to the parties within 45 days after the date on which the head of the public agency or the Superintendent if the hearing is requested by a public agency, receives the request for the hearing. Except as otherwise provided in NAC 388.308, the hearing officer may extend the time for rendering a decision for a specific number of days upon the request of either party. The written findings of fact and decision must be made available to any party to the hearing. At the option of a parent, findings of fact and decision must be made available to the parent by electronic means.
- 12. The public agency shall pay the expenses of the hearing officer and any other expenses of the hearing.
- 13. The hearing officer must not have a personal or professional interest which would conflict with the hearing officer's objectivity.
- 14. Each calendar year, the Department will provide a list to each public education agency of the hearing officers and their qualifications.
- 15. The decision of a hearing officer is final unless the decision is appealed pursuant to NAC 388.315. A public agency may proceed without the consent of the parents pursuant to the decision of the hearing officer.
- 16. As used in this section, "business day" means Monday through Friday, excluding federal and state holidays.

NAC 388.XXX Decision of Hearing Officer

1. Subject to paragraph 2, a decision made by a hearing officer shall be made on substantive grounds based on a determination of whether the pupil received a free appropriate public education.

2. In matters alleging a procedural violation, a hearing officer may find that a pupil did not receive a free appropriate public education only if the procedural inadequacies:

(a) Impeded the pupil's right to a free appropriate public education;

(b) Significantly impeded the parents' opportunity to participate in the decisionmaking process regarding the provision of a free appropriate public education to the pupil; or

(c) Caused a deprivation of educational benefits.

3. Nothing in this section shall be construed to preclude a hearing officer from ordering a public agency to comply with procedural requirements.

NAC 388.315 Appeal from decision of hearing officer. (NRS 385.080, 388.520)

1. A party may appeal from the decision of a hearing officer made pursuant to NAC 388.310 within 30 days after receiving the decision. A party to the hearing may file a cross appeal within 10 days after he receives notice of the initial appeal. If there is an appeal, a state review officer appointed by the Superintendent from a list of officers maintained by the Department shall conduct an impartial review of the hearing. The officer conducting the review shall:

(a) Examine the entire record of the hearing;

(b) Ensure that the procedures at the hearing were consistent with the requirements of due process;

(c) Seek any additional evidence necessary and, if a hearing is held to receive additional evidence, afford the parties the rights set forth in NAC 388.310;

(d) Afford the parties an opportunity for oral or written argument, or both, at the discretion of the reviewing officer;

(e) Schedule any oral arguments at a time and place which is reasonably convenient to the parent and pupil involved;

(f) Make an independent decision on the completion of the review; and

(g) Except as otherwise provided in this paragraph, mail copies of the written findings and decision to the parties within 30 days after receipt of a written request for review. The review officer may extend the time for rendering a decision for a specific number of days upon the request of either party. At the option of the parent, the findings of fact and decision must be made available to the parent by electronic means.

2. The decision of a review officer is final unless a party brings an action pursuant to subsection 3.

3. A party may appeal from the decision of the review officer by initiating a civil action in a court of competent jurisdiction within ~~30~~ 90 days after receipt of the decision of the review officer. A party may file a cross appeal within 10 days after he receives notice of the initial appeal.

4. The Department shall transmit the written findings of fact and decisions and transmit them to the Special Education Advisory Council of the Department after removing any personally identifiable information of the pupil. The findings and decisions must be available for public inspection.

NAC 388.318 Procedure for complaints. (NRS 385.080, 388.520)

1. A person may file a complaint with the Superintendent stating that a public agency has violated a provision of the Individuals with Disabilities Education Act, 20 U.S.C. §§ 1400 et seq., or the regulations adopted pursuant thereto, or a provision of NAC 388.150 to 388.450, inclusive. The complaint must be in writing and must include the facts related to the alleged violation.

2. Within 60 days after receipt of the written complaint, the Department shall investigate the allegations in the complaint and render its decision. If the Department finds that the public agency has violated the federal or state requirements referenced in subsection 1, the Department shall order the public agency to take actions to remediate the violation.

3. A public agency that receives an order pursuant to subsection 2 shall take the actions prescribed in the order and provide to the Department documentation of all actions taken in accordance with the order.

Determination of Eligibility for Placement of Pupils With Disabilities and Gifted and Talented Pupils

NAC 388.325 Prior intervention. (NRS 385.080, 388.470, 388.520)

1. If a pupil is experiencing an educational or behavioral difficulty but is not suspected of having a disability by the public agency, the public agency may attempt to remediate such a difficulty through a prior intervention.

2. The public agency shall:

(a) Determine the type of intervention to be attempted, the process for monitoring progress and the methods for evaluating the effectiveness of the intervention;

(b) Specify reasonable timelines for initiating, completing and evaluating the intervention; and

(c) Based in part on the results of the prior intervention, determine whether the pupil is suspected of having a disability and should be evaluated in accordance with NAC 388.330 to 388.440, inclusive.

3. During the period in which a prior intervention is being provided, a parent of the pupil may ask for an initial evaluation of the pupil if the parent suspects that the pupil has a disability and may qualify for special services and programs of instruction pursuant to NAC 388.330 to 388.440, inclusive. If the public agency suspects the pupil has a disability, the public agency shall not refuse to conduct the initial evaluation or delay the initial evaluation until the prior intervention is completed. If the public agency disagrees with the parent and does not suspect the pupil has a disability, it may refuse to conduct an evaluation. The public agency shall provide to the parent written notice of this refusal in accordance with NAC 388.300, and the parent may request mediation pursuant to NAC 388.305 or a hearing pursuant to NAC 388.300 to resolve the dispute.

4. If the public agency determines that the educational difficulty or behavior of the pupil is resistant to the prior intervention, or if the public agency determines that the prior intervention requires continued and substantial effort and may require the provision of special education and related services to be effective, the public agency shall conduct an initial evaluation of the pupil to determine whether the pupil is eligible for special education. Informed parental consent in accordance with subsection 1 of NAC 388.300 must be obtained before the public agency may conduct such an evaluation.

NAC 388.330 Credentials required to administer or interpret assessment. (NRS 385.080, 388.470, 388.520) Any person responsible for administering or interpreting an assessment pursuant to NAC 388.330 to 388.440, inclusive, must:

1. Possess a license or certificate in the area of the person's professional discipline; and
2. Be trained in the area of assessment in question.

NAC 388.335 Tests and devices for assessment. (NRS 385.080, 388.470, 388.520) Any test or other device for assessment used pursuant to NAC 388.330 to 388.440, inclusive, must comply with the procedures set forth in ~~[34 C.F.R. § 300.532]~~ **20 U.S.C. § 1414(b)**.

NAC 388.336 Review of evaluation data; determination of need for additional data. (NRS 385.080, 388.470, 388.520) As part of an initial evaluation if data is available, and as part of any reevaluation, a group that includes the committee that developed or will develop the pupil's individualized educational program pursuant to NAC 388.281, the members of the eligibility team and any other qualified professionals appointed shall:

1. Conduct a review of data from existing evaluations, including, without limitation:
 - (a) Evaluations and information provided by the parents of the pupil;
 - (b) Current classroom-based, *local, or state* assessments and *classroom-based* observations; and
 - (c) Observations by teachers and related service providers; and
2. Based upon the review and input from the pupil's parents, identify the additional data, if any, that is required to determine:
 - (a) Whether the pupil has a particular category of disability, or, in case of a reevaluation of a pupil, whether the pupil continues to have such a disability, *and the educational needs of the pupil*;
 - (b) The present levels of ~~performance and educational~~ *academic achievement and related developmental* needs of the pupil;
 - (c) Whether the pupil needs special education and related services, or in the case of a reevaluation of a pupil, whether the pupil continues to need special education and related services; and
 - (d) Whether any additions or modifications to the special education and related services are needed to enable the pupil to meet the measurable annual goals set out in the individualized educational program of the pupil and to participate, as appropriate, in the general *education* curriculum.

The group may conduct its review without a meeting.

NAC 388.337 Deadlines for conducting initial evaluations. (NRS 385.080, 388.470, 388.520)

1. Except as otherwise provided by subsection 2, when a public agency determines that good cause exists to evaluate a pupil pursuant to NAC 388.330 to 388.440, inclusive, it shall conduct the initial evaluation within:
 - (a) Forty-five school days after the parent, or pupil if the pupil is an adult, provides informed written consent;
 - (b) Forty-five school days after the date of the decision of a hearing officer pursuant to NAC 388.310 ordering the parent to allow, or adult pupil to submit to an evaluation; or
 - (c) At any other time agreed upon in writing by the parent or adult pupil and the public agency.
2. Upon the request of a public agency, the Superintendent may extend the deadline for conducting initial evaluations for not more than 15 school days.
3. For the purposes of this section, "school day" means any day in which pupils enrolled in a school are scheduled to be engaged in registration, classes, other instructional activities or testing during the required minimum daily period for each grade or department.

4. *The deadline for conducting an initial evaluation shall not apply to a public agency if:*

(a) A pupil enrolls in a school served by the public agency after the 45-school-day timeframe has begun and prior to a determination by the pupil's previous public agency as to whether the pupil is a pupil with a disability, but only if the subsequent public agency is making sufficient progress to ensure a prompt completion of the evaluation, and the parent and subsequent public agency agree to a specific time when the evaluation will be completed;
or

(b) The parent of a pupil repeatedly fails or refuses to produce the pupil for the evaluation.

NAC 388.340 Decisions concerning placement or eligibility. (NRS 385.080, 388.470, 388.520)

1. In conducting an evaluation pursuant to NAC 388.330 to 388.440, inclusive, the public agency shall use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information, including information provided by the parent, that may assist in determining:

(a) Whether the pupil is a pupil with a disability; and

(b) The content of the pupil's individualized educational program, including information related to enabling the child to be involved in and progress in the general education curriculum, or, for preschool children, to participate in appropriate activities.

~~2.~~ No single ~~[test or other device for]~~ *measure or* assessment may be used as the sole or controlling criterion for ~~[the placement of a pupil]~~ *determining whether a pupil is a pupil with a disability* pursuant to NAC 388.330 to 388.440, inclusive, *or for determining an appropriate educational program for the pupil.* ~~[The interpretation of data obtained from an assessment and any decision concerning the placement of a pupil must be:~~

~~—(a) Made in light of the physical condition, adaptive skills, and social or cultural background of the pupil; and~~

~~—(b) Based upon information from a variety of sources, such as the pupil, the pupil's family, the pupil's teacher or a test of aptitude or achievement.]~~

3. The public agency shall use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.

4. The public agency shall ensure that:

(a) Assessments and other evaluation materials used to assess a pupil under this section:

(1) Are selected and administered so as not to be discriminatory on a racial or cultural basis;

(2) Are provided and administered in the language and form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is not feasible to so provide or administer;

(3) Are used for purposes for which the assessments or measures are valid and reliable;

(4) Are administered by trained and knowledgeable personnel; and

(5) Are administered in accordance with any instructions provided by the producer of such assessments.

(b) The pupil is assessed in all areas of suspected disability;

(c) Assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the pupil are provided; and

(d) Assessments of pupils with disabilities who transfer from one school district to another school district in the same academic year are coordinated with such pupil's prior and subsequent schools, as necessary and as expeditiously as possible, to ensure prompt completion of full evaluations.

~~5.~~ In making a determination of the eligibility of the pupil for special services and programs of instruction pursuant to NAC 388.330 to 388.440, inclusive, a pupil may not be determined to be a pupil with a disability if the controlling factor for such a determination is the pupil's lack of *appropriate* instruction in reading, *including in the essential components of reading instruction as defined in § 1208(3) of the Elementary and Secondary Education Act of 1965*, or math or limited proficiency in English.

~~6.~~ The public agency must evaluate a pupil with a disability pursuant to NAC 388.330 to 388.440, inclusive, before determining that the pupil is no longer a pupil with a disability.

(a) The evaluation shall not be required before the termination of a pupil's eligibility due to graduation from secondary school with a regular diploma, or due to exceeding the age of 21.

(b) For a pupil whose eligibility under Part B of the Individuals with Disabilities Education Act terminates under the circumstances described in paragraph (a), the public agency shall provide the pupil with a written summary of the pupil's academic achievement and functional

performance, which shall include recommendations on how to assist the pupil in meeting the pupil's postsecondary goals.

~~4~~ 7. Any decision of the eligibility team concerning the eligibility of a pupil for special services and programs of instruction pursuant to NAC 388.330 to 388.440, inclusive, must be justified in a written report, to be kept in the records of the pupil maintained by the public agency. The public agency shall provide a copy of the report and any other documentation relating to the determination of the pupil's eligibility pursuant to this section to the parents of the pupil.

~~5~~ 8. If the members of the eligibility team disagree about the determination of eligibility, a minority report must be prepared if required by paragraph (h) of subsection ~~6~~ 7 of NAC 388.420 and may be prepared in any other case.

NAC 388.345 Assessment of cognitive abilities. (NRS 385.080, 388.470, 388.520)

1. An individually administered, standardized test of cognitive ability must be used in assessing the cognitive abilities of a pupil with a disability. If a score other than the total score of the pupil on such a test is used to assess the pupil's cognitive abilities, the procedure must be justified, on the basis of professionally recognized criteria, in the records of the pupil maintained by the public agency.

2. Except as otherwise provided in this subsection, any interpretation of an assessment of cognitive abilities must be made by a licensed school psychologist or licensed or certified psychologist. In the case of a pupil under the age of 6 years, any such interpretation may be made by a licensed school psychologist or a licensed or certified psychologist with documented training in the assessment of preschool pupils with disabilities.

NAC 388.350 Assessment of social and emotional condition. (NRS 385.080, 388.470, 388.520)

1. Except as otherwise provided in this subsection, if the social and emotional condition of a pupil with a disability is assessed, the assessment may include:

- (a) Observation of the pupil;
- (b) An interview of the pupil or of any person having personal knowledge of the pupil;
- (c) Projective testing of the social and emotional condition of the pupil; and
- (d) The use of:
 - (1) A behavior rating scale;
 - (2) An adaptive behavior scale; and
 - (3) A self-report inventory.

A pupil may not be identified as a pupil with serious emotional disturbance unless a variety of these techniques is used to assess the social and emotional condition of the pupil.

2. Any interpretation of an assessment of social and emotional condition must be made by a psychologist or another certified or licensed mental health professional.

NAC 388.360 Assessment of adaptive skills. (NRS 385.080, 388.470, 388.520)

1. If the adaptive skills of a pupil with a disability are assessed, the person conducting the assessment must use a validated adaptive behavior scale. The assessment must include an assessment of any six or more of the following:

- (a) Communication;
- (b) Self-care;
- (c) Home living;
- (d) Social skills;
- (e) Community use;
- (f) Self-direction;
- (g) Health and safety;
- (h) Functional academics; and
- (i) Leisure and work.

2. Any interpretation of an assessment of adaptive skills must be made by a person qualified to assess adaptive skills through the use of an adaptive behavior scale.

NAC 388.365 Assessment of health. (NRS 385.080, 388.470, 388.520)

1. If the health of a pupil with a disability is assessed, the assessment may include:

- (a) A review of the developmental history;
- (b) Hearing and vision screening;
- (c) A physical examination;
- (d) An audiological assessment;
- (e) A physical therapy assessment; and
- (f) An occupational therapy assessment,

of the pupil.

2. Any interpretation of an assessment of health must be made by a person qualified to assess the condition in issue.

NAC 388.370 Assessment of speech, language or other communication skills. (NRS 385.080, 388.470, 388.520)

1. If the speech, language or other communication skills of a pupil with a disability are assessed, the assessment may include:

- (a) The use of a standardized test of speech, language or other communication skills;
- (b) An interview of the pupil or of any person having personal knowledge of the pupil;
- (c) An observation of the pupil; and
- (d) The use of information from a parent or teacher of the pupil.

2. Any interpretation of an assessment of speech, language or other communication skills must be made by a speech and language specialist.

NAC 388.375 Assessment of academic achievement. (NRS 385.080, 388.470, 388.520)

1. Except as otherwise provided in subsection 2, if the academic achievement of a pupil with a disability is assessed, the person conducting the assessment may use:

- (a) A standardized test of academic achievement;
- (b) Curriculum-based assessment; and
- (c) A report by the teacher of the pupil.

2. If the assessment of academic achievement is required to determine the eligibility of the pupil for special services and programs of instruction pursuant to NAC 388.330 to 388.440, inclusive, the assessment must be based upon the use of a standardized test.

3. Any interpretation of an assessment of academic achievement must be made by a person qualified to administer individually standardized tests of academic achievement to pupils.

NAC 388.380 Assessment of performance in current educational setting. (NRS 385.080, 388.470, 388.520)

1. If the performance of a pupil with a disability in the pupil's current educational setting is assessed, the assessment may include:

- (a) Except as otherwise limited by subsection 2, observation of the pupil in that setting;
- (b) Review of any report from a parent or teacher of the pupil;
- (c) Review of samples of the work of the pupil; and
- (d) Curriculum-based assessment.

2. If the assessment of performance is required to determine the eligibility of the pupil for special services and programs of instruction for pupils with specific learning disabilities, any observation conducted pursuant to paragraph (a) of subsection 1 must be conducted by a person other than the regular classroom teacher of the pupil.

3. Any interpretation of an assessment of performance in the current educational setting must be made by one or more members of the eligibility team having personal knowledge of the performance of the pupil.

NAC 388.385 Assessment of previous educational intervention. (NRS 385.080, 388.470, 388.520) If, with respect to a pupil with a disability, evidence of any previous educational intervention is assessed, the assessment may include consideration of the feasibility of:

1. Adapting curriculum materials to the needs of the pupil;
2. Variations in the techniques employed in teaching the pupil;
3. Tutoring of the pupil;
4. Using behavior management programs;
5. Counseling of the pupil; and
6. A change in the educational environment.

NAC 388.386 Assessment of functional behavior. (NRS 385.080, 388.470, 388.520) If the functional behavior of a pupil is assessed, the assessment must include:

1. Systematic observation of the occurrence of the targeted behavior for an accurate definition and description of the frequency, duration and intensity of the behavior.
2. Systematic observation of the events that immediately precede each display of the targeted behavior and are associated with the display of the behavior.
3. Systematic observation and analysis of the consequences following the display of the targeted behavior to identify the specific environmental or physiological outcomes produced by the behavior in order to determine the function that the behavior serves for the pupil. The communicative intent of the targeted behavior must be identified in terms of what the pupil is either requesting or protesting through the display of the behavior.
4. Analysis of the settings in which the targeted behavior occurs most frequently. Factors that may be considered include the physical setting, the social setting, the activities and the nature of instruction, scheduling, the quality of communication between the pupil and staff and other pupils, the degree of participation of the pupil in the setting, the amount and quality of social interaction, the degree of choice and the variety of activities.
5. Review of records for health and medical factors which may influence the targeted behavior, including, without limitation, levels of medication, sleep cycles, health and diet.
6. Review of the history of the targeted behavior to include the effectiveness of any intervention previously used.

As used in this section, “targeted behavior” means the particular adaptive or inappropriate behavior of the pupil that the person conducting the assessment monitors in order to promote adaptive behavior and reduce the occurrence of inappropriate behavior.

NAC 388.387 Eligibility of pupil with autism. (NRS 385.080, 388.470, 388.520)

1. A pupil is eligible for special services and programs of instruction if the eligibility team, comprised of the persons set forth in subsection 2, determines that the pupil has autism.
2. The eligibility team must consist of:
 - (a) A school psychologist.
 - (b) A teacher of special education or a person with a specialized knowledge of autism.
 - (c) The regular classroom teacher of the pupil, or, if none, a person qualified to teach the pupil.
 - (d) A specialist of speech and language.
 - (e) A parent of the pupil.
 - (f) One or more persons who have sufficient knowledge of the pupil to interpret information relating to the pupil’s social, emotional, developmental and familial condition. Such persons may include an administrator of the school, a nurse, a counselor, a school psychologist or any other certificated or licensed professional.
3. The eligibility team shall conduct an evaluation of the pupil to determine whether the pupil is eligible for special services and programs of instruction pursuant to this section. Such an evaluation must:
 - (a) Assess the:
 - (1) Health and medical status;

- (2) Developmental history, including, without limitation, the rate and sequence of development and a clear statement of strengths and weaknesses;
 - (3) Cognitive abilities;
 - (4) Social and emotional condition in multiple settings;
 - (5) Academic achievement;
 - (6) Adaptive skills; and
 - (7) Speech, language and other communication skills;
- of the pupil; and
- (b) Consider the:
 - (1) Sensory regulation;
 - (2) Self-help and independent living skills;
 - (3) Behavior problems;
 - (4) Symbolic and imaginative play;
 - (5) Activities and special interests; and
 - (6) Motor skills;
- of the pupil.

NAC 388.390 Eligibility of pupil with hearing impairment. (NRS 385.080, 388.470, 388.520)

1. Except as otherwise provided in subsection 3, a pupil with a hearing impairment who is deaf is eligible for special services and programs of instruction if the eligibility team, comprised of the persons described in subsections 6 and 7, concludes that:

- (a) Routine auditory communication is impossible for the pupil, or nearly so, because of the pupil's inability to discriminate among and understand the sounds that reach the pupil;
- (b) The sense of hearing of the pupil is nonfunctional for the ordinary purposes of life, whether as the result of congenital or postlingual deafness; and
- (c) The pupil has an average hearing threshold level, at 500, 1,000 and 2,000 Hz, of 92 decibels or more.

As used in this subsection, "nonfunctional for the ordinary purposes of life" means that the pupil does not receive speech sounds clearly enough through hearing, with or without amplification and notwithstanding the fact that he may be aware of loud or random noises, to develop language.

2. Except as otherwise provided in subsection 3, a pupil with a hearing impairment who is hard-of-hearing is eligible for special services and programs of instruction if the eligibility team concludes that:

- (a) The pupil has the ability, if aided, to hear and understand most spoken words;
- (b) The hearing mechanism of the pupil, though defective, is sufficiently functional with or without the use of a hearing aid to allow a receptive flow of information; and
- (c) The pupil has an average hearing threshold level of 30 decibels or more.

3. A pupil with a hearing impairment who is deaf or hard-of-hearing is eligible for special services and programs of instruction if the eligibility team concludes that the pupil meets the criterion set forth in paragraph (c) of subsection 1 or paragraph (c) of subsection 2, whichever applies, notwithstanding the pupil's failure to meet the other criteria set forth in subsection 1 or 2.

4. A pupil with a hearing impairment who has deaf-blindness is eligible for special services and programs of instruction if the eligibility team concludes that the pupil meets the criteria set forth in subsection 1, 2 or 3, whichever applies, and the criteria set forth in NAC 388.395.

5. A pupil under the age of 6 years is not ineligible, because of the pupil's age, for the special services and programs of instruction referred to in this section.

6. The eligibility team may include a teacher or specialist in the field of hearing impairment and must consist of a parent of the pupil and not fewer than three persons with expertise in one or more of the following areas:

- (a) Audiology or the interpretation of an audiological report.
- (b) Hearing impairment.

- (c) The interpretation of an assessment of:
 - (1) Health.
 - (2) Communication skills and disorders.
 - (3) Academic achievement.

7. If the requirements of subsection 6 are satisfied, one or more of the following persons may serve on the eligibility team:

- (a) A regular classroom teacher.
- (b) One or more persons qualified to interpret an assessment of the social or emotional condition of the pupil, or of the cognitive abilities of the pupil, because of the person's personal knowledge of the pupil. Such persons may include, without limitation, an administrator, nurse, school counselor, school psychologist or any other certificated or licensed professional.

8. The conclusions of the eligibility team concerning the eligibility of the pupil for the special services and programs of instruction referred to in this section must be based upon an evaluation of the pupil. The evaluation must include:

- (a) A comprehensive audiological examination, including pure tone and speech discrimination tests, performed by an audiologist; and
- (b) An assessment of the:
 - (1) Health of the pupil, which must include a comprehensive examination of vision;
 - (2) Academic achievement of the pupil; and
 - (3) Speech and language of the pupil.

9. If the requirements of subsection 8 are satisfied, the evaluation of the pupil may include an assessment of the pupil's cognitive abilities and social and emotional condition.

NAC 388.395 Eligibility of pupil with visual impairment. (NRS 385.080, 388.470, 388.520)

1. A pupil with a severe visual impairment is eligible for special services and programs of instruction if the eligibility team, comprised of the persons described in subsections 5 and 6, concludes that:

- (a) The visual acuity of the pupil does not exceed 20/200 in the better eye;
- (b) The vision of the pupil in the better eye is restricted to a field which subtends an arc of not more than 20 degrees; or
- (c) The pupil suffers from a progressive deterioration of the pupil's vision, the probable result of which will be one or both of the conditions described in paragraphs (a) and (b).

2. A pupil with a moderate visual impairment is eligible for special services and programs of instruction if the eligibility team concludes that the pupil can use vision as the main channel of learning and:

- (a) The visual acuity of the pupil is 20/70 or less in the better eye with the best possible correction; or
- (b) The pupil suffers from a progressive deterioration of the pupil's vision, the probable result of which will be the condition described in paragraph (a).

3. A pupil with a visual impairment who has deaf-blindness is eligible for special services and programs of instruction if the eligibility team concludes that the pupil meets the criteria set forth in subsection 1 or 2, whichever applies, and the criteria set forth in NAC 388.390.

4. A pupil under the age of 6 years is not ineligible, because of the pupil's age, for the special services and programs of instruction referred to in this section.

5. The eligibility team may include a teacher or specialist in the field of vision impairment and must consist of a parent of the pupil and not fewer than three persons with expertise in one or more of the following areas:

- (a) Vision.
- (b) Vision impairment.
- (c) The interpretation of an assessment of health or academic achievement.

6. If the requirements of subsection 5 are satisfied, one or more of the following persons may serve on the eligibility team:

- (a) A regular classroom teacher.

(b) One or more persons qualified to interpret an assessment of the social or emotional condition of the pupil, or of the cognitive abilities of the pupil, because of the person's personal knowledge of the pupil. Such persons may include, without limitation, an administrator, nurse, school counselor, school psychologist or any other certificated or licensed professional.

7. The conclusions of the eligibility team concerning the eligibility of the pupil for the special services and programs of instruction referred to in this section must be based upon an evaluation of the pupil. The evaluation must include:

- (a) A comprehensive examination of vision, performed by an eye specialist; and
- (b) An assessment of the health and academic achievement of the pupil.

8. If the requirements of subsection 7 are satisfied, the evaluation of the pupil may include an assessment of the pupil's cognitive abilities and social and emotional condition.

NAC 388.400 Eligibility of pupil with orthopedic impairment. (NRS 385.080, 388.470, 388.520)

1. A pupil with an orthopedic impairment is eligible for special services and programs of instruction if the eligibility team, comprised of the persons described in subsection 3, concludes that the pupil suffers from a severe orthopedic impairment which adversely affects the pupil's educational performance.

2. To determine whether an orthopedic impairment adversely affects the pupil's educational performance, an analysis must be conducted of the pupil's impairment to determine whether he can function in a regular classroom.

3. The eligibility team must consist of:

(a) A school nurse or other person qualified to interpret an assessment of the health of the pupil;

(b) A regular classroom teacher of the pupil, or, if none, a person qualified to teach the pupil;

(c) A parent of the pupil;

(d) One of the following:

(1) A physical therapist;

(2) An occupational therapist; or

(3) Any other specialist whose presence on the team is deemed appropriate; and

(e) One or more persons having personal knowledge of the pupil. Such persons may include, without limitation, an administrator, nurse, school counselor, school psychologist or any other certificated or licensed professional.

4. The conclusions of the eligibility team concerning the eligibility of the pupil for the special services and programs of instruction referred to in this section must be based upon an evaluation of the pupil. The evaluation must include an assessment of:

(a) The health of the pupil, which must include a physical examination; and

(b) The pupil's functional limitations in relation to the demands of a regular classroom.

5. If the requirements of subsection 4 are satisfied, the evaluation of the pupil may include physical therapy, occupational therapy and an assessment of the pupil's:

(a) Cognitive abilities;

(b) Social and emotional condition; and

(c) Academic achievement.

NAC 388.402 Eligibility of pupil with health impairment other than orthopedic impairment. (NRS 385.080, 388.470, 388.520)

1. A pupil is eligible for special services and programs of instruction if the eligibility team, comprised of the persons described in subsection 3, concludes that the pupil has a health impairment other than an orthopedic impairment which could reasonably be interpreted as adversely affecting the educational performance of a pupil.

2. As used in subsection 1, "adversely affecting the educational performance of a pupil" includes, without limitation, difficulty concentrating, chronic fatigue and impulsiveness which interfere with a pupil's ability to be educated.

3. The eligibility team must consist of:

- (a) A school psychologist;
 - (b) A teacher of special education;
 - (c) The regular teacher of the pupil, or, if none, a person qualified to teach the pupil;
 - (d) A school nurse or other person qualified to interpret an assessment of the health of the pupil;
 - (e) A parent of the pupil; and
 - (f) One or more persons with sufficient knowledge of the pupil to interpret information relating to the pupil's social, emotional, developmental and familial condition. Such persons may include an administrator of the school, a nurse, a counselor, a school psychologist or any other certificated or licensed professional.
4. The eligibility team shall conduct an evaluation of the pupil to determine eligibility for special services and programs of instruction pursuant to this section. Such an evaluation must:
- (a) Assess the health of the pupil; and
 - (b) Analyze the ability of the pupil to perform in a regular classroom.
5. The evaluation conducted pursuant to subsection 4 may also include an assessment of the:
- (a) Developmental history;
 - (b) Cognitive abilities;
 - (c) Social and emotional condition;
 - (d) Academic achievement; and
 - (e) Language and motor skills,
- of the pupil.

NAC 388.405 Eligibility of pupil with speech and language impairment. (NRS 385.080, 388.470, 388.520)

1. A pupil with a speech and language impairment is eligible for special services and programs of instruction if the eligibility team, comprised of the persons described in subsection 5, concludes that:
- (a) An impairment exists;
 - (b) The pupil has demonstrated the ability to profit from speech and language therapy; and
 - (c) The pupil requires a program of instruction, because of the nature or severity of the pupil's impairment, which is not feasible in the current educational setting of the pupil because:
 - (1) Intensive remedial techniques or strategies, which can only be implemented in a clinical or therapeutic setting, are required to improve the communication skills of the pupil;
 - (2) The nature of the pupil's impairment requires that the pupil receive the services of a teacher of the speech and language impaired; or
 - (3) The pupil's impairment is of such severity or multiplicity that individual or small group management, available only in a speech and language program, is required.
2. For the purposes of this section, an impairment exists if the pupil suffers from a deficit or disorder with respect to:
- (a) Phonology or articulation, as indicated by the presence of three or more of the following conditions:
 - (1) The pupil has the physiological potential to make the neuromuscular adjustments necessary for oral expression;
 - (2) The communicative ability of the pupil is interfered with by the pupil's lack of intelligibility;
 - (3) The pupil cannot adequately discriminate, imitate or sequence sound patterns;
 - (4) The ability of the pupil to articulate is significantly less than that which is expected in view of the cognitive abilities and level of development of the pupil; or
 - (5) The deficit or disorder has an adverse social, emotional or academic effect upon the pupil;
 - (b) The use and comprehension of language, as indicated by the presence of two or more of the following conditions:
 - (1) The ability of the pupil to comprehend language is significantly less than that which is expected in view of the cognitive abilities and level of development of the pupil;

(2) The use of expressive language by the pupil is significantly less than that which is expected in view of the cognitive abilities and level of development of the pupil;

(3) Pragmatic use of language by the pupil is inappropriate; or

(4) The deficit or disorder has an adverse social, emotional or academic effect upon the pupil;

(c) Fluency of speech, as indicated by the presence of two or more of the following conditions:

(1) The speech of the pupil is observed to be dysfluent;

(2) The severity of the deficit or disorder is such that it interferes with communication by the pupil; or

(3) The deficit or disorder has an adverse social, emotional or academic effect upon the pupil; or

(d) The quality, pitch or intensity of the pupil's voice, as indicated by the presence of two or more of the following conditions:

(1) Voice therapy is recommended by:

(I) A physician; or

(II) Another person certified as a specialist in the identification and treatment of oral, nasal or laryngeal anomalies;

(2) The severity of the deficit or disorder is such that it interferes with communication by the pupil; or

(3) The deficit or disorder has an adverse social, emotional or academic effect upon the pupil.

3. A pupil with limited proficiency in English is eligible for the special services and programs of instruction referred to in this section, on the same basis as other pupils, if the pupil's impairment:

(a) Manifests itself in the pupil's native language and in English; and

(b) Is not attributable to the phonological system of the pupil's native language, or to dialectical differences of articulation and language form between that language and English.

4. A pupil under the age of 6 years is not ineligible, because of the age of the pupil for the special services and programs referred to in this section.

5. The eligibility team must consist of:

(a) A speech and language specialist;

(b) A regular classroom teacher;

(c) If the pupil has another disability in addition to the pupil's speech and language impairment, a special education teacher;

(d) A parent of the pupil; and

(e) If not otherwise a member of the team, a person having personal knowledge of the pupil. This person may be, without limitation, an administrator, nurse, school counselor, school psychologist or any other certificated or licensed professional.

6. The conclusions of the eligibility team concerning the eligibility of the pupil for the special services and programs of instruction referred to in this section must be based upon an evaluation of the pupil. The evaluation must include an assessment of:

(a) The performance of the pupil relating to language, articulation, fluency or voice, as relevant to the pupil's impairment;

(b) The health of the pupil; and

(c) If relevant to the pupil's eligibility for the special services and programs of instruction referred to in this section, the cognitive abilities, academic achievement, and social and emotional condition of the pupil.

NAC 388.407 Eligibility of pupil with traumatic brain injury. (NRS 385.080, 388.470, 388.520)

1. A pupil is eligible for special services and programs of instruction if the eligibility team, comprised of the persons described in subsection 2, concludes that the pupil has a traumatic brain injury.

2. The eligibility team must consist of:
 - (a) A school psychologist;
 - (b) A teacher of special education or a person with a specialized knowledge of traumatic brain injuries;
 - (c) The regular teacher of the pupil, or, if none, a person qualified to teach the pupil;
 - (d) A specialist of speech and language;
 - (e) A school nurse or other person who is qualified to assess the health of the pupil;
 - (f) A parent of the pupil; and
 - (g) One or more persons with sufficient knowledge of the pupil to interpret information relating to the social, emotional, developmental and familial condition of the pupil. Such persons may include an administrator of the school, a nurse, a counselor, a school psychologist or any other certificated or licensed professional.
3. In making a determination pursuant to subsection 1, the eligibility team shall consider, without limitation:
 - (a) Medical documentation of the injury;
 - (b) The pupil's educational performance relative to a normative population;
 - (c) The pupil's strengths and weaknesses; and
 - (d) If possible, the pupil's educational performance before and after the pupil acquired the injury.
4. In addition to the considerations required pursuant to subsection 3, the eligibility team shall conduct an evaluation of the pupil to determine whether the pupil is eligible for special services and programs of instruction pursuant to this section. Such an evaluation must assess the:
 - (a) Health;
 - (b) Developmental history;
 - (c) Cognitive abilities;
 - (d) Social and emotional condition;
 - (e) Academic achievement;
 - (f) Language and motor skills;
 - (g) Sensory and perceptual abilities; and
 - (h) Attention, comprehension, judgment and problem-solving skills,of the pupil.

NAC 388.410 Eligibility of pupil with mental retardation. (NRS 385.080, 388.470, 388.520)

1. A pupil with mild mental retardation is eligible for special services and programs of instruction if the eligibility team, comprised of the persons described in subsections 5 and 6, concludes that:
 - (a) The measured cognitive abilities of the pupil, as determined by an acceptable individual standardized test, are at least two standard deviations below the mean score for that test;
 - (b) The adaptive skills of the pupil, in comparison with those of members of the pupil's chronological peer group, indicate that the pupil is experiencing difficulty; and
 - (c) The academic achievement of the pupil is generally consistent with the cognitive abilities and adaptive skills of the pupil.
2. A pupil with moderate mental retardation is eligible for special services and programs of instruction if the eligibility team concludes that:
 - (a) The measured cognitive abilities of the pupil, as determined by an acceptable individual standardized test, are at least three standard deviations below the mean score for that test;
 - (b) The adaptive skills of the pupil, in comparison with those of members of the pupil's chronological peer group, indicate that the pupil has markedly lower capabilities; and
 - (c) The academic achievement and speech and language development of the pupil is generally consistent with the cognitive abilities and adaptive skills of the pupil.
3. A pupil with severe mental retardation is eligible for special services and programs of instruction if the eligibility team concludes that:

(a) The measured cognitive abilities of the pupil, as determined by an acceptable individual standardized test, are at least four standard deviations below the mean score for that test;

(b) The adaptive skills of the pupil, in comparison with those of members of the pupil's chronological peer group, indicate that the pupil has extensively lower capabilities; and

(c) The developmental functioning of the pupil is generally consistent with the cognitive abilities and adaptive skills of the pupil.

4. A pupil with profound mental retardation is eligible for special services and programs of instruction if the eligibility team concludes that:

(a) The measured cognitive abilities of the pupil, as determined by an acceptable individual standardized test, are at least five standard deviations below the mean score for that test;

(b) The adaptive skills of the pupil, in comparison with those of members of the pupil's chronological peer group, indicate that the pupil has extremely limited capabilities; and

(c) The developmental functioning of the pupil is generally consistent with the cognitive abilities and adaptive skills of the pupil.

5. The eligibility team must consist of:

(a) A school psychologist;

(b) A special education teacher or specialist in the field of mental retardation;

(c) A speech and language specialist;

(d) A parent of the pupil; and

(e) One or more persons qualified, because of personal knowledge of the pupil, to interpret:

(1) Assessments of the health and adaptive skills of the pupil; and

(2) Information relating to the family of the pupil.

The person or persons described in this paragraph may be one or more of the persons described in paragraphs (a), (b) and (c) of this subsection and may, without limitation, be an administrator, nurse, school counselor, school psychologist or any other certificated or licensed professional.

6. If the requirements of subsection 5 are met, one or more of the following persons may serve on the eligibility team:

(a) The principal of the school attended by the pupil;

(b) A regular classroom teacher;

(c) An occupational therapist;

(d) A physical therapist; and

(e) Any other specialist whose presence on the team is deemed appropriate.

7. The conclusions of the eligibility team concerning the eligibility of the pupil for the special services and programs of instruction referred to in this section must be based upon an evaluation of the pupil. The evaluation must include an assessment of:

(a) The cognitive abilities of the pupil;

(b) The adaptive skills of the pupil, including prevocational and vocational assessments if appropriate;

(c) The health of the pupil, including a developmental history;

(d) The academic achievement of the pupil; and

(e) The performance of the pupil relating to speech and language.

NAC 388.415 Eligibility of pupil with emotional disturbance. (NRS 385.080, 388.470, 388.520)

1. A pupil with a serious emotional disturbance is eligible for special services and programs of instruction if the eligibility team, comprised of the persons described in subsection 4, concludes that:

(a) The pupil exhibits one or more of the characteristics described in subsection 2;

(b) These characteristics have been evident for at least 3 months;

(c) The characteristics adversely affect the ability of the pupil to perform developmental tasks appropriate to the pupil's age:

(1) Within the educational environment, despite the provision of intervention strategies; or

(2) In the case of a pupil under school age, in the home, child care or preschool setting;

and

(d) Special education support is required to alleviate these adverse effects.

2. The requirement of paragraph (a) of subsection 1 is satisfied by the consistent manifestation of any of the following characteristics:

(a) An inability of the pupil to build or maintain satisfactory interpersonal relationships within the school environment, including:

(1) Withdrawal and isolation of the pupil from others.

(2) Efforts by the pupil to obtain negative attention from others through punishment, ostracism or excessive approval.

(b) Inappropriate behavior or feelings under normal circumstances, including atypical behavior such as outbursts of anger, crying or head banging, without apparent cause or reason.

(c) A pervasive mood of unhappiness or depression.

(d) Fears or a tendency to develop physical symptoms associated with personal or school problems.

3. A pupil is not eligible for the special services and programs of instruction referred to in subsection 1 solely because:

(a) The pupil exhibits the characteristics described in subsection 2 because of sensory, intellectual or health factors; or

(b) The pupil is socially maladjusted or has a conduct problem.

A pupil who is socially maladjusted or has a conduct problem may not be determined to be eligible for special services and programs of instruction unless the eligibility team concludes, based upon an evaluation of the pupil, that the pupil meets the criteria of eligibility set forth in NAC 388.330 to 388.440, inclusive.

4. The eligibility team must consist of:

(a) A school psychologist;

(b) A regular classroom teacher;

(c) A special education teacher or specialist in the field of serious emotional disturbances;

(d) A parent of the pupil; and

(e) One or more persons qualified, because of personal knowledge of the pupil, to interpret information relating to the health, development, family, and social and emotional condition of the pupil. This person may be, without limitation, an administrator, nurse, school counselor, school psychologist or any other certificated or licensed professional.

5. The conclusions of the eligibility team concerning the eligibility of the pupil for the special services and programs of instruction referred to in this section must be based upon an evaluation of the pupil. The evaluation must include an assessment of:

(a) The social and emotional condition of the pupil, based in part upon information from the pupil;

(b) The health and cognitive abilities of the pupil;

(c) The performance of the pupil in the pupil's current educational setting; and

(d) Any previous educational intervention on behalf of the pupil.

6. As used in this section, "socially maladjusted" and "conduct problem" mean behavior characterized by knowledge of social expectations and intentional disregard of those expectations.

NAC 388.420 Eligibility of pupil with specific learning disabilities. (NRS 385.080, 388.470, 388.520)

1. A pupil with specific learning disabilities is eligible for special services and programs of instruction if the eligibility team, comprised of the persons described in subsection ~~[4]~~ 5, concludes that:

(a) Except as otherwise provided in subsection ~~[3]~~ 4, the pupil exhibits a ~~[severe discrepancy between predicted and actual achievement in oral expression, comprehension in listening, mathematical calculation or reasoning, written expression, basic reading skills or comprehension in reading]~~ *disorder in one or more of the basic psychological processes involved in understanding or using language, spoken or written, which disorder may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations*; and

(b) Prior intervention strategies have not remedied the ~~discrepancy~~ disorder.

2. *When determining whether a pupil has a specific learning disability, the public agency may but is not required to take into consideration whether a pupil has a severe discrepancy between achievement and intellectual ability in oral expression, listening comprehension, written expression, basic reading skill, reading comprehension, mathematical calculation, or mathematical reasoning.* Except as otherwise provided in this subsection, *if the public agency considers* the existence of a discrepancy between predicted and actual achievement, *the discrepancy* must be determined through the use of a statistically valid formula, as prescribed by the Department, which takes into account the age and level of ability of the pupil, the correlation between tests of ability and achievement, and the reliability of each test used. The Department shall prescribe this formula on the basis of consultation with an appropriate representative of each public agency affected. In the case of a pupil under the age of 6 years, a discrepancy may be identified through the use of one or more tests of language concepts or academic readiness skills. *If the public agency considers the existence of a severe discrepancy between achievement and intellectual ability,* the discrepancy between predicted and actual achievement must be corroborated by classroom-based assessment.

3. *When determining whether a pupil has a specific learning disability, the public agency may but is not required to use a process that determines if the pupil responds to scientific, research-based intervention as part of the evaluation procedures described in paragraph 6.*

~~3.~~ 4. A pupil otherwise eligible for the special services and programs of instruction referred to in this section is not eligible if ~~the discrepancy between~~ the pupil's ~~predicted and actual achievement~~ disorder is primarily the result of:

- (a) A visual, hearing or motor impairment;
- (b) Mental retardation;
- (c) A serious emotional disturbance; or
- (d) An environmental, cultural or economic disadvantage.

~~4.~~ 5. The eligibility team must consist of:

- (a) The regular classroom teacher of the pupil or, if the pupil does not have a regular teacher, a teacher qualified to teach a pupil of the pupil's age;
- (b) A special education teacher or specialist with knowledge in the area of the suspected disability;
- (c) A school psychologist;
- (d) A parent of the pupil; and
- (e) One or more persons qualified, because of personal knowledge of the pupil, to interpret information relating to the pupil's health, family, and social and emotional condition. This person may be, without limitation, an administrator, nurse, school counselor, school psychologist or any other certificated or licensed professional.

~~5.~~ 6. The conclusions of the eligibility team concerning the eligibility of the pupil must be based upon an evaluation of the pupil. The evaluation must include:

- (a) An assessment of:
 - (1) The cognitive abilities of the pupil, *if the public agency considers the existence of a severe discrepancy between achievement and intellectual ability*;
 - (2) The social and emotional condition of the pupil;
 - (3) The academic achievement of the pupil;
 - (4) The performance of the pupil in the pupil's current educational setting;
 - (5) Any previous educational intervention on behalf of the pupil; and
 - (6) The health and developmental history of the pupil; and
- (b) An observation of the academic performance of the pupil in the pupil's classroom or, in the case of a pupil under school age, in an environment appropriate for a child of the pupil's age. This observation must be conducted by someone other than the regular classroom teacher of the pupil.

~~6.~~ 7. The eligibility team must prepare a written report of its conclusions. The report must include:

- (a) A statement as to whether the pupil has a specific learning disability;

- (b) The basis for making that determination;
- (c) A description of the relevant behavior noted during the observation of the pupil;
- (d) A statement of the relationship of that behavior to the academic functioning of the pupil;
- (e) Any educationally relevant medical findings;
- (f) A statement as to whether there is a ~~severe discrepancy between the predicted and actual achievement of the pupil~~ **disorder** which ~~cannot be corrected without~~ **requires** special education and related services;
- (g) The conclusion of the team concerning the effect upon the pupil of any environmental, cultural or economic disadvantage; and
- (h) A certification by each member of the team that the report reflects the member's conclusions or, if the report does not reflect the conclusions of a member, a statement of the conclusions of that member.

~~[7.]~~ **8.** ~~[A reevaluation regarding]~~ **If the public agency considers** the continuing existence of a severe discrepancy between predicted and actual achievement **in a reevaluation of the pupil, the determination of a severe discrepancy** may be made based upon information other than the statistically valid formula prescribed by the Department pursuant to subsection 2.

NAC 388.425 Eligibility of pupil with multiple impairments. (NRS 385.080, 388.470, 388.520)

1. A pupil with multiple impairments is eligible for special services and programs of instruction if the pupil meets the requirements for eligibility set forth in NAC 388.410 for pupils with mental retardation and the eligibility team, comprised of the persons described in subsection 2, concludes that the pupil meets the requirements for eligibility for any additional disabling condition, other than a specific learning disability, developmental delay or a speech and language impairment, set forth in NAC 388.330 to 388.440, inclusive.

2. The eligibility team must consist of:

- (a) The persons described in subsection 5 of NAC 388.410; and
- (b) To the extent their presence on the team is not provided for by paragraph (a) of this subsection, the persons included on the team pursuant to:
 - (1) Subsections 6 and 7 of NAC 388.390;
 - (2) Subsections 5 and 6 of NAC 388.395;
 - (3) Subsection 3 of NAC 388.400;
 - (4) Subsection 4 of NAC 388.415;
 - (5) Subsection 3 of NAC 388.402;
 - (6) Subsection 2 of NAC 388.407; or
 - (7) Subsection 2 of NAC 388.387,

whichever applies.

3. The conclusions of the eligibility team concerning the eligibility of the pupil for the special services and programs of instruction referred to in this section must be based upon an evaluation of the pupil. The evaluation must include an assessment of:

- (a) The information described in subsection 7 of NAC 388.410; and
- (b) To the extent its assessment is not provided for by paragraph (a) of this subsection, the information included in the assessment pursuant to:
 - (1) Subsections 8 and 9 of NAC 388.390;
 - (2) Subsections 7 and 8 of NAC 388.395;
 - (3) Subsections 4 and 5 of NAC 388.400;
 - (4) Subsection 5 of NAC 388.415;
 - (5) Subsections 4 and 5 of NAC 388.402;
 - (6) Subsections 3 and 4 of NAC 388.407; or
 - (7) Subsection 3 of NAC 388.387,

whichever applies.

NAC 388.430 Identification of certain pupils with developmental delays. (NRS 385.080, 388.470, 388.520)

1. Except as otherwise provided in subsection 5, a pupil under the age of 6 years may be identified with a developmental delay if the eligibility team, comprised of the persons described in subsections 2 and 3, concludes that he demonstrates a delay of at least two standard deviations in one, or at least one standard deviation in two or more, of the following areas:

- (a) Receptive or expressive language.
- (b) Cognitive abilities.
- (c) Gross or fine motor function.
- (d) Self-help.
- (e) Social or emotional condition.

2. In a case governed by this section, the eligibility team must consist of:

- (a) A special education teacher or specialist in the field of early childhood education;
- (b) A licensed school psychologist or a licensed or certified psychologist with documented training in the assessment of preschool pupils with disabilities;
- (c) A parent of the pupil; and
- (d) One or more persons qualified, because of personal knowledge of the pupil, to interpret information relating to the pupil's health, family, and social and emotional condition. This person may be, without limitation, an administrator, nurse, school counselor, school psychologist or any other certificated or licensed professional.

3. If the requirements of subsection 2 are satisfied, the eligibility team may include one or more persons who provide related services, including speech and language therapy, physical or occupational therapy, and psychological services.

4. The conclusions of the eligibility team concerning the identification of the pupil with a developmental delay must be based upon an evaluation of the pupil. The evaluation must include an assessment of the health, developmental functioning, and social and emotional condition of the pupil.

5. In a case governed by this section, a pupil may no longer be identified with a developmental delay if:

- (a) The pupil maintains appropriate developmental functioning in all developmental areas for 6 months or more, and the eligibility team concludes that special education services are no longer necessary; or
- (b) The pupil reaches the age of 6 years on or before September 30 of the current school year.

NAC 388.435 Eligibility of pupil who is gifted and talented. (NRS 385.080, 388.470, 388.520)

1. Except as otherwise provided in subsection 2, a pupil who is gifted and talented is eligible for special services and programs of instruction if a team, comprised of persons selected by the public agency, concludes that the pupil has:

(a) General intellectual ability or academic aptitude in a specific area that is demonstrated by a score at or above the 98th percentile:

- (1) On a test of cognitive ability that is individually administered;
- (2) In a major content area on a nationally standardized achievement test that is individually administered in kindergarten through eighth grade; or
- (3) In a major content area on a nationally standardized achievement test, the Preliminary Scholastic Aptitude Test (PSAT), the Scholastic Aptitude Test (SAT) or the American College Test (ACT) that is administered to a group of students for grades 9 through 12, inclusive; or

(b) An area of talent, including, but not limited to, creative thinking, productive thinking, leadership, ability in the visual arts or ability in the performing arts, as determined by the local public agency of the pupil.

2. In determining the eligibility of a pupil for the special services and programs of instruction referred to in this section, the team may use alternative assessment procedures for a

pupil from another culture, a pupil who is environmentally or economically deprived or a pupil who has a disability.

3. A pupil under the age of 6 years is not ineligible, because of the pupil's age, for the special services and programs referred to in this section.

4. The conclusions of the team concerning the eligibility of the pupil for the special services and programs of instruction referred to in this section must be based upon an assessment of the talent, cognitive abilities or academic achievement of the pupil.

5. Unless the pupil's individualized educational program otherwise provides, a pupil who is gifted and talented must participate in not less than 150 minutes of differentiated educational activities each week during the school year.

NAC 388.440 Periodic reevaluation of pupil. (NRS 385.080, 388.470, 388.520)

1. ~~Except as otherwise provided in this section, a pupil receiving special services and programs of instruction pursuant to NAC 388.330 to 388.440, inclusive, other than for the gifted and talented, must be reevaluated at least once every 3 years. A reevaluation must be conducted more frequently if conditions warrant or if a reevaluation is requested, based upon a reasonable belief that a change in the condition of the pupil has occurred, by the parent or teacher of the pupil or any other member of the committee that developed the pupil's individualized educational program pursuant to NAC 388.281.]~~ *A public agency shall ensure that a reevaluation of each pupil with a disability is conducted if the public agency determines that the educational or related services needs, including improved academic achievement and functional performance, of the pupil warrant a reevaluation, or if the pupil's parents or teacher requests a reevaluation. A reevaluation conducted under this section shall occur:*

(a) Not more frequently than once a year, unless the parent and the public agency otherwise agree; and

(b) At least once every 3 years, unless the parent and the public agency agree that a reevaluation is unnecessary.

2. If the members of the committee that developed a pupil's individualized educational program pursuant to NAC 388.281 and other qualified personnel, including, without limitation, members of the eligibility team, determine in accordance with NAC 388.336 that no additional data is needed to determine whether the pupil continues to have a disability *and the educational needs of the pupil*, the public agency shall notify the parents of the pupil of the public agency's decision not to conduct additional assessments and the reasons for the decision. The notice must include a statement informing the parents that they may request that an assessment be conducted.

3. In the case of a pupil with a disability who is placed in a program of early childhood education, the reevaluation required by subsection 1 must occur on an ongoing basis. At least every 6 months, the parents of such a pupil must be given the opportunity to participate in a review of the pupil's progress.

4. Each reevaluation of a pupil must be conducted in the manner prescribed by the committee that developed the individualized educational program for the pupil pursuant to NAC 388.281 and other qualified personnel in accordance with the needs of the pupil. Such a reevaluation also must comply with the requirements set forth in subsection 2 of NAC 388.300 and 388.330, 388.335, **388.336** and 388.340.

5. Upon the completion of the reevaluation, the eligibility team shall issue a written report which includes a statement of any disability found to exist and the basis for any determination of continued eligibility.

~~[6.—A pupil must be reevaluated before a determination is made that the pupil no longer has a disability.]~~

NAC 388.450 Independent evaluation of pupil. (NRS 385.080, 388.470, 388.520)

1. A parent may request a public agency to pay for an additional, independent evaluation of a pupil if the parent disagrees with the results of an evaluation obtained by the Department or the public agency. The public agency must, without unnecessary delay, either request a hearing

pursuant to NAC 388.300 if it believes that its evaluation of the pupil is appropriate, or ensure that an independent evaluation is provided at public expense.

2. If at a hearing the hearing conducted pursuant to NAC 388.300, the hearing officer decides that an additional, independent evaluation is necessary because the agency's evaluation was not appropriate, the public agency shall pay for the evaluation. If the hearing officer decides that the evaluation is not necessary because the agency's evaluation was appropriate, the parent may obtain the additional independent evaluation at the parent's personal expense.

3. If the parent so requests, the public agency shall provide the parent with information as to where an independent evaluation may be obtained and the requirements of the agency relating to independent evaluations as set forth in subsection 6.

4. If an independent evaluation is obtained at the parent's personal expense or at public expense, the public agency shall consider the results of the evaluation in any decision made with respect to the provision of a free appropriate public education. The results may be presented as evidence at a hearing regarding that pupil.

5. If a hearing officer requests an independent evaluation as part of a hearing, the cost of the evaluation must be paid by the public agency.

6. Whenever an independent evaluation is obtained at the public agency's expense, the circumstances under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the public agency uses when it initiates an evaluation. Except as otherwise provided in this subsection, a public agency may not impose conditions or timelines on obtaining an independent evaluation at public expense.