

**ADOPTED REGULATION OF THE
STATE BOARD OF EDUCATION**

LCB File No. R058-07

Effective October 31, 2007

EXPLANATION – Matter in *italics* is new; matter in brackets ~~[omitted material]~~ is material to be omitted.

AUTHORITY: §§1-5, 12-21 and 49, NRS 385.080; §§6-11 and 22-39, NRS 385.080 and 388.520; §§40-48, NRS 385.080, 388.470 and 388.520.

A REGULATION relating to special education; revising provisions governing the provision of special education and related services to pupils with disabilities; and providing other matters properly relating thereto.

Section 1. Chapter 388 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 11, inclusive, of this regulation.

Sec. 2. *“Peer-reviewed research” means research relating to education that is reviewed by qualified and independent persons to ensure that the quality of the information meets the standards of the field of education before the research is published.*

Sec. 3. *“Response to scientific, research-based intervention” means a collaborative process which assesses a pupil’s response to scientific, research-based intervention that is matched to the pupil’s needs and that systematically monitors the pupil’s level of performance and rate of learning over time for the purpose of making data-based decisions concerning the pupil’s need for increasingly intensified services.*

Sec. 4. *“Scientific, research-based intervention” means the modification of the classroom environment, curriculum or delivery of instruction in a regular educational environment, which is:*

1. Based upon an examination of the characteristics of the pupil as a learner, the instruction being provided and the curricular tasks to be accomplished and which is targeted toward improving the level of performance and rate of learning of the pupil; and

2. Demonstrated through scientifically based research and practice to have a positive impact on the academic achievement or behavior of the pupil.

Sec. 5. *“Scientifically based research” has the meaning ascribed to it in 20 U.S.C. § 7801.*

Sec. 6. 1. *The parent of a pupil with a disability may participate in meetings relating to the identification, evaluation and educational placement of the pupil, and the provision of a free appropriate education to the pupil. A public agency shall provide notice consistent with the provisions of subsection 8 of NAC 388.281 to ensure that the parent of a pupil is provided sufficient notice to enable the parent to make arrangements to participate in such meetings.*

2. If neither parent of a pupil is able to participate in a meeting in which a decision is made relating to the educational placement of the pupil, the public agency shall use other methods to ensure the participation of a parent, including, without limitation, telephone conversations, conference telephone calls or video conferencing.

3. A decision relating to the educational placement of a pupil may be made without the involvement of a parent of the pupil if the public agency is not able to obtain the participation of a parent in the decision. In such a case, the public agency shall record its attempts to obtain the involvement of the parent.

4. For purposes of this section, “meeting” does not include:

(a) Informal or unscheduled conversations involving the public agency or an employee of the public agency, including, without limitation, conversations relating to teaching methodology, lesson plans or the coordination of services; or

(b) Preparatory activities of the public agency to develop a proposal or a response to a proposal submitted by the parent which will be discussed at a meeting.

Sec. 7. 1. *Except as otherwise provided in subsection 4 of NAC 388.300, a parent of a pupil or a public agency may file a due process complaint on any matter relating to the identification, evaluation or educational placement of the pupil or the provision of a free appropriate public education to the pupil. If the party filing the complaint is the parent of a pupil, the parent shall file the due process complaint with the head of the public agency.*

2. The Department shall develop a model form for filing a due process complaint. A party may use the model form to file a due process complaint or may use any other form or document that meets the requirements of subsection 3.

3. The party filing the complaint, or an attorney representing the party, must provide a copy of the complaint to the other party and to the Department. The complaint must include:

(a) The name of the pupil;

(b) The address of the residence of the pupil or, if the pupil is a homeless youth, available contact information for the 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 party at the time.

↳ *A party may not have a hearing until the party, or an attorney representing the party, files a due process complaint that meets the requirements of this subsection.*

4. A due process complaint filed pursuant to this section is deemed sufficient unless, within 15 days after receiving the complaint, the party receiving the complaint submits written notice to the hearing officer and the party who filed the complaint that the complaint does not meet the requirements of this section.

5. Within 5 days after receipt of a notification pursuant to subsection 4, the hearing officer shall make a determination on the face of the due process complaint whether the complaint meets the requirements of this section and shall immediately provide written notice to the parties of his determination.

6. A party may amend its due process complaint if:

(a) The party receiving the complaint consents in writing to the amendment and is given an opportunity to resolve the problems identified in the due process complaint through a resolution meeting held pursuant to section 8 of this regulation; or

(b) The hearing officer grants permission not less than 5 days before the hearing.

7. If a party files an amended due process complaint, the time period relating to holding a resolution meeting pursuant to section 8 of this regulation and the time period for resolving the due process complaint recommence on the date on which the amended complaint is filed.

8. If the public agency has not sent a prior written notice pursuant to NAC 388.300 to the parent regarding the subject matter contained in the parent's due process complaint, the public agency shall, within 10 days after receiving the due process complaint, send to the parent a response that includes:

(a) An explanation of why the public agency proposed or refused to take the action raised in the due process complaint;

(b) A description of other options that were considered and the reasons for rejecting those options;

(c) A description of each evaluation procedure, assessment, record or report that the public agency used as the basis for the proposed or refused action; and

(d) A description of the other factors that are relevant to the proposed or refused action of the public agency.

↳ A response required pursuant to this subsection does not preclude the public agency from asserting that the due process complaint is insufficient.

9. Unless a response is sent pursuant to subsection 8, the party who receives a due process complaint shall, within 10 days after receiving the complaint, file and send to the other party a response that specifically addresses the issues raised in the complaint.

10. Within 5 days after receiving a complaint pursuant to subsection 1, 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.

11. Except as otherwise provided in this section, NAC 388.308 or 20 U.S.C. § 1415(k), or as otherwise agreed by the parties, the pupil must remain in the pupil's current placement until completion of any administrative or judicial proceedings.

12. If the hearing involves an application for a child's initial admission to a program of a public school, the child, with the consent of the parent, must be placed in a public school until the completion of all the proceedings.

13. If the hearing involves an application for initial services for a child who is receiving early intervention services and who is no longer eligible for those services because he has attained 3 years of age, the public agency:

(a) Is not required to provide the early intervention services that the child received under an individualized family service plan; and

(b) Shall, if it is determined the child is eligible for special education and related services and the parent consents to the initial provision of special education and related services pursuant to NAC 388.300, provide to the child special education and related services to the extent that those services are not in dispute between the parent and the public agency.

14. 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.

15. A parent or a public agency shall file a complaint pursuant to this section within 2 years after the date on which the parent or public agency knew or should have known about the alleged action that forms the basis of the complaint. The time limit for filing a complaint does not apply to a parent if:

(a) The parent was prevented from requesting a 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

(b) The public agency withheld information from the parent that the public agency was required to provide to the parent pursuant to 20 U.S.C. §§ 1400 et seq.

Sec. 8. 1. *Except as otherwise provided in this section, within 15 days after receiving a due process complaint pursuant to section 7 of this regulation and before the initiation of a hearing, the public agency shall convene a resolution meeting with the parent and the relevant members of the individualized educational program committee of the pupil who have specific knowledge of the facts identified in the due process complaint.*

2. The parent and the public agency shall determine which members of the individualized educational program committee are relevant because they have specific knowledge of the facts identified in the due process complaint.

3. A representative of the public agency who has the authority to make decisions on behalf of the agency shall attend the resolution meeting.

4. An attorney for the public agency must not attend the resolution meeting unless the parent is accompanied by an attorney.

5. The purpose of the resolution meeting is to allow the parent and the public agency an opportunity to discuss the due process complaint and the facts that form the basis of the complaint in an effort to resolve the dispute that is the basis for the complaint.

6. A resolution meeting is not required to be held if:

(a) The parent and the public agency agree in writing to waive the meeting; or

(b) The parent and the public agency agree to use the mediation process set forth in NAC 388.305.

7. Except as otherwise provided in subsection 8, if the complaint filed pursuant to section 7 of this regulation is not resolved to the satisfaction of the parent within 30 days after the

public agency received the complaint, the hearing may proceed. Except as otherwise provided in subsection 12 of NAC 388.310, the 45-day timeline for issuing a final decision begins at the expiration of the 30-day period for resolution.

8. Except as otherwise provided in subsection 6, if the parent fails to participate in a resolution meeting, the timelines for the hearing and any action to resolve the complaint will be delayed until such time as the parent participates in the meeting. The public agency shall make reasonable efforts to obtain the participation of the parent. The public agency shall be deemed to have made reasonable efforts if the agency provides written notice and makes additional attempts to notify the parent of the meeting, including, without limitation, attempts to notify the parent by telephone or through a visit to his home or place of employment. The public agency shall keep detailed records of any telephone calls, correspondence or visits made to the parent's home or place of employment and the results of each correspondence or visit, if any. The parent and the public agency may agree to use alternative means of participation in a meeting by the use of a video conference, a telephone conference call or other means.

9. If the public agency is not able to obtain the participation of the parent in a resolution meeting and the agency has made and documented its reasonable efforts to obtain such participation, the public agency may, not less than 30 days after the public agency received the due process complaint, request that the complaint be dismissed.

10. If the public agency fails to hold a resolution meeting within 15 days after receipt of a due process complaint or fails to participate in such a meeting, the parent may request a hearing officer to begin the timeline for a due process hearing.

11. If a resolution to the dispute which forms the basis of a due process complaint is reached during a resolution meeting, the parties shall execute a legally binding agreement which:

(a) Must be signed by the parent and a representative of the public agency who has the authority to bind the agency; and

(b) Is enforceable in any court in this State with competent jurisdiction or in a district court of the United States.

↳ A party may void such an agreement within 3 business days after the agreement is executed.

Sec. 9. To the extent consistent with the number and location of pupils with disabilities who are homeschooled or enrolled by their parents in private schools, including, without limitation, religious, elementary and secondary schools, and who are located in the school district served by the public agency, a public agency shall provide for the participation of those pupils in the program assisted or carried out under Part B of the Individuals with Disabilities Education Act, 20 U.S.C. §§ 1400 et seq., by providing those pupils with special education and related services, including, without limitation, direct services in accordance with the provisions of 34 C.F.R. §§ 300.130 to 300.144, inclusive.

Sec. 10. 1. A public agency shall appropriately and adequately prepare and train all personnel employed by the public agency who assist in carrying out the provisions of this chapter and NRS 388.440 to 388.5315, inclusive, including, without limitation, special education teachers, personnel who provide related services and paraprofessionals to ensure that the personnel have the content knowledge and skills necessary to serve pupils with disabilities.

2. A public agency shall take measurable steps to recruit, hire, train and retain highly qualified personnel to provide special education and related services to pupils with disabilities.

3. Notwithstanding a right of action that a parent or pupil may maintain pursuant to 20 U.S.C. §§ 1400 et seq., NRS 388.440 to 388.5315, inclusive, or this chapter, this section does not:

(a) Create a right of action on behalf of a pupil or group of pupils for the failure of an employee of a public agency to be highly qualified.

(b) Prevent a parent from filing a complaint with the Department in accordance with this chapter concerning the qualifications of personnel.

Sec. 11. 1. *Except as otherwise provided in this section, when more than one person may act as the parent of a pupil, as defined in NAC 388.071, the biological or adoptive parent of the pupil shall be deemed the parent unless that person does not have the legal authority to make educational decisions for the pupil.*

2. If a judicial decree or order identifies a person to act as the parent of a pupil or to make educational decisions for the pupil and a surrogate parent has not been appointed pursuant to NAC 388.283, the person identified in the judicial decree or order shall be deemed the parent for purposes of NAC 388.001 to 388.450, inclusive, and sections 2 to 11, inclusive, of this regulation.

Sec. 12. NAC 388.001 is hereby amended to read as follows:

388.001 As used in NAC 388.001 to ~~[388.655,]~~ **388.450**, inclusive, *and sections 2 to 11, inclusive, of this regulation*, unless the context otherwise requires, the words and terms defined in NAC 388.005 to 388.141, inclusive, *and sections 2 to 5, inclusive of this regulation* have the meanings ascribed to them in those sections.

Sec. 13. NAC 388.005 is hereby amended to read as follows:

388.005 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 fluency*, 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.

Sec. 14. NAC 388.028 is hereby amended to read as follows:

388.028 *1.* “Autism” means a spectrum disorder which:

~~{1-}~~ *(a)* 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-}~~ *(b)* Is usually apparent before the age of 3 years; and

~~{3-}~~ *(c)* 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 disorder, atypical autism, pervasive developmental disorder and other disorders that share the characteristics described in ~~{subsections 1, 2 and 3.}~~ *this subsection.*

2. The term does not apply to a pupil if the pupil’s educational performance is adversely affected primarily because the pupil has a serious emotional disturbance.

Sec. 15. NAC 388.046 is hereby amended to read as follows:

388.046 “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 Tourette syndrome*; and
2. Adversely affects the educational performance of the pupil.

Sec. 16. NAC 388.071 is hereby amended to read as follows:

388.071 “Parent” means:

1. A ~~natural~~ *biological* or adoptive parent;
2. A guardian ~~;~~ *generally authorized to act as a parent of the pupil or authorized to make educational decisions for the pupil*, but not the State if the pupil is a ward of the State;
3. A person acting in the place of a ~~natural~~ *biological* or adoptive parent, including, without limitation, a grandparent, stepparent or other relative with whom the pupil resides or a person who is legally responsible for the pupil’s welfare;
4. A surrogate parent appointed pursuant to NAC 388.283; and
5. A foster parent, if the foster parent:
 - (a) Has an ongoing parental relationship with the pupil;
 - (b) Is willing to make the educational decisions required of parents pursuant to 20 U.S.C. §§ 1400 et seq.; and
 - (c) Has no interest that would conflict with the interests of the pupil.

Sec. 17. NAC 388.085 is hereby amended to read as follows:

388.085 ~~["Previous educational intervention"]~~ **"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.

Sec. 18. NAC 388.101 is hereby amended to read as follows:

388.101 "Related services" has the meaning ascribed to it in 34 C.F.R. § ~~[300.24.]~~ **300.34**. The term does not include a medical device that is surgically implanted, *the optimization of the functioning of such a device, the maintenance of such a device* or the replacement of such a device.

Sec. 19. NAC 388.115 is hereby amended to read as follows:

388.115 "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 *provided pursuant to 34 C.F.R. § 300.108* 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.

Sec. 20. NAC 388.132 is hereby amended to read as follows:

388.132 "Supplementary aids and services" means aids, services and other supports that are provided in regular educational classes, ~~for~~ other education-related settings, *extracurricular settings and nonacademic settings* to enable pupils with disabilities to be educated with pupils who are not disabled to the maximum extent appropriate.

Sec. 21. NAC 388.133 is hereby amended to read as follows:

388.133 “Transition services” means a coordinated set of activities which:

1. Is designed within a process which is results-oriented and which focuses on improving the academic and functional achievement of the pupil with a disability to facilitate the pupil’s movement from school to postschool activities, including, without limitation, postsecondary education, vocational training, integrated employment, continuing and adult education, adult services, independent living ~~or~~ *and* community participation;

2. Is based on the needs of the pupil, taking into account the pupil’s preferences and interests; ~~and~~

3. ~~Includes;~~ *If the pupil is 14 years of age or older, includes the courses of study of the pupil; and*

4. *If the pupil is 16 years of age or older, or the pupil will attain 16 years of age during the period in which the individualized educational program will be in effect, 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.

Sec. 22. NAC 388.145 is hereby amended to read as follows:

388.145 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 ~~H~~ *and all applicable federal laws and regulations.*

Sec. 23. NAC 388.150 is hereby amended to read as follows:

388.150 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~~ *number of cases per teacher* 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.

Sec. 24. NAC 388.215 is hereby amended to read as follows:

388.215 Each public agency shall take measures *pursuant to 34 C.F.R. § 300.111* to ensure that every pupil with a disability who resides within the *school* 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.

Sec. 25. NAC 388.245 is hereby amended to read as follows:

388.245 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 ***and may not be removed from an age-appropriate regular classroom solely because the pupil needs modification to the general curriculum.***

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 ~~and~~ *and the public agency shall ensure that the pupil receives the supplementary aids and services determined appropriate by the individualized educational program committee for the pupil to participate in those activities.* 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.

Sec. 26. NAC 388.255 is hereby amended to read as follows:

388.255 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. The *initial evaluation or* most recent ~~evaluation~~ *reevaluation* of the pupil ~~and~~, *as applicable;* and
3. Information relating to the current educational performance of the pupil.

Sec. 27. NAC 388.263 is hereby amended to read as follows:

388.263 1. If a pupil with a disability who is receiving special education services pursuant to an individualized educational program in a school in this State transfers to another school district in this State in the same academic *school* year and enrolls in another school, the applicable public agency shall, in consultation with the parents of the pupil, provide the pupil with a free appropriate public education including services which are comparable to the services described in his previous individualized educational program. The public agency shall continue to provide such a free appropriate public education to the pupil . ~~[until such time as the public agency adopts]~~ *The public agency shall:*

(a) Within 30 days after the pupil is enrolled in the school, adopt the previous individualized educational program for the pupil or ~~[develops, adopts and implements]~~ *develop* a new individualized educational program for the pupil in accordance with applicable federal and state law ~~[]~~; *or*

(b) Commence a reevaluation of the pupil within 30 days after the pupil is enrolled in the school and continue to provide comparable services described in the pupil's individualized educational program until the development of a new individualized educational program for the pupil in accordance with applicable federal and state law. For purposes of this paragraph, a reevaluation is commenced when written notice is provided to the parent that additional data is not required or upon the consent of a parent for a reevaluation that requires additional data.

2. If a pupil with a disability who is receiving special education services pursuant to an individualized educational program in another state transfers to a school district in this State in the same academic *school* year and enrolls in a school, the applicable public agency shall, in

consultation with the parents of the pupil, provide the pupil with a free appropriate public education including services which are comparable to the services described in his previous individualized educational program. The public agency shall continue to provide such a free appropriate public education to the pupil until such time as the public agency conducts an evaluation of the pupil pursuant to NAC 388.330 to 388.440, inclusive, and develops a new individualized educational program for the pupil, if determined appropriate, in accordance with applicable federal and state law.

3. The public agency shall maintain written documentation of the consultation with the parents of the pupil, the comparable services that will be provided to the pupil and the period during which the comparable services will be provided. The public agency shall provide to the parents of the pupil a copy of the documentation at no cost.

Sec. 28. NAC 388.265 is hereby amended to read as follows:

388.265 1. ~~[No]~~ A pupil with a disability may *not* 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 , *34 C.F.R. §§ 300.530 to 300.536, inclusive*, and 20 U.S.C. § 1415(k). School personnel may consider any unique circumstances , *including, without limitation, the disciplinary history of the pupil, the ability of the pupil to understand consequences, whether the pupil expresses remorse and whether support was provided before the misconduct*, on a case-by-case basis when determining whether to make a change of placement for a pupil with a disability who violates a code of conduct for pupils.

2. Before initiating any suspension, expulsion or exclusion that will result in a change of placement for the pupil ~~[]~~ *during a school year*, 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 those relevant members of the committee.

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

In carrying out the requirements of this paragraph, it must be determined whether the conduct in question was:

(1) Caused by or directly and substantially related to the pupil's disability; or

(2) The direct result of the public agency's failure to implement the pupil's individualized educational program.

↪ If the public agency, the parent and the relevant members of the committee determine that either subparagraph (1) or (2) is applicable to the pupil, the conduct must be determined to be a manifestation of the pupil's disability.

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

4. The public agency shall provide to a pupil with a disability who is suspended, expelled or excluded 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 the same school year* in which the pupil is removed from school.

5. As used in this section:

(a) “Change of placement” ~~[has the meaning ascribed to it]~~ *occurs under the circumstances described* in 34 C.F.R. § ~~[300.519.]~~ *300.536.*

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

Sec. 29. NAC 388.281 is hereby amended to read as follows:

388.281 Except as otherwise provided in ~~[NAC 388.282:]~~ *this chapter and applicable federal laws and regulations:*

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. *Except as otherwise provided in this chapter and 34 C.F.R. § 300.300(b)(3)(ii), the procedure must comply with the provisions of 34 C.F.R. §§ 300.320 to 300.324, inclusive.* For eligible pupils making the transition from *early intervention* programs operated pursuant to 20 U.S.C. §§ 1431 to ~~[1445,]~~ *1444*, inclusive ~~[, an]~~ :

(a) *An* individualized educational program must be developed and implemented by the pupil's third birthday. ~~[If a pupil with a disability is between 3 and 5 years of age, the committee to develop an initial individualized educational program shall consider the pupil's individualized family service plan.]~~

(b) The public agency shall participate in transition planning conferences arranged by the early intervention program of the pupil.

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 education 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 10 and 11, 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 12, 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,]~~ *relating to the courses of study of a pupil who has attained 14 years of age*, the pupil ~~[and a representative of the participating agency; and —(g) At least one member of the committee must have]~~ ;

(g) If the committee is meeting to develop an individualized educational program which includes transition services for a pupil who is 16 years of age or older, or a pupil who will attain 16 years of age during the period in which the individualized educational program will be in effect, and the parent of the pupil consents, a representative of any agency that may be responsible for providing or paying for the transition services; and

(h) One member who has personal knowledge about the personnel and options for placement available to provide special education and related services to the pupil.

3. 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. *The determination of the knowledge or special expertise of such a person must be made by the parents or the public agency who invited the person to participate.*

4. A member of a committee to develop an individualized educational program for a pupil with a disability must not be required to attend a meeting of the committee, in whole or in part, if:

(a) The *authorized representative of the* public agency and the parent of the pupil 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 at the meeting; and

(b) The parent of the pupil agrees in writing to the absence of the member.

5. A member of a committee to develop an individualized educational program for a pupil with a disability may be excused from attending a meeting of the committee, 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:

(a) The parent of the pupil with a disability consents in writing to the absence of the member;

(b) The *authorized representative of the* public agency consents to the absence; and

(c) Before the meeting, the member submits, in writing, to the parent and the committee the member's input concerning the development of the individualized educational program.

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.

7. After the annual meeting for a school year to develop the individualized educational program for a pupil:

(a) Upon *written* agreement of the parent of the pupil with a disability and the *authorized representative of the* public agency, the pupil's individualized educational program may be revised without convening a meeting of the committee.

(b) Portions of the pupil's individualized educational program may be revised without redrafting the entire individualized educational program.

↪ If an individualized educational program is revised in accordance with this subsection, the parent of the pupil with a disability must be provided with a copy of the revised individualized

educational program ~~is~~ *at no cost and the public agency shall ensure that the committee is informed of the changes.*

8. 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; and

(d) If transition services *or transition services and postsecondary goals* 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 transition services *or transition services and postsecondary goals* 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.

9. The public agency shall, if the pupil previously received early intervention services pursuant to 20 U.S.C. §§ 1431 et seq., *notify the parent of the pupil that*, upon the request of the parent, *the public agency will* send an invitation to the service coordinator of the pupil's early

intervention *system* or other representative of ~~[that]~~ *the early intervention* system to participate in the initial meeting for the development of the pupil's individualized educational program to assist with the smooth transition of services for the pupil. *If the parent requests such an invitation, the public agency shall send an invitation to the service coordinator of the pupil's early intervention system or other representative of that system to participate in the initial meeting for the development of the pupil's individualized educational program.*

10. If the parents do not acknowledge receipt of the notice given pursuant to subsection 8, 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. 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 parents of a pupil with a disability and the public agency may agree to use alternative means of participation in a meeting by the use of a video conference, a telephone conference call or other means.

11. 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.

12. ~~[If the individualized educational program includes transition services 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 transition services, the public agency shall use alternative methods to

ascertain the preferences and interest of the pupil and document the alternative methods that were used.

13. 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 ~~{}~~ *at no cost*.

Sec. 30. NAC 388.282 is hereby amended to read as follows:

388.282 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 ~~{}~~ *and 34 C.F.R. § 300.325*.

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}~~ *ensure that a* representative of the private school ~~{at}~~ *attends* 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.

4. Except as otherwise provided in 34 C.F.R. §§ 300.18 and 300.156, a public agency shall ensure that a pupil with a disability who is placed in or referred to a private school or facility by the public agency is provided an education in compliance with the provisions of federal and state laws and regulations and is afforded all the rights of a pupil with a disability who is served by a public agency.

Sec. 31. NAC 388.283 is hereby amended to read as follows:

388.283 1. Except as otherwise provided in subsection 2, a public agency shall appoint or petition the Superintendent to appoint a surrogate parent for:

(a) A pupil with a disability, other than a gifted and talented pupil, when the:

(1) Parents cannot be identified;

(2) Location of a parent is not discovered after reasonable efforts; or

(3) Pupil is a ward of the State.

(b) An unaccompanied youth who is a homeless youth.

↪ The public agency or the Superintendent, as applicable, shall make reasonable efforts to ensure the appointment of a surrogate parent not more than 30 days after the determination of the agency that the appointment is necessary. As used in this subsection, “unaccompanied youth” has the meaning ascribed to it in 42 U.S.C. § 11434a(6).

2. If a pupil with a disability is a ward of the State, the judge overseeing the care of the pupil may appoint a surrogate parent who satisfies the requirements of this section.

3. 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}~~

4. *Except as otherwise provided in this subsection, 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.

~~{4.}~~ *If the pupil is an unaccompanied youth who is a homeless youth, an appropriate employee of an emergency shelter, transitional shelter, independent living program or street outreach program who is otherwise qualified may be appointed on a temporary basis as a surrogate parent, regardless of whether the person is employed by a public agency which is involved in the education or care of the pupil, until another person is appointed as a surrogate parent who satisfies the requirements of subsection 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.

Sec. 32. NAC 388.284 is hereby amended to read as follows:

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

(a) A statement of the pupil's present levels of 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) If the pupil takes alternate assessments aligned to alternate achievement standards, a description of benchmarks or short-term objectives for the pupil.

(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 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 education 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. *Such services may be provided as:*

- (1) Special education;*
- (2) Related services; or*
- (3) Supplementary aids and services.*

↳ On a case-by-case basis, assistive technology devices must be purchased by the school or school district for use by the pupil at home or in other settings if the individualized educational program committee determines that the pupil needs access to those devices to receive a free appropriate public education.

(e) If the pupil is 14 years of age or older, a statement of 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) Beginning not later than the first individualized educational program which is in effect when the pupil is 16 years of age and *in* annual updates 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) Transition services, including, without limitation, the 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 when periodic reports on the progress of the pupil toward meeting the annual goals will be provided by the use of quarterly or other periodic reports, concurrent with the issuance of report cards, or other means. *The parent of a pupil who is 3, 4 or*

5 years of age must be given an opportunity to participate in a review of the progress of the pupil not less than once every 6 months.

(i) A statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the pupil on state and district-wide assessments. If the committee to develop an individualized educational program determines that the pupil must take an alternate assessment for a particular state or district-wide assessment of pupil achievement, the individualized educational program must 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 *, if the pupil will be removed from the regular educational environment,* 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~~ *and* 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;

(b) If the behavior of the pupil impedes the learning of the pupil or other pupils, ~~consider the use of~~ *provide* positive behavioral *strategies*, supports and interventions, ~~and~~ *or* other strategies, *supports and interventions* to address that behavior;

(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;

(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;

(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

(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 education curriculum in the individualized educational program of the pupil if the pupil's disability affects participation, involvement and progress in the general education curriculum and if the individualized

educational committee determines that the inclusion of such goals and objectives is appropriate for that pupil; *and*

(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~~

~~—(e)}~~ Shall include in the individualized educational program of a pupil who requires positive behavioral ~~{interventions,}~~ strategies, *supports* and ~~{supports:}~~ *interventions*:

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

(2) ~~{Methods}~~ *Services* to teach skills to pupils with disabilities so that the pupils can replace inappropriate behavior with adaptive behavior;

(3) ~~{Methods}~~ *Services* to enhance the independence and quality of life of pupils with disabilities;

(4) The use of the least restrictive ~~{methods}~~ *strategies, supports and interventions* 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.

↳ The positive behavioral strategies, supports and interventions or other strategies, supports and interventions may be addressed in the statement of special education, supplementary aids and services, or related services, if the pupil's individualized education program committee determines appropriate.

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. *The public agency 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.* As used in this ~~[section,]~~ *subsection*, “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.

Sec. 33. NAC 388.289 is hereby amended to read as follows:

388.289 1. Each public agency shall ~~[1]~~, *pursuant to the provisions of 34 C.F.R. §§ 300.610 to 300.627, inclusive:*

- (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 *school* 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.

Sec. 34. NAC 388.300 is hereby amended to read as follows:

388.300 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, before conducting additional assessments in a reevaluation, and before special education and related services are initially provided to a pupil with a disability. *The public agency shall make reasonable efforts to obtain such consent.* If a parent ~~does not~~ *refuses to* provide written consent for the initial evaluation, ~~or~~ fails to respond to a request to provide the consent for an initial evaluation ~~or~~ *refuses to provide consent for a reevaluation requiring additional*

assessments, the public agency may , *but is not required to*, request mediation pursuant to NAC 388.305 or a hearing pursuant to ~~[this section.]~~ *section 7 of this regulation.*

2. *If a public agency has made reasonable efforts to obtain informed consent from the parent of a pupil and the public agency does not request mediation or a hearing upon the parent's failure to respond or refusal, the public agency:*

(a) *Does not violate any obligations for an evaluation or reevaluation.*

(b) *Is not deemed to have knowledge pursuant to 34 C.F.R. § 300.534 that a pupil is a pupil with a disability.*

3. If a pupil is a ward of the State and the pupil 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 for an initial evaluation to determine whether the pupil is a pupil with a disability. The public agency is not required to obtain informed consent from the parent of such a pupil for an initial evaluation to determine whether the pupil is a pupil with a disability if:

(a) Despite reasonable efforts to do so, the public agency cannot discover the whereabouts of the parents of the pupil;

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

(c) The rights of the parents 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 a person appointed by the judge to represent the pupil.

~~[3.]~~ 4. 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 through use of

mediation pursuant to NAC 388.305 or a hearing pursuant to ~~[this section.]~~ *section 7 of this regulation.* The public agency shall not be:

(a) 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 requests such consent.

(b) *Deemed to have knowledge pursuant to 34 C.F.R. § 300.534 that a pupil is a pupil with a disability.*

(c) Required to convene a meeting relating to an individualized educational program or develop an individualized educational program for the pupil for the special education and related services for which the public agency requests such consent.

~~[4.]~~ 5. 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]~~ *made reasonable efforts* to obtain consent for an additional assessment to be conducted as part of a reevaluation and the pupil's parents have failed to respond.

~~[5.]~~ 6. *If the parent of a pupil who is homeschooled or who is parentally placed in a private school refuses to provide consent for the initial evaluation or for a reevaluation requiring additional assessments or the parent fails to respond to a request to provide consent, the public agency shall not request mediation pursuant to NAC 388.305 or a hearing pursuant to section 7 of this regulation and the public agency is not required to consider the pupil as eligible for services pursuant to section 9 of this regulation.*

7. 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.

~~6.1~~ 8. 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.

~~7.1~~ 9. 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 other options the public agency considered and the reasons why those options were rejected;

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

(e) A description of 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.

~~§ 10.~~ **10.** A public agency shall provide the parents of a pupil with a statement of parental rights once a year and:

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

(b) When the public agency receives the first request *in a school year* for a hearing pursuant to ~~this~~ section *7 of this regulation* from the parents; ~~and~~

(c) *When the public agency receives the first complaint in a school year filed by the parents with the Department pursuant to NAC 388.318; and*

(d) 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) *and 34 C.F.R. § 300.504(c)* that are available to the parents. ~~and the procedures for filing a complaint pursuant to NAC 388.318.~~

~~9.—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.~~

~~—10.—The party requesting a hearing, or an attorney representing the party, must provide notice to the other party and forward a copy of such notice to the Department. The notice must include:~~

~~—(a) The name of the pupil;~~

~~—(b) The address of the residence of the pupil or, if the pupil is a homeless youth, available contact information for the 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 party at the time.~~

~~→ A party may not have a hearing until the party, or an attorney representing the party, files a due process notice that meets the requirements of this subsection. Responses to a notice must be in accordance with 20 U.S.C. § 1415(c)(2)(B).~~

~~—11.—Within 5 days after receipt of a request pursuant to subsection 9, 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.~~

~~—12.— Except as otherwise provided in this subsection, 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.~~

~~—13.— A parent or public agency shall request a hearing within 2 years after the date on which the parent or agency knew or should have known about the alleged action that forms the basis of the hearing. The time limit for requesting a hearing does not apply to a parent if:~~

~~—(a) The parent was prevented from requesting a 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~~

~~—(b) The public agency withheld information from the parent that the public agency was required to provide to the parent pursuant to 20 U.S.C. §§ 1400 et seq.]~~ *A public agency may place a current copy of the statement of the procedural safeguards on the Internet website of the public agency, if applicable.*

11. If the public agency makes the notices required pursuant to this section available through electronic means, a parent of a pupil with a disability may elect to receive such notices by electronic mail.

12. For purposes of this section, a public agency has made reasonable efforts to obtain the informed consent of the parents if the public agency has used procedures for notification and documentation consistent with subsection 10 of NAC 388.281.

Sec. 35. NAC 388.305 is hereby amended to read as follows:

388.305 1. If a ~~[parent of a pupil does not agree with]~~ *dispute arises between the parent of a pupil and a public agency which relates to* the identification, evaluation or educational placement of the pupil or the provision of a free appropriate public education to the pupil, *including matters that arise before a complaint is filed pursuant to section 7 of this regulation,* the parent or the public agency may request the Department to provide mediation. *Mediation is voluntary and either the parent or the public agency may decline to participate.*

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 ~~[]~~ *or to deny any other right afforded pursuant to 20 U.S.C. §§ 1400 et seq.*

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. *The Department shall select a mediator on a random or rotational basis or by using some other impartial method.*

4. *A person may serve as a mediator if the person:*

(a) Is trained in effective mediation techniques;

(b) Is not an employee of the public agency that is involved in the education or care of the pupil; and

(c) Does not have a personal or professional interest that conflicts with his objectivity.

↳ A person who otherwise qualifies as a mediator is not an employee of the public agency solely because he is paid by the agency to serve as a mediator.

5. If mediation is requested:

(a) The Department will pay for the costs incurred by the mediation; *and*

(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.]~~

6. If the parties resolve a dispute through the mediation process, the parties shall execute a legally binding agreement which sets forth the resolution and which:

(a) States that all discussions that occurred during the mediation process will remain confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding; and

(b) Is signed by both the parent and a representative of the public agency who has the authority to bind the agency.

7. A written, signed mediation agreement is enforceable in any court in this State with competent jurisdiction or in a district court of the United States.

8. Discussions that occur during the mediation process are confidential and must not be used as evidence in any subsequent due process hearing or civil proceeding of any federal court or state court of a state that receives assistance under the Individuals with Disabilities Education Act, 20 U.S.C. § 1400 et seq.

Sec. 36. NAC 388.308 is hereby amended to read as follows:

388.308 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~~ *a disciplinary change of* placement of a pupil pursuant to ~~[20 U.S.C. § 1415(k) in an appropriate]~~ *34 C.F.R. §§ 300.530 and 300.531, the services to be provided in the disciplinary placement or the* interim alternative educational setting ~~[]~~ *for services.*

2. A public agency may request an expedited hearing for 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.

3. An expedited hearing must be conducted in accordance with the provisions of NAC ~~[388.300 and 388.310,]~~ *388.310 and section 7 of this regulation*, except that the hearing must be conducted within 20 school days after the date on which the hearing is requested and must result in a determination within 10 school days after the hearing.

4. If an expedited hearing is requested pursuant to this section, a resolution meeting must occur in accordance with section 8 of this regulation within 7 days after receipt of the due process complaint requesting the expedited hearing unless the parent and the public agency agree in writing to waive the meeting or to use the mediation process pursuant to NAC 388.305. If a resolution is not reached to the satisfaction of both parties within 15 days after receipt of the due process complaint for an expedited hearing, the hearing may proceed within the timelines prescribed in subsection 3.

5. Except as otherwise provided in 20 U.S.C. § 1415(k) or as otherwise agreed to by the parties, if a parent or public agency requests an expedited hearing, the pupil must remain in the pupil's interim alternative educational setting until:

(a) A decision is rendered by the hearing officer or, if an appeal is taken pursuant to NAC 388.315, the review officer; or

(b) Expiration of the time period of removal ordered by school personnel in accordance with 34 C.F.R. § 300.530,

↪ whichever occurs first.

Sec. 37. NAC 388.310 is hereby amended to read as follows:

388.310 1. If a parent [~~guardian~~] or public agency requests a hearing pursuant to [~~NAC 388.300,~~] *section 7 of this regulation*, the public agency shall comply with the provisions of 20 U.S.C. § 1415(f) and:

(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) *Object to the admissibility of evidence, an evaluation or a recommendation based on an evaluation that was not disclosed to that party pursuant to subsection 5;*

(e) Call, examine and compel the attendance of witnesses; and

~~(e)~~ (f) 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,~~

~~→] Not less than 5 business days before a hearing, each party shall disclose to all other parties all evidence, all evaluations completed by that date and all recommendations based on the evaluations that the party intends to use at the hearing. A hearing officer may exclude the~~

admission of evidence, evaluations or recommendations based on an evaluation that have not been disclosed to the opposing party at least 5 business days before the hearing.

6. *The party who filed the complaint pursuant to section 7 of this regulation may not raise an issue at the hearing if the issue was not included in the complaint unless the parties otherwise agree.*

7. 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.]~~ 8. 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.]~~ 9. The public agency shall transmit the written findings of fact and decisions prepared pursuant to subsection ~~[H1]~~ 12 and transmit them to the Special Education Advisory ~~[Council]~~ *Committee* of the Department. The findings and decisions must be available for public inspection after removing any personally identifiable information of the pupil.

~~[9.]~~ 10. The hearing must be held at a time and place reasonably convenient to the parent and the pupil involved.

~~[10.]~~ 11. The hearing officer shall base the decision solely on the evidence presented at the hearing. Subject to the limitations set forth in this subsection, a decision made by a hearing officer *of whether a pupil received a free appropriate public education* must be made on substantive grounds. ~~[based on a determination of whether a pupil received a free appropriate public education.]~~ In a matter 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 decision-making process regarding the provision of a free appropriate public education to the pupil; or
- (c) Caused a deprivation of educational benefits.

↳ This subsection does not preclude a hearing officer from ordering a public agency to comply with procedural requirements ~~[]~~, *including, without limitation, the procedural requirements established in 34 C.F.R. §§ 300.500 to 300.536, inclusive.*

~~[H1-] 12.~~ Except as otherwise provided in this subsection ~~[]~~ *and section 8 of this regulation*, 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.]~~ *one of the following occurs:*

(a) The parties agree in writing to waive the resolution meeting required pursuant to section 8 of this regulation;

(b) The parties agree in writing that an agreement is not possible through mediation or a resolution meeting and such agreement is reached after the beginning of either the mediation or resolution meeting but before the end of the 30-day period for resolution; or

(c) The parties agree in writing to continue mediation upon the expiration of the 30-day period for resolution and a party subsequently withdraws from the mediation process.

↳ Except as otherwise provided in NAC 388.308 ~~[]~~ *for expedited hearings*, the hearing officer may extend the time for rendering a decision for a specific number of days upon the request of either party.

13. The written findings of fact and decision must be made available to any party to the hearing. At the option of a parent, the findings of fact and decision must be made available to the parent by electronic means.

~~H2.~~ **14.** The public agency shall pay the expenses of the hearing officer and any other expenses of the hearing.

~~H3.~~ **15.** The hearing officer must ~~not~~ :

(a) Not be an employee of the public agency that is involved in the education or care of the pupil;

(b) Not have a personal or professional interest which would conflict with the hearing officer's objectivity H;

(c) Possess knowledge of and the ability to understand the provisions of the Individuals with Disabilities Education Act, federal and state regulations pertaining to the Act and legal interpretations of the Act by federal and state courts;

(d) Possess the knowledge and ability to conduct hearings in accordance with the appropriate standards of the legal practice; and

(e) Possess the knowledge and ability to render and write decisions in accordance with the appropriate standards of the legal practice.

↪ A person who otherwise qualifies as a hearing officer is not an employee of the public agency solely because he is paid by the agency to serve as a hearing officer.

~~H4.~~ **16.** Each calendar year, the Department will provide a list to each public education agency of the hearing officers and their qualifications.

~~{15.}~~ 17. 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.}~~ 18. As used in this section, “business day” means Monday through Friday, excluding federal and state holidays.

Sec. 38. NAC 388.315 is hereby amended to read as follows:

388.315 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 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]~~ *Committee* of the Department after removing any personally identifiable information of the pupil. The findings and decisions must be available for public inspection.

Sec. 39. NAC 388.318 is hereby amended to read as follows:

388.318 1. A person *, as the term is defined in NRS 0.039, including a person outside this State,* may file a complaint with the Superintendent ~~[stating]~~ *alleging* 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 ~~[.]~~, *and sections 6 to 11, inclusive, of this regulation.* The complaint must be ~~[in]~~ :

(a) In writing and must ~~[include the facts related to the alleged violation.] be signed by the person filing the complaint.~~

(b) Filed with the Superintendent not more than 1 year after the date on which the alleged violation occurred.

2. ~~[Within]~~ The Department shall develop a model form for filing a complaint pursuant to this section. A person may use the model form to file a complaint or may use any other form or document that meets the requirements of subsection 3.

3. The complaint must include:

(a) A statement 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, and sections 6 to 11, inclusive, of this regulation;

(b) The facts on which the statement is based;

(c) The signature and contact information of the complainant; and

(d) If alleging a violation regarding a specific pupil:

(1) The name of the pupil;

(2) The address of the residence of the pupil or, if the pupil is a homeless youth, any available contact information for the pupil;

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

(4) 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

(5) A proposed resolution of the problem to the extent known and available to the party at the time the complaint is filed.

↪ *The party filing the complaint shall forward a copy of the complaint to the public agency at the same time that the complaint is filed with the Department.*

4. *Except as otherwise provided in subsection 5, within 60 days after receipt of the signed 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) If the Department deems it necessary, carry out an independent on-site investigation of the allegations contained in the complaint;

(b) Provide an opportunity for the complainant to submit additional information, either orally or in writing, regarding the allegations contained in the complaint;

(c) Provide an opportunity for the public agency to respond to the complaint, including, without limitation:

(1) At the discretion of the public agency, an opportunity to propose a resolution to the allegations contained in the complaint; and

(2) An opportunity to engage the parent, if the parent is the complainant, in voluntary mediation pursuant to NAC 388.305;

(d) Review all relevant information and make an independent determination as to whether the public agency is violating a requirement of a law or regulation; and

(e) Issue a written decision to the complainant that addresses each allegation contained in the complaint and that includes:

(1) Findings of fact and conclusions; and

(2) The reasoning of the Department for the decision.

5. The Department may extend the time period set forth in subsection 4 if:

(a) Exceptional circumstances exist with regard to a particular complaint; or

(b) A complainant who is a parent of a pupil and the public agency agree to extend the time to allow for mediation or other means of alternative dispute resolution.

6. The Department shall maintain procedures for effective implementation of the final decision, including, without limitation, technical assistance activities, negotiations and corrective actions to achieve compliance.

7. In resolving a complaint in which the Department has found that a public agency failed to provide appropriate services, the Department shall address the failure, including, without limitation, by prescribing corrective action to address the needs of the pupil such as compensatory services or monetary reimbursements, and by ensuring that appropriate services are provided to all pupils with disabilities served by the public agency.

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

Sec. 40. NAC 388.325 is hereby amended to read as follows:

388.325 1. If a pupil is experiencing an ~~educational~~ *academic* 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~~ *targeted scientific, research-based* intervention.

2. ~~The~~ *If the public agency determines that a pupil should be provided targeted scientific, research-based intervention, 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)] develop an intervention plan for the pupil which must include, without limitation:~~

(a) An identification of the academic or behavioral concerns which describes the degree of discrepancy between the demands of the educational setting and the performance of the pupil;

(b) The targeted scientific, research-based intervention to be provided which must be:

(1) Based upon an examination of the characteristics of the pupil as a learner, the instruction being provided and the curricular tasks to be accomplished by the pupil; and

(2) Targeted to improve the level of performance and increase the rate of learning of the pupil;

(c) A description of the progress-monitoring data which will be collected over time to measure the level of performance and rate of learning of the pupil; and

(d) A description of the frequency at which the data will be collected, the strategies which will be used to summarize and evaluate the data, the criteria for evaluating the effectiveness of the intervention and the schedule for evaluating the effectiveness of the intervention.

↪ A copy of the intervention plan must be provided to the parents of the pupil.

3. The public agency shall notify the parents of the pupil concerning the right of the parent to request an evaluation to determine whether the pupil is eligible for special education and related services.

4. Based in part on the results of the ~~[prior]~~ *targeted scientific, research-based* intervention, *the public agency shall* 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.]~~ 5. During the period in which ~~[a-prior]~~ *targeted scientific, research-based* 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]~~ *targeted scientific, research-based* 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]~~ *section 7 of this regulation* to resolve the dispute.

~~[4.]~~ 6. If the public agency determines that the ~~[educational]~~ *academic* difficulty or behavior of the pupil is resistant to the ~~[prior]~~ *targeted scientific, research-based* intervention, or if the public agency determines that the ~~[prior]~~ *targeted scientific, research-based* 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.

Sec. 41. NAC 388.336 is hereby amended to read as follows:

388.336 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 ~~§~~, *in accordance with 34 C.F.R. § 300.305:*

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 local or state assessments and classroom-based *assessments and* 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 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.

Sec. 42. NAC 388.340 is hereby amended to read as follows:

388.340 1. In conducting an evaluation pursuant to NAC 388.330 to 388.440, inclusive, the public agency shall *comply with the provisions of 34 C.F.R. §§ 300.304 and 300.306 and shall* use a variety of assessment tools and strategies to gather relevant functional, developmental and academic information concerning the pupil, including, without limitation, information provided by the parent that may assist in determining:

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

(b) The *educational needs of the pupil and the* content of the pupil's individualized educational program, including, without limitation, 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 measure or assessment may be used as the sole or controlling criterion for determining whether a pupil is a pupil with a disability pursuant to NAC 388.330 to 388.440, inclusive, or for determining an appropriate individualized educational program for the pupil.

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

4. The public agency shall ensure that:

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

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

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

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

(4) Administered by trained and knowledgeable personnel; and

(5) 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 which 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 *school* year are coordinated with such pupil's prior and subsequent schools, as necessary, to ensure prompt completion of full evaluations.

5. *When interpreting evaluation data to determine the eligibility of a pupil for special services and programs of instruction pursuant to NAC 388.325 to 388.450, inclusive, and to determine the educational needs of the pupil, the public agency shall:*

(a) Draw upon information from a variety of sources, including, without limitation, aptitude and achievement tests, input from the parent of the pupil, recommendations from the teacher of the pupil and any other information about the physical condition, social or cultural background of the pupil and the adaptive behavior of the pupil; and

(b) Ensure that the information obtained from sources pursuant to paragraph (a) is properly documented and carefully considered.

6. 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~~:

(a) *Lack* of appropriate instruction in reading, including, without limitation, the essential components of reading instruction ~~;~~ or ~~or~~;

(b) *Lack of appropriate instruction in* math ; or ~~limited~~

(c) *Limited* proficiency in English.

↪ As used in this subsection, “essential components of reading instruction” has the meaning ascribed to it in the Elementary and Secondary Education Act, 20 U.S.C. § 6368(3).

~~6.~~ 7. The *screening of a pupil by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation must not be considered as an evaluation of the pupil.*

8. *Except as otherwise provided in this subsection, 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. An evaluation is not required to terminate a pupil's eligibility if the pupil graduates from secondary school with a standard high school diploma or the pupil is no longer under the age of 22 years. The public agency shall provide such a pupil with a written summary of the pupil's academic achievement and functional performance, including, without limitation, recommendations to assist the pupil in meeting postsecondary goals.

~~7.~~ 9. 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 ~~§~~ *at no cost.*

~~§~~ **10.** If the members of the eligibility team disagree about the determination of eligibility, a minority report must be prepared if required by paragraph ~~(h)~~ *(j)* of subsection 7 of NAC 388.420 and may be prepared in any other case.

Sec. 43. NAC 388.385 is hereby amended to read as follows:

388.385 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.

Sec. 44. NAC 388.415 is hereby amended to read as follows:

388.415 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.

Sec. 45. NAC 388.420 is hereby amended to read as follows:

388.420 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 ~~[5,]~~ 4, concludes that:

(a) ~~[Except as otherwise provided in subsection 4, the pupil exhibits a disorder in one or more of the basic psychological processes involved in understanding or using spoken or written language which 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 disorder.~~

~~—2. When determining whether a pupil has a specific learning disability, the public agency may take into consideration whether a pupil has a severe discrepancy between achievement and intellectual ability in oral expression, listening comprehension, written expression, basic reading skills, reading comprehension, mathematical calculation or mathematical reasoning.]~~ *The pupil does not achieve adequately for the pupil's age or to meet the state-approved grade level standards when provided with learning experiences and instruction appropriate for the age of the pupil or the state-approved grade level standards in one or more of the following areas:*

- (1) Oral expression;*
- (2) Listening comprehension;*
- (3) Written expression;*
- (4) Basic reading skills;*
- (5) Reading fluency skills;*
- (6) Reading comprehension;*
- (7) Mathematics calculation; or*
- (8) Mathematics problem solving;*

(b) The pupil:

(1) Does not make sufficient progress to meet the age appropriate standards or the state-approved grade level standards in one or more of the areas set forth in paragraph (a) when using a process based on the pupil's response to scientific, research-based intervention; or

(2) Exhibits a pattern of strengths and weaknesses in performance or achievement, or both, relative to the pupil's age, the state-approved grade level standards or intellectual development, that is determined by the eligibility team to be relevant to the identification of a specific learning disability using appropriate assessments;

(c) The findings in this subsection are not primarily the result of:

(1) A visual, hearing or motor disability;

(2) Mental retardation;

(3) Emotional disturbance;

(4) Cultural factors;

(5) Environmental or economic disadvantage; or

(6) Limited English proficiency;

(d) Interventions implemented in general education classrooms have not remedied any identified underachievement; and

(e) Any identified underachievement or severe discrepancy between achievement and intellectual ability is not correctable without special education services.

2. If the public agency determines that a pupil exhibits a pattern of strengths and weaknesses in performance or achievement, or both, relative to the pupil's age, the state-approved grade level standards or intellectual development, the public agency shall determine whether the pupil has a severe discrepancy between achievement and intellectual ability in the

areas set forth in paragraph (a) of subsection 1. Except as otherwise provided in this subsection, if the public agency considers the existence of a discrepancy between ~~[predicted and actual achievement,]~~ *achievement and intellectual ability*, 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 *and intellectual ability* must be corroborated by classroom-based assessment.

~~[3.—When determining whether a pupil has a specific learning disability, the public agency may use a process that determines if the pupil responds to scientific, research based intervention as part of the evaluation procedures described in subsection 6.~~

~~—4.—A pupil otherwise eligible for the special services and programs of instruction referred to in this section is not eligible if the pupil's 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.~~

~~—5.]~~ *If the public agency considers the continuing existence of a severe discrepancy between achievement and intellectual ability 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 this subsection.

3. If the public agency determines that a pupil has not made sufficient progress to meet the age appropriate standards or the state-approved grade level standards in one or more of the areas set forth in paragraph (a) of subsection 1 when using a process based on the pupil's response to scientific, research-based intervention, the public agency shall document:

(a) The instructional strategies used and the pupil-centered data collected; and

(b) The notice provided to the parents of the pupil concerning:

(1) The policies of the Department regarding the amount and nature of the data relating to the performance of the pupil that will be collected and the general educational services that will be provided;

(2) Strategies to increase the rate of learning of the pupil; and

(3) The right of the parents to request an evaluation to determine whether the pupil is eligible for special education and related services.

4. 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.

~~{6.}~~ **5.** 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}~~ *determines* 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}~~ *scientific, research-based intervention provided to* 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.}~~ *pursuant to paragraph (b) of subsection 6.*

6. *In determining whether a pupil has a specific learning disability, the eligibility team shall:*

(a) Use information from an observation in routine classroom instruction and monitoring of the performance of the pupil that was conducted before the pupil was referred for an evaluation; or

(b) Have at least one member of the eligibility team conduct an observation of the academic progress of the pupil in the regular classroom after the pupil was referred for an evaluation and parental consent is obtained pursuant to NAC 388.300.

↳ If a child is less than school age or out of school, an eligibility team member shall observe the pupil in an environment appropriate for a pupil of that age.

7. To ensure that the underachievement of a pupil who is suspected of having a specific learning disability is not due to lack of appropriate instruction in reading or math, the eligibility team shall consider as part of the evaluation:

(a) Data that demonstrates that before, or as part of, the referral process, the pupil was provided appropriate instruction in regular educational settings, delivered by qualified personnel; and

(b) Data-based documentation of repeated assessments of achievement at reasonable intervals that reflects formal assessments of the progress of the pupil during instruction. The documentation must be provided to the parents of the pupil.

~~[7.]~~ 8. The eligibility team ~~[must prepare a written report of its conclusions. The report]~~ shall document the determination of eligibility of the pupil which must include:

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

(b) The basis for making that determination ~~[]~~, *including an assurance that the determination has been made in accordance with NAC 388.340;*

(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 disorder which requires special education and related services;]~~ *the pupil does not achieve adequately for the pupil's age or to meet the state-approved grade level standards and whether the pupil:*

(1) Has not made sufficient progress to meet the age appropriate standards or the state-approved grade level standards when a process based on the pupil's response to scientific, research-based intervention is used; or

(2) Exhibits a pattern of strengths and weaknesses in performance or achievement, or both, relative to the pupil's age, the state-approved grade level standards or intellectual development;

(g) *A statement that any identified underachievement or severe discrepancy between achievement and intellectual development is not correctable without special education and related services;*

(h) The conclusion of the team concerning the effect upon the *achievement of the* pupil of any *visual disability, hearing disability, motor disability, mental retardation, emotional disturbance, cultural factors,* environmental ~~[, cultural]~~ or economic disadvantage ~~[; and~~ ~~—(h)]~~ , *or limited English proficiency;*

(i) *If the pupil has participated in a process that assesses the response of the pupil to scientific, research-based intervention:*

(1) The instructional strategies used and the pupil-centered data that was collected; and

(2) Documentation that the parents of the pupil were notified about:

(I) The policies of the Department regarding the amount and nature of the data relating to the performance of a pupil that will be collected and the general educational services that will be provided;

(II) Strategies to increase the rate of learning of the pupil; and

(III) The right of the parents to request an evaluation to determine whether the pupil is eligible for special education and related services; and

(j) 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 minority report of the conclusions of that member.

~~18.1~~ 9. 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.

Sec. 46. NAC 388.430 is hereby amended to read as follows:

388.430 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 ~~the~~

~~—(a) The~~ *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 . ~~the~~

~~—(b) The pupil reaches the age of 6 years on or before September 30 of the current school year.~~

Sec. 47. NAC 388.440 is hereby amended to read as follows:

388.440 1. A public agency shall ensure that a reevaluation of each pupil with a disability is conducted if the public agency determines that the needs of the pupil for educational or related services, including, without limitation, improved academic achievement and functional performance, warrant a reevaluation or if the parent or teacher of the pupil requests a reevaluation. A reevaluation conducted pursuant to this section shall occur:

(a) Not more than once a year, unless the parent and the *authorized representative of the* public agency otherwise agree; and

(b) At least once every 3 years, unless the parent and the *authorized representative of the* public agency agree that a reevaluation is not necessary.

2. If the members of the committee who 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 to determine 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 4 of~~ NAC 388.300, ~~and NAC~~ 388.330, 388.335, 388.336 and 388.340.

~~5.~~ 4. 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. *The public agency shall provide a copy of the report and any other documentation relating to the determination of the eligibility of a pupil pursuant to this section to the parents of the pupil at no cost.*

Sec. 48. NAC 388.450 is hereby amended to read as follows:

388.450 1. A parent may request a public agency to pay for an ~~additional,~~ independent *educational* 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,~~ *shall*, without unnecessary delay, either request a hearing pursuant to ~~NAC 388.300~~ *section 7 of this regulation* if it believes that its evaluation of the pupil is appropriate, or ensure that an ~~independent~~ *educational* evaluation is provided at public expense.

2. If, at a hearing ~~the hearing~~ conducted pursuant to ~~NAC 388.300,~~ *section 7 of this regulation*, the hearing officer decides that an ~~additional,~~ independent *educational* 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 *educational* evaluation at the parent's personal expense.

3. If the parent ~~so~~ requests ~~,~~ *an independent educational evaluation*, the public agency shall provide the parent with information as to where an independent *educational* evaluation

may be obtained and the ~~requirements~~ *criteria* of the agency relating to independent evaluations as set forth in subsection ~~6.~~ 8.

4. *If a parent requests an independent educational evaluation, the public agency may inquire into the reason of the parent for objecting to the public evaluation. The public agency shall not require the parent to provide an explanation and shall not unreasonably delay the independent educational evaluation or delay in filing a due process complaint to request a hearing to defend the public evaluation.*

5. *A parent is entitled to only one independent educational evaluation at public expense for each time a public agency conducts an evaluation with which the parent disagrees.*

6. If an independent *educational* evaluation is obtained at the ~~parent's~~ personal expense of *the parent* or at public expense, the public agency shall consider the results of ~~the~~ *an* evaluation *if the evaluation meets the criteria of the public agency* 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 ~~in~~ *in accordance with the provisions of NAC 388.310 which relate to the introduction of evidence.*

~~5.~~ 7. If a hearing officer requests an independent *educational* evaluation as part of a hearing, the cost of the evaluation must be paid by the public agency.

~~6.~~ 8. Whenever an independent *educational* evaluation is obtained at the public agency's expense, the *criteria established by the public agency for 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 ~~in~~, *to the extent those criteria are consistent with the parent's right to such an evaluation.* Except as

otherwise provided in this subsection, a public agency may not impose conditions or timelines on obtaining an independent *educational* evaluation at public expense.

Sec. 49. NAC 388.087 is hereby repealed.

TEXT OF REPEALED SECTION

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.

**NOTICE OF ADOPTION OF PROPOSED REGULATION
LCB File No. R058-07**

NAC 388 – Special Instructional Services and Programs

The State Board of Education adopted regulations assigned LCB File No. R058-07 which pertain to chapter 388 of the Nevada Administrative Code.

INFORMATIONAL STATEMENT

1. A description of how public comment was solicited, a summary of public response, and explanation how other interested persons may obtain a copy of the summary.

Notice of Workshop to Solicit Comments on Proposed Regulations was sent to approximately 200 individuals and educational organizations. A workshop was held on October 5, 2007. There was public comment.

The Notice of Intent to Act Upon a Regulation for public hearing and adoption of the amendments to NAC 388 – Special Instructional Services and Programs were sent to approximately 200 individuals and educational organizations. The public hearing was conducted on October 6, 2007 to provide the opportunity for comments by affected parties and the public. There was no public comment. The Nevada State Board of Education/Nevada State Board for Career and Technical Education adopted the proposed amendments to NAC 388.

2. The Number of Persons Who:

a) Attended Each Hearing: First Workshop: 3; First Hearing: 3; Second Hearing: N/A
b) Testified at Each Hearing: First Workshop: 1; First Hearing: 0; Second Hearing: N/A
c) Submitted Written Statements: First Workshop: 0; First Hearing: 0; Second Hearing: 0

3. A description of how comment was solicited from affected businesses, a summary of the response and an explanation how other interested parties may obtain a copy of the summary.

Comments were solicited through the workshop notice of August 31, 2007; and the public hearing notice of August 31, 2007. At the October 5, 2007 Workshop to Solicit Comments, there was public comment to the proposed amendments to the regulation language. At the October 6, 2007 public hearings there were no public comments to the proposed amendments to the regulation language.

Public Hearing comments:

There were no public hearing comments.

A copy of the summary and/or minutes of the public hearing may be obtained by calling Doris Arnold, Executive Assistant to the Nevada State Board of Education/Nevada State Board for Career and Technical Education, Nevada Department of Education, 775-687-9217, or by writing to the Nevada Department of Education, 700 East Fifth Street, Carson City, Nevada 89701-5096.

4. If the regulation was adopted with or without change to any part of the proposed regulation, a summary of the reasons for adopting.

The Nevada State Board of Education adopted the proposed amendments to the regulation language at the public hearing held October 6, 2007. The reason for adopting the regulations was to be in compliance with the federal statute of IDEA-04 after its reauthorization.

5. The estimated economic effect of the adopted regulation on the business that it is to regulate and on the public. These must be stated separately and each case must include:

There is no fiscal impact on the Department of Education or the public.

There is no anticipated economic effect of the Department of Education. The Department uses the federal Individuals with Disability Education Act, 2004, to conform to the federal statute.

The beneficial economic effect will place NAC 388 regulations in compliance with the federal statute of IDEA-04. The immediate effect is that NAC 388 will be in compliance with IDEA-04. There is no long-term effect.

There is no estimated economic effect on the public, either adversely or beneficially, nor immediate or long term.

6. The estimated cost to the agency for enforcement of the adopted regulation.

There is no additional cost to the agency for enforcement of this regulation.

7. A description of any regulations of other state or governmental agencies which the proposed regulation overlaps or duplicates and a statement explaining why the duplication or overlapping is necessary. If the regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency.

No other state or governmental agency regulations will be overlapped or duplicated by the above noted regulation. There is no duplication or overlap of federal regulations.

8. If the regulation includes provisions which are more stringent than a federal regulation, which regulates the same activity, a summary of such provisions.

There are none.

9. If the regulation provides a new fee or increases an existing fee, the total annual amount the agency expects to collect and the manner in which the money will be used.

This regulation does not provide for a new fee or increase an existing fee.