

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

LCB File No. R039-98

April 2, 1998

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

AUTHORITY: §§1-23, NRS 388.520.

Section 1. Chapter 388 of NAC is hereby amended by adding thereto a new section to read as follows:

1. If a parent of a pupil does not agree with the identification, evaluation or educational placement of the pupil or the provision of a free appropriate public education to the pupil, the parent or the public agency may request the department to provide mediation.

2. If mediation is requested, the parent involved in the dispute must not be denied his right to a hearing and the process of mediation must not be used to delay a hearing.

3. The department will maintain a list of persons who are qualified mediators and knowledgeable in the laws and regulations relating to the provision of special educational services and related services. If mediation is requested, the mediation must be conducted by an impartial mediator who is included on the list maintained by the department.

4. If mediation is requested:

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

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

(c) *Each party to the dispute must sign a confidentiality agreement before the mediation begins. The agreement must state that all discussions which occur during the mediation are confidential and may not be used as evidence in a hearing or civil proceeding.*

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

Sec. 2. NAC 388.265 is hereby amended to read as follows:

388.265 1. No pupil with a disability, other than a pupil who is gifted and talented, may be suspended, expelled or excluded from attendance by a public agency for more than 10 days during any school year except upon compliance with the provisions of this section.

2. Before initiating any [such] suspension, expulsion or exclusion [,] *that will result in the removal of a pupil for more than 10 days during one school year,* the public agency shall convene a meeting of the [multidisciplinary team appropriate to the disability of the pupil who is the subject of the proposed action. The multidisciplinary team] *committee that developed the pupil's individualized educational program pursuant to NAC 388.281. The public agency may appoint other qualified personnel to meet with the committee. The committee and other qualified personnel, if any,* shall determine whether the disciplinary

problems of the pupil are associated with his disability and prepare a report containing [its] *their* findings and conclusions.

[3. After the meeting of the multidisciplinary team, the public agency shall convene a meeting of the committee responsible for developing the pupil's individualized educational program. That committee, having regard for the findings of the multidisciplinary team and in accordance with the provisions of NAC 388.281, shall revise the individualized educational program of the pupil as it deems appropriate under the circumstances.]

Sec. 3. NAC 388.281 is hereby amended to read as follows:

388.281 Except as otherwise provided in NAC 388.282:

1. Before providing special services and programs of instruction for pupils with disabilities, other than gifted and talented pupils, a public agency shall adopt a procedure whereby an individualized educational program is developed for each such pupil. The procedure adopted must ensure that an individualized educational program is in effect at the beginning of each school year and before the initiation of special education or related services. For eligible children making the transition from programs operated pursuant to 20 U.S.C. §§ 1471-1485, an individualized educational program must be developed and implemented by the child's third birthday.

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

(a) [A] *One* representative of the public agency [, other than the teacher of the pupil,] who is [qualified] :

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

[(b) *The pupil's teacher, if he has had one in*]

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

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

[(c) *If he has not had a teacher in the public agency, a person qualified to teach him;*]

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

(c) *At least one special education teacher who teaches the pupil, or if appropriate, one person who provides special educational services to the pupil;*

(d) One or both of the pupil's parents;

(e) The surrogate parent assigned pursuant to NAC 388.283, if one is appointed;

(f) If the committee is meeting to develop an initial program for a pupil, a person who is familiar with the tests and other assessments performed on or by the pupil and their results; and

(g) Except as otherwise provided by subsection 5, if the committee is meeting to develop an individualized educational program which includes transition services, the pupil and a representative of the participating agency.

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

3. The parents or their representative and the representative of the public agency may each ask such other persons [.] *who have knowledge or special expertise concerning the pupil*, including the pupil [.] *and persons who provide related services to the pupil*, as they deem appropriate to join the committee.

4. The public agency shall:

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

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

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

(d) 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;

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

(f) Initiate and conduct additional meetings of the committees formed to develop the individualized educational programs to identify alternative methods of providing transition

services or to revise the individualized educational program of a pupil with a disability when a participating agency fails to provide an agreed upon service.

5. The public agency shall 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. The public agency shall give 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. If transition services for a pupil will be discussed at the meeting, the pupil must be invited to attend the meeting and this purpose must be set forth specifically in the written notice to the parents. The notice must be given sufficiently far in advance of the meeting to enable the parents to make arrangements to attend.

6. If the parents do not acknowledge receipt of the notice given pursuant to subsection 5, the public agency shall attempt to notify them by telephone or through a visit to their home or place of employment. If, after consultation concerning the time and place of the meeting, the parents are unable to attend the committee meeting in person, the public agency shall use reasonable efforts to secure their participation in the meeting by written, telephonic or other means. The public agency shall keep detailed records of any telephone calls, correspondence or visits made or had pursuant to this section and their results, if any.

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

8. If the individualized educational program includes transition services and a representative of the participating agency does not attend the meeting, the public agency shall consult with the participating agency regarding the planning of such services. If the pupil for whom the individualized educational program is being developed does not attend the meeting and the program includes transition services, the public agency shall document the alternative methods that were used to ascertain the preferences and interests of the pupil at the meeting.

9. The committee shall:

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

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

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

(d) Provide a copy of the program and any revisions to the parents if they so request.

Sec. 4. NAC 388.281 is hereby amended to read as follows:

388.281 Except as otherwise provided in NAC 388.282:

1. Before providing special services and programs of instruction for pupils with disabilities, other than gifted and talented pupils, a public agency shall adopt a procedure whereby an individualized educational program is developed for each such pupil. The procedure adopted must ensure that an individualized educational program is in effect at the beginning of each school year and before the initiation of special education or related

services. For eligible children making the transition from programs operated pursuant to 20 U.S.C. §§ [1471-1485,] *1431 to 1445, inclusive*, an individualized educational program must be developed and implemented by the child's third birthday.

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

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

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

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

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

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

(c) At least one special education teacher who teaches the pupil, or if appropriate, one person who provides special educational services to the pupil;

(d) One or both of the pupil's parents;

(e) The surrogate parent assigned pursuant to NAC 388.283, if one is appointed;

(f) If the committee is meeting to develop an initial program for a pupil, a person who is familiar with the tests and other assessments performed on or by the pupil and their results; and

(g) Except as otherwise provided by subsection 5, if the committee is meeting to develop an individualized educational program which includes transition services, the pupil and a representative of the participating agency.

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

3. The parents or their representative and the representative of the public agency may each ask such other persons who have knowledge or special expertise concerning the pupil, including the pupil and persons who provide related services to the pupil, as they deem appropriate to join the committee.

4. The public agency shall:

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

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

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

(d) 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;

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

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

5. The public agency shall 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. The public agency shall give 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. If transition services for a pupil will be discussed at the meeting, the pupil must be invited to attend the meeting and this purpose must be set forth specifically in the written notice to the parents. The notice must be given sufficiently far in advance of the meeting to enable the parents to make arrangements to attend.

6. If the parents do not acknowledge receipt of the notice given pursuant to subsection 5, the public agency shall attempt to notify them by telephone or through a visit to their home or place of employment. If, after consultation concerning the time and place of the meeting, the parents are unable to attend the committee meeting in person, the public agency shall use reasonable efforts to secure their participation in the meeting by written, telephonic or other means. The public agency shall keep detailed records of any telephone calls, correspondence or visits made or had pursuant to this section and their results, if any.

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

8. If the individualized educational program includes transition services and a representative of the participating agency does not attend the meeting, the public agency shall consult with the participating agency regarding the planning of such services. If the pupil for whom the individualized educational program is being developed does not attend the meeting and the program includes transition services, the public agency shall document the alternative methods that were used to ascertain the preferences and interests of the pupil at the meeting.

9. The committee shall:

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

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

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

(d) Provide a copy of the program and any revisions to the parents if they so request.

Sec. 5. NAC 388.284 is hereby amended to read as follows:

388.284 1. Except as otherwise provided in subsection 2, each committee shall include in the individualized educational program it develops:

(a) A statement of the pupil's present levels of educational 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 curriculum.

(b) A statement of the *measurable* annual goals, including *benchmarks or* the short-term instructional objectives [set for] , *related to meeting the needs of the pupil [;] that result from his disability. Such goals must enable the pupil to participate and progress in the general curriculum and meet the other educational needs of the pupil that result from his disability.*

(c) A statement of the specific special education , *supplementary aids and services*, and related services to be provided to the pupil [and the extent to which he will be able to participate in regular educational programs;] , *or on behalf of the pupil, and a statement of the modifications to the regular educational program or support for school personnel that must be provided for the pupil to:*

(1) Advance appropriately toward attaining the annual goals set forth in paragraph (b);

(2) Participate and progress in the general curriculum;

(3) Participate in extracurricular activities and other nonacademic activities; and

(4) Participate with other children with disabilities and children who are not disabled in the activities described in this paragraph.

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

(e) A]

(e) If the pupil is 14 years of age or older, a statement of the needs of the pupil for transition services [required, if any, for each pupil and a statement of the responsibilities of each public agency in providing such services;] with regard to the pupil's courses of study, including, without limitation, participation in advanced placement courses or a vocational educational program. The statement required by this paragraph must be updated annually.

(f) If the pupil is 16 years of age or older, a statement of the needs of the pupil for transition services with regard to interagency services. The committee may prepare such a statement before the pupil is 16 years of age if the committee determines that the statement is appropriate for the pupil. The statement required by this paragraph must be updated annually.

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

(g) A statement of the appropriate objective criteria, evaluative procedures and schedules for determining, on at least an annual basis, whether the short-term instructional objectives are being achieved;]

(h) A statement [of any modifications, including supplementary aids and services, deemed necessary to ensure the pupil's participation in the regular education program;] *that describes the method by which the progress of the pupil toward the annual goals will be measured and the method by which the parents of the pupil will be regularly informed, by periodic reports of progress or otherwise, at least as often as a parent of a pupil who is not disabled is informed of the progress of his pupil. The report of progress must adequately inform the parent of:*

(1) The progress of the pupil; and

(2) The extent to which the progress is sufficient to enable the pupil to achieve the goals set forth in paragraph (b) on or before the completion of the academic year.

(i) *A statement of the modifications that are necessary, if any, for the pupil to participate in examinations which are required by this state or the local school district. If the committee determines that the pupil must not participate in a particular examination or a particular part of an examination, the committee shall include a statement describing the reason why the examination or the particular part of an examination is not appropriate for the pupil and the method by which the pupil will be otherwise tested.*

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

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

(k) A schedule of meetings with the pupil, if appropriate, and his parents to discuss the pupil's progress.

As used in this subsection, "short-term instructional objective" means a measurable, intermediate step between the pupil's present level of educational performance and the annual goals set for the pupil.

2. If the public agency deems it appropriate, any required transition services must commence not later than when the pupil attains the age of 14 years, but the services must commence in any event not later than when the pupil attains the age of 16 years. If the committee determines that a pupil does not require transition services, it also shall include in the individualized educational program a statement that such services are not required and the basis for its determination.

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

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

2. If a pupil has a speech impairment and no other disability, the individualized educational program developed for him may be limited to a statement of his speech needs.

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

Sec. 6. NAC 388.300 is hereby amended to read as follows:

388.300 1. Except as otherwise provided in this section or NAC 388.440, a pupil may not be assessed , *reassessed* or provided with special education and related services without the written consent of his parents. If a parent does not provide written consent for the preplacement assessment or the initial provision of special education, the public agency may request a hearing pursuant to this section. [After a pupil is initially placed in special education, no additional consent may be required as a condition of any continuing benefit to the pupil.]

2. A public agency shall notify the parents of a pupil with a disability, other than a gifted and talented pupil, within a reasonable time before any proposed or refused action regarding the:

- (a) Placement of the pupil;
- (b) Identification or assessment 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 [through the department] *pursuant to section 1 of this regulation* or may request a fair and impartial hearing on the proposed action, or the parent may withhold the consent required by subsection 1, if that subsection applies.

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

4. The public agency shall include in the notice:

- (a) A description of the action proposed or refused by the public agency;
- (b) The reasons for the proposal or refusal;
- (c) A description of any options the public agency considered and the reasons why those options were rejected;
- (d) A description of the assessment procedures, tests, records or reports upon which the action is based;
- (e) Any other factors which are relevant to the public agency's proposal or refusal; and
- (f) A statement of all of the parent's rights in the matter, including his right to:
 - (1) Obtain a hearing [under] *pursuant to* this section;
 - (2) Challenge or withhold consent to the action;
 - (3) Obtain an independent assessment of the pupil;
 - (4) Be provided with a list of public and private agencies from whom the assessment may be obtained; and

(5) Request a court to award attorney's fees and related costs *pursuant to 20 U.S.C. § 1415(i)* in any action brought pursuant to 20 U.S.C. § 1415 [(e)] if the parent is the prevailing party.

5. If the parent desires a hearing regarding the public agency's proposal or refusal, he must:

- (a) Submit a written request for the hearing to the head of the public agency; and
- (b) Include with the request a statement of his reasons for opposing the public agency.

6. Within 5 days after he receives a request pursuant to subsection 5, the head of the public agency shall request the superintendent of public instruction to appoint a hearing officer. The superintendent, upon receiving such a request, shall:

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

- (b) Notify the parties of the appointment.

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

7. Except as otherwise provided in this subsection or as the parties otherwise agree, the pupil must remain in his current placement until completion of any administrative or judicial proceedings or a decision is rendered by the hearing officer or, if an appeal is taken pursuant to NAC 388.315, the review officer. If the hearing involves an application for the

pupil's initial admission to a program of a public school, the pupil, with the consent of the parent, must be placed in a public school until the completion of all the proceedings.

Sec. 7. NAC 388.310 is hereby amended to read as follows:

388.310 1. If a parent, guardian or public agency requests a hearing pursuant to NAC 388.300, the public agency shall:

- (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; and

(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 a person who has special knowledge of or training regarding the problems of pupils with disabilities;

(c) Present evidence;

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

(e) Cross-examine witnesses.

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

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

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

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

which has] :

(a) Evidence; or

(b) Evaluations, including recommendations based upon evaluations,

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

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

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

8. The public agency shall transmit the written findings of fact and decisions prepared pursuant to subsection 11 and transmit them to the Nevada department of education, special education advisory [committee. Such] council. The findings and decisions must be available for public inspection after removing any personally identifiable information of the pupil.

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

10. The hearing officer shall base his decision solely on the evidence presented at the hearing.

11. The hearing officer shall render his findings of fact and decision in writing and mail a copy of the decision to the parties within 45 days after the date the head of the public agency receives the request for the hearing. The hearing officer may extend the time for rendering a decision for a specific number of days upon the request of either party.

Written findings of fact and decision must be made available to any party to the hearing.

Upon the request of a parent, electronic findings of fact and decision must be made available to the parent.

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

13. The hearing officer must not have a personal or professional interest which would conflict with *his* objectivity.

14. Each calendar year, the department will provide a list to each public education agency of the hearing officers and their qualifications.

15. The decision of a hearing officer is final unless the decision is appealed pursuant to NAC 388.315. A public agency may proceed without the consent of the parents pursuant to the decision of the hearing officer.

Sec. 8. NAC 388.315 is hereby amended to read as follows:

388.315 1. A party may appeal from the decision of a hearing officer made pursuant to NAC 388.310 within 30 days after receiving the decision. *A party to the hearing may file a cross appeal within 10 days after he receives notice of the initial appeal.* If there is an appeal, a state review officer appointed by the superintendent of public instruction from a

list of officers maintained by the department will conduct an impartial review of the hearing. The officer conducting the review will:

- (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) Mail copies of his written findings and decision to the parties within 30 days after receipt of a written request for review. The review officer may extend the time for rendering a decision for a specific number of days upon the request of either party.

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

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

4. The department shall transmit the written findings of fact and decisions and transmit them to the Nevada department of education, special education advisory [committee] *council* after removing any personally identifiable information of the pupil. [Such] *The* findings and decisions must be available for public inspection.

Sec. 9. NAC 388.340 is hereby amended to read as follows:

388.340 1. No single test or other device for assessment may be used as the sole criterion for the placement of a pupil pursuant to NAC 388.330 to 388.440, inclusive. The interpretation of data obtained from an assessment and any decision concerning the placement of a pupil must be:

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

(b) Based upon information from a variety of sources, such as the pupil, his family, his teacher or a test of aptitude or achievement.

2. Any decision of a multidisciplinary team concerning the eligibility of a pupil for special services and programs of instruction pursuant to NAC 388.330 to 388.440, inclusive:

(a) Must be justified in a written report, to be kept in the records of the pupil maintained by the public agency; and

(b) May be made by a majority of the team.

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

Sec. 10. NAC 388.387 is hereby amended to read as follows:

388.387 1. A pupil is eligible for special services and programs of instruction for the autistic if the multidisciplinary team, comprised of the persons set forth in subsection 2, determines that he has autism. ~~[The pupil is no longer eligible for such services and programs if the multidisciplinary team concludes that he no longer has autism.]~~

2. The multidisciplinary team must consist of:

- (a) A school psychologist.
- (b) A teacher of special education or a person with a specialized knowledge of autism.
- (c) The regular teacher of the pupil, or, if none, a person qualified to teach him.
- (d) A specialist of speech and language.
- (e) *A parent of the pupil.*

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

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

- (a) Health;
- (b) Developmental history;
- (c) Cognitive abilities;
- (d) Social and emotional condition;
- (e) Academic achievement;
- (f) Adaptive behavior; and
- (g) Language and motor skills,

of the pupil.

Sec. 11. 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 is eligible for the special services and programs of instruction for the deaf if a multidisciplinary team, comprised of the persons described in subsections [7 and 8,] 6 and 7, concludes that:

(a) Routine auditory communication is impossible for the pupil, or nearly so, due to his inability to discriminate among and understand the sounds that reach him;

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

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

As used in this subsection, [nonfunctional] “*nonfunctional* for the ordinary purposes of [life] *life*” means that the pupil does not receive speech sounds clearly enough through

hearing, with or without amplification and notwithstanding the fact that he may be aware of loud or random noises, to develop language.

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

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

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

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

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

4. A pupil with a hearing impairment is eligible for the special services and programs of instruction for the deaf and blind if the multidisciplinary team concludes that he 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 is no longer eligible for the special services and programs of instruction referred to in this section if the multidisciplinary team concludes that he no longer meets the criteria set forth in subsection 1, 2, 3 or 4, whichever applies.]

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

[7.] 6. The multidisciplinary team may include a teacher or specialist in the field of hearing impairment and must consist of *a parent of the pupil and* not [less] *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.

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

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

[9.] 8. The conclusions of the multidisciplinary 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 pupil. The assessment 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.

[10.] 9. If the requirements of subsection [9] 8 are satisfied, the assessment of the pupil may include an assessment of his cognitive abilities and social and emotional condition.

Sec. 12. NAC 388.395 is hereby amended to read as follows:

388.395 1. A pupil with a visual impairment is eligible for the special services and programs of instruction for the severely visually impaired if a multidisciplinary team, comprised of the persons described in subsections [6 and 7,] 5 and 6, concludes that:

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

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

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

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

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

4. ~~A pupil is no longer eligible for the special services and programs of instruction referred to in this section if the multidisciplinary team concludes that he no longer meets the criteria set forth in subsection 1, 2 or 3, whichever applies.~~

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

~~6.]~~ 5. The multidisciplinary team may include a teacher or specialist in the field of vision impairment and must consist of *a parent of the pupil and* not ~~[less]~~ *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.

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

(a) A regular classroom teacher.

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

[8.] 7. The conclusions of the multidisciplinary 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 pupil. The assessment 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.

[9.] 8. If the requirements of subsection [8] 7 are satisfied, the assessment of the pupil may include an assessment of his cognitive abilities and social and emotional condition.

Sec. 13. NAC 388.400 is hereby amended to read as follows:

388.400 1. A pupil with an [orthopedic impairment] “*orthopedic impairment*” is eligible for special services and programs of instruction for the orthopedically impaired if a multidisciplinary team, comprised of the persons described in subsection [4,] 3, concludes that the pupil suffers from a severe orthopedic impairment which adversely affects his

ability to be educated. As used in this subsection, orthopedic impairment includes any impairment resulting from:

- (a) A congenital anomaly, including clubfoot or the absence of a member;
- (b) Disease, including poliomyelitis or bone tuberculosis; or
- (c) Any other cause, including cerebral palsy, a neuromuscular disorder, an amputation, a fracture or a burn causing a contracture.

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

3. [A pupil is no longer eligible for the special services and programs of instruction referred to in this section if the multidisciplinary team concludes that he no longer meets the criteria set forth in subsection 1.

4.] The multidisciplinary 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 him; [and]

(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 [.

(d)] ; *and*

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

[5.] 4. The conclusions of the multidisciplinary 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 pupil. The assessment 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.

[6.] 5. If the requirements of subsection [5] 4 are satisfied, the assessment of the pupil may include physical therapy, occupational therapy and an assessment of his:

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

Sec. 14. NAC 388.402 is hereby amended to read as follows:

388.402 1. A pupil is eligible for special services and programs of instruction if a multidisciplinary team, comprised of the persons described in subsection [4,] 3, concludes that he has a health impairment other than an orthopedic impairment which could reasonably be interpreted as adversely affecting the educational performance of a pupil. As used in this section, [health impairment] "*health impairment*" includes an illness which

causes a person to have limited strength, vitality or alertness, including, without limitation, heart conditions, tuberculosis, rheumatic fever, nephritis, asthma, sickle cell anemia, hemophilia, epilepsy, lead poisoning, leukemia or diabetes.

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. **[A pupil is no longer eligible for special services and programs of instruction referred to in this section if the multidisciplinary team concludes that he no longer meets the criteria set forth in subsection 1.**

4.] The multidisciplinary team must consist of:

- (a) A school psychologist;
- (b) A teacher of special education;
- (c) The regular teacher of the pupil, or, if none, a person qualified to teach him;
- (d) A school nurse or other person qualified to interpret an assessment of the health of the pupil; **[and]**

(e) *A parent of the pupil; and*

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

[5.] 4. The multidisciplinary team shall conduct an assessment of the pupil to determine whether he is eligible for special services and programs of instruction pursuant to this section. Such an assessment must:

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

[6.] 5. The assessment conducted pursuant to subsection [5] 4 may also include an evaluation 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. 15. 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 services and programs of instruction if a multidisciplinary team, comprised of the persons described in subsection [6,] 5, concludes that:

- (a) An impairment exists;
- (b) The pupil has demonstrated the ability to profit from speech and language therapy;

and

(c) The pupil requires a program of instruction, due to the nature or severity of his impairment, which is not feasible in his current educational setting because:

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

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

(3) His 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 his 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 his cognitive abilities and level of development; 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 his cognitive abilities and level of development;

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

(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 his voice, as indicated by the presence of two or more of the following conditions:

(1) Voice therapy is recommended by:

(I) A physician; or

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

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

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

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

(a) Manifests itself in his native language and in English; and

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

4. [A pupil is no longer eligible for the special services and programs of instruction referred to in this section if:

(a) The multidisciplinary team concludes that he no longer meets the criteria set forth in subsection 1; or

(b) The committee responsible for developing the pupil's individualized educational program concludes that he no longer requires the services or programs.

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

[6.] 5. The multidisciplinary team must consist of:

- (a) A speech and language specialist;
- (b) A regular classroom teacher;
- (c) If the pupil has another disability in addition to his speech and language

impairment, a special education teacher; [and]

(d) *A parent of the pupil; and*

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

[7.] 6. The conclusions of the multidisciplinary 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 pupil. The assessment must include an evaluation of:

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

(b) The health of the pupil; and

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

Sec. 16. NAC 388.407 is hereby amended to read as follows:

388.407 1. A pupil is eligible for special services and programs of instruction if a multidisciplinary team, comprised of the persons described in subsection 2, concludes that

he has a traumatic brain injury. [The pupil is no longer eligible for such services and programs of instruction if the multidisciplinary team determines that he no longer has a traumatic brain injury.]

2. The multidisciplinary 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 him;

(d) A specialist of speech and language;

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

[and]

(f) *A parent of the pupil; and*

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

3. In making a determination pursuant to subsection 1, the multidisciplinary 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 he acquired the injury.

4. In addition to the considerations required pursuant to subsection 3, the multidisciplinary team shall conduct an assessment of the pupil to determine whether he is eligible for special services and programs of instruction pursuant to this section. Such an assessment must evaluate 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. 17. NAC 388.410 is hereby amended to read as follows:

388.410 1. A pupil is eligible for special services and programs of instruction for the mildly mentally retarded if a multidisciplinary team, comprised of the persons described in subsections [6 and 7,] 5 and 6, concludes that:

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

(b) His adaptive behavior, in comparison with that of members of his chronological peer group, indicates that he is experiencing difficulty; and

(c) His academic achievement is generally consistent with his cognitive abilities and adaptive behavior.

2. A pupil is eligible for special services and programs of instruction for the moderately mentally retarded if the multidisciplinary team concludes that:

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

(b) His adaptive behavior, in comparison with that of members of his chronological peer group, indicates that he has markedly lower capabilities; and

(c) His academic achievement and speech and language development is generally consistent with his cognitive abilities and adaptive behavior.

3. A pupil is eligible for special services and programs of instruction for the severely mentally retarded if the multidisciplinary team concludes that:

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

(b) His adaptive behavior, in comparison with that of members of his chronological peer group, indicates that he has extensively lower capabilities; and

(c) His developmental functioning is generally consistent with his cognitive abilities and adaptive behavior.

4. A pupil is eligible for special services and programs of instruction for the profoundly mentally retarded if the multidisciplinary team concludes that:

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

(b) His adaptive behavior, in comparison with that of members of his chronological peer group, indicates that he has extremely limited capabilities; and

(c) His developmental functioning is generally consistent with his cognitive abilities and adaptive behavior.

5. [A pupil is no longer eligible for the special services and programs of instruction referred to in this section if:

(a) The multidisciplinary team concludes that he no longer meets the criteria set forth in subsection 1, 2, 3 or 4, whichever applies; or

(b) The committee responsible for developing the pupil's individualized educational program concludes that he has been successfully integrated into the regular education program without the support of specially designed instruction or specialized related services.

6.] The multidisciplinary team must consist of:

(a) A school psychologist;

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

(c) A speech and language specialist; [and]

(d) *A parent of the pupil; and*

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

- (1) Assessments of the health and adaptive behavior of the pupil; and
- (2) Information relating to the family of the pupil.

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

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

- (a) The principal of the school attended by the pupil;
- (b) A regular classroom teacher;
- (c) An occupational therapist;
- (d) A physical therapist; and
- (e) Any other specialist whose presence on the team is deemed appropriate.

[8.] 7. The conclusions of the multidisciplinary 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 pupil. The assessment must include an assessment of:

- (a) The cognitive abilities of the pupil;
- (b) The adaptive behavior 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. 18. NAC 388.415 is hereby amended to read as follows:

388.415 1. A pupil is eligible for special services and programs of instruction for the seriously emotionally disturbed if a multidisciplinary team, comprised of the persons described in subsection [5,] 4, concludes that:

- (a) The pupil exhibits one or more of the characteristics described in subsection 2;
- (b) These characteristics have been evident for at least 3 months;
- (c) The characteristics adversely affect the ability of the pupil to perform

developmental tasks appropriate to his age:

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

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

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

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

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

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

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

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

(c) A pervasive mood of unhappiness or depression.

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

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

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

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

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

4. [A pupil is no longer eligible for the special services and programs of instruction referred to in this section if:

(a) The multidisciplinary team concludes that he no longer meets the criteria set forth in subsection 1; or

(b) The committee responsible for developing the pupil's individualized educational program concludes that the pupil has been successfully placed in the regular program on a full-time basis.

5.] The multidisciplinary team must consist of:

(a) A school psychologist;

(b) A regular classroom teacher;

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

(d) *A parent of the pupil; and*

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

[6.] 5. The conclusions of the multidisciplinary 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 pupil. The assessment must include an evaluation 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 his current educational setting; and

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

[7.] 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. 19. NAC 388.420 is hereby amended to read as follows:

388.420 1. A pupil is eligible for special services and programs of instruction for pupils with specific learning disabilities if a multidisciplinary team, comprised of the persons described in subsection [6,] 5, concludes that:

(a) The pupil exhibits a deficit in auditory or visual discrimination, memory, association or perception, visual-motor integration, auditory-visual integration or any other essential learning process;

(b) Except as otherwise provided in subsection 4, the pupil exhibits a severe discrepancy between predicted and actual achievement in oral expression, comprehension in listening, mathematical calculation or reasoning, written expression, basic reading skills or comprehension in reading; and

(c) Pre-referral intervention strategies have not remedied the deficit.

2. If the identification of a deficit, of a kind described in subsection 1, is based upon one part of a test, the existence of the deficit must be confirmed by another assessment technique. If two or more assessment techniques give conflicting results concerning the existence of a deficit, the diagnosis of a deficit must be justified.

3. Except as otherwise provided in this subsection, the existence of a discrepancy between predicted and actual achievement 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 will 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.

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

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

5. [A pupil is no longer eligible for the special services and programs of instruction referred to in this section if:

(a) The multidisciplinary team concludes that he no longer meets the criteria set forth in subsection 1; or

(b) The committee responsible for developing the pupil's individualized educational program concludes that he:

(1) Has made sufficient progress in meeting the goals of his individualized educational program; and

(2) Has demonstrated his ability to function adequately, in view of his cognitive abilities, during a full-time trial placement in the regular program of not less than 9 nor more than 18 weeks.

6.] The multidisciplinary team must consist of:

(a) The regular teacher of the pupil or, if he does not have a regular teacher, a teacher qualified to teach a pupil of his age;

(b) A special education teacher or specialist with knowledge in the area of the suspected disability;

(c) A school psychologist; [and]

(d) *A parent of the pupil; and*

(e) One or more persons qualified, because of personal knowledge of the pupil, to interpret information relating to his health, family, and social and emotional condition.

This person may be, without limitation, an administrator, nurse, [parent,] school counselor, school psychologist or any other certificated or licensed professional.

[7.] 6. The conclusions of the multidisciplinary team concerning the eligibility of the pupil must be based upon an assessment of the pupil. The assessment must include:

(a) An evaluation of:

(1) The cognitive abilities of the pupil;

(2) The social and emotional condition of the pupil;

- (3) The academic achievement of the pupil;
- (4) The performance of the pupil in his current educational setting;
- (5) Any previous educational intervention on behalf of the pupil;
- (6) The health and developmental history of the pupil; and
- (7) The essential learning processing skills of the pupil; and

(b) An observation of the academic performance of the pupil in his classroom or, in the case of a pupil under school age, in an environment appropriate for a child of his age. This observation must be conducted by someone other than the regular teacher of the pupil.

[8.] 7. The multidisciplinary team must prepare a written report of its conclusions. The report must include:

- (a) A statement *as to* whether the pupil has a specific learning disability;
- (b) The basis for making that determination;
- (c) A description of the relevant behavior noted during the observation of the pupil;
- (d) A statement of the relationship of that behavior to the academic functioning of the pupil;
- (e) Any educationally relevant medical findings;
- (f) A statement *as to* whether there is a severe discrepancy between the predicted and actual achievement of the pupil which cannot be corrected without special education and related services;
- (g) The conclusion of the team concerning the effect upon the pupil of any environmental, cultural or economic disadvantage; and

(h) A certification by each member of the team that the report reflects his conclusions or, if the report does not reflect the conclusions of a member, a statement of the conclusions of that member.

Sec. 20. NAC 388.425 is hereby amended to read as follows:

388.425 1. A pupil who meets the requirements for eligibility set forth in NAC 388.410 for the mentally retarded is eligible for the special services and programs of instruction for persons with multiple impairments if a multidisciplinary team, comprised of the persons described in subsection [3,] 2, concludes that he meets the requirements for eligibility for any additional disabling condition, other than a specific learning disability, developmental delay or a speech and language impairment, set forth in NAC 388.330 to 388.440, inclusive.

2. [A pupil is no longer eligible for the special services and programs of instruction referred to in this section if the multidisciplinary team concludes that he no longer meets the criteria referred to in subsection 1.

3.] The multidisciplinary team must consist of:

(a) The persons described in subsection [6] 5 of NAC 388.410; and

(b) To the extent their presence on the team is not provided for by paragraph (a) of this subsection, the persons included on the team pursuant to:

(1) Subsections 6 and 7 [and 8] of NAC 388.390;

(2) Subsections 5 and 6 [and 7] of NAC 388.395;

(3) Subsection [4] 3 of NAC 388.400;

- (4) Subsection [5] 4 of NAC 388.415;
- (5) Subsection [4] 3 of NAC 388.402;
- (6) Subsection 2 of NAC 388.407; or
- (7) Subsection 2 of NAC 388.387,

whichever applies.

[4.] 3. The conclusions of the multidisciplinary 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 pupil. The assessment must include an assessment of:

- (a) The information described in subsection [8] 7 of NAC 388.410; and
- (b) To the extent its assessment is not provided for by paragraph (a) of this subsection,

the information included in the assessment pursuant to:

- (1) Subsections 8 and 9 [and 10] of NAC 388.390;
- (2) Subsections 7 and 8 [and 9] of NAC 388.395;
- (3) Subsections 4 and 5 [and 6] of NAC 388.400;
- (4) Subsection [6] 5 of NAC 388.415;
- (5) Subsections 4 and 5 [and 6] of NAC 388.402;
- (6) Subsections 3 and 4 of NAC 388.407; or
- (7) Subsection 3 of NAC 388.387,

whichever applies.

Sec. 21. 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 as developmentally delayed if a multidisciplinary team, comprised of the persons described in subsections 2 and 3, concludes that he demonstrates a delay of at least two standard deviations in one, or at least one standard deviation in two or more, of the following areas:

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

2. In a case governed by this section, the multidisciplinary 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; **[and]**

(c) *A parent of the pupil; and*

(d) One or more persons qualified, because of personal knowledge of the pupil, to interpret information relating to his health, family, and social and emotional condition.

This person may be, without limitation, an administrator, nurse, **[parent,]** school counselor, school psychologist or any other certificated or licensed professional.

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

4. The conclusions of the multidisciplinary team concerning the identification of the pupil as developmentally delayed must be based upon an assessment of the pupil. The assessment 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 as developmentally delayed if:

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

(b) He reaches the age of 6 *years* on or before September 30 of the current school year.

Sec. 22. NAC 388.440 is hereby amended to read as follows:

388.440 1. Except as otherwise provided in this [**subsection and in subsection 2,**] *section*, a pupil receiving special services and programs of instruction pursuant to NAC 388.330 to 388.440, inclusive, other than for the gifted and talented, must be reassessed at least once every 3 years. A reassessment must be conducted more frequently if conditions warrant or if a reassessment is requested, based upon a reasonable belief that a change in the condition of the pupil has occurred, by the parent or teacher of the pupil or any other member of the committee [**responsible for developing**] *that developed* the pupil's

individualized educational program [.] *pursuant to NAC 388.281. A pupil may not be reassessed without the written consent of his parents unless the public agency has taken reasonable measures to obtain parental consent but the parents have failed to respond.*

2. *If the members of the committee that developed a pupil's individualized educational program pursuant to NAC 388.281 and other qualified personnel determine that a reassessment is not necessary because the pupil continues to have a disability, the public agency shall notify the parents of the pupil of the determination and the reasons for it. The notice must include a statement informing the parents that they may request a reassessment. A pupil must be reassessed before a determination is made that the pupil no longer has a disability.*

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

[3.] 4. Each reassessment of a pupil must be conducted in the manner prescribed by the [appropriate multidisciplinary team] *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 reassessment also must comply with the requirements set forth in NAC 388.335.

[4.] 5. Upon the completion of the reassessment, the [multidisciplinary team] *committee that developed the individualized educational program for the pupil pursuant to*

NAC 388.281 shall issue a written report which includes a statement of any disability found to exist and the basis for any determination of continued eligibility. If the members of the **[multidisciplinary team]** *committee* disagree about the determination of eligibility, a minority report:

(a) Must be prepared if required by *paragraph (h)* of subsection **[8]** *7* of NAC 388.420;

and

(b) May be prepared in any other case.

Sec. 23. 1. This section and sections 1, 2, 3 and 5 to 22, inclusive, of this regulation become effective upon filing with the secretary of state.

2. Section 4 of this regulation becomes effective on July 1, 1998.