

**PROPOSED REGULATION OF THE
DEPARTMENT OF EDUCATION**

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PROPOSED REGULATION OF THE STATE BOARD OF EDUCATION

January 2018

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

AUTHORITY: §§1-9, 30-33 and 36-61, NRS 385.080 and 388.520; §§10, 34 and 35, NRS 385.080, 388.493 and 388.520; §§11 and 62-84, NRS 385.080, 388.470 and 388.520; §§12-29, NRS 385.080.

A REGULATION relating to education; revising provisions relating to programs for pupils with disabilities; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law authorizes the State Board of Education to adopt regulations for the execution of its powers and duties. (NRS 385.080) Existing law also requires the Board to prescribe minimum standards: (1) for the special education of pupils with disabilities and gifted and talented pupils; and (2) for examinations to find the extent to which pupils deviate from normal growth and development patterns. (NRS 388.470, 388.520)

This regulation revises various provisions relating to the determination of eligibility for and administration of programs for pupils with disabilities. **Section 9** of this regulation requires a public agency to ensure that a pupil with a disability is provided instructional materials in an accessible format in a timely manner. **Sections 10 and 55** of this regulation also establish standards for a parent of a pupil with a disability to give informed consent for assessments and special education and related services for the pupil. **Section 41** of this regulation requires the placement of such a pupil to be based on the pupil's individualized educational program and in the least restrictive environment to the maximum extent appropriate.

Existing regulations require a public agency to: (1) allow the parents of a pupil to review the pupil's education records and request an amendment of certain information in the records; and (2) protect the confidentiality of personally identifiable information in such records. (NAC 388.287-388.289) **Sections 2, 7 and 51-53** of this regulation revise these provisions to apply to agencies with personally identifiable information rather than public agencies. Existing regulations require a public agency to remove any personally identifiable information of a pupil from certain findings of fact and decisions before transmitting them to the Special Education Advisory Committee of the Department of Education and making them available for public inspection. (NAC 388.310) **Section 61** of this regulation revises these provisions to require the Department to remove any personally identifiable information rather than a public agency.

Sections 15, 16, 27, 33, 80, 82 and 83 of this regulation replace the term “mental retardation” with the term “intellectual disability” in accordance with the provisions of Senate Bill No. 338 of the 77th Legislative Session. (Section 121, chapter 186, Statutes of Nevada 2013, at page 700).

Section 23 of this regulation removes the reference to “scientifically based” research because the definition has been removed from the Every Student Succeeds Act (ESSA) enacted on December 10, 2015, and to conform to regulatory amendments made to IDEA regulations on June 30, 2017 (Federal Register, Vol. 82, No. 125, p. 29755-29761).

Section 24 of this regulation removes the definition of “scientifically based research” because the definition has been removed from the Every Student Succeeds Act (ESSA) enacted on December 10, 2015, and to conform to regulatory amendments made to IDEA regulations on June 30, 2017 (Federal Register, Vol. 82, No. 125, p. 29755-29761).

Section 34 of this regulation removes references to “highly” qualified special education teachers to conform to statutory amendments made to the IDEA by the Every Student Succeeds Act (ESSA) enacted on December 10, 2015, and to regulatory amendments made to IDEA regulations on June 30, 2017 (Federal Register, Vol. 82, No. 125, p. 29755-29761).

Section 85 of this regulation revises the eligibility criteria for pupils who are gifted and talented and clarifies that although nothing requires a public agency to provide special services and programs of instruction to such pupils, the public agency must do so to qualify for state funding for this population.

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

Sec. 2. *“Agency with personally identifiable information” has the meaning ascribed to the term “participating agency” in 34 C.F.R. § 300.611.*

Sec. 3. *“Business day” has the meaning ascribed to it in 34. C.F.R. § 300.11(b).*

Sec. 4. *“Communication mode” has the meaning ascribed to it in NRS 388.440.*

Sec. 5. *“Dyslexia” has the meaning ascribed to it in NRS 388.440.*

Sec. 6. *“Local educational agency” has the meaning ascribed to it in 20 U.S.C. § 7801(30)(A).*

Sec. 7. *“Personally identifiable information” has the meaning ascribed to it in 34*

C.F.R. § 99.3.

Sec. 8. "School day" has the meaning ascribed to it in 34 C.F.R. § 300.11(c).

Sec. 9. 1. A public agency shall take measures pursuant to 34 C.F.R. § 300.172 to ensure that each pupil with a disability who needs instructional materials in an accessible format receives the materials in a timely manner.

2. If, after reasonable efforts, a public agency is unable to provide instructional materials in an accessible format to a pupil with a disability in a timely manner, the public agency shall provide temporary accommodations to the pupil until the instructional materials are acquired in an accessible format.

3. As used in this section, "timely manner" means the use of reasonable efforts to provide instructional materials in an accessible format to a pupil with a disability at the same time that pupils without disabilities have access to the instructional materials.

Sec. 10. "Consent" has the meaning ascribed to it in 34 C.F.R. § 300.9.

Sec. 11. 1. A pupil with deaf-blindness is eligible for special education and related services if the eligibility team, comprised of the persons described in subsections 4 and 5, concludes that:

(a) The pupil has a hearing impairment which satisfies any one or more of the following criteria:

(1) The pupil has an average hearing threshold level, at 500, 1,000 and 2,000 Hz, of 26 decibels or more; or

(2) The pupil suffers from a progressive deterioration of the pupil's hearing, the probable result of which will be the condition described in subparagraph (1);

(b) The pupil has a visual impairment which satisfies any one or more of the following

criteria:

(1) The visual acuity of the pupil does not exceed 20/70 in the better eye with the best possible correction;

(2) 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

(3) The pupil suffers from a progressive deterioration of the pupil's vision, the probable result of which will be one or more of the conditions described in subparagraphs (1) and (2); and

(c) By reason thereof, the pupil needs special education and related services.

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

3. A pupil with deaf-blindness may have other disabling conditions in addition to deaf-blindness.

4. The eligibility team must consist of:

(a) A parent of the pupil.

(b) (1) A special education teacher, or

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

(c) A speech and language specialist.

(d) A person qualified to interpret an assessment of the health of the pupil.

(e) If not otherwise a member of the team, one or more persons qualified to interpret the comprehensive audiological and vision examinations required by subsection 6.

5. If the requirements of subsection 4 are satisfied, the eligibility team may include 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.

6. The conclusions of the eligibility team concerning the eligibility of the pupil for the special education and related services 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;

(b) An assessment of the:

(1) Health of the pupil;

(2) Academic achievement of the pupil; and

(3) Speech and language of the pupil; and

(c) A comprehensive examination of vision, performed by an eye specialist.

7. If the requirements of subsection 6 are satisfied, the evaluation of the pupil may include an assessment of the pupil's cognitive abilities and social and emotional condition.

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

388.001 As used in NAC 388.001 to 388.450, inclusive, *and sections 2 to 11, inclusive, of this regulation*, unless the context otherwise requires, the words and terms defined in NAC 388.005 to 388.141, inclusive, *and sections 2 to 8, inclusive, of this regulation* have the meanings ascribed to them in those sections.

Sec. 13. NAC 388.028 is hereby amended to read as follows:

388.028 1. “Autism ~~[-means a]-~~spectrum disorder ” *means a condition* which:

(a) Significantly affects the verbal and nonverbal communication and social skills of a person and is often characterized by repetitive activities and stereotyped movements, resistance

to changes in environment or daily routine and responding to sensory experiences in an unusual manner;

(b) Is usually apparent before the age of 3 years; and

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

↪ The term includes, without limitation, a group of developmental disorders such as ~~{autistic disorder,}~~ Asperger's disorder, atypical autism, pervasive developmental disorder and other disorders that share the characteristics described in this subsection.

2. The term does not apply to a pupil if the pupil's educational performance is adversely affected primarily because the pupil has ~~{a serious}~~ *an* emotional disturbance.

Sec. 14. NAC 388.047 is hereby amended to read as follows:

388.047 "Hearing impairment" means an impairment of the hearing mechanism which affects sound integration , ~~{and}~~ prevents or delays the normal development of speech and language ~~{}~~ *and adversely affects the educational performance of a pupil.*

Sec. 15. NAC 388.055 is hereby amended to read as follows:

388.055 ~~{“Mental retardation”}~~ *“Intellectual disability”* 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.

Sec. 16. NAC 388.065 is hereby amended to read as follows:

388.065 “Multiple impairments” means the occurrence of ~~mental retardation~~*an intellectual disability* with another disability, the combination of which causes severe educational needs for the pupil.

Sec. 17. NAC 388.071 is hereby amended to read as follows:

388.071 “Parent” means:

1. A biological or adoptive parent;
2. A guardian generally authorized to act as a parent of the pupil or authorized to make educational decisions for the pupil, but not the State if the pupil is a ward of the State;
3. A person acting in the place of a 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 *Part B of the Individuals with Disabilities Education Act*, 20 U.S.C. §§ ~~H400~~1411 et seq. ~~H~~, and the regulations adopted pursuant thereto; and

(c) Has no interest that would conflict with the interests of the pupil ~~H~~; or

6. A person deemed to be a parent of the pupil pursuant to NAC 388.191.

Sec. 18. NAC 388.073 is hereby amended to read as follows:

388.073 “Participating agency” means any institution ~~H~~ or entity ~~for person~~, other than a public agency, that is likely to ~~provide~~ be responsible for providing transition services to a pupil ~~because the services will have an impact on the pupil’s adult life.~~ or to pay for such services.

Sec. 19. NAC 388.077 is hereby amended to read as follows:

388.077 “Positive behavioral *strategies*, supports ~~H~~ and interventions” 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.

Sec. 20. NAC 388.091 is hereby amended to read as follows:

388.91 “Program of instruction” means a program of ~~related or other~~ educational services provided to a pupil . ~~with a disability.~~

Sec. 21. NAC 388.092 is hereby amended to read as follows:

388.92 “Public agency” *has the meaning ascribed to it in 34 C.F.R. § 300.33*
~~[means any school district or other governmental entity responsible for providing education to a~~

~~pupil with a disability~~ .

Sec. 22. NAC 388.093 is hereby amended to read as follows:

388.93 “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.~~ *a pupil who is determined to be eligible for special services and programs of instruction pursuant to NAC 388.435 unless the pupil is also determined to be eligible for special education and related services pursuant to NAC 388.387 to 388.430, inclusive, and section 11 of this regulation.*

Sec. 23. NAC 388.103 is hereby amended to read as follows:

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

1. Based upon an examination of the characteristics of the pupil as a learner, the instruction being provided and the curricular tasks to be accomplished and which is targeted toward improving the level of performance and rate of learning of the pupil; and
2. Demonstrated through ~~scientifically based~~ research and practice to have a positive impact on the academic achievement or behavior of the pupil.

Sec. 24. NAC 388.104 is hereby deleted.

Sec. 25. NAC 388.105 is hereby amended to read as follows:

388.105 ~~“Serious emotional”~~ *“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.

Sec. 26. NAC 388.115 is hereby amended to read as follows:

388.115 “Special education” means ~~instruction~~ *specifically* designed *instruction, as defined in 34 C.F.R. § 300.39, which is designed* to meet the unique needs of a pupil with a disability at no cost to the parent, including, without limitation, instruction conducted in a classroom, at the pupil’s home or in a hospital, institution or other setting. The term includes instruction in physical education provided pursuant to 34 C.F.R. § 300.108 and includes speech and language services, travel training and vocational education if these services are ~~specifically~~ *specifically* designed ~~for~~ instruction ~~of the particular pupil~~, *as defined in 34 C.F.R. § 300.39*, to meet the *unique* needs of the pupil.

Sec. 27. NAC 388.117 is hereby amended to read as follows:

388.117 “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~~ *an intellectual disability, an* 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.

Sec. 28. NAC 388.125 is hereby amended to read as follows:

388.125 “Speech and language impairment” means a disorder relating to language, articulation, fluency or the use of the voice *which adversely affects the educational performance of a pupil and* 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.

Sec. 29. NAC 388.133 is hereby amended to read as follows:

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

1. Is designed within a process which is results-oriented and which focuses on improving the academic and functional achievement of the pupil with a disability to facilitate the pupil’s movement from school to postschool activities, including, without limitation, postsecondary education, vocational training, integrated employment, continuing and adult education, adult services, independent living and community participation;
2. Is based on the needs of the pupil, taking into account the pupil’s preferences and interests;
3. If the pupil is 14 years of age or older, includes the courses of study of the pupil; ~~and~~
4. If the pupil is 16 years of age or older, or the pupil will attain 16 years of age during the period in which the individualized educational program will be in effect, includes, without limitation:

- (a) Instruction;

- (b) Related services;
- (c) Community experiences;
- (d) The development of employment and other objectives for living as an adult after the completion of school ~~†~~, *including, without limitation, the development of work skills*; and
- (e) If appropriate, *the* acquisition of daily living skills and functional vocational evaluation ~~†~~

→ ~~The term includes†~~;

5. *Includes* special education or related services if required to assist a pupil with a disability to benefit from special education ~~†~~; *and*

6. *Is implemented in accordance with the provisions of the pupil’s individualized educational program, if applicable.*

Sec. 30. NAC 388.1345 is hereby amended to read as follows:

388.1345 “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~~

an environment †, including, without limitation, in school, in the home, at work and in the community.

Sec. 31. NAC 388.141 is hereby amended to read as follows:

388.141 “Visual impairment” means an impairment *in vision* 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.

Sec. 32. NAC 388.145 is hereby amended to read as follows:

388.145 Any educational program for pupils with disabilities *provided by a public agency* 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 all applicable federal laws and regulations.

Sec. 33. NAC 388.150 is hereby amended to read as follows:

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

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

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

(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.~~ *intellectual disabilities.*
- (4) Twelve for pupils with severe to profound ~~mental retardation.~~ *intellectual*

disabilities.

(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 **+***spectrum disorder.*

(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.}~~ *intellectual disabilities.*

(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.}~~ *intellectual disabilities.*
- (4) Six for pupils with severe to profound ~~{mental-retardation.}~~ *intellectual disabilities.*

(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 ~~+~~*spectrum disorder.*

(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 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~~ *intellectual disabilities.*

(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.~~ *intellectual disabilities.*
- (4) Eight for pupils with severe to profound ~~mental retardation.~~ *intellectual disabilities.*

(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 ~~+~~ *spectrum disorder.*
- (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]~~ *subsection 4* may be made with the written approval of the Department. A request for an exception must be submitted to the Department within 30 days after the limit set forth in subsection 4 is exceeded.

Sec. 34. NAC 388.171 is hereby amended to read as follows:

388.171 1. A public agency shall appropriately and adequately prepare and train all personnel employed by the public agency who assist in carrying out the provisions of this chapter and NRS 388.440 to ~~388.5315,~~ *388.5317*, inclusive, including, without limitation, special education teachers, personnel who provide related services and paraprofessionals, to ensure that the personnel have the content knowledge and skills necessary to serve pupils with disabilities.

2. A public agency shall take measurable steps to recruit, hire, train and retain ~~highly qualified~~ personnel *who meet the applicable requirements in 34 C.F.R. § 300.156(c)* to provide special education and related services to pupils with disabilities.

3. *A public agency shall ensure that each person employed as a public school special*

education teacher who teaches in elementary school, middle school, or secondary school meets the applicable requirements in 34 C.F.R. § 300.156(c). Notwithstanding a right of action that a parent or pupil may maintain pursuant to this chapter, NRS 388.440 to ~~388.5315,~~ **388.5317**, inclusive, or 20 U.S.C. §§ ~~1400~~-**1411** et seq., this section does not:

(a) Create a right of action on behalf of a pupil or group of pupils for the failure of an employee of a public agency to ~~be highly qualified~~ **meet the applicable requirements in 34 C.F.R. § 300.156(c).**

(b) Prevent a parent from filing a *state* complaint with the ~~Department in accordance with this chapter~~ **Superintendent pursuant to NAC 388.318** concerning the qualifications of personnel.

Sec. 35. NAC 388.191 is hereby amended to read as follows:

388.191 1. Except as otherwise provided in this section, when more than one person may act as the parent of a pupil, as defined in NAC 388.071, the biological or adoptive parent of the pupil shall **, when attempting to act as the parent of the pupil for the purposes of NAC 388.001 to 388.450, inclusive, and sections 2 to 11, inclusive, of this regulation,** be deemed the parent **of the pupil** unless that person does not have the legal authority to make educational decisions for the pupil.

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

Sec. 36. NAC 388.195 is hereby amended to read as follows:

388.195 1. Except as otherwise provided in this section and NAC 388.197 and NRS 388.492 and 388.493, any right accorded to a parent of a pupil with a disability pursuant to *Part B of* the Individuals with Disabilities Education Act, 20 U.S.C. ~~§ 1400~~ *§§ 1411* et seq., ~~or~~ *and* the regulations adopted pursuant thereto, transfers to the pupil when the pupil attains the age of 18 years. ~~Not less than 1 year before the date on which the pupil with a disability attains the~~ *age of 18 years, the* ~~The~~ school district or charter school in which the pupil is enrolled shall provide notice to the parent of the pupil and to the pupil of the transfer of rights pursuant to this section.

2. If a pupil with a disability attains the age of 18 years and the pupil is enrolled in a program of special education pursuant to NRS 388.440 to ~~388.5315,~~ *388.520*, inclusive, the school district or charter school in which the pupil is enrolled shall provide any notice required pursuant to :

(a) Part B of the Individuals with Disabilities Education Act, 20 U.S.C. ~~§ 1400~~ *§§ 1411* et seq., and the regulations adopted pursuant thereto ; ~~or~~

(b) NRS 388.440 to ~~388.5315,~~ *388.5317*, inclusive, and NAC 388.001 to 388.450, inclusive, ~~to the:~~

~~—(a) Parent; and~~

~~—(b) Pupil with a disability;~~

~~↪~~ *and sections 2 to 11, inclusive of this regulation,*

↪ *to the parent and pupil with a disability, regardless of whether the parent is appointed to*

represent the educational interests of the pupil pursuant to NRS 388.493 and NAC 388.197 or the rights transfer to the pupil pursuant to ~~this section.~~ subsection 1.

3. If a court of competent jurisdiction adjudicates a pupil with a disability incompetent and appoints a guardian for the pupil, all rights pursuant to *Part B of* the Individuals with Disabilities Education Act, 20 U.S.C. ~~§ 1400~~ *§§ 1411* et seq., and the regulations adopted pursuant thereto, remain with or otherwise transfer to the guardian.

Sec. 37. NAC 388.197 is hereby amended to read as follows:

388.197 1. Not less than 1 year before the date on which a pupil with a disability who has a significant cognitive impairment and who participates in the alternate assessment developed by the State attains the age of 18 years, the school district or charter school in which the pupil is enrolled shall provide notice to the parent and the pupil of the procedure by which the parent may submit an application to represent the educational interests of the pupil pursuant to subsection 2. The notice must include:

- (a) A description of the purpose for the submission of an application to represent the educational interests of the pupil;
- (b) An identification of the category of parents who are authorized to submit an application;
- (c) The process and deadline for submission of an application;
- (d) The procedure for appealing a decision made on an application by a school district or charter school; and
- (e) A copy of the application.

2. A parent of a pupil with a disability who has a significant cognitive impairment and who participates in the alternate assessment developed by the State may submit to the

designated official of the school district or charter school in which the pupil is enrolled, on a form prescribed by the Department, an application to represent the educational interests of the pupil. Such an application must be submitted at least 90 days before the date on which the pupil attains the age of 18 years. The application must include a signed statement by the parent declaring that:

- (a) The parent believes that the pupil does not have the ability to provide informed consent with respect to his or her own educational program;
- (b) The pupil is at least 16 years of age;
- (c) The pupil has a significant cognitive impairment and participates in the alternate assessment developed by the State; and
- (d) The date on which the application is being submitted is not less than 90 days before the date on which the pupil attains the age of 18 years.

3. Within 30 days after an application is received pursuant to subsection 2, the school district or charter school shall:

- (a) Review the application for completeness and accuracy; and
- (b) Provide notice in writing to the parent and the pupil of the determination of the school district or charter school.

4. If a school district or charter school approves an application for a parent to represent the educational interests of a pupil with a disability, the parent shall continue to represent the educational interests of the pupil until:

- (a) The pupil receives a standard high school ~~diploma or an adjusted~~ diploma;
- (b) The pupil is no longer enrolled in a program of special education pursuant to NRS 388.440 to ~~388.5315,~~ 388.5317, inclusive; or

(c) The parent elects to transfer the right to represent the educational interests to the pupil.

5. If a parent or a pupil with a disability disagrees with the decision made on an application by a school district or charter school submitted pursuant to subsection 2, the parent or the pupil may file a *state* complaint with the ~~Department~~ *Superintendent* pursuant to NAC 388.318. If

the complaint is filed before the date on which the pupil attains the age of 18 years, any rights which would have otherwise transferred to the pupil in accordance with NAC 388.195 must remain with the parent pending a final decision on the complaint by the Department.

Sec. 38. NAC 388.215 is hereby amended to read as follows:

388.215 Each public agency shall take measures pursuant to 34 C.F.R. § 300.111 to ensure that every pupil with a disability who resides within the school district is identified, *located*, 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 *education and related* 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 a pupil with a disability is receiving *special education and related* services appropriate to the pupil's disability.

Sec. 39. NAC 388.219 is hereby amended to read as follows:

388.219 To the extent consistent with the number and location of pupils with disabilities who are homeschooled or enrolled by their parents in private *elementary and secondary* schools, including, without limitation, religious ~~+, elementary and secondary+~~ schools, and who are

located in the school district ~~{served by the public agency, a public agency}~~, *each school district*

shall provide for the participation of those pupils in the program assisted or carried out under Part B of the Individuals with Disabilities Education Act, 20 U.S.C. §§ ~~H400+~~*1411* et seq., by providing those pupils with special education and related services ~~+, including, without limitation, direct services+~~ in accordance with the provisions of 34 C.F.R. §§ 300.130 to 300.144,

inclusive ~~+,~~ *including, without limitation, direct services determined in accordance with the provisions of 34 C.F.R. § 300.137.*

Sec. 40. NAC 388.225 is hereby amended to read as follows:

388.225 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 ~~+,~~ *pursuant to NAC 388.330 to 388.440, inclusive, and section 11 of this regulation* 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.

Sec. 41. NAC 388.245 is hereby amended to read as follows:

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

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

➔ A pupil with a disability, including a pupil in a public or private institution or other care facility, must be educated with pupils who are not disabled to the maximum extent appropriate and may not be removed from an age-appropriate regular classroom solely because the pupil needs modification to the general curriculum.

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

- (a) Consultative and supplementary services provided with regular class placement; and
- (b) Instructing the pupil in:

- (1) A regular class;
- (2) A special class;
- (3) A special school;
- (4) A community-based program;
- (5) The pupil's home;
- (6) A hospital; or
- (7) An institution.

3. In the case of a program of ~~early childhood~~ special education ~~for a pupil who is at least 3 years of age but less than 6 years of age,~~ the continuum of alternative placements required by subsection 2 may include, as appropriate:

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

kindergarten class;

- (b) A ~~home-based~~ *public or private preschool* program;
- (c) ~~An itinerant consultant working with a~~ A community-based *child care* 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.~~ *The pupil's home.*

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~~ *to* the maximum extent appropriate and the public agency shall ensure that the pupil receives the supplementary aids and services determined appropriate by the individualized educational program committee for the pupil to participate in those activities. If a pupil with a disability is excluded from such participation because of the pupil's needs or performance, the basis for the exclusion must be clearly set forth in the individualized educational program of the pupil.

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

Sec. 42. NAC 388.255 is hereby amended to read as follows:

388.255 Except as otherwise provided in NAC 388.265, any change in the placement of a pupil with a disability must *comply with NAC 388.245 and* be based upon:

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

Sec. 43. NAC 388.261 is hereby amended to read as follows:

388.261 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~~*education* 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~~*the education* records of the pupil, the school or public agency shall transmit the ~~educational~~*education* records of the pupil pursuant to subsection 1 not later than 10 school days after it receives such consent.

Sec. 44. NAC 388.263 is hereby amended to read as follows:

388.263 1. If a pupil with a disability who is receiving special education *and related* services pursuant to an individualized educational program in a school in this State transfers to another school district *or public agency* 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 or her previous individualized educational program. The public agency shall continue to provide such a free appropriate public education

to the pupil. The public agency shall:

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

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

2. If a pupil with a disability who is receiving special education *and related* services pursuant to an individualized educational program in another state transfers to a school district *or public agency* 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 or her 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 section 11 of this regulation* and develops a new individualized educational program for the pupil, if determined appropriate, in accordance with applicable federal and state law.

3. The public agency shall maintain written documentation of the consultation with the

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

Sec. 45. NAC 388.265 is hereby amended to read as follows:

388.265 1. A pupil with a disability , *including, without limitation, a pupil described in 34 C.F.R. § 300.534 who has not been determined to be eligible for special education and related services*, may not be suspended, expelled or excluded from attendance by a public agency *for an incident of misconduct* except upon compliance with the provisions of this section, 34 C.F.R. §§ 300.530 to 300.536, inclusive, and 20 U.S.C. § 1415(k). School personnel may consider any unique circumstances, including, without limitation, the disciplinary history of the pupil, the ability of the pupil to understand consequences, whether the pupil expresses remorse and whether support was provided before the misconduct, on a case-by-case basis when determining whether to make a change of placement for a pupil with a disability who violates a code of conduct for pupils.

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

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

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

(1) Evaluations and diagnostic results, including, without limitation, relevant information supplied by the parents of the pupil;

(2) Observations of the pupil; and

(3) The pupil's individualized educational program and placement.

(b) Determine whether the behavior of the pupil was a manifestation of the disability of the pupil. 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 disability of the pupil; 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 disability of the pupil.

(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.,~~ **34 C.F.R. § 300.530(d)** on the 11th school day that

the pupil is removed *in the same school year* 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”,~~ “change of placement” occurs under the circumstances described in 34 C.F.R.

§ 300.536.

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

6. A pupil who has not been determined to be eligible for special education and related services and who has engaged in behavior that violated a code of student conduct may assert the protections in this section in accordance with 34 C.F.R. § 300.534.

Sec. 46. NAC 388.275 is hereby amended to read as follows:

388.275 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 *and related* 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 ~~[,]~~ *to 388.284, inclusive.*

Sec. 47. NAC 388.281 is hereby amended to read as follows:

388.281 Except as otherwise provided in this chapter and applicable federal laws and regulations:

1. Before providing special *education and related* services ~~[and programs of instruction]~~ for

pupils with disabilities, ~~other than gifted and talented pupils,~~ a public agency shall adopt a procedure whereby an individualized educational program is developed for each such pupil. The procedure adopted must ensure that an individualized educational program is in effect at the beginning of each school year and before the initiation of special education or related services. Except as otherwise provided in this chapter and 34 C.F.R. § 300.300(b)(3)(ii), the procedure must comply with the provisions of 34 C.F.R. §§ 300.320 to 300.324, inclusive. For eligible pupils making the transition from early intervention programs operated pursuant to 20 U.S.C. §§ 1431 to 1444, inclusive:

(a) An individualized educational program must be developed and implemented by the pupil's third birthday.

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

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

(a) One representative of the public agency who is:

(1) Qualified to provide or supervise the provision of specially designed instruction to meet the unique needs of pupils with disabilities;

(2) Knowledgeable about the general education curriculum of the public agency; and

(3) Knowledgeable about the availability of resources of the public agency;

(b) If the pupil participates in a regular educational environment, one regular classroom teacher ~~who teaches~~ of the pupil or, if the pupil may participate in a regular educational environment, one regular classroom teacher;

(c) One special education teacher ~~who teaches~~ of the pupil or, if appropriate, one person

who provides special ~~educational~~ *education and related* 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, *the pupil* if the committee is meeting to develop an individualized educational program which includes ~~transition~~:

(1) *Transition* services relating to the courses of study of a pupil who has attained 14 years of age ~~the pupil~~; or

(2) *Postsecondary goals and transition services for a pupil who is 16 years of age or older or who will attain 16 years of age during the period in which the individualized educational program is in effect;*

(g) If the committee is meeting to develop an individualized educational program which includes *postsecondary goals and* transition services for a pupil who is 16 years of age or older ~~or a pupil~~ who will attain 16 years of age during the period in which the individualized educational program ~~will be~~ *is* in effect, and the parent of the pupil consents, a representative of

any *participating* agency that may be responsible for providing or paying for the transition services; and

(h) ~~One~~ *If not otherwise a member of the committee, one* member who has personal knowledge about the personnel and options for placement available to provide special education and related services to the pupil.

3. The parents or their representative and the representative of the public agency may each

ask such other persons who have knowledge or special expertise concerning the pupil, including the pupil and persons who provide related services to the pupil, as ~~the parents or the representative of the public agency deem~~ appropriate, to join the committee. The determination of the knowledge or special expertise of such a person must be made by the parents or the public agency who invited the person to participate.

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

~~(a) The~~ *the* authorized representative of the public agency and the parent of the pupil agree *in writing* that the attendance of such member is not necessary because the member's area of the curriculum or related services is not being modified or discussed at the meeting. ~~the~~ *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}~~ *Have an individualized educational program in effect for each pupil with a disability within its jurisdiction at the beginning of each school year and 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}~~ *Make special education and related services available to the pupil in accordance with his or her* 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}~~ *each*

pupil's individualized educational ~~{programs}~~ *program* to identify alternative ~~{methods of}~~

~~providing] strategies to meet the~~ transition ~~[services or to revise the individualized educational program of a pupil with a disability]~~ *objectives in the pupil's individualized educational program* when a participating agency fails to provide an agreed upon service ~~++~~; *and*

(h) Provide a copy of the pupil's individualized educational program and any revisions to the parents of the pupil at no cost.

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

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

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

↳ If an individualized educational program is revised in accordance with this subsection, the parent of the pupil with a disability must be provided with a copy of the revised individualized educational program at no cost and the public agency shall ensure that the committee is informed of the changes.

8. The public agency shall:

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

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

(c) Inform the parents of their right to invite persons who have knowledge or special

expertise regarding the pupil, including, without limitation, *any appropriate* related service personnel, to participate as a member of the committee that will develop the pupil's individualized educational program; and

(d) If *the* transition services *relating to courses of study* or transition services and postsecondary goals *described in paragraph (e) or (f) of subsection 1 of NAC 388.284* will be discussed at the meeting:

(1) Provide notice pursuant to paragraph (b) to the pupil and the ~~{parent}~~*parents* 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}~~*parents* 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 *relating to courses of study* or transition services and postsecondary goals will be discussed at the meeting.

↪ The notice must be given sufficiently far in advance of the meeting to enable the parents to make arrangements to attend.

9. The public agency shall, if the pupil previously received early intervention services pursuant to 20 U.S.C. §§ 1431 et seq., ~~{notify}~~*include in the notice to* the ~~{parent}~~*parents* of the pupil *given pursuant to subsection 8* that, upon the request of the ~~{parent,}~~*parents*, the public agency will send an invitation to the service coordinator of the pupil's early intervention system or other representative of the early intervention system to participate in the initial meeting for the development of the pupil's individualized educational program to assist with the smooth transition of services for the pupil. If the ~~{parent requests}~~*parents request* such an

invitation, the

public agency shall send an invitation to the service coordinator of the pupil's early intervention system or other representative of that system to participate in the initial meeting for the development of the pupil's individualized educational program.

10. If the parents do not acknowledge receipt of the notice given pursuant to subsection 8, the public agency shall make additional attempts to notify them, which may include, without limitation, attempts to notify them by telephone or through a visit to their home or place of employment. The public agency shall keep detailed records of any telephone calls, correspondence or visits made to ~~the~~a 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. *If neither parent is able to attend a meeting for the development of a pupil's individualized educational program, the public agency shall use alternative methods to ensure the participation of a parent, including, without limitation, the use of a video conference, a telephone conference call or other means.*

11. *A meeting may be conducted without a parent in attendance if the public agency is unable to convince the parents that they should attend.* If the reasonable efforts of the public agency to ~~involve~~convince the pupil's parents *to attend or participate in the meeting through the use of alternative methods* are unsuccessful, the parents shall be deemed unavailable and the public agency shall *conduct the meeting and* develop an individualized educational program *for the pupil* without the parents.

12. 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~~ *interests* of the pupil and document the alternative methods that were used.

13. The committee shall:

(a) Meet to develop the pupil's *individualized educational* program not later than 30 days after it is determined that the pupil is eligible for special *education and related* services. ~~and programs of instruction.~~

(b) Base the *individualized educational* program it develops *for the pupil* on the results of an evaluation made in accordance with NAC 388.330 to 388.440, inclusive ~~+~~, *and section 11 of this regulation.*

(c) Review the *individualized educational* program at least annually *to determine whether the annual goals for the pupil are being achieved* and revise it as ~~necessary.~~

~~—(d) Provide a copy of the program and any revisions to the parents at no cost.~~ *appropriate in accordance with 34 C.F.R. § 300.324(b).*

Sec. 48. NAC 388.282 is hereby amended to read as follows:

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

2. Except as otherwise provided in subsection 3, before a public agency places a pupil with a disability in or refers such a pupil to a private school or facility, the public agency shall initiate and conduct a meeting to develop an individualized educational program for the pupil.

The public agency shall ensure that a representative of the private school attends the meeting. If a representative is unable to attend the meeting, the public agency shall ~~include the representative~~ *with written or use alternative methods to ensure participation by the private school or facility, including, without limitation, the use of a video conference, a telephone ~~communication.~~ conference call or other means.*

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

(a) Remains responsible for implementing the individualized educational program of the pupil; and

(b) Must serve the pupil as it serves pupils with disabilities in public schools.

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

(a) Part B of the Individuals with Disabilities Education Act, 20 U.S.C. §§ 1411 et seq., and the regulations adopted pursuant thereto; and

(b) NRS 388.440 to 388.520, inclusive, and NAC 388.001 to 388.450, inclusive, and sections 2 to 11, inclusive, of this regulation,

↳ and is afforded all the rights of a pupil with a disability who is served by a public agency.

Sec. 49. NAC 388.283 is hereby amended to read as follows:

388.283 1. Except as otherwise provided in subsection 2, a public agency shall appoint ~~for~~

~~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}~~ *No parent can* be identified;
 - (2) ~~{Location}~~ *The location* of a parent is not discovered after reasonable efforts; or
 - (3) ~~{Pupil}~~ *The pupil* is a ward of the State.
- (b) An unaccompanied youth who is a homeless youth.

↪ The public agency ~~for 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

public 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 *pursuant to this section* 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.
- 4. Except as otherwise provided in this subsection, the surrogate parent must not be an employee of the public agency which is involved in the education or care of the pupil, but he or she may be paid by the public agency to serve as the surrogate parent. If the pupil is an unaccompanied youth who is a homeless youth, an appropriate employee of an emergency shelter, transitional shelter, independent living program or street outreach program who is otherwise qualified may be appointed on a temporary basis as a surrogate parent, regardless of

whether the person is employed by a public agency which is involved in the education or care of the pupil, until another person is appointed as a surrogate parent who satisfies the requirements of subsection 3.

5. The surrogate parent shall represent the pupil in all matters relating to the identification of

~~the~~ 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 *surrogate* parent.

6. As used in this section, “unaccompanied youth” has the meaning ascribed to it in 42 U.S.C. § 11434a(6).

Sec. 50. NAC 388.284 is hereby amended to read as follows:

388.284 1. Each committee shall include in the individualized educational program it develops ~~the~~ *for a pupil with a disability:*

(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 disability of the pupil. 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 disability of the pupil.

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

- (1) Advance appropriately toward attaining the annual goals set forth in paragraph (b);
- (2) Participate and progress in the general education curriculum;
- (3) Participate in extracurricular activities and other nonacademic activities; and
- (4) Participate with other pupils with disabilities and pupils who are not disabled in the activities described in this paragraph.

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

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

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

(e) If the pupil is 14 years of age or older, a statement of transition services with regard to the pupil's courses of study, including, without limitation, participation in advanced placement

courses or a vocational educational program. The committee may prepare such a statement before the pupil is 14 years of age if the committee determines that the statement is appropriate for the pupil. The statement required by this paragraph must be updated annually.

(f) Beginning not later than the first individualized educational program which is in effect when the pupil is 16 years of age and in annual updates thereafter:

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

(2) Transition services, including, without limitation, the courses of study needed to assist the pupil in reaching those goals.

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

(h) A statement that describes the method by which the progress of the pupil toward the annual goals will be measured and when periodic reports on the progress of the pupil toward meeting the annual goals will be provided by the use of quarterly or other periodic reports, concurrent with the issuance of report cards, or other means. The parent of a pupil who is 3, 4 or 5 years of age must be given an opportunity to participate in a review of the progress of the pupil not less than once every 6 months.

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

of pupil achievement, the individualized educational program must include a statement of why the pupil cannot participate in the regular assessment and why the particular alternate assessment selected is appropriate for the pupil. The committee shall not base its determination of whether a pupil may participate in such examinations upon the fact that the pupil has already been labeled as having a disability, or upon the placement of the pupil or other categorical factors.

(j) If the pupil is entering the public agency from another public agency, provisions relating to case management and ~~{interagency}~~ transition ~~{services.}~~ *between the public agencies, as appropriate.*

(k) A statement of the other placements considered by the ~~{team}~~ *committee* and, if the pupil

will be removed from the regular educational environment, the reasons why the ~~{team}~~ *committee* 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 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, provide

positive behavioral strategies, supports and interventions, 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~~ and , in the case of a pupil who is deaf or hard-of-hearing, consider , *in accordance with the provisions of NRS 388.477*, 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 ~~and~~; *and*

(g) *Consider the instructional needs of the pupil, in accordance with the provisions of NRS 388.443, if the pupil has a specific learning disability and dyslexia.*

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 disability of the pupil affects participation, involvement and progress in the general education curriculum and if the individualized educational committee determines that the inclusion of such goals and objectives

is appropriate for that pupil; and

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

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

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

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

(4) The use of the least restrictive strategies, supports and interventions to respond to and reinforce the behavior of pupils with disabilities; and

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

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

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

5. The public agency shall not limit the availability of extended school year programs to pupils with a particular category of disability or unilaterally limit the type, amount or duration of those programs. As used in this subsection, "extended school year programs" means special

education and related services that:

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

Sec. 51. NAC 388.287 is hereby amended to read as follows:

388.287 1. The parents of a pupil must be allowed to inspect and review any ~~educational~~

education records relating to their child which are collected, maintained or used by ~~a public~~
an

agency ~~with personally identifiable information~~. The ~~public~~ agency *with personally*

identifiable information shall comply with such *a* request *for inspection and review* without unnecessary delay and in any event:

- (a) Before any meeting regarding ~~an~~ *the pupil's* 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;~~ *or resolution meeting pursuant to NAC 388.306 to 388.310,*

inclusive, as applicable; 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~~ *have the right to* :

(a) Make reasonable requests for the ~~{public}~~ agency *with personally identifiable information* to explain and interpret the *education* records ~~{;}~~, *and the agency with personally identifiable information shall respond to each such request;*

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

(c) Request that the ~~{public}~~ agency *with personally identifiable information* provide them with copies of the records if, without the copies, any meaningful review of the records is impractical.

3. ~~{A public}~~ An agency *with personally identifiable information* may presume that ~~{the}~~
a

parent has authority to inspect and review *education* records relating to the pupil unless the ~~{public}~~ agency *with personally identifiable information* 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 *with personally identifiable information* shall keep a record of the persons other than parents and authorized employees given access to ~~{educational}~~ *education* records it collects, maintains or uses. The record must include the:

(a) Name of the person;

(b) Date access was given; *and*

(c) Purpose for which the person is authorized to use the records. ~~{; and}~~

~~—(d) List required by subsection 6.~~

5. If any ~~{educational}~~ *education* 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 *with personally identifiable information* shall maintain and provide

to parents on request a list of the types and locations of ~~{educational}~~ *education* records it collects, maintains or uses relating to pupils.

7. If the ~~{public}~~ agency *with personally identifiable information* 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.

Sec. 52. NAC 388.288 is hereby amended to read as follows:

388.288 1. A parent who believes that information in ~~{educational}~~ *education* records is inaccurate, misleading or violates the privacy or other rights of the pupil may request an amendment of the information. The ~~{public}~~ agency *with personally identifiable information* 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 *with personally identifiable information* 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 *with personally identifiable information* shall, upon request, provide an opportunity for a hearing to challenge information in ~~{educational}~~ *education* 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 *with personally identifiable information* 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 *with personally identifiable information* shall notify the parent that the parent has a right to include such a statement in the ~~{record}~~ records. The ~~{public}~~ agency *with personally identifiable information* 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}~~ records or *the* contested portion is maintained. If the records of the pupil ~~{are}~~ *or the contested portion is* 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.

Sec. 53. NAC 388.289 is hereby amended to read as follows:

388.289 1. Each ~~{public}~~ agency *with personally identifiable information* shall, pursuant to the provisions of 34 C.F.R. §§ 300.610 to ~~{300.627,}~~ *300.626*, inclusive:

- (a) Protect the confidentiality of personally identifiable information at its collection, storage, disclosure and destruction;
- (b) Appoint one official to assume responsibility for ensuring the confidentiality of any personally identifiable information;
- (c) Train or instruct all persons collecting or using personally identifiable information regarding these policies and procedures; and
- (d) Maintain a current listing for public inspection of the names and positions of those employees within the ~~{school district}~~ *agency with personally identifiable information* who may have access to personally identifiable information.

2. Each ~~{public}~~ *agency with personally identifiable information* shall:

- (a) Inform the parents when the personally identifiable information *collected, maintained or used* 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 the pupil attended, grades he or she completed and the year he or she 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 ~~{}~~ *to the pupil*.

3. ~~{A public}~~ *An agency with personally identifiable information* shall not disclose personally identifiable information except as authorized by law.

4. ~~{A public}~~ *An agency with personally identifiable information* may include student teachers and related service interns among those persons who have a legitimate educational

interest in accessing ~~educational~~*education* records pursuant to policies developed in accordance with the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. § 1232g, and the related regulations.

Sec. 54. NAC 388.292 is hereby amended to read as follows:

388.292 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~~*pupils* 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.

Sec. 55. NAC 388.300 is hereby amended to read as follows:

388.300 1. Except as otherwise provided in this section ~~or~~ *and subsection 17 of NAC-
~~388.440,~~ 388.310*, informed written consent *as defined in section 10 of this regulation* must be obtained from the parents of the pupil before conducting an initial evaluation, before conducting additional assessments in a reevaluation, and before special education and related services are initially provided to a pupil with a disability. The public agency shall make reasonable efforts to obtain such consent. If a parent refuses to provide written consent for the initial evaluation, 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 or ~~file a hearing~~ *file a due process complaint* pursuant to NAC 388.306.

2. If a public agency has made reasonable efforts to obtain informed consent from the parent of a pupil *for an initial evaluation and the parent fails to respond or refuses to provide written consent or refuses to provide consent for a reevaluation requiring additional assessments* and the public agency does not request mediation or ~~file a hearing~~ *file a due process complaint* upon the parent's failure to respond or refusal, the public agency:

(a) Does not violate any obligations *pursuant to NAC 388.215 and 388.330 to 388.440, inclusive, and section 11 of this regulation* for *the conduct of* an evaluation or reevaluation ~~of~~ *of the pupil*.

(b) Is not deemed to have knowledge pursuant to 34 C.F.R. § ~~300.534~~ *300.534(c)(1)(i)* that a pupil is a pupil with a disability.

3. If a pupil is a ward of the State and the pupil is not residing with the pupil's parent, the public agency shall make reasonable efforts to obtain the informed consent from the parent of

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

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

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

(c) The rights of the parents *of the pupil* 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.

4. If the parent of a pupil refuses to consent to the initial receipt of special education and related services or the parent fails to respond to a request to provide such consent, the public agency shall not ~~provide special education and related services to the pupil through use of~~ *use the procedural safeguards described in 34 C.F.R. §§ 300.500 to 300.520, inclusive, request mediation pursuant to NAC 388.305 or file a ~~hearing~~ due process complaint pursuant to NAC 388.306 ~~to obtain an agreement or ruling that special education and related services may be provided to the pupil.~~* The public agency shall not be:

(a) Considered to be in violation of the requirement to make available a free appropriate public education to the pupil for the failure to provide such pupil with the special education and related services for which the public agency requests such consent.

(b) Deemed to have knowledge pursuant to 34 C.F.R. § ~~300.534~~ *300.534(c)(1)(i)* that a pupil is a pupil with a disability.

(c) Required to convene a meeting relating to an individualized educational program or

develop an individualized educational program for the pupil . ~~{for the special education and related services for which the public agency requests such consent.}~~

5. The parent of a pupil with a disability may withdraw consent in writing for the continued provision of special education and related services for the pupil. If the parent withdraws such consent after the initial provision of special education and related services, the public agency shall not:

(a) Continue providing special education and related services to the pupil, but the public agency shall provide prior written notice pursuant to this section to the parents of the pupil before discontinuing the special education and related services.

(b) Use *the procedural safeguards described in 34 C.F.R. §§ 300.500 to 300.520, inclusive, request* mediation pursuant to NAC 388.305 or *file a ~~hearing~~ due process complaint* pursuant to NAC 388.306 to obtain an agreement or ruling that special education or related services continue to be provided to the pupil.

(c) Be considered to be in violation of the requirement to make available a free appropriate public education to the pupil for the failure to provide such pupil with further special education and related services.

(d) Be required to convene a meeting relating to an individualized educational program or otherwise develop an individualized educational program for the pupil for the further provision of special education and related services.

6. 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 made reasonable efforts to obtain consent for an additional assessment to be conducted as part of a reevaluation and the pupil's parents have failed to respond.

7. If the parent of a pupil who is homeschooled or who is ~~parentally~~ placed in a private school *at the parent's 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 shall not ~~request~~ *use the procedural safeguards described in 34 C.F.R. §§ 300.500 to 300.520, inclusive, request* mediation pursuant to NAC 388.305 or *file a hearing* ~~due process complaint~~ pursuant to NAC 388.306 and the public agency is not required to consider the pupil as eligible for *special education and related* services pursuant to NAC 388.219.

8. ~~Except as otherwise provided in this subsection, a~~ A public agency shall ~~notify~~ *provide* the parents of a pupil with a disability ~~other than a gifted and talented pupil,~~ *with prior written notice as described in subsections 9 and 10* 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~~ *file a hearing* ~~due process complaint~~ pursuant to NAC 388.306 on the proposed action, or the parent

may withhold the consent required by subsection 1, if that subsection applies.

9. The *prior written* 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~~

of the parent is not a written ~~language~~, the public agency shall ~~ensure~~:

(a) *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 *content of the* notice ~~The public agency shall maintain~~; and

(b) *Maintain* written evidence ~~of the parent's understanding of the translated notice~~ that *the requirements of paragraph (a) have been met*.

10. The public agency shall include in the *prior written* notice ~~required by subsection 8~~:

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

(b) ~~The~~ *An explanation of 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~~ *other* 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.

11. 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~~ *due process complaint* in a school year ~~for a hearing~~ pursuant to NAC 388.306 from the parents;

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

(d) As required by the provisions of 34 C.F.R. § 300.530(h); and

(e) Upon request by the parents.

↪ The statement of parental rights must explain fully the procedural safeguards listed in 20 U.S.C. § 1415(d)(2) and 34 C.F.R. § 300.504(c) that are available to the parents. A public agency may place a current copy of the statement of the procedural safeguards on the Internet website of the public agency, if applicable.

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

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

Sec. 56. NAC 388.302 is hereby amended to read as follows:

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

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

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

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

(a) Informal or unscheduled conversations involving *personnel of* the public agency, ~~for an employee of the public agency,~~ including, without limitation, conversations relating to teaching

methodology, lesson plans or the coordination of services; or

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

Sec. 57. NAC 388.305 is hereby amended to read as follows:

388.305 1. If a dispute arises between the parent of a pupil and a public agency which

relates to the identification, evaluation or educational placement of the pupil or the provision of a free appropriate public education to the pupil, including , *without limitation*, matters that arise before a *due process* complaint is filed pursuant to NAC 388.306 ~~†~~*or any matter governed by Part B of the Individuals with Disabilities Education Act, 20 U.S.C. §§ 1411 et seq., and the regulations adopted pursuant thereto*, the parent or the public agency may request *that* the Department ~~†~~provide mediation. Mediation is voluntary and either the parent or the public agency may decline to participate.

2. If mediation is requested, the parent involved in the dispute must not be denied the parent's right to a hearing and the process of mediation must not be used to delay a hearing or to deny any other right afforded pursuant to *Part B of the Individuals with Disabilities Education Act*, 20 U.S.C. §§ ~~†1400†~~*1411 et seq. , and the regulations adopted pursuant thereto.*

3. The Department will maintain a list of persons who are qualified mediators and knowledgeable in the laws and regulations relating to the provision of special ~~†educational services†~~*education* and related services. If mediation is requested, the mediation must be conducted by an impartial mediator who is included on the list maintained by the Department. The Department shall select a mediator on a random or rotational basis or by using some other impartial method.

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

- (a) Is trained in effective mediation techniques;
- (b) Is not an employee of the public agency that is involved in the education or care of the pupil; and
- (c) Does not have a personal or professional interest that conflicts with the person's

objectivity.

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

5. If mediation is requested:

(a) The Department will pay for the costs ~~incurred by~~ of the mediation ~~process~~; and

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

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

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

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

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

8. Discussions that occur during the mediation process are confidential and must not be used as evidence in any subsequent due process hearing or civil proceeding of any federal court or state court of a state that receives assistance under *Part B of* the Individuals with Disabilities Education Act, 20 U.S.C. ~~§ 1400~~ *§§ 1411* et seq.

Sec. 58. NAC 388.306 is hereby amended to read as follows:

388.306 1. Except as otherwise provided in ~~subsection 4 of~~ NAC 388.300, a parent of a pupil or a public agency may file a due process complaint on any matter relating to *any*

proposal or refusal to initiate or change the identification, evaluation or educational placement of the pupil or the provision of a free appropriate public education to the pupil. If the party filing the *due process* complaint is the parent of a pupil, the parent shall file the due process complaint with the head of the public agency ~~†~~*that is the party to the due process complaint.*

2. The Department shall develop a model form for filing a due process complaint ~~†~~*and post the model form on the Internet website maintained by the Department.* A party may use the model form to file a due process complaint or may use any other form or document that meets the requirements of subsection 3.

3. The party filing the *due process* complaint, or an attorney representing the party, must provide a copy of the *due process* complaint to the other party and *forward a copy of the due process complaint* to the ~~†Department.†~~*Superintendent at the same time.* The *due process* complaint must include:

- (a) The name of the pupil;
- (b) The address of the residence of the pupil or, if the pupil is a homeless youth, available contact information for the pupil;
- (c) The name of the school the pupil is attending;
- (d) A description of the nature of the problem of the pupil relating to the public agency's proposal or refusal, including, without limitation, the facts relating to the problem; and
- (e) A proposed resolution of the problem to the extent known and available to the party at the time.

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

4. A due process complaint filed pursuant to this section is deemed sufficient unless,

within 15 days after receiving the *due process* complaint, the party receiving the *due process* complaint submits written notice to the hearing officer and the party who filed the *due process* complaint that the *due process* complaint does not meet the requirements of ~~{this section.}~~ *subsection 3*.

5. Within 5 days after receipt of a notification pursuant to subsection 4, the hearing officer shall make a determination on the face of the due process complaint whether the *due process* complaint meets the requirements of ~~{this section.}~~ *subsection 3* and shall immediately provide ~~{written}~~ notice to the parties *in writing* of his or her determination.

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

(a) The party receiving the *due process* complaint consents in writing to the amendment and is given an opportunity to resolve the problems identified in the due process complaint through a resolution meeting held pursuant to NAC 388.307; or

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

7. If a party files an amended due process complaint, the time period relating to holding a resolution meeting ~~{pursuant to NAC 388.307}~~ and the time period for resolving the due process complaint *pursuant to NAC 388.307* recommence on the date on which the amended *due process* complaint is filed.

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

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

the due process complaint;

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

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

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

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

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

10. Within 5 days after receiving *or filing a due process* complaint pursuant to subsection 1, the head of the public agency shall request *that* 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 ~~to~~ *pursuant to NRS 388.463*; and

(b) Notify the parties of the appointment.

II. Except as otherwise provided in this section, NAC 388.308 or 20 U.S.C. § 1415(k), or as otherwise agreed by the parties, the pupil must remain in the pupil's current placement until completion of any administrative or judicial proceedings ~~to~~ *regarding a due process complaint*

filed pursuant to this section.

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

13. If ~~{the hearing}~~ *a due process complaint* involves an application for initial services for a child who is receiving early intervention services and who is no longer eligible for those services because he or she has attained 3 years of age, the public agency:

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

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

14. If, in an appeal taken pursuant to NAC 388.315, the *state* review officer agrees with the parents of the pupil that a particular change in the pupil's current placement is appropriate, the change in placement must be treated as an agreement between the public agency and the parents for the purposes of ~~{this}~~ subsection ~~{}~~ *11*.

15. ~~{A}~~ *Except as otherwise provided in this subsection, a* parent or a public agency ~~{shall}~~ *must* file a *due process* complaint pursuant to this section within 2 years after the date on which the parent or public agency knew or should have known about the alleged action that forms the basis of the *due process* complaint. The time limit for filing a *due process* complaint does not apply to a parent if:

(a) The parent was prevented from ~~requesting a hearing;~~ *filing a due process complaint* due

to specific misrepresentations by the public agency that it had resolved the problem forming the basis of the ~~request for the hearing;~~ *due process complaint;* or

(b) The public agency withheld information from the parent that the public agency was required to provide to the parent pursuant to *Part B of the Individuals with Disabilities Education Act*, 20 U.S.C. §§ ~~1400~~ *1411* et seq. , *and the regulations adopted pursuant thereto.*

16. The Department shall post the timelines and procedures for conducting due process hearings and appeals pursuant to NAC 388.306 to 388.315, inclusive, on the Internet website maintained by the Department.

Sec. 59. NAC 388.307 is hereby amended to read as follows:

388.307 1. Except as otherwise provided in this section ~~1~~ *and subsection 4 of NAC 388.308*, within 15 days after receiving a due process complaint *from a parent* pursuant to NAC 388.306 and before the initiation of a hearing, the public agency shall convene a resolution meeting with the parent and the relevant members of the individualized educational program committee of the pupil who have specific knowledge of the facts identified in the due process complaint.

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

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

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

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

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

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

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

7. Except as otherwise provided in subsection 8, if the *due process* complaint ~~filed pursuant to NAC 388.306~~ is not resolved to the satisfaction of the parent within 30 days after the public agency received the *due process* complaint, the hearing may proceed. Except as otherwise provided in subsection 12 of NAC 388.310, the 45-day timeline for issuing a final decision begins at the expiration of the 30-day period for resolution.

8. Except as otherwise provided in subsection 6, if the parent fails to participate in a resolution meeting, the timelines for the ~~hearing and any action~~ *process* to resolve the *due process* complaint *and the hearing* will be delayed until such time as the parent participates in the meeting. The public agency shall make reasonable efforts to obtain the participation of the parent. The public agency shall be deemed to have made reasonable efforts if the agency provides written notice and makes additional attempts to notify the parent of the meeting, including, without limitation, attempts to notify the parent by telephone or through a visit to his or her home or place of employment. The public agency shall keep detailed records of any

telephone calls, correspondence or visits made to the parent's home or place of employment ~~{and}~~, *including, without limitation*, the results of ~~{each correspondence or visit,}~~ *the efforts of*

the public agency, if any. The parent and the public agency may agree to use alternative means of participation in a meeting by the use of a video conference, a telephone conference call or other means.

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

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

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

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

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

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

Sec. 60. NAC 388.308 is hereby amended to read as follows:

388.308 1. A *hearing requested by a* parent ~~{may request an expedited hearing}~~ *pursuant*

to NAC 388.306 must be expedited pursuant to this section if the hearing is to resolve a dispute concerning:

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

(b) A determination regarding a disciplinary change of placement of a pupil pursuant to 34 C.F.R. §§ 300.530 and 300.531, *including, without limitation*, the services to be provided in the disciplinary placement or the interim alternative educational setting for services.

2. A *hearing requested by a* public agency ~~{may request an expedited hearing}~~ *pursuant to*

NAC 388.306 must be expedited pursuant to this section 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 388.306 and 388.310, except that the hearing must be conducted}~~ within 20 school days after the

date on which the *due process complaint requesting the* hearing is ~~{requested}~~ *filed* and must result in a determination within 10 school days after the hearing. *Except as otherwise provided in this section, such a hearing and any appeal must be conducted in a manner consistent with the provisions of NAC 388.306 to 388.315, inclusive. No continuance may be granted which extends the time periods set forth in this subsection.*

4. ~~If an expedited hearing is requested pursuant to this section, a~~ resolution meeting *for an expedited hearing* must occur in accordance with NAC 388.307 within 7 days after receipt of the due process complaint requesting the ~~expedited~~ hearing unless the parent and the public agency *that is a party to the hearing* agree in writing to waive the meeting or to use the mediation process pursuant to NAC 388.305. If a resolution is not reached to the satisfaction of both parties within 15 days after receipt of the due process complaint for ~~an expedited~~ a hearing ~~;~~ *pursuant to this section*, the hearing ~~may~~ *must* proceed *thereafter* within the timelines prescribed in subsection 3.

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

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

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

↳ whichever occurs first.

Sec. 61. NAC 388.310 is hereby amended to read as follows:

388.310 1. If a parent or public agency ~~requests a hearing~~ *files a due process complaint*

pursuant to NAC 388.306, 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;

~~†(e)†~~~~(b)~~ Inform the parent of the right to request a resolution of the dispute through a mediation process pursuant to NAC 399.305; and

~~†(d)†~~~~(c)~~ Inform the parent of the provisions of this section.

2. At the hearing, a party to the hearing may:

(a) Be represented by counsel;

(b) Be accompanied by and advised by persons who have special knowledge of or training regarding the problems of pupils with disabilities;

(c) Present evidence;

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

(e) Call, examine and compel the attendance of witnesses ~~†, and†~~, *including, without limitation, by requesting that the hearing officer ensure the issuance of a subpoena pursuant to NRS 388.509 to compel the attendance of witnesses, the giving of testimony and the production of books and papers at the hearing if such evidence is relevant to the issues in the due process complaint and will not be produced voluntarily;*

(f) ~~†Cross-examine†~~ *Confront and cross-examine* witnesses ; and

(g) *Prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five 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~~ *the education* records *of the pupil pursuant to NAC 388.287* before the hearing.
5. Not less than 5 business days before a hearing, each party shall disclose to all other parties ~~all evidence,~~ all evaluations completed by that date and all recommendations based on the evaluations that the party intends to use at the hearing. A hearing officer may ~~exclude the admission of evidence,~~ *bar any party that fails to comply with this subsection from introducing* evaluations or recommendations based on evaluations that have not been disclosed to the opposing party at least 5 business days before the hearing ~~and~~ *unless the opposing party consents to their admission.*
6. The party who filed the *due process* complaint pursuant to NAC 388.306 may not raise an issue at the hearing if the issue was not included in the *due process* complaint unless the parties otherwise agree.
7. The public agency shall make a verbatim record of the hearing either in writing or, at the option of the parent, by electronic means. The record must be made available to any party to the hearing ~~and~~, *and the public agency shall provide a copy of the record to the parent at no cost.*
8. The public agency shall take whatever action is necessary to ensure that the parent understands the proceedings at the hearing, including arranging for an interpreter for a parent who is deaf or whose native language is not English.
9. The ~~public agency~~ *hearing officer* shall transmit the written findings of fact and ~~decisions~~ *decision* prepared pursuant to subsection 12 ~~and~~ *to the parties. After removing any personally identifiable information of the pupil, the Department shall* transmit ~~them~~ *the*

findings of fact and decision to the Special Education Advisory Committee of the Department
~~†~~

~~The~~ *and make the* findings *of fact* and ~~decisions must be~~ *decision* available for public inspection ~~after removing any personally identifiable information of the pupil.~~ *by posting the findings of fact and decision on the Internet website maintained by the Department.*

10. The hearing must be held at a time and place reasonably convenient to the parent and the pupil involved. *The hearing officer shall notify the parties of the time and place of the hearing.*

11. The hearing officer shall base the decision solely on the evidence ~~presented~~ *admitted* at the hearing. Subject to the limitations set forth in this subsection, a decision made by a hearing officer of whether a pupil received a free appropriate public education must be made on substantive grounds. In a matter alleging a procedural violation, a hearing officer may find that a pupil did not receive a free appropriate public education only if the procedural inadequacies:

- (a) Impeded the pupil's right to a free appropriate public education;
- (b) Significantly impeded the parents' opportunity to participate in the decision-making process regarding the provision of a free appropriate public education to the pupil; or
- (c) Caused a deprivation of educational benefits.

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

12. Except as otherwise provided in this subsection and NAC 388.307, 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 one of the following occurs:

(a) The parties agree in writing to waive the resolution meeting required pursuant to NAC 388.307;

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

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

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

13. The *Department shall make 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. *The Department shall provide the findings of fact and decision to the parent at no cost.*

14. The public agency shall pay the expenses of the hearing officer and any other expenses of the hearing ~~+~~, *including, without limitation, any costs incurred pursuant to subsections 7 and 8, using a method that avoids a conflict of interest or the appearance thereof.*

15. 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 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 the appropriate standards of the legal practice; and

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

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

16. The Department shall maintain a list of hearing officers and their qualifications.

Each calendar year, the Department will provide a *copy of the* list to each public ~~education~~ agency. ~~of the hearing officers and their qualifications.~~ *To remain on the list, a hearing officer must:*

(a) Meet the qualifications prescribed by 20 U.S.C. § 1415(f)(3)(A) and the regulations adopted pursuant thereto;

(b) Complete, before being placed on the list or within the first year that the hearing officer appears on the list, a minimum of 40 hours of training, including, without limitation, 24 hours of training in the law relating to special education which must include, without limitation:

(1) Part B of the Individuals with Disabilities Education Act, 20 U.S.C. §§ 1411 et seq., and the regulations adopted pursuant thereto;

(2) NRS 388.440 to 388.520, inclusive, and NAC 388.001 to 388.450, inclusive, and sections 2 to 11, inclusive, of this regulation; and

(3) Legal interpretations of those laws and regulations by state and federal courts; and
(c) Complete annual training arranged by the Department, including, without limitation, training concerning laws relating to special education, the procedure for conducting a hearing and rendering and writing a decision.

17. The decision of a hearing officer *pursuant to this section* is final unless the decision is appealed pursuant to NAC 388.315. ~~††~~*If the decision is rendered in favor of the public agency on a due process complaint, the* public agency may proceed without the consent of the parents pursuant to the decision of the hearing officer.

18. ~~†As used in this section, “business day” means Monday through Friday, excluding federal and state holidays.†~~*A party to a pending due process complaint may request the recusal of a hearing officer on the basis of bias or a conflict of interest by motion to the hearing officer. The hearing officer shall timely rule on such a motion by written order.*

Sec. 62. NAC 388.315 is hereby amended to read as follows:

388.315 1. A party may appeal from the decision of a hearing officer made pursuant to NAC 388.310 *by filing with the Superintendent a notice of appeal which identifies the specific findings and conclusions being appealed and forwarding a copy of the notice of appeal to the other parties* within 30 days after receiving the decision. A party to the hearing may file a cross appeal *by filing a notice of cross appeal with the Superintendent which identifies the specific findings and conclusions being appealed and forwarding a copy of the notice of cross appeal to the other parties* within 10 days after receiving notice of the initial appeal. If ~~†there is†~~an appeal ~~††~~*is filed*, 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 *state review*

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 *of fact*

and decision to the parties within 30 days after ~~receipt of a written request for review.~~ *the*

notice of appeal was filed with the Superintendent. The *state* review officer may extend the

time for rendering a decision for a specific number of days upon the request of either party ~~+~~

for

good cause. At the option of the parent, the findings of fact and decision must be made

available to the parent by electronic means. *The Department shall provide a copy of the*

findings of fact and decision to the parent at no cost.

2. The decision of ~~+~~ *the state* review officer is final unless a party brings an action pursuant to subsection 3.

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

4. ~~The~~ *After removing any personally identifiable information of the pupil, the* Department shall transmit the written findings of fact and ~~decisions~~ *decision* to the Special Education Advisory Committee of the Department ~~after removing any personally identifiable information of the pupil. The~~ *and make the* findings *of fact* and ~~decisions must be~~ *decision* available for public inspection ~~by posting the findings of fact and decision on the Internet website maintained by the Department.~~

Sec. 63. NAC 388.318 is hereby amended to read as follows:

388.318 1. A person, as the term is defined in NRS 0.039, including a person outside this State, may file a *state* complaint with the Superintendent alleging that a public agency has violated a provision *of*:

(a) *Part B* of the Individuals with Disabilities Education Act, 20 U.S.C. §§ ~~1400~~ *1411* et seq., or the regulations adopted pursuant thereto ; ~~or~~ ~~a provision of~~

(b) *NRS 388.440 to 388.520, inclusive, or* NAC ~~388.150~~ *388.001* to 388.450, inclusive ~~and sections 2 to 11, inclusive, of this regulation.~~

2. The *state* complaint must be:

(a) In writing and must be signed by the person filing the *state* complaint.

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

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

~~3.~~4.

4. The *state* complaint must include:

(a) A statement that a public agency has violated a provision ~~of the Individuals with Disabilities Education Act, 20 U.S.C. §§ 1400 et seq., or the regulations adopted pursuant thereto, or a provision of NAC 388.150 to 388.450, inclusive;~~ *described in subsection 1;*

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

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

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

(1) The name of the pupil;

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

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

(4) A description of the nature of the problem of the pupil relating to the public agency's ~~proposal or refusal;~~ *alleged violation*, 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 *state* complaint is filed.

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

~~4.1~~ *Superintendent.*

5. As soon as practicable, the Superintendent shall forward the state complaint to the Department for review. Except as otherwise provided in subsection ~~5.1~~6, within 60 days after receipt of the signed written *state* complaint, the Department shall:

(a) If the Department deems it necessary, carry out an independent on-site investigation of the allegations contained in the *state* complaint;

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

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

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

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

(d) Review all relevant information and make an independent determination *regarding the allegations contained in the state complaint* as to whether the public agency is violating a requirement of a law or regulation ~~4.1~~*described in subsection 1*; and

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

(1) Findings of fact and conclusions; and

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

~~5.1~~6. The Department may extend the time period set forth in subsection ~~4.1~~5 if:

- (a) Exceptional circumstances exist with regard to a particular *state* complaint; or
- (b) A complainant who is a parent of a pupil and the public agency agree to extend the time to allow for mediation or other means of alternative dispute resolution.

~~{6.}~~7. The Department shall maintain procedures for effective implementation of the final decision, including, without limitation, technical assistance activities, negotiations and corrective actions to achieve compliance.

~~{7.}~~8. In resolving a *state* complaint in which the Department has found that a public agency failed to provide appropriate services, the Department shall address the failure, including, without limitation, by ~~{prescribing}~~*requiring* corrective action *which is appropriate* to address the needs of the pupil, such as compensatory services or monetary reimbursements, and by ~~{ensuring}~~*requiring* that appropriate services are provided to all pupils with disabilities served by the public agency.

~~{8.}~~9. A public agency that receives an order pursuant to this section shall take the actions prescribed in the order and provide to the Department documentation of all actions taken in accordance with the order.

10. A written decision issued pursuant to subsection 5 is a final administrative decision of the Department. The filing of a state complaint pursuant to this section does not preclude a person from filing a due process complaint pursuant to NAC 388.306.

Sec. 64. NAC 388.325 is hereby amended to read as follows:

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

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

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

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

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

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

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

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

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

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

4. Based in part on the results of the targeted scientific, research-based intervention, the public agency shall determine whether the pupil is suspected of having a disability and should be evaluated in accordance with NAC 388.330 to 388.440, inclusive **††**, *and section 11 of this regulation.*

5. During the period in which 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 *education and related services* ~~and~~ ~~programs of instruction~~ pursuant to NAC 388.330 to 388.440, inclusive ~~†~~, *and section 11 of this regulation*. 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 targeted scientific, research-based intervention is completed ~~†~~ *and shall promptly request parental consent to evaluate the pupil*. 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 *prior* written notice of this refusal in accordance with NAC 388.300, and the parent may request mediation pursuant to NAC 388.305 ~~for a hearing~~, *file a due process complaint* pursuant to NAC 388.306 *or file a state complaint pursuant to NAC 388.318* to resolve the dispute.

6. If the public agency determines that the academic difficulty or behavior of the pupil is resistant to the targeted scientific, research-based intervention, or if the public agency determines that the 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 *promptly request parental consent and* conduct an initial evaluation of the pupil to determine whether the pupil is eligible for special education ~~†~~ *and related services*. Informed parental consent in accordance with subsection 1 of NAC 388.300 must be obtained before the public agency may conduct such an evaluation.

Sec. 65. NAC 388.335 is hereby amended to read as follows:

388.335 Any test or other device for assessment used pursuant to NAC 388.330 to 388.440, inclusive, *and section 11 of this regulation* must comply with the evaluation procedures set forth in ~~20 U.S.C. § 1414(b)~~ *34 C.F.R. §§ 300.304 to 300.311, inclusive*, and NAC 388.340 and 388.420.

Sec. 66. NAC 388.336 is hereby amended to read as follows:

388.336 As part of an initial evaluation if data is available, and as part of any reevaluation, a group that includes the committee that developed or will develop the pupil's individualized educational program pursuant to NAC 388.281, the members of the eligibility team and any other qualified professionals appointed shall, in accordance with 34 C.F.R. § 300.305:

1. Conduct a review of data from existing evaluations, including, without limitation:

(a) Evaluations and information provided by the parents of the pupil;

(b) Current local or state assessments and classroom-based assessments and observations;

and

(c) Observations by teachers and related service providers; and

2. Based upon the review and input from the pupil's parents, identify the additional data, if any, that is required to determine:

(a) ~~Whether~~ *The educational needs of the pupil and whether* the pupil has a particular category of disability or, in case of a reevaluation of a pupil, whether the pupil continues to have such a disability ; ~~and the educational needs of the pupil;~~

(b) The present levels of academic achievement and related developmental needs of the pupil;

(c) Whether the pupil needs special education and related services or, in the case of a

reevaluation of a pupil, whether the pupil continues to need special education and related services; and

(d) Whether any additions or modifications to the special education and related services are needed to enable the pupil to meet the measurable annual goals set out in the individualized educational program of the pupil and to participate, as appropriate, in the general education curriculum.

→ The group may conduct its review without a meeting.

Sec. 67. NAC 388.337 is hereby amended to read as follows:

388.337 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, *and section 11 of this regulation*, 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~~ *receipt* 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 the time set forth in the decision, whichever is shorter;* or

(c) At any other time agreed upon in writing by the parent ~~for 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.

Sec. 68. NAC 388.340 is hereby amended to read as follows:

388.340 1. In conducting an evaluation pursuant to NAC 388.330 to 388.440, inclusive, *and section 11 of this regulation*, the public agency shall comply with the provisions of 34 C.F.R. §§ 300.304 , *300.305* 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~~ *pupil* 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, *and section 11 of this regulation* or for determining an appropriate individualized

educational program for the pupil.

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

4. The public agency shall ensure that:

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

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

(2) Provided and administered in the language *or other communication mode normally used by the pupil in the home or in his or her learning environment* and *in the* form most likely to yield accurate information on what the pupil knows and can do academically, developmentally and functionally, unless it is *clearly* 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) *Assessments and other evaluation materials used to assess a pupil pursuant to this section include those tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient;*

(d) *Assessments are selected and administered in a manner to ensure that, if an assessment is administered to a pupil with impaired sensory, manual or speaking skills, the assessment results accurately reflect the pupil's aptitude or achievement level or whatever other factors the test purports to measure rather than reflecting the pupil's impaired sensory,*

manual or speaking skills unless those skills are the factors that the test purports to measure;

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

~~[(d)]-(f)~~ Assessments of pupils with disabilities who transfer from one ~~[school district]~~ *public agency* to another ~~[school district]~~ *public agency* in the same academic school year are coordinated with ~~[such]~~ *the* pupil's prior and subsequent schools, as necessary ~~[]~~ *and as expeditiously as possible consistent with the provisions of NAC 388.337*, to ensure prompt completion of full evaluations.

5. When interpreting evaluation data to determine the eligibility of a pupil for special *education and related* services ~~[and programs of instruction]~~ pursuant to NAC 388.325 to 388.450, inclusive, *and section 11 of this regulation*, and to determine the educational needs of the pupil, the public agency shall:

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

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

6. In making a determination of the eligibility of the pupil for special *education and related* services ~~[and programs of instruction]~~ pursuant to NAC 388.330 to 388.440, inclusive, *and section 11 of this regulation*, 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:

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

(b) Lack of appropriate instruction in math; or

(c) Limited proficiency in English.

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

7. The screening of a pupil by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation , *including, without limitation, an early literacy screening assessment*, must not be considered as an evaluation of the pupil ~~{}~~ *pursuant to this section.*

8. Except as otherwise provided in this subsection, the public agency must evaluate a pupil with a disability pursuant to NAC 388.330 to 388.440, inclusive, *and section 11 of this regulation* 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.

9. Any decision of the eligibility team concerning the eligibility of a pupil for special *education and related* services ~~{and programs of instruction}~~ pursuant to NAC 388.330 to 388.440, inclusive, *and section 11 of this regulation* must be justified in a written report, to be kept in the records of the pupil maintained by the public agency. The public agency shall provide a copy of the report and any other documentation relating to the determination of the

pupil's eligibility pursuant to this section to the parents of the pupil at no cost.

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

11. As used in this section, "essential components of reading instruction" means explicit and systematic instruction in:

(a) Phonemic awareness;

(b) Phonics;

(c) Vocabulary development;

(d) Reading fluency, including, without limitation, oral reading skills; and

(e) Reading comprehension strategies.

Sec. 69. NAC 388.350 is hereby amended to read as follows:

388.350 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~~*an* 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.

Sec. 70. NAC 388.375 is hereby amended to read as follows:

388.375 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 *education and related* services ~~and programs of instruction~~ pursuant to NAC 388.330 to 388.440, inclusive, *and section 11 of this regulation*, 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.

Sec. 71. NAC 388.380 is hereby amended to read as follows:

388.380 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 *education and related* services ~~and programs of instruction~~ for pupils with specific

learning disabilities, any observation must be conducted ~~pursuant to paragraph (b) of~~ *as provided in* subsection ~~5~~6 of NAC 388.420.

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.

Sec. 72. NAC 388.386 is hereby amended to read as follows:

388.386 **1.** If the functional behavior of a pupil is assessed, the assessment must include:

~~1.1~~(a) Systematic observation of the occurrence of the targeted behavior for an accurate definition and description of the frequency, duration and intensity of the behavior.

~~1.2~~(b) Systematic observation of the events that immediately precede each display of the targeted behavior and are associated with the display of the behavior.

~~1.3~~(c) 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.

~~1.4~~(d) 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.

~~1.5~~(e) 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.

~~16.1(f)~~ Review of the history of the targeted behavior to include the effectiveness of any intervention previously used.

~~17.1~~2. *Informed written consent as defined in section 10 of this regulation must be obtained*

from the parents of the pupil before conducting an assessment of the functional behavior of a pupil to determine:

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

(b) If the pupil is a pupil with a disability, the nature and extent of the needs of the pupil for special education and related services.

3. 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.

Sec. 73. NAC 388.387 is hereby amended to read as follows:

388.387 1. A pupil is eligible for special *education and related* services ~~and programs of~~

~~instruction~~ if the eligibility team, comprised of the persons set forth in subsection 2, determines

that the pupil has *an* autism *spectrum disorder* and, by reason thereof, needs special education and related services.

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 ~~+~~

spectrum disorder.

(c) ~~The~~ A 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~~ *If not otherwise a member of the team, 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~~, *without limitation, a school* administrator ~~of the school, a~~, *school* nurse, ~~a~~ *school* counselor, ~~a~~ *school* psychologist or any other certificated or licensed professiona.

3. The eligibility team shall conduct an evaluation of the pupil to determine whether the pupil is eligible for special *education and related* 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.

Sec. 74. NAC 388.390 is hereby amended to read as follows:

388.390 1. Except as otherwise provided in subsection 3, a pupil with a hearing impairment who is deaf is eligible for special *education and related* services ~~and programs of instruction~~ if the eligibility team, comprised of the persons described in subsections *5 and 6*, ~~and 7,~~ concludes that:

(a) The pupil has a hearing impairment and, by reason thereof, needs special education and related services;

(b) 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;

(c) 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

(d) 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 or she 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 *education and related* services ~~and programs of instruction~~ if the eligibility team concludes that:

(a) The pupil is hard-of-hearing and, by reason thereof, needs special education and related services;

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

(c) 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

(d) 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 *education and related* services ~~and programs of instruction~~ if the eligibility team concludes that the pupil meets the criterion set forth in paragraph (d) of subsection 1 or paragraph (d) 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 *education and related* services ~~and programs of instruction~~ referred to in this section.

~~6.]~~ 5. 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.

~~17.1~~**6.** If the requirements of subsection ~~16.1~~**5** are satisfied, one or more of the following persons may serve on the eligibility team:

- (a) A regular classroom teacher ~~11~~***of the pupil or, if none, a person qualified to teach the pupil.***
- (b) ~~10~~***If not otherwise a member of the team, 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~~***a school*** administrator, ***school*** nurse, school counselor, school psychologist or any other certificated or licensed professional.

~~18.1~~**7.** The conclusions of the eligibility team concerning the eligibility of the pupil for the special ***education and related*** 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.

~~9.1-8.~~ If the requirements of subsection ~~8.1-7~~ are satisfied, the evaluation of the pupil may include an assessment of the pupil's cognitive abilities and social and emotional condition.

Sec. 75. NAC 388.395 is hereby amended to read as follows:

388.395 1. A pupil with a severe visual impairment is eligible for special *education and related* services ~~and programs of instruction~~ if the eligibility team, comprised of the persons described in subsections *4 and 5*, ~~and 6,~~ concludes that ~~the~~

~~(a) The~~ *the* pupil has a severe visual impairment and, by reason thereof, needs special education and related services ~~the~~ *and:*

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

~~(e)~~ *(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

~~(d)~~ *(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)*. ~~and~~

~~(e)~~

2. A pupil with a moderate visual impairment is eligible for special *education and related* services ~~and programs of instruction~~ if the eligibility team concludes that the pupil can use vision as the main channel of learning, that the pupil has a moderate visual impairment and, by reason thereof, needs special education and related services and that:

(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 *education and related* services ~~{and programs of instruction}~~ referred to in this section.

~~{5.}~~4. 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.}~~5. If the requirements of subsection ~~{5.}~~4 are satisfied, one or more of the following persons may serve on the eligibility team:

(a) A regular classroom teacher ~~{}~~*of the pupil or, if none, a person qualified to teach the pupil.*

(b) ~~{One}~~*If not otherwise a member of the team, 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}~~*a school* administrator, *school* nurse, school counselor, school

psychologist or any other certificated or licensed professional.

~~7.1-6.~~ 6. The conclusions of the eligibility team concerning the eligibility of the pupil for the special *education and related* 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.

~~8.1-7.~~ 7. If the requirements of subsection ~~7.1-6~~ are satisfied, the evaluation of the pupil may include an assessment of the pupil's cognitive abilities and social and emotional condition.

Sec. 76. NAC 388.400 is hereby amended to read as follows:

388.400 1. A pupil with an orthopedic impairment is eligible for special *education and related* 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 and, by reason thereof, needs special education and related services.

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 or she 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~~ *If not otherwise a member of the team, one* or more persons having personal knowledge of the pupil. Such persons may include, without limitation, ~~an~~ *a school* administrator, *school* 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 *education and related* 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 *an assessment of the need for* physical therapy, occupational therapy and an assessment of the pupil's:

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

Sec. 77. NAC 388.402 is hereby amended to read as follows:

388.402 1. A pupil is eligible for special *education and related* 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 and, by reason thereof, needs special education and related services.

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~~ A 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~~ *If not otherwise a member of the team, 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~~, *without limitation, a school* administrator ~~of the school, a~~, *school* nurse, ~~a~~ *school* 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 *education and related* 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.

Sec. 78. NAC 388.405 is hereby amended to read as follows:

388.405 1. A pupil with a speech and language impairment is eligible for special

education and related services ~~[and programs of instruction]~~ if the eligibility team, comprised of

the persons described in subsection 5, concludes that:

(a) The pupil has a speech and language impairment and, by reason thereof, needs special education and related services;

(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 *education and related* 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 *education and related* 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 ~~of the pupil or, if none, a person qualified to teach the~~ *pupil*;

(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~~ *a school* administrator, *school* 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 *education and related* 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 *education and related* services ~~and programs of instruction~~ referred to in this section, the cognitive abilities, academic achievement,

and social and emotional condition of the pupil.

Sec. 79. NAC 388.407 is hereby amended to read as follows:

388.407 1. A pupil is eligible for special *education and related* 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 and, by reason thereof, needs special education and related services.

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~~ *If not otherwise a member of the team, 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~~, *without limitation, a school*

administrator ~~of the school, a~~, *school* nurse, ~~a~~ *school* 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 *education and related* 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.

Sec. 80. NAC 388.410 is hereby amended to read as follows:

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

- (a) The pupil has *a* mild ~~mental retardation~~ *intellectual disability* and, by reason thereof, needs special education and related services;
- (b) 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;

(c) 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

(d) The academic achievement of the pupil is generally consistent with the cognitive abilities and adaptive skills of the pupil.

2. A pupil with *a* moderate ~~mental retardation~~ *intellectual disability* is eligible for special *education and related* services ~~and programs of instruction~~ if the eligibility team concludes that:

(a) The pupil has *a* moderate ~~mental retardation~~ *intellectual disability* and, by reason thereof, needs special education and related services;

(b) 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;

(c) 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

(d) 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 *a* severe ~~mental retardation~~ *intellectual disability* is eligible for special *education and related* services ~~and programs of instruction~~ if the eligibility team concludes that:

(a) The pupil has *a* severe ~~mental retardation~~ *intellectual disability* and, by reason thereof, needs special education and related services;

(b) 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;

(c) 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

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

4. A pupil with *a* profound ~~mental retardation~~ *intellectual disability* is eligible for special *education and related* services ~~and programs of instruction~~ if the eligibility team concludes that:

(a) The pupil has *a* profound ~~mental retardation~~ *intellectual disability* and, by reason thereof, needs special education and related services;

(b) 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;

(c) 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

(d) 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;~~ *intellectual disabilities;*

(c) A speech and language specialist;

(d) A parent of the pupil; and

(e) ~~One~~ *If not otherwise a member of the team, 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}~~

a

school administrator, *school* 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 ~~{}~~*of the pupil or, if none, a person qualified to teach the*

pupil;

- (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 *education and related* 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.

Sec. 81. NAC 388.415 is hereby amended to read as follows:

388.415 1. A pupil with ~~{a-serious}~~ *an* emotional disturbance is eligible for special *education and related* services ~~{and programs of instruction}~~ if the eligibility team, comprised of

the persons described in subsection 4, concludes that:

(a) The pupil has ~~{a-serious}~~ *an* emotional disturbance and, by reason thereof, needs special education and related services;

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

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

(d) 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

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

2. The requirement of paragraph (b) 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 *education and related* 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 *education and related* 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 ~~and~~, *and section 11 of this regulation.*
4. The eligibility team must consist of:
- (a) A school psychologist;
 - (b) A regular classroom teacher ~~and~~ *of the pupil or, if none, a person qualified to teach the pupil;*
 - (c) A special education teacher or specialist in the field of ~~serious~~ emotional disturbances;

(d) A parent of the pupil; and

(e) ~~One~~ *If not otherwise a member of the team, 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~~ *a school* administrator, *school* 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 *education and related* 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 intervention on behalf of the pupil.

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

Sec. 82. NAC 388.420 is hereby amended to read as follows:

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

(a) The pupil has a specific learning disability and, by reason thereof, needs special

education and related services;

(b) The pupil does not achieve adequately for the pupil's age or to meet the state-approved grade level standards when provided with learning experiences and instruction appropriate for the age of the pupil ~~for the state-approved grade level standards~~ in one or more of the following areas:

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

(c) The pupil:

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

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

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

- (1) A visual, hearing or motor disability;
- (2) ~~Mental retardation;~~ *An intellectual disability;*
- (3) ~~Emotional;~~ *An emotional* disturbance;
- (4) Cultural factors;
- (5) Environmental or economic disadvantage; or
- (6) Limited English proficiency;

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

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

2. If the public agency determines that a pupil exhibits a pattern of strengths and weaknesses in performance or achievement, or both, relative to the pupil's age, the state-approved grade level standards or intellectual development, the public agency shall determine whether the pupil has a severe discrepancy between achievement and intellectual ability in the areas set forth in paragraph (b) of subsection 1. Except as otherwise provided in this subsection, if the public agency considers the existence of a discrepancy between 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 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. If the public agency determines that a pupil has not made sufficient progress to meet the age-appropriate standards or the state-approved grade level standards in one or more of the areas set forth in paragraph (b) of subsection 1 when using a process based on the pupil's response to scientific, research-based intervention, the public agency shall document:

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

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

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

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

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

4. The eligibility team must consist of:

(a) ~~The~~ A 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~~ *If not otherwise a member of the team, 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~~ *a school* administrator, *school* 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 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 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 scientific, research-based intervention provided to the pupil; and

(6) The health and developmental history of the pupil; ~~and~~

(b) An observation of the academic performance of the pupil ~~pursuant to paragraph (b) of~~ *as provided in* subsection 6 ~~H~~; *and*

(c) *A norm-referenced assessment of whether the pupil has dyslexia, if the public agency has:*

(1) *Confirmed that the pupil has indicators for dyslexia;*

(2) *Provided targeted scientific, research-based intervention to the pupil in addition to*

the early literacy screening assessment required by NRS 388.441; and

(3) Determined that the pupil needs additional screening to determine whether the pupil has a specific learning disability.

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

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

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

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

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

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

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

8. The eligibility team shall document the determination of eligibility of the pupil which must include:

- (a) A statement as to whether the pupil has a specific learning disability;
- (b) The basis for making that determination, including an assurance that the determination has been made in accordance with NAC 388.340;
- (c) A description of the relevant behavior noted during the observation of the pupil;
- (d) A statement of the relationship of that behavior to the academic functioning of the pupil;
- (e) Any educationally relevant medical findings;
- (f) A statement as to whether the pupil does not achieve adequately for the pupil's age or to meet the state-approved grade level standards and whether the pupil:
 - (1) Has not made sufficient progress to meet the age-appropriate standards or the state-approved grade level standards when a process based on the pupil's response to scientific, research-based intervention is used; or
 - (2) Exhibits a pattern of strengths and weaknesses in performance or achievement, or both, relative to the pupil's age, the state-approved grade level standards or intellectual development;
- (g) A statement that any identified underachievement or severe discrepancy between achievement and intellectual development is not correctable without special education and related services;
- (h) The conclusion of the team concerning the effect upon the achievement of the pupil of any visual disability, hearing disability, motor disability, ~~mental retardation,~~ *intellectual disability*, emotional disturbance, cultural factors, environmental or economic disadvantage, or limited English proficiency;
- (i) If the pupil has participated in a process that assesses the response of the pupil to scientific, research-based intervention:

- (1) The instructional strategies used and the pupil-centered data that was collected; and
- (2) Documentation that the parents of the pupil were notified about:

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

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

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

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

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

Sec. 83. NAC 388.425 is hereby amended to read as follows:

388.425 1. A pupil with multiple impairments is eligible for special *education and related* services ~~and programs of instruction~~ if the pupil meets the requirements for eligibility set forth in NAC 388.410 for pupils with ~~mental retardation~~ *intellectual disabilities* 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, *deaf-blindness* or a speech and language impairment, set forth in NAC 388.330 to 388.440, inclusive ~~†~~, *and section 11 of this*

regulation.

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) Subsection 2 of NAC 388.387;

(2) Subsections 5 and 6 ~~and 7~~ of NAC 388.390;

~~(2)~~ *(3) Subsections 4 and 5 ~~and 6~~ of NAC 388.395;*

~~(3)~~ *(4) Subsection 3 of NAC 388.400;*

~~(4)~~ *(5) Subsection 3 of NAC 388.402;*

(6) Subsection 2 of NAC 388.407; or

(7) 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 *education and related* 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) *Subsection 3 of NAC 388.387;*

(2) Subsections *7 and 8* ~~and 9~~ of NAC 388.390;

~~(2)-(3)~~ Subsections *6 and 7* ~~and 8~~ of NAC 388.395;

~~(3)-(4)~~ Subsections 4 and 5 of NAC 388.400;

~~(4)-(5)~~ *Subsections 4 and 5 of NAC 388.402;*

(6) *Subsections 3 and 4 of NAC 388.407; or*

(7) 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.

Sec. 84. NAC 388.430 is hereby amended to read as follows:

388.430 1. Except as otherwise provided in subsection 5, a pupil under the age of 6 years may be identified with a developmental delay if the eligibility team, comprised of the persons described in subsections 2 and 3, concludes that the pupil has a developmental delay and, by reason thereof, needs special education and related services and that the pupil 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~~ *If not otherwise a member of the team, 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~~ *a school* administrator, *school* 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 *, if not otherwise a member of the team,* one or more persons who provide related services, including speech and language therapy, physical or occupational therapy, and psychological services.

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

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

Sec. 85. NAC 388.435 is hereby amended to read as follows:

388.435. 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 *determined through the use of a scoring procedure prescribed by the Department which takes into account the cognitive abilities and academic achievement of the pupil and other factors related to the pupil*

~~[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]~~ *receive* not less than 150 minutes of differentiated ~~educational activities]~~ *instruction* each week during the school year *from a teacher of the gifted and talented, licensed in accordance with NAC 388.165(1)(b).*

6. A public agency qualifies for state funding to provide special services and programs of instruction for pupils who are gifted and talented if the public agency identifies and serves such pupils in accordance with the provisions of subsections 1 through 5 of this section.

7. Nothing in this section requires that a public agency provide special services and programs of instruction for pupils who are gifted and talented.

Sec. 86. NAC 388.440 is hereby amended to read as follows:

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

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

(b) At least once every 3 years, unless the parent and the authorized representative of the

public agency agree that a reevaluation is not necessary.

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

3. 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 NAC 388.300, 388.330, 388.335, 388.336 , ~~and~~ 388.340 ~~+~~ *and 388.420, as appropriate.*

4. Upon the completion of the reevaluation, the eligibility team shall issue a written report which includes a statement of any disability found to exist and the basis for any determination of continued eligibility. The public agency shall provide a copy of the report and any other documentation relating to the determination of the eligibility of a pupil pursuant to this section to the parents of the pupil at no cost.

Sec. 87. NAC 388.450 is hereby amended to read as follows:

388.450 1. A parent may request *that* a public agency ~~to~~ pay for an independent educational evaluation of a pupil if the parent disagrees with the results of an evaluation

obtained by the public agency. The public agency shall, without unnecessary delay, either ~~request a~~ ~~hearing~~ ~~file a due process complaint~~ pursuant to NAC 388.306 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 conducted pursuant to NAC ~~388.306,~~ *388.310*, the hearing officer decides that an independent educational evaluation is necessary because the agency's evaluation was not appropriate, the public agency shall ~~pay for the~~ *ensure that an independent educational* evaluation ~~is provided at public expense.~~ If the hearing officer decides that the evaluation is not necessary because the agency's evaluation was appropriate, the parent may obtain ~~the~~ *an* independent educational evaluation ~~at the parent's personal expense,~~ *but the evaluation will not be provided at public expense.*

3. If the parent 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 criteria of the agency relating to independent evaluations as set forth in subsection 8.

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

5. A parent is entitled to only one independent educational evaluation at public expense

for each time a public agency conducts an evaluation with which the parent disagrees.

6. If an independent educational evaluation is obtained at the personal expense of the parent or at public expense, the public agency shall consider the results of an evaluation if the evaluation meets the criteria of the public agency in any decision made with respect to the provision of a free appropriate public education ~~to~~ *to the pupil*. The results may be presented as

evidence at a hearing regarding that pupil in accordance with the provisions of NAC 388.310 which relate to the introduction of evidence.

7. If a hearing officer requests an independent educational evaluation as part of a hearing, the cost of the evaluation must be paid by the public agency ~~to~~ *pursuant to subsection 14 of NAC 388.310*.

8. Whenever an independent educational evaluation is obtained at the public agency's expense, the criteria established by the public agency for the circumstances under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the public agency uses when it initiates an evaluation, to the extent those criteria are consistent with the parent's right to such an evaluation. Except as otherwise provided in this subsection, a public agency may not impose conditions or timelines on obtaining an independent educational evaluation at public expense.