

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

LCB File No. R058-24

April 10, 2024

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

AUTHORITY: §§ 1-3, NRS 385.080, 385.113 and 388.419.

A REGULATION relating to education; revising requirements relating to the transition services which must be included in the individualized educational program of certain pupils with disabilities; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing federal law requires a school district to develop an individualized education program for the education of a pupil with a disability who attends a public school in the district. (20 U.S.C. § 1414) Existing regulations prescribe the required contents of and procedure for developing an individualized educational program. (NAC 388.281, 388.284) Under existing regulations, an individualized educational program developed for a pupil who is 14 years of age or older must include transition services, which existing regulations define to mean a coordinated set of activities designed to improve the academic and functional achievement of a pupil. Existing regulations require the transition services included in an individualized educational program developed for a pupil who is 14 years of age or older to include the courses of study of the pupil. If the pupil for whom an individualized educational program is developed is 16 years of age or older or will attain 16 years of age during the period in which the individualized educational program is in effect, existing regulations additionally require the transition services included in the individualized educational program to include transition services relating to certain postsecondary goals for the pupil. (NAC 388.133, 388.284) **Sections 1 and 3** of this regulation revise these requirements by requiring the transition services included in an individualized educational program developed for a pupil who is 14 years of age or older or who will attain 14 years of age during the period in which the individualized educational program is in effect to include the courses of study of the pupil and certain postsecondary goals for the pupil. **Sections 1 and 3** thereby establish uniform requirements for the transition services that must be included in the individualized educational program for all pupils who are 14 years of age or older or will attain 14 years of age during the period in which the individualized educational program is in effect. **Section 2** of this regulation makes a conforming change related to the revised requirements concerning transition services set forth in **sections 1 and 3**.

Section 1. NAC 388.133 is hereby amended to read as follows:

“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 ~~f, includes the courses of study of the pupil;~~
~~4. If the pupil is 16 years of age or older,;~~ or the pupil will attain ~~16~~ 14 years of age during the period in which the individualized educational program will be in effect, includes, without limitation:
 - (a) *The courses of study for the pupil;*
 - (b) Instruction;
 - ~~(b)~~ (c) Related services;
 - ~~(e)~~ (d) Community experiences;
 - ~~(d)~~ (e) 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)~~ (f) If appropriate, the acquisition of daily living skills and functional vocational evaluation;
- ~~5.~~ 4. Includes special education or related services if required to assist a pupil with a disability to benefit from special education; and

~~16.1~~ 5. Is carried out in accordance with the provisions of the pupil's individualized educational program, if applicable.

Sec. 2. NAC 388.281 is hereby amended to read as follows:

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

1. Before providing special education and related services for pupils with disabilities, 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 of the pupil or, if the pupil may participate in a regular educational environment, one regular classroom teacher;

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

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

~~——(2) Postsecondary~~ *postsecondary* goals and transition services for a pupil who is ~~†6†~~ *14* years of age or older or who will attain ~~†6†~~ *14* 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 ~~†6†~~ *14* years of age or older or who will attain ~~†6†~~ *14* years of age during the period in which the individualized educational program 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) 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 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 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.

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) 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) 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) Initiate and conduct additional meetings of the committees formed to develop each pupil's individualized educational program to identify alternative strategies to meet the transition

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 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 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., include in the notice to the parents of the pupil given pursuant to paragraph (b) of subsection 8 that, upon the request of the 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 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 paragraph (b) of 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 a parent's home or place of employment 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. If the reasonable efforts of the public agency to 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 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.

(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.

(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 appropriate in accordance with 34 C.F.R. § 300.324(b).

Sec. 3. NAC 388.284 is hereby amended to read as follows:

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

(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 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 ~~H6~~ 14 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)~~ *(f)* The projected dates for the initiation of the modifications and services described in paragraphs (c) to ~~(f)~~ *(e)*, inclusive, and the anticipated frequency, location and duration of such modifications and services.

~~(h)~~ *(g)* 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)~~ *(h)* 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.

~~(h)~~ (i) If the pupil is entering the public agency from another public agency, provisions relating to case management and transition between the public agencies, as appropriate.

~~(h)~~ (j) A statement of the other placements considered by the committee and, if the pupil will be removed from the regular educational environment, the reasons why the committee rejected a less restrictive placement.

~~(h)~~ (k) 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)~~ (l) 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, in the case of a pupil who is deaf or hard-of-hearing, consider, in accordance with the provisions of NRS 388.437, 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;

(f) Consider whether the pupil requires assistive technology devices and services; 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. *The committee may include a statement of transition services in the individualized educational program of a pupil to whom the requirements prescribed by paragraph (e) of subsection 1 do not apply if the committee determines that the statement is appropriate for the pupil.*

4. 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 educational program committee determines appropriate.

~~14.1~~ **5.** 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.

~~15.1~~ **6.** 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.