

Chapter 388 of NAC

LCB File No. T036-07

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

Filed with the Secretary of State on July 3, 2007

CHAPTER 388 - SYSTEM OF PUBLIC INSTRUCTION

SPECIAL INSTRUCTIONAL SERVICES AND PROGRAMS

388.001	Definitions.
388.005	“Academic achievement” defined.
388.015	“Adaptive skills” defined.
388.023	“Assistive technology device” defined.
388.024	“Assistive technology service” defined.
388.028	“Autism” defined.
388.029	“Classroom-based assessment” defined.
388.031	“Cognitive abilities” defined.
388.033	“Collaborative or consulting services” defined.
388.034	“Day” defined.
388.0345	“Deaf-blindness” defined.
388.035	“Department” defined.
388.041	“Developmental functioning” defined.
388.042	“General education curriculum” defined.
388.043	“Gifted and talented” defined.
388.045	“Health” defined.
388.046	“Health impairment” defined.
388.047	“Hearing impairment” defined.
388.049	“Homeless youth” defined.
388.055	“Mental retardation” defined.
388.065	“Multiple impairments” defined.
388.067	“Orthopedic impairment” defined.
388.071	“Parent” defined.
388.073	“Participating agency” defined.
388.075	“Performance in the current educational setting” defined.
388.077	“Positive behavioral supports” defined.
388.085	“Previous educational intervention” defined.
388.087	“Prior intervention” defined.
388.091	“Program of instruction” defined.
388.092	“Public agency” defined.
388.093	“Pupil with a disability” defined.

- 388.095 “Regular classroom teacher” defined.
- 388.101 “Related services” defined.
- 388.105 “Serious emotional disturbance” defined.
- 388.111 “Social and emotional condition” defined.
- 388.115 “Special education” defined.
- 388.117 “Specific learning disability” defined.
- 388.121 “Speech and language” defined.
- 388.125 “Speech and language impairment” defined.
- 388.131 “Superintendent” defined.
- 388.132 “Supplementary aids and services” defined.
- 388.133 “Transition services” defined.
- 388.134 “Traumatic brain injury” defined.
- 388.1345 “Travel training” defined.
- 388.135 “Unit” defined.
- 388.141 “Visual impairment” defined.
- 388.145 Educational programs for pupils with disabilities must comply with chapter.
- 388.150 Maximum number of cases per teacher in unit; maximum size of class; exceptions.
- 388.165 Required licensing of teachers; exception.
- 388.180 Length of school day.
- 388.195 Transfer of rights to pupil who attains age of majority.
- 388.215 Measures to identify, evaluate and serve pupils with disabilities.
- 388.225 Prohibition on requiring medication of pupil; consulting or sharing certain observations with parent.
- 388.245 Restrictions on placement of pupil with disability; continuum of alternative placements; annual determination of placement of pupil.
- 388.255 Basis for change in placement of pupil with disability.
- 388.261 Transmittal of educational records of pupil with disability upon enrollment in different school or public agency.
- 388.263 Provision of services to pupil with disability who transfers between school districts.
- 388.265 Suspension, expulsion or exclusion of pupil with disability.
- 388.275 Development of interim individualized educational program.
- 388.281 Development, implementation, review and revision of individualized educational program.
- 388.282 Placement of pupil with disability in private school or facility.
- 388.283 Appointment of surrogate parent for pupil with disability.
- 388.284 Individualized educational program: Contents; considerations when developing.
- 388.287 Inspection and review of educational records of pupil.
- 388.288 Amendment of educational records; hearing.
- 388.289 Confidentiality of records.
- 388.290 Required facilities and space.
- 388.292 Notice of project to identify, locate or evaluate pupils or educational data.
- 388.294 Monitoring of units and programs.
- 388.296 Reports to Department concerning programs and units.

- 388.300 Parental consent; notice to parents of proposed or refused action; statement of parental rights; request for hearing and notice of request; appointment of hearing officer; placement of pupil pending completion of proceedings.
- 388.305 Resolution of dispute by mediation.
- 388.308 Expedited hearing.
- 388.310 Resolution of dispute by hearing.
- 388.315 Appeal from decision of hearing officer.
- 388.318 Complaints to Department.
- 388.325 Prior intervention.
- 388.330 Credentials required to administer or interpret assessment.
- 388.335 Tests and devices for assessment.
- 388.336 Review of evaluation data; determination of need for additional data.
- 388.337 Deadlines for conducting initial evaluations.
- 388.340 Determination of eligibility of pupil and appropriate individualized educational program.
- 388.345 Assessment of cognitive abilities.
- 388.350 Assessment of social and emotional condition.
- 388.360 Assessment of adaptive skills.
- 388.365 Assessment of health.
- 388.370 Assessment of speech, language or other communication skills.
- 388.375 Assessment of academic achievement.
- 388.380 Assessment of performance in current educational setting.
- 388.385 Assessment of previous educational intervention.
- 388.386 Assessment of functional behavior.
- 388.387 Eligibility of pupil with autism.
- 388.390 Eligibility of pupil with hearing impairment.
- 388.395 Eligibility of pupil with visual impairment.
- 388.400 Eligibility of pupil with orthopedic impairment.
- 388.402 Eligibility of pupil with health impairment other than orthopedic impairment.
- 388.405 Eligibility of pupil with speech and language impairment.
- 388.407 Eligibility of pupil with traumatic brain injury.
- 388.410 Eligibility of pupil with mental retardation.
- 388.415 Eligibility of pupil with emotional disturbance.
- 388.420 Eligibility of pupil with specific learning disabilities.
- 388.425 Eligibility of pupil with multiple impairments.
- 388.430 Identification of certain pupils with developmental delays.
- 388.435 Eligibility of pupil who is gifted and talented.
- 388.440 Periodic reevaluation of pupil.
- 388.450 Independent evaluation of pupil.

SPECIAL INSTRUCTIONAL SERVICES AND PROGRAMS

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

(Added to NAC by Bd. of Education, eff. 7-14-88; A 11-23-93; R035-99, 11-3-99; R085-99, 2-16-2000; R071-05, 2-23-2006)

NAC 388.005 “Academic achievement” defined. (NRS 385.080) Except as otherwise provided in this section, “academic achievement” means the possession of basic reading skills and skills relating to oral expression, listening comprehension, written expression, *reading 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.

(Added to NAC by Bd. of Education, eff. 7-14-88; A 11-23-93)

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

(Added to NAC by Bd. of Education, eff. 7-14-88; A by R085-99, 2-16-2000)

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

(Added to NAC by Bd. of Education, eff. 11-23-93; A by R071-05, 2-23-2006)

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

(Added to NAC by Bd. of Education, eff. 11-23-93)

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

1. Significantly affects the verbal and nonverbal communication and social skills of a person and is often characterized by repetitive activities and stereotyped movements, resistance to changes in environment or daily routine and responding to sensory experiences in an unusual manner;

2. Is usually apparent before the age of 3 years; and

3. Adversely affects the educational performance of a pupil causing significant delays or irregular patterns in learning, or both.

The term includes, without limitation, a group of developmental disorders such as autistic disorder, Asperger’s disorder, atypical autism, pervasive developmental disorder and other disorders that share the characteristics described in subsections 1, 2 and 3. *The term does not apply if a pupil’s educational performance is adversely affected primarily because the pupil has an emotional disturbance as defined in NAC 388.105.*

(Added to NAC by Bd. of Education, eff. 11-23-93; A by R085-99, 2-16-2000; R071-05, 2-23-2006)

NAC 388.029 “Classroom-based assessment” defined. (NRS 385.080) “Classroom-based assessment” means an assessment of the academic work of a pupil produced in a classroom, including, without limitation, samples of the pupil’s work, pupil portfolios, progress reports, reports of teachers, curriculum-based measurements, locally normed instruments and tests taken by the pupil which were created by the pupil’s teacher.
(Added to NAC by Bd. of Education by R085-99, eff. 2-16-2000)

NAC 388.031 “Cognitive abilities” defined. (NRS 385.080) “Cognitive abilities” means those abilities involving the processes of thinking, reasoning and problem solving.
(Added to NAC by Bd. of Education, eff. 7-14-88)

NAC 388.033 “Collaborative or consulting services” defined. (NRS 385.080) “Collaborative or consulting services” means the assistance provided by special education personnel or other professionals to regular classroom teachers regarding the assessment, teaching and evaluation of a pupil with a disability in a regular educational environment.
(Added to NAC by Bd. of Education, eff. 11-23-93; A by R085-99, 2-16-2000)

NAC 388.034 “Day” defined. (NRS 385.080) “Day” means a calendar day.
(Added to NAC by Bd. of Education by R085-99, eff. 2-16-2000)

NAC 388.0345 “Deaf-blindness” defined. (NRS 385.080) “Deaf-blindness” means concomitant hearing and visual impairments, the combination of which causes severe communication and other developmental and educational needs that cannot be accommodated in special education programs that are solely for pupils who are deaf or pupils who are blind.
(Added to NAC by Bd. of Education by R085-99, eff. 2-16-2000)

NAC 388.035 “Department” defined. (NRS 385.080) “Department” means the Department of Education.
(Added to NAC by Bd. of Education, eff. 7-14-88)

NAC 388.041 “Developmental functioning” defined. (NRS 385.080) “Developmental functioning” means cognitive abilities, gross and fine motor skills, self-help, social and emotional condition, and skill in the use of receptive and expressive language.
(Added to NAC by Bd. of Education, eff. 7-14-88)

NAC 388.042 “General education curriculum” defined. (NRS 385.080) “General education curriculum” means the goals and objectives defined by the public agency and the corresponding materials, equipment and instructional strategies to accomplish the educational functions of the public agency for all enrolled pupils.
(Added to NAC by Bd. of Education by R085-99, eff. 2-16-2000; A by R071-05, 2-23-2006)

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

1. General intelligence;
2. Academic aptitude in a specific area;

3. Creative thinking;
 4. Productive thinking;
 5. Leadership;
 6. The visual arts; or
 7. The performing arts.
- (Added to NAC by Bd. of Education, eff. 9-13-91)

NAC 388.045 “Health” defined. (NRS 385.080) “Health” means the general physical condition of a person.
(Added to NAC by Bd. of Education, eff. 7-14-88)

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

1. Is caused by chronic or acute health problems such as asthma, attention deficit disorder or attention deficit hyperactivity disorder, childhood disintegrative disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, Rett’s disorder, ~~and~~ sickle-cell anemia *and Tourette syndrome*; and
 2. Adversely affects the educational performance of the pupil.
- (Added to NAC by Bd. of Education by R085-99, eff. 2-16-2000)

NAC 388.047 “Hearing impairment” defined. (NRS 385.080) “Hearing impairment” means an impairment of the hearing mechanism which affects sound integration and prevents or delays the normal development of speech and language.
(Added to NAC by Bd. of Education, eff. 7-14-88; A 11-23-93)—(Substituted in revision for NAC 388.025)

NAC 388.049 “Homeless youth” defined. (NRS 385.080) “Homeless youth” has the meaning ascribed to it in 42 U.S.C. § 11434a(2).
(Added to NAC by Bd. of Education by R071-05, eff. 2-23-2006)

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

1. Is characterized by intellectual functioning at a level that is significantly below average, and which exists concurrently with related limitations in two or more of the following adaptive skill areas:
 - (a) Communication skills;
 - (b) Self-care;
 - (c) Home living;
 - (d) Social skills;
 - (e) Use of the community;
 - (f) Self-direction;
 - (g) Health and safety;
 - (h) Functional academics;
 - (i) Leisure; and

- (j) Work;
 - 2. Manifests before the age of 18 years; and
 - 3. Adversely affects the educational performance of a pupil.
- (Added to NAC by Bd. of Education, eff. 7-14-88; A 11-23-93; R085-99, 2-16-2000)

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

(Added to NAC by Bd. of Education, eff. 7-14-88; A 11-23-93; R085-99, 2-16-2000)

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

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

(Added to NAC by Bd. of Education, eff. 7-14-88; A 11-23-93; R085-99, 2-16-2000; R071-05, 2-23-2006)

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

- 1. A ~~fnatural~~ *biological* or adoptive parent;
- 2. A guardian *generally authorized to act as the pupil's parent, 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 ~~fnatural~~ *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.

6. Except as provided in subsection 7, the biological or adoptive parent, when attempting to act as the parent and when more than one party is qualified under this section to act as parent, shall be presumed to be the parent, unless the biological or adoptive parent does not have the legal authority to make educational decisions for the pupil.

7. If a judicial decree or order identifies a specific person or persons under subsections 1, 2, 3, or 5 to act as the parent of the pupil or to make educational decisions on behalf of the pupil, then such person or persons shall be determined to be the parent for purposes of this section.

(Added to NAC by Bd. of Education, eff. 7-14-88; A 11-23-93; R085-99, 2-16-2000; R071-05, 2-23-2006)

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

(Added to NAC by Bd. of Education, eff. 11-23-93; A by R085-99, 2-16-2000)

NAC 388.XXX "Peer-reviewed research" defined. (NRS 385.080) "Peer-reviewed research" means education and education-related research that is reviewed by qualified and independent reviewers to ensure that the quality of the information meets the standards of the field before the research is published.

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

(Added to NAC by Bd. of Education, eff. 7-14-88; A 11-23-93; R085-99, 2-16-2000)

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

(Added to NAC by Bd. of Education by R085-99, eff. 2-16-2000)

NAC 388.085 “[~~Previous educational i~~]ntervention” defined. (NRS 385.080) “[~~Previous educational i~~]ntervention” 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.

(Added to NAC by Bd. of Education, eff. 7-14-88; A 11-23-93)

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

(Added to NAC by Bd. of Education, eff. 11-23-93; A by R085-99, 2-16-2000)—(Substituted in revision for NAC 388.083)

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

(Added to NAC by Bd. of Education, eff. 7-14-88; A 11-23-93)

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

(Added to NAC by Bd. of Education, eff. 7-14-88; A 11-23-93)—(Substituted in revision for NAC 388.021)

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

(Added to NAC by Bd. of Education, eff. 11-23-93)

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

(Added to NAC by Bd. of Education, eff. 7-14-88; A 11-23-93; R085-99, 2-16-2000)

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

(Added to NAC by Bd. of Education, eff. 7-14-88; A 11-23-93; R085-99, 2-16-2000; R071-05, 2-23-2006)

NAC 388.XXX "Response to scientific, research-based intervention" defined. (NRS 385.080) "Response to scientific, research-based intervention" means a collaborative process for providing scientific, research-based interventions matched to a pupil's needs and systematically monitoring the pupil's level of performance and rate of learning over time to make data-based decisions about the need for increasingly intensified services.

NAC 388.XXX "Scientifically based research" defined. (NRS 385.080 "Scientifically based research has the meaning ascribed to the term in section 9101(37) of the Elementary and Secondary Education Act.

NAC 388.XXX "Scientific, research-based intervention" defined. (NRS 385.080) "Scientific, research-based intervention" means the modification of the classroom environment, curriculum or delivery of instruction in general education settings, which is based upon an examination of characteristics of the pupil as a learner, the instruction being provided and the curricular tasks to be accomplished, and targeted toward improving the pupil's level of performance and rate of learning. The modification of the classroom environment, curriculum or delivery of instruction is demonstrated through scientifically based research and practice to have a positive impact on a pupil's academic achievement or behavior.

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

1. Is exhibited by a person for at least 3 months;
2. Adversely affects academic performance; and
3. Includes one or more of the following:
 - (a) An inability to learn which is not caused by an intellectual, sensory or health factor;
 - (b) An inability to engage in or to maintain interpersonal relationships with peers and teachers;
 - (c) Inappropriate behavior or feelings;

- (d) A general and pervasive mood of unhappiness or depression;
 - (e) A physical symptom associated with a personal or academic problem; or
 - (f) The expression of fears regarding personal or academic problems.
- (Added to NAC by Bd. of Education, eff. 7-14-88; A 9-13-91; 11-23-93)

NAC 388.111 “Social and emotional condition” defined. (NRS 385.080) “Social and emotional condition” means the present thoughts, feelings and interactive behavior of a person.
(Added to NAC by Bd. of Education, eff. 7-14-88)

NAC 388.115 “Special education” defined. (NRS 385.080) “Special education” means instruction designed to meet the unique needs of a pupil with a disability at no cost to the parent, including, without limitation, instruction conducted in a classroom, at the pupil’s home or in a hospital, institution or other setting. The term includes instruction in physical education *in accordance with 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.

(Added to NAC by Bd. of Education, eff. 7-14-88; A 11-23-93; R085-99, 2-16-2000)

NAC 388.117 “Specific learning disability” defined. (NRS 385.080) “Specific learning disability” means a disorder in one or more of the basic psychological processes involved in understanding or using spoken or written language which is not primarily the result of a visual, hearing or motor impairment, mental retardation, serious emotional disturbance, or an environmental, cultural or economic disadvantage. The disorder may manifest itself in an imperfect ability to listen, think, speak, read, write, spell or perform mathematical calculations. The disorder includes, without limitation, such conditions as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia and developmental aphasia.

(Added to NAC by Bd. of Education, eff. 7-14-88; A 11-23-93; R085-99, 2-16-2000; R071-05, 2-23-2006)

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

(Added to NAC by Bd. of Education, eff. 7-14-88)

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

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

(Added to NAC by Bd. of Education, eff. 7-14-88; A 11-23-93)

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

(Added to NAC by Bd. of Education, eff. 7-14-88)

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

(Added to NAC by Bd. of Education by R085-99, eff. 2-16-2000)

NAC 388.133 “Transition services” defined. (NRS 385.080) “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 ~~for~~ *and* community participation;

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

3. *Includes the pupil's courses of study beginning at age 14; and*

4. Includes, without limitation, *beginning with the individualized educational program which is in effect when the pupil is 16 years of age:*

(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.

(Added to NAC by Bd. of Education, eff. 11-23-93; A by R085-99, 2-16-2000; R071-05, 2-23-2006)

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

1. Cognitive abilities;

2. Speech;

3. Language;

4. Information processing;

5. Memory;

6. Attention;

7. Reasoning;

8. Abstract thinking;

9. Judgment;

10. Problem solving abilities;

11. Sensory, perceptual and motor skill abilities;

12. Psychosocial behavior; and
13. Physical functions,
of a person. The term does not include injuries to the brain that are congenital or degenerative or which are induced by trauma during birth.

(Added to NAC by Bd. of Education, eff. 11-23-93)

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

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

(Added to NAC by Bd. of Education by R085-99, eff. 2-16-2000)

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

(Added to NAC by Bd. of Education, eff. 7-14-88)

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

(Added to NAC by Bd. of Education, eff. 7-14-88; A 11-23-93)

NAC 388.145 Educational programs for pupils with disabilities must comply with chapter *and federal regulations*. (NRS 385.080, 388.520) Any educational program for pupils with disabilities in this State, including, without limitation, a program of special education in a private school that provides special education to a pupil who is placed in the private school by a public agency, must be administered in accordance with the provisions of this chapter *and applicable sections of 34 C.F.R. Part 300*.

(Added to NAC by Bd. of Education, eff. 7-14-88; A 11-23-93; R085-99, 2-16-2000)

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

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

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

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

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

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

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

- (1) Twenty for pupils with hearing impairments.
- (2) Fifteen for pupils with multiple impairments.
- (3) Four for pupils with deaf-blindness.
- (4) Twenty for pupils with orthopedic impairments and health impairments.
- (5) Ten for pupils with orthopedic impairments and health impairments receiving special education services in a home or hospital.
- (6) Fifteen for pupils with orthopedic impairments and health impairments receiving special education services through the teleteaching method of instruction.
- (7) Fifty for pupils with speech and language impairments receiving speech and language therapy services.
- (8) Twelve for pupils with speech and language impairments receiving special education services in a self-contained classroom.
- (9) Sixteen for pupils with visual impairments.
- (10) Fifteen for pupils with traumatic brain injury.
- (11) Twelve for pupils with autism.
- (12) Sixty-five for pupils who are gifted and talented.

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

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

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

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

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

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

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

- (1) Six for pupils with hearing impairments.

- (2) Six for pupils with multiple impairments.
 - (3) Four for pupils with deaf-blindness.
 - (4) Six for pupils with orthopedic impairments and health impairments.
 - (5) Fifteen for pupils with orthopedic impairments and health impairments receiving special education services through a teleteaching method of instruction.
 - (6) Eight for pupils with speech and language impairments receiving special education services in a self-contained classroom.
 - (7) Six for pupils with visual impairments.
 - (8) Eight for pupils with traumatic brain injury.
 - (9) Six for pupils with autism.
 - (10) Twenty for pupils who are gifted and talented.
- (d) Pupils under the age of 6 years who are placed in early childhood nonspecialized programs and who receive special education services in a center-based classroom, integrated setting or through a consultative method of instruction is 12.
- (e) Pupils under the age of 6 years who are placed in early childhood specialized programs is 6.
3. In the case of a heterogeneous program, the maximum number of cases per teacher and the maximum size of the class is to be determined according to the area of disability represented by the majority of the pupils in the program.
4. The maximum ~~enrollment~~ *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.

[Dep't of Education, eff. 12-15-77]—(NAC A by Bd. of Education, 2-7-83; 7-14-88; 9-13-91; 11-23-93; R027-00, 6-20-2000, eff. 7-1-2000; R199-03, 3-19-2004)

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

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

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

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

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

(Added to NAC by Bd. of Education, eff. 7-14-88; A 9-13-91; 11-23-93)

NAC 388.XXX Personnel qualifications. (NRS 385.080, 388.520)

1. The public agency must ensure that personnel, including special education teachers, related services personnel, and paraprofessionals necessary to carry out the purposes of this chapter are appropriately and adequately prepared and trained, including that those personnel have the content knowledge and skills to serve pupils with disabilities.

2. The public agency must 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 any other individual right of action that a parent or student may maintain under 20 U.S.C. §§ 1400 et seq., nothing in this section shall be construed to create a right of action on behalf of an individual pupil or a class of pupils for the failure of a particular public agency employee to be highly qualified, or to prevent a parent from filing a complaint about staff qualifications with the Nevada Department of Education as provided for under this chapter.

NAC 388.180 Length of school day. (NRS 385.080, 388.090, 388.520) Except as otherwise provided by NAC 387.125, subsection 2 of NAC 387.131 and NAC 387.286, a school day in

session for a unit must consist of the minimum daily periods established for the grade by subsection 1 of NAC 387.131.

[Dep't of Education, eff. 12-15-77]—(NAC A by Bd. of Education, 2-7-83; 7-14-88; R043-04, 7-16-2004)

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

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

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

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

(Added to NAC by Bd. of Education, eff. 7-14-88; A 11-23-93; R085-99, 2-16-2000)

NAC 388.215 Measures to identify, evaluate and serve pupils with disabilities. (NRS 385.080, 388.520) Each public agency shall take measures *in accordance with 34 C.F.R. § 300.111* to ensure that every pupil with a disability who resides within the district is identified, evaluated and served in the manner appropriate to the unique needs of the pupil. These measures must include, without limitation:

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

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

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

4. Communication with such agencies; and

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

(a) The implementation of the foregoing measures; and

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

(Added to NAC by Bd. of Education, eff. 7-14-88; A 11-23-93; R085-99, 2-16-2000)

NAC 388.225 Prohibition on requiring medication of pupil; consulting or sharing certain observations with parent. (NRS 385.080, 388.520)

1. A person employed by a public agency shall not require a pupil or a parent of a pupil to obtain a prescription for the pupil for a substance covered by the Controlled Substances Act, 21 U.S.C. §§ 801 et seq., as a condition of attending school, receiving an evaluation for special education or related services, or receiving special education or related services.

2. This section does not prohibit a teacher or other school personnel from consulting or sharing classroom-based observations with a parent of a pupil concerning:

(a) The academic achievement and functional performance of the pupil;

- (b) The behavior of the pupil while in the classroom, on the premises of any public school, at an activity sponsored by a public school or on any school bus; or
 - (c) The need for the pupil to be evaluated for special education or related services.
- (Added to NAC by Bd. of Education by R071-05, eff. 2-23-2006)

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

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

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

A pupil with a disability, including a pupil in a public or private institution or other care facility, must be educated with pupils who are not disabled to the maximum extent appropriate. *A pupil with a disability may not be removed from education in an age-appropriate regular classroom solely because of needed modifications in the general education 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. *The public agency shall ensure that each pupil with a disability has the supplementary aids and services determined by the individualized educational program committee to be appropriate and necessary for the pupil to participate in nonacademic settings.* 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.

(Added to NAC by Bd. of Education, eff. 7-14-88; A 11-23-93; R085-99, 2-16-2000)

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

1. The current individualized educational program of the pupil;
2. The *initial evaluation or* most recent *reevaluation* of the pupil; and
3. Information relating to the current educational performance of the pupil.

(Added to NAC by Bd. of Education, eff. 7-14-88; A 11-23-93; R085-99, 2-16-2000; R071-05, 2-23-2006)

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

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

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

(Added to NAC by Bd. of Education by R028-01, eff. 11-1-2001)

NAC 388.263 Provision of services to pupil with disability who transfers between school districts. (NRS 385.080, 388.520)

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 *for a period not to exceed 30 calendar days, or* until such time as the public agency adopts the previous individualized educational program for the pupil or develops, adopts and implements a new individualized educational program for the pupil in accordance with applicable federal and state law, *whichever occurs first. If a reevaluation of the pupil is commenced within the 30-calendar day period for providing comparable services, the period for providing comparable services shall be extended until the completion of the reevaluation and development and implementation of a new individualized educational program for the pupil. For purposes of this section, a reevaluation has commenced upon provision of written notice to the parent that no additional data are needed, or upon parent consent for a reevaluation requiring 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, the comparable services to be provided, and the period of time comparable services will be provided, and shall provide a copy of the documentation to the parent.

(Added to NAC by Bd. of Education by R071-05, eff. 2-23-2006)

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

1. No pupil with a disability may be suspended, expelled or excluded from attendance by a public agency ~~[if such suspension, expulsion or exclusion results in a change of placement of the pupil during any school year]~~ except upon compliance with the provisions of this section, *34 C.F.R. §§ 300.530 through 300.536*, and 20 U.S.C. § 1415(k). School personnel may consider any unique circumstances, *such as a pupil's disciplinary history, ability to understand consequences, expression of remorse, and supports provided prior to 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 any 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 in 34 C.F.R. § 300.519~~36~~.

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

(Added to NAC by Bd. of Education, eff. 7-14-88; A 9-13-91; 11-23-93; R039-98, 5-29-98; R085-99, 2-16-2000; R071-05, 2-23-2006)

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

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

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

(Added to NAC by Bd. of Education, eff. 7-14-88; A 9-13-91; 11-23-93; R085-99, 2-16-2000)

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

1. Before providing special services and programs of instruction for pupils with disabilities, other than gifted and talented pupils, a public agency shall adopt a procedure whereby an individualized educational program is developed for each such pupil *in accordance with 34 C.F.R. §§ 300.320 through 300.324, except as provided in 34 C.F.R. § 300.300(b)(3)(ii) and as otherwise provided in this chapter*. The procedure adopted must ensure that an individualized educational program is in effect at the beginning of each school year and before the initiation of special education or related services. For eligible pupils making the transition from *early intervention* programs operated pursuant to 20 U.S.C. §§ 1431 to 1445, inclusive, *each public agency will participate in transition planning conferences arranged by the pupil's early intervention program, and* 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.]~~

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, i]~~ *If the committee is meeting to develop an individualized educational program which includes [needed] transition services with regard to the pupil's courses of study beginning at age 14, [or to consider the pupil's transition services needs,] the pupil; [and a representative of the participating agency; and]*

(g) *If the committee is meeting to develop an individualized educational program which includes transition services to be in effect when the pupil is 16 years of age, with the consent of the parents, a representative of any participating agency that is likely to be responsible for providing or paying for transition services; and*

(h) At least one member of the committee must have personal knowledge about the personnel and options for placement available to provide special education and related services to the pupil.

3. 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 any such persons shall be made by the parents or public agency who invited the persons to join the committee.

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.

(c) If changes are made to the pupil's individualized educational program in accordance with this subsection, the public agency shall ensure that the pupil's individualized educational program committee is informed of those changes.

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 ***at no cost to the parents.***

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 ***early enough to ensure that the parents will have an opportunity to attend;***

(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.

(e) If the pupil previously received early intervention services pursuant to 20 U.S.C. §§ 1431 et seq. and the meeting is an initial meeting for the development of the pupil's individualized educational program, notify the parents that upon the request of the parents, the public agency shall send an invitation to the service coordinator or other representative of the pupil's early intervention system to participate in 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., upon the request of the parent, send an invitation to the service coordinator ***or other representative*** of the pupil's early intervention ~~for other representative of that~~ 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.

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 to the parents*.

(Added to NAC by Bd. of Education, eff. 2-7-83; A 7-14-88; 9-13-91; 11-23-93; R039-98, 5-29-98; R039-98, 5-29-98, eff. 7-1-98; R085-99, 2-16-2000; R071-05, 2-23-2006)

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

1. *In accordance with 34 C.F.R. § 300.325, a [A]* public agency shall provide a pupil with a disability, other than a gifted and talented pupil, who is placed in or referred to a private school or facility by the Department or the public agency with special education and related services at no cost to the parents and in accordance with the pupil's individualized educational program.

2. Except as otherwise provided in subsection 3, before a public agency places a pupil with a disability in or refers such a pupil to a private school or facility, the public agency shall initiate and conduct a meeting to develop an individualized educational program for the pupil. The public agency ~~[shall request the presence of a teacher or other]~~ *must 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. A pupil with a disability who is placed in or referred to a private school or facility by a public agency is provided an education that meets state and federal standards, except for 34 C.F.R. § 300.18 and § 300.156(c), and has all the rights of a pupil with a disability who is served by a public agency.

(Added to NAC by Bd. of Education, eff. 2-7-83; A 7-14-88; 9-13-91; 11-23-93; R085-99, 2-16-2000)

NAC 388.XXX Pupils with disabilities enrolled by their parents in private schools or homeschooled. (NRS 385.080, 388.520, 392.070.2)

1. To the extent consistent with the number and location of pupils with disabilities who are homeschooled or enrolled by their parents in private, including religious, elementary schools and secondary schools located in the school district served by the public agency, each public agency shall provide for the participation of those pupils in the program assisted or carried out under the Individuals with Disabilities Education Act, 20 U.S.C. §§ 1400 et seq., by providing them with special education and related services, including direct services.

2. Provision for the participation of such pupils shall be in accordance with 34 C.F.R. §§ 300.130 through 300.144.

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

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 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. In the case of a pupil who is an unaccompanied homeless youth, appropriate staff of emergency shelters, transitional shelters, independent living programs, and street outreach programs may be appointed as temporary surrogate parents if they 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, without regard to the requirement that employees of public agencies involved in the education or care of the pupil may not be selected as surrogate parents, until a surrogate parent can be appointed that meets all 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.

(Added to NAC by Bd. of Education, eff. 2-7-83; A 7-14-88; 9-13-91; 11-23-93; R071-05, 2-23-2006)

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

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

(a) A statement of the pupil's present levels of 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 ~~as~~ *as part of the pupil's:*

(1) Special education;

(2) Related services; or

(3) Supplementary aids and services.

On a case-by-case basis, the use of school-purchased assistive technology devices in a pupil's home or in other settings is required if the pupil's individualized educational program committee determines that the pupil needs access to those devices in order 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 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. *At least every 6 months, the parents of a pupil who is 3, 4, or 5 years of age must be given the opportunity to participate in a review of the pupil's progress.*

(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 education 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;

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

~~—(c)]~~ Shall include in the individualized educational program of a pupil who requires positive behavioral ~~[interventions,]~~ strategies, ~~[and]~~ supports *and 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.

If determined appropriate by the pupil's individualized educational program committee, positive behavioral strategies, supports and interventions, or other strategies, supports and interventions are described in the statement of specific special education, supplementary aids and services, or related services described in subsection 1(c).

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

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

(a) Are provided to a pupil with a disability outside the normal school year of the public agency;

(b) Are in accordance with the pupil's individualized educational program;

(c) Are provided at no cost to the parents of the pupil; and

(d) Comply with the requirements of this chapter.

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.

(Added to NAC by Bd. of Education, eff. 2-7-83; A 7-14-88; 11-23-93; R039-98, 5-29-98; R085-99, 2-16-2000; R071-05, 2-23-2006)

NAC 388.287 Inspection and review of educational records of pupil; *parent participation in meetings*. (NRS 385.080, 388.520)

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

(a) Before any meeting regarding an individualized educational program or any hearing relating to the identification, evaluation or placement of the pupil or the provision of a free appropriate public education; and

(b) Not later than 45 days after the request has been made.

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

2. The parents may:

(a) Make reasonable requests for the public agency to explain and interpret the records;

(b) Have their representative inspect and review the records; and

(c) Request that the public agency provide them with copies of the records if, without the copies, any meaningful review of the records is impractical.

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

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

(a) Name of the person;

(b) Date access was given;

(c) Purpose for which the person is authorized to use the records; and

(d) List required by subsection 6.

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

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

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

8. The parents of a pupil with a disability shall be afforded an opportunity to participate in meetings with respect to the identification, evaluation, and educational placement of the pupil, and the provision of a free appropriate public education to the pupil. Each public agency shall provide notice consistent with NAC 388.281 subsection 8 to ensure that parents of pupils with disabilities have the opportunity to participate in such meetings.

9. A meeting does not include informal or unscheduled conversations involving public agency personnel and conversations on issues such as teaching methodology, lesson plans, or coordination of service provision. A meeting also does not include preparatory activities that public agency personnel engage in to develop a proposal or response to a parent proposal that will be discussed at a later meeting.

10. Each public agency shall use procedures consistent with NAC 388.281 subsection 8 to ensure that a parent of each pupil with a disability is a member of any group that makes decisions on the educational placement of the pupil. If neither parent can participate in a meeting in which a decision is to be made relating to the educational placement of the pupil, the public agency shall use other methods to ensure their participation, including individual or conference telephone calls, or video conferencing. A placement decision may be made by a

group without the involvement of a parent, if the public agency is unable to obtain the parent's participation in the decision. In this case, the public agency shall have a record of its attempt to ensure their involvement.

(Added to NAC by Bd. of Education, eff. 2-7-83; A 7-14-88; 11-23-93; R085-99, 2-16-2000)

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

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

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

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

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

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

(Added to NAC by Bd. of Education, eff. 2-7-83; A 7-14-88; 11-23-93; R085-99, 2-16-2000)

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

1. *In accordance with the provisions of 34 C.F.R. §§ 300.611 through 300.625, [REDACTED] each public agency shall:*

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

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

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

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

2. Each public agency shall:

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

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

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

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

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

(Added to NAC by Bd. of Education, eff. 2-7-83; A 7-14-88; 11-23-93; R085-99, 2-16-2000)

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

[Dep't of Education, eff. 12-15-77]—(NAC A by Bd. of Education, 2-7-83; 7-14-88; 11-23-93; R085-99, 2-16-2000)

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

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

2. The notice must include:

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

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

(c) The types of information sought;

(d) A description of the methods and sources to be used in gathering the information;

(e) The uses to be made of the information;

(f) A summary of the policies and procedures to be followed regarding the storage, disclosure to any interested third parties, retention and destruction of personally identifiable information; and

(g) A description of all of the rights of parents and pupils regarding this information, including, without limitation, the rights pursuant to the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. § 1232g, and the related regulations.

(Added to NAC by Bd. of Education, eff. 2-7-83; A 7-14-88; 11-23-93; R085-99, 2-16-2000)

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

1. The Department will monitor each unit to determine whether the unit is in compliance with this chapter.

2. Each public agency which provides an educational program for pupils with disabilities shall establish a procedure for monitoring the program to ensure that it complies with the provisions of this chapter.

(Added to NAC by Bd. of Education, eff. 2-7-83; A 7-14-88; 11-23-93)

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

1. Any information or report required to be furnished to the Department by a public agency providing an educational program for pupils with disabilities must be furnished in the form and manner prescribed by the Department.

2. A public agency shall submit the requested information regarding each unit receiving apportionment to the Special Education Branch of the Department at the beginning of each school year and as changes occur.

(Added to NAC by Bd. of Education, eff. 2-7-83; A 7-14-88; 11-23-93)

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

1. Except as otherwise provided in this section or NAC 388.440, informed written consent must be obtained from the parents of the pupil before conducting an initial evaluation, 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 the informed consent from the parent for an initial evaluation, or for a reevaluation requiring additional assessments, and for the initial provision of special education and related services.* 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]~~ *NAC 388.XXX. The public agency does not violate its obligations for evaluation or reevaluation and will not be deemed to have knowledge that a pupil is a pupil with a disability under 34 C.F.R. § 300.534 if it declines to request mediation or a hearing. To meet the reasonable efforts requirement in this section, the public agency shall use procedures consistent with NAC 388.281 subsection 10.*

2. 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. 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]~~ **NAC 388.XXX**. 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 ***and will not be deemed to have knowledge that a pupil is a pupil with a disability under 34 C.F.R. § 300.534.***

(b) 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. Parental consent is not required:

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

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

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

5. If a parent of a pupil who is homeschooled or placed in a private school by the parents at their own expense 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 may not request mediation pursuant to NAC 388.305 or a hearing pursuant to NAC 388.XXX and the public agency is not required to consider the pupil as eligible for services for complying with provisions for parentally placed private school children or homeschooled children under NAC 388.XXX.

6. 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]7~~. 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]8~~. 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.

~~[8]9.~~ 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]~~ *NAC 388.XXX* from the parents *or when the public agency receives the first request in a school year for a State complaint*; and

(c) Upon request by the parents.

The statement of parental rights must explain fully the procedural safeguards listed in ~~[20 U.S.C. § 1415(d)(2)]~~ *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]~~. *A public agency may place a current copy of the procedural safeguards statement on its Internet web site if a web site exists.*

10. A parent of a pupil with a disability may elect to receive notices required under NAC 388.300 subsections 6 and 9, and NAC 388.XXX subsection 7, by an electronic mail communication if the public agency makes that option available.

NAC 388.XXX Request for hearing; appointment of hearing officer; placement of pupil pending completion of proceedings. (NRS 388.080; 388.520)

~~[9]1.~~ If the parent desires a hearing regarding the public agency's proposal or refusal *concerning the identification, evaluation or educational placement of the pupil, or the provision of a free appropriate public education to the pupil*, the parent must submit a ~~[written request for the hearing]~~ *due process complaint* to the head of the public agency. *The model form for filing a due process complaint developed by the Department may but is not required to be used so long as the form or document that is used meets the requirements in subsection 2 for filing a due process complaint.*

~~[10]2.~~ The party requesting a hearing, or an attorney representing the party, must provide ~~[notice]~~ *due process complaint* to the other party and forward a copy of such ~~[notice]~~ *complaint* to the Department. The ~~[notice]~~ *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 ~~notice~~ **complaint** that meets the requirements of this subsection. ~~[Responses to a notice must be in accordance with 20 U.S.C. § 1415(e)(2)(B).]~~

3. The due process complaint required by this section shall be deemed sufficient unless the party receiving the complaint notifies the hearing officer and the other party in writing, within 15 days of receipt of the complaint, that the receiving party believes the complaint does not meet the requirements in subsection 2.

4. Within five days of receipt of notification under subsection 3, the hearing officer shall make a determination on the face of the due process complaint of whether the notice meets the requirements of subsection 2, and shall immediately notify the parties in writing of that determination.

5. A party may amend its due process complaint only if:

(a) The other party consents in writing to the amendment and is given the opportunity to resolve the problems identified in the due process complaint through a meeting held pursuant to NAC 388.XXX; or

(b) The hearing officer grants permission, except that the hearing officer may only grant permission to amend at any time not later than five days before the due process hearing begins.

6. If a party files an amended due process complaint, the timelines for the resolution meeting and the time period to resolve in NAC 388.XXX begin again with the filing of the amended due process complaint.

7. If the public agency has not sent a prior written notice under 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 of 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 why those options were rejected;

(c) A description of each evaluation procedure, assessment, record, or report 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 agency's proposed or refused action.

8. A response by a public agency under subsection 7 shall not be construed to preclude the public agency from asserting that the parent's due process complaint was insufficient, where appropriate.

9. Except as provided in subsection 7, the party receiving a due process complaint shall, within 10 days of receiving the complaint, send to the other party a response that specifically addresses the issues raised in the complaint.

~~10~~ **10**. Within 5 days after receipt of a ~~request~~ **due process complaint** pursuant to subsection ~~9~~ **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.

~~[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.]~~

~~[2]11.~~ Except as otherwise provided in this subsection, *NAC 388.308* ~~[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.

(a) 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.

(b) If the hearing involves an application for initial services from a pupil who is transitioning from Part C to Part B of the Individuals with Disabilities Education Act and is no longer eligible for Part C services because the child has turned three, the public agency is not required to provide the Part C services that the child had been receiving. If the pupil is found eligible for special education and related services under Part B and the parent consents to the initial provision of special education and related services under NAC 388.300, then the public agency shall provide those special education and related services that are not in dispute between the parent and the public agency.

(c) 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.

~~[3]12.~~ 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.

[Dep't of Education, eff. 12-15-77]—(NAC A by Bd. of Education, 2-7-83; 7-14-88; 9-13-91; 11-23-93; R039-98, 5-29-98; R085-99, 2-16-2000; R071-05, 2-23-2006)

NAC 388.XXX Resolution process. (NRS 385.080, 388.520)

1. Within 15 days of receiving the parent's due process complaint, and prior to the initiation of a due process hearing, the public agency shall convene a meeting with the parent and the relevant member or members of the individualized educational program committee who have specific knowledge of the facts identified in the due process complaint that:

(a) Includes a representative of the public agency who has decision-making authority on behalf of that agency; and

(b) May not include an attorney of the public agency unless the parent is accompanied by an attorney.

2. The purpose of the meeting is for the parent of the child to discuss the due process complaint, and the facts that form the basis of the complaint, so that the public agency has the opportunity to resolve the dispute that is the basis for the complaint.

3. *The meeting described in subsection 1 need not 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 described in NAC 388.305.*

4. *The parent and the public agency determine the relevant members of the individualized educational program committee to attend the meeting.*

5. *If the public agency has not resolved the due process complaint to the satisfaction of the parent within 30 days of the receipt of the due process complaint, the due process hearing may occur. Except for adjustments provided in subsection 9, the 45-day timeline for issuing a final decision begins at the expiration of this 30-day period.*

6. *Except where the parties have jointly agreed to waive the resolution process or to use mediation, notwithstanding subsection 5, the failure of the parent filing a due process complaint to participate in the resolution meeting will delay the timelines for the resolution process and due process hearing until the meeting is held.*

7. *If the public agency is unable to obtain the participation of the parent in the resolution meeting after reasonable efforts have been made and documented, the public agency may, at the conclusion of the 30-day period, request that a hearing officer dismiss the parent's due process complaint. To meet the reasonable efforts requirement in this subsection, the public agency shall use procedures consistent with those in NAC 388.281 subsection 10.*

8. *If the public agency fails to hold the resolution meeting specified in subsection 1 within 15 days of receiving notice of a parent's due process complaint or fails to participate in the resolution meeting, the parent may seek the intervention of a hearing officer to begin the due process hearing timeline.*

9. *The 45-day timeline for the due process hearing in NAC 388.310 starts the day after one of the following events:*

- (a) *Both parties agree in writing to waive the resolution meeting;*
- (b) *After either the mediation or resolution meeting starts but before the end of the 30-day period, the parties agree in writing that no agreement is possible;*
- (c) *If both parties agree in writing to continue the mediation at the end of the 30-day resolution period, but later, the parent or public agency withdraws from the mediation process.*

10. *If a resolution to the dispute is reached at the meeting described in subsection 1, the parties shall execute a legally binding agreement that is:*

- (a) *Signed by both the parent and a representative of the agency who has the authority to bind the agency; and*
- (b) *Enforceable in any State court of competent jurisdiction or in a district court of the United States.*

11. *If the parties execute an agreement pursuant to subsection 10, a party may void the agreement within 3 business days of the agreement's execution.*

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

1. If a ~~[parent of a pupil does not agree with]~~ *dispute arises between the parent and the public agency involving any matter related to the identification, evaluation or educational placement of the pupil or the provision of a free appropriate public education to the pupil, including matters arising prior to the filing of a due process complaint, the parent or the public agency may request the Department to provide mediation. Mediation is voluntary on the part of the parties.*

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.]~~ *The mediation process shall not be used to deny or delay a parent's right to a hearing on the parent's due process complaint, or to deny any other rights afforded under Part B of the Individuals with Disabilities Education Act.*

3. *Mediators are qualified and impartial and are trained in effective mediation techniques. A person who serves as a mediator:*

(a) *May not be an employee of the public agency that is involved in the education or care of the pupil; and*

(b) *Shall not have a personal or professional interest that conflicts with the person's objectivity.*

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

4. 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 mediators on a random, rotational, or other impartial basis.*

~~[4]5.~~ If mediation is requested:

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

(b) Each session of mediation must be scheduled in a timely manner and must be held at a location that is convenient for the parties to the dispute; and

(c) ~~[Each party to the dispute must sign a confidentiality agreement before the mediation begins. The agreement must state that all discussions which occur during the mediation are confidential and may not be used as evidence in a hearing or civil proceeding.]~~ *If the parties resolve a dispute through the mediation process, the parties shall execute a legally binding agreement that sets forth the resolution and that:*

(1) *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*

(2) *Is signed by both the parent and a representative of the agency who has the authority to bind such agency.*

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

7. *Discussions that occur during the mediation process shall be confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding of any Federal court or State court of a State receiving assistance under the Individuals with Disabilities Education Act.*

~~[5. If the parties to mediation reach an agreement, the agreement must be set forth in writing.]~~

(Added to NAC by Bd. of Education by R039-98, eff. 5-29-98; A by R085-99, 2-16-2000)

NAC 388.308 Expedited hearing. (NRS 385.080, 388.520)

1. A parent may request an expedited hearing if the hearing is to resolve a dispute concerning:

(a) A determination of whether the behavior of the pupil is a manifestation of the disability of the pupil which is made pursuant to paragraph (b) of subsection 3 of NAC 388.265; or

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

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]XXX~~ and 388.310, 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. Unless the parents and the public agency agree in writing to waive the resolution meeting described in NAC 388.XXX, or agree to use the mediation process described in NAC 388.305:

(a) A resolution meeting shall occur within 7 days of receiving notice of the due process complaint requesting an expedited hearing; and

(b) The due process hearing may proceed unless the matter has been resolved to the satisfaction of both parties within 15 day of the receipt of the due process complaint.

5. Whenever an expedited due process hearing has been requested by either the parent or the public agency, the pupil shall remain in the interim alternative educational setting pending the decision of the hearing officer or, if an appeal is taken pursuant to NAC 388.315, the review officer, or until the expiration of the time period of removal ordered by school personnel pursuant to 34 C.F.R. § 300.530, whichever occurs first, unless the parent and the public agency agree otherwise.

(Added to NAC by Bd. of Education by R085-99, eff. 2-16-2000; A by R071-05, 2-23-2006)

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

1. If a parent~~[, guardian]~~ or public agency requests a hearing pursuant to NAC 388.~~[300]XXX~~, 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) Call, examine and compel the attendance of witnesses; ~~[and]~~

(e) Cross-examine witnesses; *and*

(f) Prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least 5 business days before the hearing.

3. At the hearing, the parent has the right to:

- (a) Have the pupil present; and
- (b) Have the hearing open to the general public.

4. The parent may examine all pertinent school records before the hearing.

5. ~~[A party to the hearing may object to the introduction of:~~

~~—(a) Evidence; or~~

~~—(b) Evaluations, including recommendations based upon evaluations,~~

~~that have not been disclosed to the opposing party at least 5 business days before the hearing.]~~ *At*

least 5 business days prior to the hearing, each party shall disclose to all other parties all evaluations completed by that date and recommendations based on the offering party's evaluations that the other party intends to use at the hearing. A hearing officer may bar introduction of the relevant evaluation or recommendation that was not disclosed to the opposing party at least 5 business days before the hearing without the consent of the other party.

6. The public agency shall make a verbatim record of the hearing either in writing or, at the option of the parent, by electronic means. The record must be made available to any party to the hearing.

7. The public agency shall take whatever action is necessary to ensure that the parent understands the ~~[written notice and the]~~ *hearing* proceedings ~~[at the hearing]~~, including arranging for an interpreter for a parent who is deaf or whose native language is not English.

8. The public agency shall transmit the written findings of fact and decisions prepared pursuant to subsection 11 and transmit them to the Special Education Advisory Council of the Department. The findings and decisions must be available for public inspection after removing any personally identifiable information of the pupil.

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

10. The hearing officer shall base the decision solely on the evidence presented at the hearing. Subject to the limitations set forth in this subsection, ~~[a decision made by a hearing officer must be made on substantive grounds based on a determination of whether a pupil received a free appropriate public education]~~ *a hearing officer's determination of whether a child received a free appropriate public education shall be based on substantive grounds.* 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 *in 34 CFR §§ 300.500 through 300.536.*

11. Except as otherwise provided in this subsection, the hearing officer shall render the findings of fact and decision in writing and mail a copy of the decision to the parties within 45 days after the ~~[date on which the head of the public agency or the Superintendent if the hearing is requested by a public agency, receives the request for the hearing]~~ *expiration of the 30-day resolution period under NAC 388.XXX or the adjusted time periods in NAC 388.XXX,*

subsection 9. Except ~~as otherwise provided~~ *for expedited hearings* in NAC 388.308, the hearing officer may extend the time for rendering a decision for a specific number of days upon the request of either party.

12. 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.

~~12~~*13.* The public agency shall pay the expenses of the hearing officer and any other expenses of the hearing.

~~13~~*14.* The hearing officer must:

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

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

(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 appropriate, standard legal practice; and

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

A person who otherwise qualifies to conduct a hearing under subsection 14 is not an employee of the public agency solely because he or she is paid by the agency to serve as a hearing officer.

~~14~~*15.* *The party requesting the due process hearing may not raise issues at the due process hearing that were not raised in the due process complaint filed under NAC 388.XXX unless the other party agrees otherwise.*

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.

[Dep't of Education, eff. 12-15-77]—(NAC A by Bd. of Education, 2-7-83; 7-14-88; 9-13-91; 11-23-93; R039-98, 5-29-98; R085-99, 2-16-2000; R071-05, 2-23-2006)

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

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

(a) Examine the entire record of the hearing;

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

- (c) Seek any additional evidence necessary and, if a hearing is held to receive additional evidence, afford the parties the rights set forth in NAC 388.310;
- (d) Afford the parties an opportunity for oral or written argument, or both, at the discretion of the reviewing officer;
- (e) Schedule any oral arguments at a time and place which is reasonably convenient to the parent and pupil involved;
- (f) Make an independent decision on the completion of the review; and
- (g) Except as otherwise provided in this paragraph, mail copies of the written findings and decision to the parties within 30 days after receipt of a written request for review. The review officer may extend the time for rendering a decision for a specific number of days upon the request of either party. At the option of the parent, the findings of fact and decision must be made available to the parent by electronic means.

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

3. A party may appeal from the decision of the review officer by initiating a civil action in a court of competent jurisdiction within 90 days after receipt of the decision of the review officer.

~~[A party may file a cross appeal within 10 days after he receives notice of the initial appeal.]~~

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

(Added to NAC by Bd. of Education, eff. 2-7-83; A 7-14-88; 9-13-91; 11-23-93; 1-26-94; R039-98, 5-29-98; R085-99, 2-16-2000; R071-05, 2-23-2006)

NAC 388.318 Complaints to Department. (NRS 385.080, 388.520)

1. ~~[A person]~~ ***An organization or person, including an organization or person from another State, may file a signed written complaint with the Superintendent alleging a violation of [stating that a public agency has violated] a provision of the Individuals with Disabilities Education Act, 20 U.S.C. §§ 1400 et seq., or the regulations adopted pursuant thereto, or a provision of NAC 388.150 to 388.450, inclusive, that occurred not more than one year prior to the date that the complaint is received by the Superintendent. The model form for filing a complaint developed by the Department may but is not required to be used so long as the form or document that is used meets the requirements in this subsection for filing a complaint. [The complaint must be in writing and must include the facts related to the alleged violation.] The complaint shall 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, of this regulation;

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

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

(d) If alleging violations with respect to 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, 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, 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 serving the pupil at the same time the party files the complaint with the Department.

2. Within 60 days after receipt of the *signed* written complaint, the Department shall:

(a) Carry out an independent onsite investigation if the Department determines that an investigation is necessary;

(b) Give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint;

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

(1) At the discretion of the public agency, a proposal to resolve the complaint; and

(2) An opportunity for a parent who has filed a complaint and the public agency to voluntarily engage in mediation consistent with NAC 388.305.

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

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

(1) Findings of fact and conclusions; and

(2) The reasons for the Department's decision.

3. *The Department may extend the time limit under subsection 2 if:*

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

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

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

5. In resolving a complaint in which the Department has found a failure to provide appropriate services, the Department shall address the failure to provide appropriate services, including corrective action appropriate to address the needs of the pupil, such as compensatory services or monetary reimbursement, and appropriate future provision of services for all pupils with disabilities.

~~*[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]6.*~~ A public agency that receives an order pursuant to subsections ~~*[2]*~~ *4 or 5* shall take the actions prescribed in the order and provide to the Department documentation of all actions taken in accordance with the order.

(Added to NAC by Bd. of Education by R085-99, eff. 2-16-2000; A by R071-05, 2-23-2006)

NAC 388.325 ~~*[Prior-]*~~ *Scientific, Research-Based Intervention*. (NRS 385.080, 388.470, 388.520)

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~~ providing *targeted scientific, research-based* intervention.

2. *If the public agency determines that a pupil should be provided targeted scientific, research-based intervention, ~~FF~~ the public agency shall develop an intervention plan for the pupil which shall include:*

(a) *The identification of the academic or behavior concern which describes the degree of discrepancy between the demands of the educational setting and the pupil's performance;*

(b) *The targeted scientific, research-based intervention to be provided 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 targeted toward improving the level of performance and increasing the rate of learning;*

(c) *The progress monitoring data to be collected over time to measure the pupil's level of performance and rate of learning; and*

(d) *The frequency of data collection, the strategies to be used to summarize data for evaluation, the criteria to be used to evaluate the effectiveness of the intervention, and the schedule for evaluating the effectiveness of the intervention.*

A copy of the intervention plan shall be provided to the pupil's parents.

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

~~[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)~~

~~4. Based in part on the results of the ~~prior~~ *targeted scientific, research-based* intervention, the public agency must 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]XXX~~ 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.

(Added to NAC by Bd. of Education by R085-99, eff. 2-16-2000)

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

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

(Added to NAC by Bd. of Education, eff. 7-14-88; A by R085-99, 2-16-2000)

NAC 388.335 Tests and devices for assessment. (NRS 385.080, 388.470, 388.520) Any test or other device for assessment used pursuant to NAC 388.330 to 388.440, inclusive, must comply with the evaluation procedures set forth in 20 U.S.C. § 1414(b) and NAC 388.340 and 388.420.

(Added to NAC by Bd. of Education, eff. 7-14-88; A 9-13-91; 11-23-93; R071-05, 2-23-2006)

NAC 388.336 Review of evaluation data; determination of need for additional data. (NRS 385.080, 388.470, 388.520) As part of an initial evaluation if data is available, and as part of any reevaluation, a group that includes the committee that developed or will develop the pupil's individualized educational program pursuant to NAC 388.281, the members of the eligibility team and any other qualified professionals appointed *shall review existing data pursuant to 34 C.F.R. § 300.305. The group* shall:

1. Conduct a review of data from existing evaluations, including, without limitation:
 - (a) Evaluations and information provided by the parents of the pupil;
 - (b) Current 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.

(Added to NAC by Bd. of Education by R085-99, eff. 2-16-2000; A by R071-05, 2-23-2006)

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

1. Except as otherwise provided by subsections 2 and 3, when a public agency determines that good cause exists to evaluate a pupil pursuant to NAC 388.330 to 388.440, inclusive, it shall conduct the initial evaluation within:

(a) Forty-five school days after the parent, or pupil if the pupil is an adult, provides informed written consent;

(b) Forty-five school days after the date of the decision of a hearing officer pursuant to NAC 388.310 ordering the parent to allow, or adult pupil to submit to an evaluation; or

(c) At any other time agreed upon in writing by the parent or adult pupil and the public agency.

2. Upon the request of a public agency, the Superintendent may extend the deadline for conducting initial evaluations for not more than 15 school days.

3. The deadline for conducting an initial evaluation does not apply to a public agency if:

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

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

4. For the purposes of this section, "school day" means any day in which pupils enrolled in a school are scheduled to be engaged in registration, classes, other instructional activities or testing during the required minimum daily period for each grade or department.

(Added to NAC by Bd. of Education, eff. 11-23-93; A by R085-99, 2-16-2000; R071-05, 2-23-2006)

NAC 388.340 Determination of eligibility of pupil and appropriate individualized educational program. (NRS 385.080, 388.470, 388.520)

1. In conducting an evaluation pursuant to NAC 388.330 to 388.440, inclusive, the public agency shall *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 screening of a pupil by a teacher or specialist to determine appropriate instruction strategies for curriculum implementation shall not be considered to be an evaluation for eligibility for special education and related services.

~~3~~**4.** The public agency shall use technically sound instruments that assess the relative contribution of cognitive, behavioral, physical or developmental factors.

~~[4]~~5. 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.

6. In interpreting evaluation data for making a determination of eligibility of the pupil for special services and programs of instruction pursuant to NAC 388.330 to 388.440, inclusive, and the educational needs of the pupil, the public agency shall:

(a) Draw upon information from a variety of sources, including aptitude and achievement tests, parent input and teacher recommendations, as well as information about the pupil's physical condition, social or cultural background, and adaptive behavior; and

(b) Ensure that information obtained from all of these sources is documented and carefully considered.

~~[5]~~7. In making a determination of the eligibility of the pupil for special services and programs of instruction pursuant to NAC 388.330 to 388.440, inclusive, a pupil may not be determined to be a pupil with a disability if the controlling factor for such a determination is the pupil's lack of appropriate instruction in reading, including, without limitation, the essential components of reading instruction, or ***lack of appropriate instruction in*** math or 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]~~8. ***Except as provided in this subsection,*** ~~[7]~~ 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 to the parents.***

~~8~~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) of subsection 7 of NAC 388.420 and may be prepared in any other case.

(Added to NAC by Bd. of Education, eff. 7-14-88; A 11-23-93; R039-98, 5-29-98; R085-99, 2-16-2000; R071-05, 2-23-2006)

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

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

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

(Added to NAC by Bd. of Education, eff. 7-14-88; A 11-23-93; R085-99, 2-16-2000)

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

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

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

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

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

(Added to NAC by Bd. of Education, eff. 7-14-88; A 11-23-93; R085-99, 2-16-2000)

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

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

- (a) Communication;
- (b) Self-care;
- (c) Home living;
- (d) Social skills;
- (e) Community use;
- (f) Self-direction;

- (g) Health and safety;
- (h) Functional academics; and
- (i) Leisure and work.

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

(Added to NAC by Bd. of Education, eff. 7-14-88; A 11-23-93; R085-99, 2-16-2000)

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

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

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

of the pupil.

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

(Added to NAC by Bd. of Education, eff. 7-14-88; A 11-23-93; R085-99, 2-16-2000)

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

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

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

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

(Added to NAC by Bd. of Education, eff. 7-14-88; A 11-23-93; R085-99, 2-16-2000)

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

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

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

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

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

(Added to NAC by Bd. of Education, eff. 7-14-88; A 11-23-93; R085-99, 2-16-2000)

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

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

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

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

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

(Added to NAC by Bd. of Education, eff. 7-14-88; A 11-23-93; R085-99, 2-16-2000)

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

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

(Added to NAC by Bd. of Education, eff. 7-14-88; A 11-23-93)

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

1. Systematic observation of the occurrence of the targeted behavior for an accurate definition and description of the frequency, duration and intensity of the behavior.

2. Systematic observation of the events that immediately precede each display of the targeted behavior and are associated with the display of the behavior.

3. Systematic observation and analysis of the consequences following the display of the targeted behavior to identify the specific environmental or physiological outcomes produced by the behavior in order to determine the function that the behavior serves for the pupil. The communicative intent of the targeted behavior must be identified in terms of what the pupil is either requesting or protesting through the display of the behavior.

4. Analysis of the settings in which the targeted behavior occurs most frequently. Factors that may be considered include the physical setting, the social setting, the activities and the nature of instruction, scheduling, the quality of communication between the pupil and staff and other pupils, the degree of participation of the pupil in the setting, the amount and quality of social interaction, the degree of choice and the variety of activities.

5. Review of records for health and medical factors which may influence the targeted behavior, including, without limitation, levels of medication, sleep cycles, health and diet.

6. Review of the history of the targeted behavior to include the effectiveness of any intervention previously used.

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

(Added to NAC by Bd. of Education by R085-99, eff. 2-16-2000)

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

1. A pupil is eligible for special services and programs of instruction if the eligibility team, comprised of the persons set forth in subsection 2, determines that the pupil has autism.

2. The eligibility team must consist of:

(a) A school psychologist.

(b) A teacher of special education or a person with a specialized knowledge of autism.

(c) The regular classroom teacher of the pupil, or, if none, a person qualified to teach the pupil.

(d) A specialist of speech and language.

(e) A parent of the pupil.

(f) One or more persons who have sufficient knowledge of the pupil to interpret information relating to the pupil’s social, emotional, developmental and familial condition. Such persons may include an administrator of the school, a nurse, a counselor, a school psychologist or any other certificated or licensed professional.

3. The eligibility team shall conduct an evaluation of the pupil to determine whether the pupil is eligible for special services and programs of instruction pursuant to this section. Such an evaluation must:

(a) Assess the:

(1) Health and medical status;

(2) Developmental history, including, without limitation, the rate and sequence of development and a clear statement of strengths and weaknesses;

(3) Cognitive abilities;

(4) Social and emotional condition in multiple settings;

(5) Academic achievement;

(6) Adaptive skills; and

(7) Speech, language and other communication skills;

of the pupil; and

(b) Consider the:

(1) Sensory regulation;

(2) Self-help and independent living skills;

(3) Behavior problems;

(4) Symbolic and imaginative play;

(5) Activities and special interests; and

(6) Motor skills;

of the pupil.

(Added to NAC by Bd. of Education, eff. 11-23-93; A by R039-98, 5-29-98; R085-99, 2-16-2000)

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

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

(a) Routine auditory communication is impossible for the pupil, or nearly so, because of the pupil's inability to discriminate among and understand the sounds that reach the pupil;

(b) The sense of hearing of the pupil is nonfunctional for the ordinary purposes of life, whether as the result of congenital or postlingual deafness; and

(c) The pupil has an average hearing threshold level, at 500, 1,000 and 2,000 Hz, of 92 decibels or more.

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

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

(a) The pupil has the ability, if aided, to hear and understand most spoken words;

(b) The hearing mechanism of the pupil, though defective, is sufficiently functional with or without the use of a hearing aid to allow a receptive flow of information; and

(c) The pupil has an average hearing threshold level of 30 decibels or more.

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

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

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

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

(a) Audiology or the interpretation of an audiological report.

(b) Hearing impairment.

(c) The interpretation of an assessment of:

(1) Health.

(2) Communication skills and disorders.

(3) Academic achievement.

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

(a) A regular classroom teacher.

(b) One or more persons qualified to interpret an assessment of the social or emotional condition of the pupil, or of the cognitive abilities of the pupil, because of the person's personal

knowledge of the pupil. Such persons may include, without limitation, an administrator, nurse, school counselor, school psychologist or any other certificated or licensed professional.

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

(a) A comprehensive audiological examination, including pure tone and speech discrimination tests, performed by an audiologist; and

(b) An assessment of the:

(1) Health of the pupil, which must include a comprehensive examination of vision;

(2) Academic achievement of the pupil; and

(3) Speech and language of the pupil.

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

(Added to NAC by Bd. of Education, eff. 7-14-88; A 11-23-93; R039-98, 5-29-98; R085-99, 2-16-2000)

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

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

(a) The visual acuity of the pupil does not exceed 20/200 in the better eye;

(b) The vision of the pupil in the better eye is restricted to a field which subtends an arc of not more than 20 degrees; or

(c) The pupil suffers from a progressive deterioration of the pupil's vision, the probable result of which will be one or both of the conditions described in paragraphs (a) and (b).

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

(a) The visual acuity of the pupil is 20/70 or less in the better eye with the best possible correction; or

(b) The pupil suffers from a progressive deterioration of the pupil's vision, the probable result of which will be the condition described in paragraph (a).

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

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

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

(a) Vision.

(b) Vision impairment.

(c) The interpretation of an assessment of health or academic achievement.

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

(a) A regular classroom teacher.

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

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

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

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

(Added to NAC by Bd. of Education, eff. 7-14-88; A 11-23-93; R039-98, 5-29-98; R085-99, 2-16-2000)

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

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

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

3. The eligibility team must consist of:

- (a) A school nurse or other person qualified to interpret an assessment of the health of the pupil;
- (b) A regular classroom teacher of the pupil, or, if none, a person qualified to teach the pupil;
- (c) A parent of the pupil;
- (d) One of the following:
 - (1) A physical therapist;
 - (2) An occupational therapist; or
 - (3) Any other specialist whose presence on the team is deemed appropriate; and
- (e) One or more persons having personal knowledge of the pupil. Such persons may include, without limitation, an administrator, nurse, school counselor, school psychologist or any other certificated or licensed professional.

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

- (a) The health of the pupil, which must include a physical examination; and
- (b) The pupil's functional limitations in relation to the demands of a regular classroom.

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

- (a) Cognitive abilities;
- (b) Social and emotional condition; and
- (c) Academic achievement.

(Added to NAC by Bd. of Education, eff. 7-14-88; A 11-23-93; R039-98, 5-29-98; R085-99, 2-16-2000)

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

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

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

3. The eligibility team must consist of:

- (a) A school psychologist;
- (b) A teacher of special education;
- (c) The regular teacher of the pupil, or, if none, a person qualified to teach the pupil;
- (d) A school nurse or other person qualified to interpret an assessment of the health of the pupil;
- (e) A parent of the pupil; and
- (f) One or more persons with sufficient knowledge of the pupil to interpret information relating to the pupil's social, emotional, developmental and familial condition. Such persons may include an administrator of the school, a nurse, a counselor, a school psychologist or any other certificated or licensed professional.

4. The eligibility team shall conduct an evaluation of the pupil to determine eligibility for special services and programs of instruction pursuant to this section. Such an evaluation must:

- (a) Assess the health of the pupil; and
- (b) Analyze the ability of the pupil to perform in a regular classroom.

5. The evaluation conducted pursuant to subsection 4 may also include an assessment of the:

- (a) Developmental history;
 - (b) Cognitive abilities;
 - (c) Social and emotional condition;
 - (d) Academic achievement; and
 - (e) Language and motor skills,
- of the pupil.

(Added to NAC by Bd. of Education, eff. 11-23-93; A by R039-98, 5-29-98; R085-99, 2-16-2000)

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

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

- (a) An impairment exists;
- (b) The pupil has demonstrated the ability to profit from speech and language therapy; and
- (c) The pupil requires a program of instruction, because of the nature or severity of the pupil's impairment, which is not feasible in the current educational setting of the pupil because:

(1) Intensive remedial techniques or strategies, which can only be implemented in a clinical or therapeutic setting, are required to improve the communication skills of the pupil;

(2) The nature of the pupil's impairment requires that the pupil receive the services of a teacher of the speech and language impaired; or

(3) The pupil's impairment is of such severity or multiplicity that individual or small group management, available only in a speech and language program, is required.

2. For the purposes of this section, an impairment exists if the pupil suffers from a deficit or disorder with respect to:

(a) Phonology or articulation, as indicated by the presence of three or more of the following conditions:

(1) The pupil has the physiological potential to make the neuromuscular adjustments necessary for oral expression;

(2) The communicative ability of the pupil is interfered with by the pupil's lack of intelligibility;

(3) The pupil cannot adequately discriminate, imitate or sequence sound patterns;

(4) The ability of the pupil to articulate is significantly less than that which is expected in view of the cognitive abilities and level of development of the pupil; or

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

(b) The use and comprehension of language, as indicated by the presence of two or more of the following conditions:

(1) The ability of the pupil to comprehend language is significantly less than that which is expected in view of the cognitive abilities and level of development of the pupil;

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

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

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

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

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

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

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

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

(1) Voice therapy is recommended by:

(I) A physician; or

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

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

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

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

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

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

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

5. The eligibility team must consist of:

(a) A speech and language specialist;

(b) A regular classroom teacher;

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

(d) A parent of the pupil; and

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

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

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

(b) The health of the pupil; and

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

(Added to NAC by Bd. of Education, eff. 7-14-88; A 11-23-93; R039-98, 5-29-98; R085-99, 2-16-2000)

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

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

2. The eligibility team must consist of:

(a) A school psychologist;

(b) A teacher of special education or a person with a specialized knowledge of traumatic brain injuries;

(c) The regular teacher of the pupil, or, if none, a person qualified to teach the pupil;

(d) A specialist of speech and language;

(e) A school nurse or other person who is qualified to assess the health of the pupil;

(f) A parent of the pupil; and

(g) One or more persons with sufficient knowledge of the pupil to interpret information relating to the social, emotional, developmental and familial condition of the pupil. Such persons may include an administrator of the school, a nurse, a counselor, a school psychologist or any other certificated or licensed professional.

3. In making a determination pursuant to subsection 1, the eligibility team shall consider, without limitation:

- (a) Medical documentation of the injury;
- (b) The pupil's educational performance relative to a normative population;
- (c) The pupil's strengths and weaknesses; and
- (d) If possible, the pupil's educational performance before and after the pupil acquired the injury.

4. In addition to the considerations required pursuant to subsection 3, the eligibility team shall conduct an evaluation of the pupil to determine whether the pupil is eligible for special services and programs of instruction pursuant to this section. Such an evaluation must assess the:

- (a) Health;
 - (b) Developmental history;
 - (c) Cognitive abilities;
 - (d) Social and emotional condition;
 - (e) Academic achievement;
 - (f) Language and motor skills;
 - (g) Sensory and perceptual abilities; and
 - (h) Attention, comprehension, judgment and problem-solving skills,
- of the pupil.

(Added to NAC by Bd. of Education, eff. 11-23-93; A by R039-98, 5-29-98; R085-99, 2-16-2000)

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

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

- (a) The measured cognitive abilities of the pupil, as determined by an acceptable individual standardized test, are at least two standard deviations below the mean score for that test;
- (b) The adaptive skills of the pupil, in comparison with those of members of the pupil's chronological peer group, indicate that the pupil is experiencing difficulty; and
- (c) The academic achievement of the pupil is generally consistent with the cognitive abilities and adaptive skills of the pupil.

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

- (a) The measured cognitive abilities of the pupil, as determined by an acceptable individual standardized test, are at least three standard deviations below the mean score for that test;
- (b) The adaptive skills of the pupil, in comparison with those of members of the pupil's chronological peer group, indicate that the pupil has markedly lower capabilities; and
- (c) The academic achievement and speech and language development of the pupil is generally consistent with the cognitive abilities and adaptive skills of the pupil.

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

- (a) The measured cognitive abilities of the pupil, as determined by an acceptable individual standardized test, are at least four standard deviations below the mean score for that test;
- (b) The adaptive skills of the pupil, in comparison with those of members of the pupil's chronological peer group, indicate that the pupil has extensively lower capabilities; and

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

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

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

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

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

5. The eligibility team must consist of:

(a) A school psychologist;

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

(c) A speech and language specialist;

(d) A parent of the pupil; and

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

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

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

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

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

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

(b) A regular classroom teacher;

(c) An occupational therapist;

(d) A physical therapist; and

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

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

(a) The cognitive abilities of the pupil;

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

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

(d) The academic achievement of the pupil; and

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

(Added to NAC by Bd. of Education, eff. 7-14-88; A 11-23-93; R039-98, 5-29-98; R085-99, 2-16-2000)

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

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

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

(b) These characteristics have been evident for at least 3 months;
(c) The characteristics adversely affect the ability of the pupil to perform developmental tasks appropriate to the pupil's age:

- (1) Within the educational environment, despite the provision of intervention strategies; or
- (2) In the case of a pupil under school age, in the home, child care or preschool setting;

and

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

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

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

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

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

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

(c) A pervasive mood of unhappiness or depression.

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

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

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

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

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

4. The eligibility team must consist of:

(a) A school psychologist;

(b) A regular classroom teacher;

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

(d) A parent of the pupil; and

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

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

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

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

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

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

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

(Added to NAC by Bd. of Education, eff. 7-14-88; A 11-23-93; R039-98, 5-29-98; R085-99, 2-16-2000)

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

1. A pupil with specific learning disabilities is eligible for special services and programs of instruction if the eligibility team, comprised of the persons described in subsection ~~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]~~ *The pupil does not achieve adequately for the pupil's age or to meet State-approved grade-level standards in one or more of the following areas, when provided with learning experiences and instruction appropriate for the pupil's age or State-approved grade-level standards:*

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

(b) ~~[Prior intervention strategies have not remedied the disorder.]~~ *The pupil does not make sufficient progress to meet age or State-approved grade-level standards in one or more of the areas identified in this subsection when using a process based on the pupil's response to scientific, research-based intervention; or the pupil exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, State-approved grade-level standards, or intellectual development, that is determined by the group to be relevant to the identification of a specific learning disability using appropriate assessments; and*

(c) *The eligibility team determines that 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.*

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

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.]~~ *If the public agency determines that a pupil exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, State-approved grade-level standards, or intellectual development, the public agency must determine whether the pupil has a severe discrepancy between achievement and intellectual ability in the areas listed in 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]~~ *achievement and intellectual ability* must be corroborated by classroom-based assessment. *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. ~~[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.]~~ *If the public agency determines that the pupil has not made sufficient progress to meet age or State-approved grade-level standards in one or more of the areas identified in this subsection when using a process based on the pupil's response to scientific, research-based intervention, the public agency must document:*

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

(b) *That the pupil's parents were notified about:*

(1) *The Department's policies regarding the amount and nature of pupil performance data that would be collected and the general education services that would be provided;*

(2) *Strategies for increasing the pupil's rate of learning; and*

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

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.]~~ 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]~~ *scientific, research-based* intervention ~~[on behalf of]~~ *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.]~~ *The eligibility team, in determining whether a pupil has a specific learning disability, must decide to:*

- (1) Use information from an observation in routine classroom instruction and monitoring of the pupil's performance that was done before the pupil was referred for an evaluation; or*
- (2) Have at least one member of the eligibility team conduct an observation of the pupil's academic progress in the regular classroom after the child has been referred for an evaluation and parental consent, consistent with NAC 388.300, is obtained. In the case of a pupil of less than school age or out of school, an eligibility team member must observe the pupil in an environment appropriate for a pupil of that age.*

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

- (1) Data that demonstrate that prior to, or as part of, the referral process, the pupil was provided appropriate instruction in regular education settings, delivered by qualified personnel; and*
- (2) Data-based documentation of repeated assessments of achievement at reasonable intervals, reflecting formal assessment of pupil progress during instruction, which was provided to the pupil's parents.*

~~[7]6.~~ The eligibility team must ~~[prepare a written report of its conclusions. The report must include]~~ *document the determination of eligibility which must contain:*

- (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 subsection 5;*

- (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 State-approved grade-level standards and:*

(1) The pupil has not made sufficient progress to meet age or State-approved standards when using a process based on the pupil's response to scientific, research-based intervention; or

(2) The pupil exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, 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 services.

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

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

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

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

(I) The Department's policies regarding the amount and nature of pupil performance data that would be collected and the general education services that would be provided;

(II) Strategies for increasing the pupil's rate of learning; and

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

~~(h)~~ *A certification by each member of the team that the report reflects the member's conclusions or, if the report does not reflect the conclusions of a member, a minority report of the conclusions of that member.*

8. 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.

(Added to NAC by Bd. of Education, eff. 7-14-88; A 11-23-93; R039-98, 5-29-98; R085-99, 2-16-2000; R071-05, 2-23-2006)

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

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

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

whichever applies.

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

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

whichever applies.

(Added to NAC by Bd. of Education, eff. 7-14-88; A 11-23-93; R039-98, 5-29-98; R085-99, 2-16-2000)

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

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

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

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

- (a) A special education teacher or specialist in the field of early childhood education;
- (b) A licensed school psychologist or a licensed or certified psychologist with documented training in the assessment of preschool pupils with disabilities;
- (c) A parent of the pupil; and

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

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

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

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

~~—(a) The pupil maintains appropriate developmental functioning in all developmental areas for 6 months or more, and the eligibility team concludes that special education services are no longer necessary;~~

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

(Added to NAC by Bd. of Education, eff. 7-14-88; A 11-23-93; R039-98, 5-29-98; R085-99, 2-16-2000)

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

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

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

(1) On a test of cognitive ability that is individually administered;

(2) In a major content area on a nationally standardized achievement test that is individually administered in kindergarten through eighth grade; or

(3) In a major content area on a nationally standardized achievement test, the Preliminary Scholastic Aptitude Test (PSAT), the Scholastic Aptitude Test (SAT) or the American College Test (ACT) that is administered to a group of students for grades 9 through 12, inclusive; or

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

2. In determining the eligibility of a pupil for the special services and programs of instruction referred to in this section, the team may use alternative assessment procedures for a pupil from another culture, a pupil who is environmentally or economically deprived or a pupil who has a disability.

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

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

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

(Added to NAC by Bd. of Education, eff. 7-14-88; A 9-13-91; 11-23-93; R085-99, 2-16-2000)

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

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 *an authorized representative of* the public agency otherwise agree; and

(b) At least once every 3 years, unless the parent and *an 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 pupil's eligibility pursuant to this section to the parents of the pupil at no cost to the parent.*

(Added to NAC by Bd. of Education, eff. 7-14-88; A 9-13-91; 11-23-93; R039-98, 5-29-98; R085-99, 2-16-2000; R071-05, 2-23-2006)

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

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, without unnecessary delay, either request a hearing pursuant to NAC 388.~~300~~XXX 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~~XXX, 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 *educational* evaluations as set forth in subsection ~~6~~8.

4. *If a parent requests an independent educational evaluation, the public agency may ask for the parent's reason why he or she objects to the public evaluation. However, the public agency may not require the parent to provide an explanation and may not unreasonably delay either providing the independent educational evaluation at public expense or filing a due process complaint to request a due process hearing to defend the public evaluation.*

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

6. If an independent *educational* evaluation is obtained at the parent's personal expense or at public expense, the public agency shall consider the results of the evaluation *if it meets agency criteria* 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 *conducted pursuant to NAC 388.310 and subject to the requirements in NAC 388.310 pertaining to the introduction of evidence.*

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

~~6~~8. Whenever an independent 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, *to the extent those criteria are consistent with the parent's right to an independent educational 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.

(Added to NAC by Bd. of Education, eff. 2-7-83; A 7-14-88; 9-15-89; 9-13-91; 11-23-93; R085-99, 2-16-2000)

NOTICE OF ADOPTION OF TEMPORARY REGULATION
LCB File No. T036-07

The State Board of Education adopted temporary regulations assigned LCB File No. T036-07 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 May 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 May 5, 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

A copy of any written comments 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.

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 March 30, 2007; and the public hearing notice of March 30, 2007. At the May 5, 2007 Workshop to Solicit Comments, there was public comment to the proposed amendments to the regulation language. At the May 5, 2007 public hearings there were no public comments to the proposed amendments to the regulation language.

Summary of Comments:
Workshop/Public Hearing Comments:

Workshop comments:

- (a) Karen Taycher, Special Education Advocate Committee Chair, thanked the staff for their hard work to help parents and stakeholders and supported approval of the proposed amendments to NAC 388.

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 May 5, 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.