

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

LCB File No. R085-99

February 16, 2000

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

AUTHORITY: §§1-75, NRS 388.520.

Section 1. Chapter 388 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 14, inclusive, of this regulation.

Sec. 2. *“Classroom-based assessment” means an assessment of the academic work of a pupil produced in a classroom including, without limitation, samples of the pupil’s work, pupil portfolios, progress reports, reports of teachers, curriculum-based measurements, locally normed instruments and tests taken by the pupil which were created by the pupil’s teacher.*

Sec. 3. *“Day” means a calendar day.*

Sec. 4. *“Deaf-blindness” means concomitant hearing and visual impairments, the combination of which causes severe communication and other developmental and educational needs that cannot be accommodated in special education programs that are solely for pupils who are deaf or pupils who are blind.*

Sec. 5. *“General curriculum” means the goals and objectives defined by the public agency and the corresponding materials, equipment and instructional strategies to accomplish the educational functions of the public agency for all enrolled pupils.*

Sec. 6. *“Health impairment” means an impairment that limits the strength, vitality or alertness of the pupil, including, without limitation, a heightened alertness to environmental*

stimuli which results in limited alertness with respect to the educational environment and which:

1. Is caused by chronic or acute health problems such as asthma, attention deficit disorder or attention deficit hyperactivity disorder, childhood disintegrative disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, Rett's disorder and sickle cell anemia; and

2. Adversely affects the educational performance of the pupil.

Sec. 7. "Positive behavioral supports" means a process for integrating behavior analysis with person-center planning to design individualized interventions for pupils which focus on promoting positive changes in behavior and enhancing the overall quality of life for pupils in schools, homes and community environments without the use of negative or aversive means.

Sec. 8. "Supplementary aids and services" means aids, services and other supports that are provided in regular educational classes or other education-related settings to enable pupils with disabilities to be educated with pupils who are not disabled to the maximum extent appropriate.

Sec. 9. "Travel training" means instruction that:

1. Is provided to pupils with significant cognitive disabilities and to any other pupils with disabilities who require this instruction; and

2. Enables the pupils to:

(a) Develop an awareness of the environment in which the pupils live; and

(b) Learn the skills necessary to move effectively and safely from place to place within the environment.

Sec. 10. 1. *A parent may request an expedited hearing if the hearing is to resolve a dispute concerning:*

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

(b) A determination regarding the placement of a pupil pursuant to 20 U.S.C. § 1415(k) in an appropriate interim alternative educational setting.

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

(a) A determination regarding the placement of a pupil in an appropriate interim alternative educational setting pursuant to 20 U.S.C. § 1415(k), if the public agency determines that the current placement of the pupil is substantially likely to result in injury to the pupil or others; or

(b) An extension of the placement of a pupil in an interim alternative educational setting for:

(1) The duration of administrative proceedings relating to a determination described in paragraph (a) or (b) of subsection 1; or

(2) Forty-five days,

whichever is shorter.

3. *An expedited hearing must be conducted in accordance with the provisions of NAC 388.300 and 388.310, except that a request for an extension of time will not be granted.*

Sec. 11. 1. *A person may file a complaint with the superintendent stating that a public agency has violated a provision of the Individuals with Disabilities Education Act, 20 U.S.C. §§ 1400 et seq., or the regulations adopted pursuant thereto, or a provision of NAC 388.150 to*

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388.450, inclusive. The complaint must be in writing and must include the facts related to the alleged violation.

2. Within 60 days after receipt of the written complaint, the department shall investigate the allegations in the complaint and render its decision. If the department finds that the public agency has violated the federal or state requirements referenced in subsection 1, the department shall order the public agency to take actions to remediate the violation.

3. A public agency that receives an order pursuant to subsection 2 shall take the actions prescribed in the order and provide to the department documentation of all actions taken in accordance with the order.

Sec. 12. *1. If a pupil is experiencing an educational or behavioral difficulty but is not suspected of having a disability by the public agency, the public agency may attempt to remediate such a difficulty through a prior intervention.*

2. The public agency shall:

(a) Determine the type of intervention to be attempted, the process for monitoring progress, and the methods for evaluating the effectiveness of the intervention;

(b) Specify reasonable timelines for initiating, completing and evaluating the intervention; and

(c) Based in part on the results of the prior intervention, determine whether the pupil is suspected of having a disability and should be evaluated in accordance with NAC 388.330 to 388.440, inclusive.

3. During the period in which a prior intervention is being provided, a parent of the pupil may ask for an initial evaluation of the pupil if the parent suspects that the pupil has a disability and may qualify for special services and programs of instruction pursuant to NAC

388.330 to 388.440, inclusive. If the public agency suspects the pupil has a disability, the public agency shall not refuse to conduct the initial evaluation or delay the initial evaluation until the prior intervention is completed. If the public agency disagrees with the parent and does not suspect the pupil has a disability, it may refuse to conduct an evaluation. The public agency shall provide to the parent written notice of this refusal in accordance with NAC 388.300, and the parent may request mediation pursuant to NAC 388.305 or a hearing pursuant to NAC 388.300 to resolve the dispute.

4. If the public agency determines that the educational difficulty or behavior of the pupil is resistant to the prior intervention, or if the public agency determines that the prior intervention requires continued and substantial effort and may require the provision of special education and related services to be effective, the public agency shall conduct an initial evaluation of the pupil to determine whether the pupil is eligible for special education. Informed parental consent in accordance with subsection 1 of NAC 388.300 must be obtained before the public agency may conduct such an evaluation.

Sec. 13. *As part of an initial evaluation if data is available, and as part of any reevaluation, a group that includes the committee that developed or will develop the pupil's individualized educational program pursuant to NAC 388.281, the members of the eligibility team and any other qualified professionals appointed shall:*

- 1. Conduct a review of data from existing evaluations, including, without limitation:*
 - (a) Evaluations and information provided by the parents of the pupil;*
 - (b) Current classroom-based assessments and observations; and*
 - (c) Observations by teachers and related service providers; and*

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

(a) Whether the pupil has a particular category of disability, or, in case of a reevaluation of a pupil, whether the pupil continues to have such a disability;

(b) The present levels of performance and educational needs of the pupil;

(c) Whether the pupil needs special education and related services, or in the case of a reevaluation of a pupil, whether the pupil continues to need special education and related services; and

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

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The group may conduct its review without a meeting.

Sec. 14. *If the functional behavior of a pupil is assessed, the assessment must include:*

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

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

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

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

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

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

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

Sec. 15. NAC 388.001 is hereby amended to read as follows:

388.001 As used in this chapter, unless the context otherwise requires, the words and terms defined in NAC 388.005 to 388.141, inclusive, *and sections 2 to 9, inclusive, of this regulation*, have the meanings ascribed to them in those sections.

Sec. 16. NAC 388.015 is hereby amended to read as follows:

388.015 “Adaptive ~~[behavior” includes gross and fine motor skills, communication, self help, socialization, academic ability, daily living skills, vocational skills, leisure activities, recreational activities and community utilization.]~~ *skills” include communication, self-care, home living, social skills, community use, self-direction, health and safety, functional academics, leisure and work.*

Sec. 17. NAC 388.028 is hereby amended to read as follows:

388.028 “Autism” means a ~~disability~~ *spectrum disorder* which:

1. Significantly affects the verbal and nonverbal communication and social skills of a person and is often characterized by repetitive activities and stereotyped movements, resistance to changes in environment or daily routine and responding to sensory experiences in an unusual manner;
2. Is usually apparent before the age of 3 years; and
3. Adversely affects the educational performance of a pupil causing significant delays or irregular patterns in learning, or both.

FLUSH *The term includes, without limitation, a group of developmental disorders such as autistic disorder, aspeger’s disorder, atypical autism, pervasive developmental disorder and other disorders that share the characteristics described in subsections 1, 2 and 3.*

Sec. 18. NAC 388.033 is hereby amended to read as follows:

388.033 “Collaborative or consulting services” means the assistance provided by special education personnel *or other professionals* to regular *classroom* teachers regarding the assessment, teaching and evaluation of a pupil with a disability in a regular educational environment.

Sec. 19. NAC 388.055 is hereby amended to read as follows:

388.055 “Mental retardation” means a condition *that:*

1. Is characterized by ~~the possession of cognitive abilities which are significantly below average, with deficits in adaptive behavior and academic or developmental achievement.]~~ intellectual functioning at a level that is significantly below average, and which exists concurrently with related limitations in two or more of the following adaptive skill areas:

(a) Communication skills;

- (b) Self-care;*
 - (c) Home living;*
 - (d) Social skills;*
 - (e) Use of the community;*
 - (f) Self-direction;*
 - (g) Health and safety;*
 - (h) Functional academics;*
 - (i) Leisure; and*
 - (j) Work;*
- 2. Manifests before the age of 18 years; and*
 - 3. Adversely affects the educational performance of a pupil.*

Sec. 20. NAC 388.065 is hereby amended to read as follows:

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

Sec. 21. NAC 388.067 is hereby amended to read as follows:

388.067 “Orthopedic impairment” means ~~an~~ *a severe* impairment which adversely affects the ~~ability of a person to benefit from or participate in an educational program without special education.~~ *educational performance of a pupil and which results from:*

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

Sec. 22. NAC 388.071 is hereby amended to read as follows:

388.071 “Parent” means ~~fa parent, an adoptive parent, a guardian, a person who is performing the duties of a parent or a surrogate parent appointed pursuant to NAC 388.283.]~~ :

1. A natural or adoptive parent;

2. A guardian other than this state;

3. A person acting in the place of a parent;

4. A surrogate parent appointed pursuant to NAC 388.283; and

5. A foster parent, if:

(a) The natural parent’s authority to make educational decisions on the pupil’s behalf has been extinguished under state law; and

(b) The foster parent:

(1) Has an ongoing, long-term parental relationship with the pupil;

(2) Is willing to make the educational decisions required of parents pursuant to 20 U.S.C. §§ 1400 et seq.; and

(3) Has no interest that would conflict with the interests of the pupil.

Sec. 23. NAC 388.073 is hereby amended to read as follows:

388.073 “Participating agency” means any institution, entity or person that is likely to provide transition services to a pupil because ~~fit~~ *the services* will have an impact on the ~~pupil in his~~ *pupil’s* adult life.

Sec. 24. NAC 388.075 is hereby amended to read as follows:

388.075 “Performance in the current educational setting” means the behavioral and academic functioning of a pupil in the environment in which the majority of ~~his~~ *the pupil’s* education occurs.

Sec. 25. NAC 388.083 is hereby amended to read as follows:

388.083 ~~["Pre-referral]~~ ***"Prior*** intervention" means the ~~[services provided to a pupil before he is referred for special education. Such services may include, without limitation, providing alternative programs and methods of instruction to determine whether a referral is necessary.]~~ ***provision of an intervention to a pupil in a regular classroom before the public agency suspects that the pupil has a disability.***

Sec. 26. NAC 388.095 is hereby amended to read as follows:

388.095 "Regular classroom teacher" means a teacher ~~[having knowledge of]~~ ***who knows*** the developmental and curricular needs of ~~[pupils at the grade level which he teaches.]~~ ***the pupil and who is licensed to teach in the general education program.***

Sec. 27. NAC 388.101 is hereby amended to read as follows:

388.101 "Related services" has the meaning ascribed to it in 34 C.F.R. § ~~[300.16.]~~ ***300.24.***

Sec. 28. NAC 388.115 is hereby amended to read as follows:

388.115 "Special education" means instruction designed to meet the unique needs of a pupil with a disability at no cost to the parent, including, without limitation, instruction conducted in a classroom, at the pupil's home or in a hospital, institution or other ~~[place.]~~ ***setting.*** The term includes instruction in physical education ~~[.]~~ ***and includes speech and language services, travel training and vocational education if these services are specifically designed for instruction of the particular pupil to meet the needs of the pupil.***

Sec. 29. NAC 388.117 is hereby amended to read as follows:

388.117 "Specific learning disability" means a ~~[chronic condition, characterized by a deficit in essential learning processes and]~~ ***disorder in one or more of the basic psychological processes involved in understanding or using spoken or written language which is***

characterized by a severe discrepancy between predicted and actual academic achievement, which is not primarily the result of a visual, hearing or motor impairment, mental retardation, serious emotional disturbance, or an environmental, cultural or economic disadvantage. *The disorder may manifest itself in an imperfect ability to listen, think, speak, read, write, spell or perform mathematical calculations.*

Sec. 30. NAC 388.133 is hereby amended to read as follows:

388.133 “Transition services” ~~[has the meaning ascribed to it in 34 C.F.R. § 300.18.]~~

means a coordinated set of activities which:

1. Is designed within a process that is outcome-oriented and which promotes movement from school to post-school activities, including, without limitation, post-secondary 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; and

3. Includes, without limitation:

(a) Instruction;

(b) Related services;

(c) Community experiences;

(d) The development of employment and other objectives for living as an adult after the completion of school; and

(e) If appropriate, acquisition of daily living skills and functional vocational evaluation.

The term includes special education, if provided as specially designed instruction or related services, and if required to assist a pupil with a disability to benefit from special education.

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Sec. 31. NAC 388.145 is hereby amended to read as follows:

388.145 Any educational program for pupils with disabilities in this state , *including, without limitation, a program of special education in a private school that provides special education to a pupil who is placed in the private school by a public agency,* must be administered in accordance with the provisions of this chapter.

Sec. 32. NAC 388.195 is hereby amended to read as follows:

388.195 1. Except as otherwise provided in subsection ~~[2.]~~ **3**, any right accorded a parent *of a pupil* under the provisions of this chapter ~~[devolves upon his child when that child]~~ *transfers to the pupil when the pupil* attains the age of 18 years. ~~[In such a case, a parent may continue to participate in any meeting held pursuant to NAC 388.281 for the purpose of developing an individualized educational program for the child and have a right to access to the pupil's records pursuant to NAC 388.287.~~
~~—2.]~~ *The public agency shall notify the pupil and parent that a transfer of rights has occurred in accordance with this subsection.*

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

3. If the ~~[child]~~ *pupil* is adjudged incompetent and a guardian is appointed for ~~[him]~~ *the pupil* by a court of competent jurisdiction, any right which would otherwise ~~[devolve upon him]~~ *transfer to the pupil* pursuant to subsection 1 ~~[devolves upon his]~~ *transfers to the pupil's* guardian.

Sec. 33. NAC 388.215 is hereby amended to read as follows:

388.215 Each public agency shall take measures to ensure that every pupil with a disability who resides within the district is identified, ~~[assessed]~~ *evaluated* and served in the manner

appropriate to ~~his disability.~~ *the unique needs of the pupil.* These measures must include ~~+~~, *without limitation:*

1. The organization of a program for screening pupils within the jurisdiction of the public agency;
2. The posting or publication of public notices within the district concerning the program for screening and the availability of special services and programs of instruction for pupils with disabilities;
3. The establishment of procedures for the referral of pupils with disabilities to agencies of state and local government providing services for those pupils;
4. Communication with such agencies; and
5. The establishment of a system of records for the purpose of verifying:
 - (a) The implementation of the foregoing measures; and
 - (b) That each pupil identified as disabled is receiving services appropriate to ~~his~~ *the pupil's* disability.

Sec. 34. NAC 388.245 is hereby amended to read as follows:

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

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

FLUSH A pupil with a disability, including a pupil in a public or private institution or other care facility, must be educated with pupils who are not disabled to the maximum extent appropriate.

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

(a) Consultative and supplementary services provided with regular class placement; and

(b) Instructing the pupil in:

(1) A regular class;

(2) A special class;

(3) A special school;

(4) A community-based program;

(5) ~~His~~ *The pupil's* home;

(6) A hospital; or

(7) An institution.

3. In the case of a program of early childhood special education, the continuum of alternative placements required by subsection 2 may include, as appropriate:

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

(b) A home-based program;

(c) An itinerant consultant working with a community-based facility; or

(d) Instruction of the pupil in a hospital or institution.

FLUSH As used in this subsection, “center-based program” means a program in which a group of pupils receives services at a central location.

4. In developing a pupil's individualized educational program, the committee which develops the program shall provide for the least restrictive environment to the maximum extent appropriate. In making this determination, the committee shall consider any potential harmful effects on the pupil and the quality of services required by the pupil. The committee shall provide for the placement of the pupil in a regular class unless the committee determines that the pupil cannot receive an appropriate education in a regular class, even with ~~{special}~~ *supplementary* aids and services. The basis for any such determination must be clearly set forth in the individualized educational program of the pupil.

5. Unless ~~{his}~~ *the* needs or performance *of the pupil* preclude such participation, a pupil with a disability must be allowed to participate with pupils who are not disabled at mealtime, recess, or any other nonacademic or extracurricular activity occurring at school for the maximum extent appropriate. If a pupil with a disability is excluded from such participation because of ~~{his}~~ *the pupil's* needs or performance, the basis for the exclusion must be clearly set forth in the individualized educational program of the pupil.

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

Sec. 35. NAC 388.255 is hereby amended to read as follows:

388.255 ~~{Any}~~ *Except as otherwise provided in NAC 388.265, any* change in the placement of a pupil with a disability must be based upon:

1. The current individualized educational program of the pupil;
2. An assessment of the pupil made within the preceding 3 years; and
3. Information relating to the current educational performance of the pupil.

Sec. 36. 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]~~ *if such suspension, expulsion or exclusion results in a change of placement of the pupil* during any school year except upon compliance with the provisions of this section ~~[.]~~ *and 20 U.S.C. § 1415(k).*

2. Before initiating any suspension, expulsion or exclusion that will result in ~~[the removal of a pupil for more than 10 days during one school year,]~~ *a change of placement for the pupil*, the public agency shall convene a meeting of the 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.

FLUSH ~~[The committee and other qualified personnel, if any, shall determine whether the disciplinary problems of the pupil are associated with his disability and prepare]~~

3. *The committee and any other qualified personnel appointed by the public agency to meet with the committee shall:*

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

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

(2) Observations of the pupil; and

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

(b) Determine whether the behavior of the pupil was a manifestation of the pupil's disability. The committee and appointed personnel may determine that the behavior of the pupil is not a manifestation of the pupil's disability if the committee determines that:

(1) In relationship to the behavior subject to disciplinary action, the pupil's individualized educational program and placement were appropriate and the special education services, supplementary aids and services, and behavior intervention strategies were provided consistent with the pupil's individualized educational program and placement;

(2) The pupil's disability did not impair the ability of the pupil to understand the effect and consequences of the behavior subject to disciplinary action; and

(3) The pupil's disability did not impair the ability of the pupil to control the behavior subject to disciplinary action.

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

4. The public agency shall provide to a pupil with a disability who is suspended, expelled or excluded in a manner that constitutes a change of placement of the pupil, a free appropriate public education in accordance with the Individuals with Disabilities Education Act, 20 U.S.C. §§ 1400 et seq., on the 11th school day that a pupil is removed and during any subsequent school day in which the pupil is removed from school.

5. As used in this section:

(a) "Change of placement" has the meaning ascribed to it in 34 C.F.R. § 300.519.

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

Sec. 37. NAC 388.275 is hereby amended to read as follows:

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

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

Sec. 38. 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~~ *pupils* making the transition from programs operated pursuant to 20 U.S.C. §§ 1431 to 1445, inclusive, an individualized educational program must be developed and implemented by the ~~child's~~ *pupil's* third birthday. *An individualized family service plan may serve as the individualized educational program for pupils who are between 3 and 5 years of age if the agency complies with the provisions of 34 C.F.R. § 300.132. As used in this subsection, the*

term “individualized family service plan” has the meaning ascribed to it in 34 C.F.R. § 303.340(b).

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~~ **One** special education teacher who teaches the pupil, or if appropriate, one person who provides special educational services to the pupil;

(d) ~~One~~ **Except as otherwise provided in subsections 6 and 7, 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,] 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**~~

~~(g)] and who can interpret the instructional implications of the results of the evaluation;~~

(f) Except as otherwise provided ~~by~~ **in** subsection 8, if the committee is meeting to develop an individualized educational program which includes **needed** transition services, **or to consider**

the pupil's transition services needs, the pupil and a representative of the participating agency
~~+~~; and

(g) 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~~ *the parents or the representative of the public agency* 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) *Ensure that each regular classroom teacher, special education teacher, persons who provide related services, and any other provider of services to the pupil who is responsible for carrying out the pupil's individualized educational program has access to the pupil's individualized educational program and is informed of any specific responsibilities related to carrying out the pupil's individualized educational program;*

(d) *Ensure that each regular classroom teacher, special education teacher, persons who provide related services and any other provider of services to the pupil who is responsible for carrying out the pupil's individualized educational program is informed of any specific accommodation, modification or support that must be provided to the pupil in accordance with the pupil's individualized educational program;*

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

~~(d)~~ (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;

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

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

5. The public agency shall ~~[schedule]~~ :

(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 ~~[-.The public agency shall give]~~ ;

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

(c) *Inform the parents of their right to invite persons who have knowledge or special expertise regarding the pupil, including, without limitation, related service personnel, to participate as a member of the committee that will develop the pupil's individualized educational program;*

(d) *Provide the parents with a statement of parental rights; and*

(e) If *needed* transition services for a pupil , *transition services needs for a pupil or both needed transition services and transition services needs of a pupil* will be discussed at the meeting ~~[-, the pupil must be invited]~~ :

(1) Provide notice pursuant to paragraph (b) to the pupil and the parent and include in the notice to the pupil an invitation to the pupil to attend the meeting and include in the notice to the parent a statement that the pupil will be invited to attend the meeting ; and ~~[this purpose must be set forth specifically in the written.]~~

(2) Specifically state in the notice provided pursuant to paragraph (b) that needed transition services, transition services needs or both needed transition services and transition services needs, as applicable, will be discussed at the meeting.

FLUSH 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]~~ *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. 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 *to the parent's home or place of employment* 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 *needed* transition services , *transition services needs or both needed transition services and a statement of transition services needs,*

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 *needed* transition services, *transition services needs or both needed transition services and transition services needs* the public agency shall *use alternative methods to ascertain the preferences and interest of the pupil and* 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~~ *evaluation* made in accordance with NAC 388.330 to 388.440, inclusive.

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

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

Sec. 39. NAC 388.282 is hereby amended to read as follows:

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

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

at the meeting. If a representative is unable to attend the meeting, the public agency shall include ~~him~~ *the representative* with written or telephone communication.

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

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

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

Sec. 40. NAC 388.284 is hereby amended to read as follows:

388.284 1. ~~Except as otherwise provided in subsection 2, each~~ *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, related to meeting the needs of the pupil that result from ~~his~~ *the pupil's* 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~~ *the pupil's* disability.

(c) A statement of the specific special education, supplementary aids and services, and related services 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 curriculum;
- (3) Participate in extracurricular activities and other nonacademic activities; and
- (4) Participate with other ~~{children}~~ *pupils* with disabilities and ~~{children}~~ *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.

(e) If the pupil is 14 years of age or older, a statement of the needs of the pupil for 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) 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.}~~ *needed by the pupil, including, if appropriate, a statement of interagency responsibilities or any other linkages needed.* 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) to (f), inclusive, and the anticipated frequency, location and duration of such modifications and services.

(h) A statement that describes the method by which the progress of the pupil toward the annual goals will be measured and 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.~~ **public agency.** 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. ***The committee shall not base its determination of whether a pupil may participate in such examinations upon the fact that the pupil has already been labeled as having a disability, or upon the placement of the pupil or other categorical factors.***

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

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

(l) An explanation of the extent, if any, to which the pupil will not participate in a regular class or in extracurricular or 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~~ *the pupil* 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.~~

~~3.]~~ *When developing a pupil's individualized educational program, the committee shall:*

(a) If the behavior of the pupil impedes the learning of the pupil or other pupils, consider, if appropriate, strategies to address such behavior, including, without limitation, positive behavioral supports and interventions;

(b) 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;

(c) 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;

(d) Consider the communication needs of the pupil, and in the case of a pupil who is deaf or hard of hearing, consider the pupil's language and communication needs, opportunities for

direct communications with other pupils and professional personnel in the pupil's language and communication mode, academic level and full range of needs, including, without limitation, opportunities for direct instruction in the pupil's language and communication mode; and

(e) Consider whether the pupil requires assistive technology devices and services.

3. When developing a pupil's individualized educational program, the public agency:

(a) May include goals and objectives of the general curriculum in the individualized educational program of the pupil if the pupil's disability affects participation, involvement and progress in the general curriculum and if the individualized educational committee determines that the inclusion of such goals and objectives is appropriate for that pupil;

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

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

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

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

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

(4) The use of the least restrictive methods 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.

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

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

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

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

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

(d) Comply with the requirements of this chapter.

Sec. 41. NAC 388.287 is hereby amended to read as follows:

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

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

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

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

2. The parents may:

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

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

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

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

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

(a) Name of the person;

(b) Date access was given;

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

(d) List required by subsection 6.

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

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

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

Sec. 42. NAC 388.288 is hereby amended to read as follows:

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

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

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

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

long as the record or contested portion is maintained. If the records of the pupil are disclosed to any person, the explanation must also be disclosed.

3. A hearing held pursuant to subsection 2 must be conducted in accordance with the applicable procedures set forth in the Family Educational Rights and Privacy Act of 1974 ~~[(20 U.S.C. §§ 1221 note, 1232 (g))]~~, **20 U.S.C. § 1232g**, and the regulations adopted thereunder.

Sec. 43. NAC 388.289 is hereby amended to read as follows:

388.289 1. Each public agency shall:

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

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

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

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

2. Each public agency shall:

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

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

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

3. ~~{A public agency shall not disclose any confidential information on a pupil contained in educational files to any person who is not employed by the public agency, department or other authorized public agency without first obtaining the consent of the parents in writing.~~

~~—4.}~~ A public agency shall not disclose personally identifiable information except as authorized by law.

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

Sec. 44. NAC 388.290 is hereby amended to read as follows:

388.290 ~~{1.}~~ The facilities and the assignment of space to special programs for pupils with disabilities must be comparable to the facilities and space assigned for regular programs in the school. For the purposes of this subsection, “comparable” means substantially equivalent, giving consideration to lighting, acoustics, ventilation, furnishings, materials and the special needs of the pupils enrolled.

~~{2.—A permanent school building must be constructed to allow free access by pupils with disabilities.}~~

Sec. 45. NAC 388.292 is hereby amended to read as follows:

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

2. The notice must include:

- (a) A description of the extent to which the notice is given in the native languages of the various population groups in the state;
- (b) A description of the pupil on whom personally identifiable information is maintained;
- (c) The types of information sought;
- (d) A description of the methods and sources to be used in gathering the information;
- (e) The uses to be made of the information;
- (f) A summary of the policies and procedures to be followed regarding the storage, disclosure to any interested third parties, retention and destruction of personally identifiable information; and
- (g) A description of all of the rights of parents and pupils regarding this information, including , *without limitation*, the rights ~~under Section 438 of the General Education Provisions Act (20 U.S.C. §§ 1221 et seq.) and~~ *pursuant to* the Family Educational Rights and Privacy Act of 1974 ~~[(20 U.S.C. §§ 1221 note, 1232 (g)),]~~ *20 U.S.C. § 1232g*, and the related regulations.

Sec. 46. 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.)]~~ *informed written consent must be obtained from the parents of the pupil before conducting an initial evaluation or reevaluation and before special education and related services are initially provided to a pupil with a disability.* If a parent does not provide written consent for the ~~[(preplacement assessment)]~~ *initial evaluation, reevaluation* or the initial provision of special education, the public agency may request a hearing pursuant to this section.

2. ~~[(A)]~~ *Parental consent is not required:*

- (a) Before existing data is reviewed as part of an initial evaluation or reevaluation;*
- (b) Before a test or other assessment is administered to all pupils unless before administration of that test or assessment, consent is required of the parents of all pupils; or*
- (c) If the public agency demonstrates that it has taken reasonable measures to obtain consent for an additional assessment to be conducted as part of a reevaluation and the pupil's parents have failed to respond.*

3. *Except as otherwise provided in this subsection, a* public agency shall notify the parents of a pupil with a disability, other than a gifted and talented pupil, within a reasonable time before any proposed or refused action regarding the:

- (a) Placement of the pupil;
- (b) Identification or ~~assessment~~ *evaluation* of any special educational needs of the pupil; or
- (c) Provision of a free appropriate public education to the pupil. If a parent does not agree to the proposed or refused action of the public agency, the public agency or the parent may request mediation pursuant to NAC 388.305 or may request a ~~fair and impartial~~ hearing on the proposed action, or the parent may withhold the consent required by subsection 1, if that subsection applies.

~~3.3~~ 4. 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.]~~ 5. 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]~~ *that the parents have* rights in the matter, ~~[including his right to:~~

~~—(1) Obtain a hearing 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 if the parent is the prevailing party.~~

~~—5.]~~ *and if the notice is not notice of an initial referral for evaluation, the means by which a statement of parental rights can be obtained; and*

(g) Sources for parents to contact to obtain assistance in understanding the provisions of state and federal law relating to special education.

6. A public agency shall provide the parents of a pupil with a statement of parental rights:

(a) When the pupil is initially referred for evaluation;

(b) When notice of a meeting relating to the pupil's individualized educational program is provided to the parents;

(c) When the pupil is being reevaluated; and

(d) When the public agency receives a request for a hearing pursuant to this section from the parents.

FLUSH *The statement of parental rights must explain fully the procedural safeguards listed in 20 U.S.C. § 1415(d)(2) that are available to the parents and the procedures for filing a complaint pursuant to section 11 of this regulation.*

7. If the parent desires a hearing regarding the public agency's proposal or refusal, ~~the must:~~
~~—(a) Submit~~ *the parent must 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.]~~ *The request must include:*

(a) The name of the pupil;

(b) The address of the residence of the pupil;

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

(d) A description of the nature of the problem of the pupil relating to the public agency's proposal or refusal, including, without limitation, the facts relating to the problem; and

(e) A proposed resolution of the problem to the extent known and available to the parents at the time.

FLUSH *A public agency may not deny or delay a parent's right to a hearing pursuant to this section for failure to provide the request in the manner required pursuant to this section.*

8. Within 5 days after ~~he receives~~ *receipt of* a request pursuant to subsection ~~{5,}~~ 7, 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.

FLUSH The hearing officer appointed must not *have a conflict of interest or* be an employee of any public agency involved in the education or care of the pupil. For the purposes of this subsection, a person is not an employee of a public agency solely because the public agency compensates ~~{him for his}~~ *the person for the person's* services as a hearing officer.

~~{7,}~~ 9. Except as otherwise provided in this subsection, *NAC 388.265* or as the parties otherwise agree, the pupil must remain in ~~{his}~~ *the pupil's* current placement until completion of any administrative or judicial proceedings or a decision is rendered by the hearing officer or, if an appeal is taken pursuant to NAC 388.315, the review officer. If the hearing involves an application for the pupil's initial admission to a program of a public school, the pupil, with the consent of the parent, must be placed in a public school until the completion of all the proceedings. *If, in an appeal taken pursuant to NAC 388.315, the review officer agrees with the parents of the pupil that a particular change in the pupil's current placement is appropriate, the change in placement must be treated as an agreement between the public agency and the parents for the purposes of this subsection.*

Sec. 47. NAC 388.305 is hereby amended to read as follows:

388.305 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~~ *the parent's* 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. 48. 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 right to request a resolution of the dispute through a mediation process pursuant to NAC 388.305; and*

(d) Inform the parent of the provisions of this section.

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

(a) Be represented by counsel;

(b) Be accompanied by and advised by ~~[a person who has]~~ *persons who have* special knowledge of or training regarding the problems of pupils with disabilities;

(c) Present evidence;

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

(e) Cross-examine witnesses.

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

(a) Have the pupil present; and

(b) Have the hearing open to the general public.

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

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

(a) Evidence; or

(b) Evaluations, including recommendations based upon evaluations,

FLUSH 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]~~ *at the option of the* parent, by electronic means. The record must be made available to any party to the hearing.

7. The public agency shall take whatever action is necessary to ensure that the parent understands the written notice and the 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 council ~~[]~~ *of the department*. The findings and decisions must be available for public inspection after removing any personally identifiable information of the pupil.

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

10. The hearing officer shall base ~~[his]~~ *the* decision solely on the evidence presented at the hearing.

11. ~~[The]~~ *Except as otherwise provided in this subsection, the* hearing officer shall render ~~[his]~~ *the* findings of fact and decision in writing and mail a copy of the decision to the parties within 45 days after the date *on which* the head of the public agency *or the superintendent if the hearing is requested by a public agency*, receives the request for the hearing. ~~[The]~~ *Except as otherwise provided in section 10 of this regulation, the* hearing officer may extend the time for rendering a decision for a specific number of days upon the request of either party. ~~[Written]~~ *The written* findings of fact and decision must be made available to any party to the hearing. ~~[Upon the request]~~ *At the option* of a parent, ~~[electronic]~~ findings of fact and decision must be made available to the parent ~~[]~~ *by electronic means*.

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~~ *the hearing officer's* 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.

16. As used in this section, "business day" means Monday through Friday, excluding federal and state holidays.

Sec. 49. 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~~ *shall* conduct an impartial review of the hearing. The officer conducting the review ~~will~~ *shall*:

- (a) Examine the entire record of the hearing;
- (b) Ensure that the procedures at the hearing were consistent with the requirements of due process;
- (c) Seek any additional evidence necessary and, if a hearing is held to receive additional evidence, afford the parties the rights set forth in NAC 388.310;
- (d) Afford the parties an opportunity for oral or written argument, or both, at the discretion of the reviewing officer;

(e) Schedule any oral arguments at a time and place which is reasonably convenient to the parent and pupil involved;

(f) Make an independent decision on the completion of the review; and

(g) ~~{Mail}~~ *Except as otherwise provided in this paragraph, mail* copies of ~~{his}~~ *the* written findings and decision to the parties within 30 days after receipt of a written request for review. The review officer may extend the time for rendering a decision for a specific number of days upon the request of either party. *At the option of the parent, the findings of fact and decision must be made available to the parent by electronic means.*

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

3. A party may appeal from the decision of the review officer by initiating a civil action in a court of competent jurisdiction within 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 council *of the department* after removing any personally identifiable information of the pupil. The findings and decisions must be available for public inspection.

Sec. 50. NAC 388.330 is hereby amended to read as follows:

388.330 Any person responsible for ~~{making a diagnostic decision}~~ *administering or interpreting an assessment* pursuant to NAC 388.330 to 388.440, inclusive, must:

1. Possess a license or certificate in the area of ~~{his}~~ *the person's* professional discipline; and

2. Be trained in the area of assessment in question.

Sec. 51. NAC 388.337 is hereby amended to read as follows:

388.337 1. Except as otherwise provided by subsection 2, when a public agency determines that good cause exists to ~~assess~~ *evaluate* a pupil pursuant to NAC 388.330 to 388.440, inclusive, it shall conduct the initial ~~assessment~~ *evaluation* within:

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

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

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

2. Upon the request of a public agency, the superintendent ~~of public instruction~~ may extend the deadline for conducting ~~assessments~~ *initial evaluations* for not more than 15 school days.

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

Sec. 52. 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 *or controlling* 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;~~ *skills* 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]~~ *the pupil's family, the pupil's* teacher or a test of aptitude or achievement.

2. *In making a determination of the eligibility of the pupil for special services and programs of instruction pursuant to NAC 388.330 to 388.440, inclusive, a pupil may not be determined to be a pupil with disability if the controlling factor for such a determination is the pupil's lack of instruction in reading or math or limited proficiency in English.*

3. *The public agency must evaluate a pupil with a disability pursuant to NAC 388.330 to 388.440, inclusive, before determining that the pupil is no longer a pupil with a disability.*

4. Any decision of ~~[a multidisciplinary]~~ *the eligibility* team concerning the eligibility of a pupil for special services and programs of instruction pursuant to NAC 388.330 to 388.440, inclusive ~~;~~

~~—(a) Must]~~, *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.]~~ *The public agency shall provide a copy of the report and any other documentation relating to the determination of the pupil's eligibility pursuant to this section to the parents of the pupil.*

5. If the members of the ~~[multidisciplinary]~~ *eligibility* team disagree about the determination of eligibility, a minority report must be prepared if required by paragraph (h) of subsection ~~[7]~~ **6** of NAC 388.420 and may be prepared in any other case.

Sec. 53. NAC 388.345 is hereby amended to read as follows:

388.345 1. An individually administered, standardized test of cognitive ability must be used in assessing the cognitive abilities of a pupil with a disability. If a score other than the total score of the pupil on such a test is used to assess ~~[his]~~ *the pupil's* cognitive abilities, the

procedure must be justified, on the basis of professionally recognized criteria, in the records of the pupil maintained by the public agency.

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

Sec. 54. NAC 388.350 is hereby amended to read as follows:

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

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

FLUSH A pupil may not be ~~[diagnosed as seriously emotionally disturbed]~~ *identified as a pupil with serious emotional disturbance* unless a variety of these techniques is used to assess ~~[his]~~ *the* social and emotional condition ~~[.]~~ *of the pupil.*

2. Any ~~[diagnostic decision concerning]~~ *interpretation of* an assessment of social and emotional condition must be made by a psychologist or another certified or licensed mental health professional.

Sec. 55. NAC 388.360 is hereby amended to read as follows:

388.360 1. If the adaptive ~~[behavior]~~ *skills* of a pupil with a disability ~~[is]~~ *are* assessed, the person conducting the assessment must use a validated adaptive ~~[behavioral]~~ *behavior* scale.

The assessment must include an assessment of any six or more of the following:

- ~~(a) [Gross and fine motor function.~~
- ~~—(b) Communication.~~
- ~~—(c) Self help.~~
- ~~—(d) Socialization.~~
- ~~—(e) Academic achievement.~~
- ~~—(f) Daily living.~~
- ~~—(g) Vocational skills.~~
- ~~—(h) Leisure and recreational activities.~~
- ~~—(i) Community utilization.]~~ *Communication;*
- (b) Self-care;*
- (c) Home living;*
- (d) Social skills;*
- (e) Community use;*
- (f) Self-direction;*
- (g) Health and safety;*
- (h) Functional academics; and*

(i) *Leisure and work.*

2. Any ~~[diagnostic decision concerning]~~ *interpretation of* an assessment of adaptive ~~[behavior]~~ *skills* must be made by a person qualified to assess adaptive ~~[behavior]~~ *skills* through the use of an adaptive ~~[behavioral]~~ *behavior* scale.

Sec. 56. NAC 388.365 is hereby amended to read as follows:

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

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

FLUSH of the pupil.

2. Any ~~[diagnostic decision concerning]~~ *interpretation of* an assessment of health must be made by a person qualified to assess the condition in issue.

Sec. 57. NAC 388.370 is hereby amended to read as follows:

388.370 1. If the speech, ~~[and]~~ language *or other communication skills* of a pupil with a disability are assessed, the assessment may include:

- (a) The use of a standardized test of speech ~~[and language;]~~, *language or other communication skills;*
- (b) An interview of the pupil or of any person having personal knowledge of the pupil;
- (c) An observation of the pupil; and

(d) The use of information from a parent or teacher of the pupil.

2. Any ~~{diagnostic decision concerning}~~ *interpretation of* an assessment of speech, ~~{and}~~ language *or other communication skills* must be made by a speech and language specialist.

Sec. 58. NAC 388.375 is hereby amended to read as follows:

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

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

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

3. Any ~~{diagnostic decision concerning}~~ *interpretation of* an assessment of academic achievement must be made by a person qualified to administer individually standardized tests of academic achievement to pupils.

Sec. 59. NAC 388.380 is hereby amended to read as follows:

388.380 1. If the performance of a pupil with a disability in ~~{his}~~ *the pupil's* current educational setting is assessed, the assessment may include:

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

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

3. Any ~~[diagnostic decision concerning]~~ *interpretation of* an assessment of performance in the current educational setting must be made by one or more members of the ~~[multidisciplinary]~~ *eligibility* team having personal knowledge of the performance of the pupil.

Sec. 60. 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]~~ *if the eligibility* team, comprised of the persons set forth in subsection 2, determines that ~~[he]~~ *the pupil* has autism.

2. The ~~[multidisciplinary]~~ *eligibility* team must consist of:

(a) A school psychologist.

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

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

(d) A specialist of speech and language.

(e) A parent of the pupil.

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

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

~~—(a) Health;~~

~~—(b)] evaluation must:~~

(a) Assess the:

(1) Health and medical status;

(2) Developmental history ~~;~~

~~—(c)] , including, without limitation, the rate and sequence of development and a clear statement of strengths and weaknesses;~~

(3) Cognitive abilities;

~~[(d)]~~ *(4) Social and emotional condition ~~;~~*

~~—(e)] in multiple settings;~~

(5) Academic achievement;

~~[(f) Adaptive behavior; and~~

~~—(g) Language and motor skills;]~~

(6) Adaptive skills; and

(7) Speech, language and other communication skills;

FLUSH of the pupil ~~;~~ *and*

(b) Consider the:

(1) Sensory regulation;

(2) Self-help and independent living skills;

(3) Behavior problems;

- (4) *Symbolic and imaginative play;*
- (5) *Activities and special interests; and*
- (6) *Motor skills;*

FLUSH *of the pupil.*

Sec. 61. NAC 388.390 is hereby amended to read as follows:

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

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

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

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

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

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

- (a) The pupil has the ability, if aided, to hear and understand most spoken words;
 - (b) The hearing mechanism of the pupil, though defective, is sufficiently functional with or without the use of a hearing aid to allow a receptive flow of information; and
 - (c) The pupil has an average hearing threshold level of 30 decibels or more.
3. A pupil with a hearing impairment *who is deaf or hard of hearing* is eligible for ~~the~~ special services and programs of instruction ~~for the deaf or hard of hearing, as appropriate, if the multidisciplinary~~ *if the eligibility* team concludes that ~~he~~ *the pupil* meets the criterion set forth in paragraph (c) of subsection 1 or paragraph (c) of subsection 2, whichever applies, notwithstanding ~~his~~ *the pupil's* failure to meet the other criteria set forth in subsection 1 or 2.
4. A pupil with a hearing impairment *who has deaf-blindness* is eligible for ~~the~~ special services and programs of instruction ~~for the deaf and blind if the multidisciplinary~~ *if the eligibility* team concludes that ~~he~~ *the pupil* meets the criteria set forth in subsection 1, 2 or 3, whichever applies, and the criteria set forth in NAC 388.395.
5. A pupil under the age of 6 years is not ineligible, because of ~~his~~ *the pupil's* age, for the special services and programs of instruction referred to in this section.
6. The ~~multidisciplinary~~ *eligibility* team may include a teacher or specialist in the field of hearing impairment and must consist of a parent of the pupil and not fewer than three persons with expertise in one or more of the following areas:
- (a) Audiology or the interpretation of an audiological report.
 - (b) Hearing impairment.
 - (c) The interpretation of an assessment of:
 - (1) Health.
 - (2) Communication skills and disorders.

(3) Academic achievement.

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

(a) A regular classroom teacher.

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

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

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

(b) An assessment of the:

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

(2) Academic achievement of the pupil; and

(3) Speech and language of the pupil.

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

Sec. 62. NAC 388.395 is hereby amended to read as follows:

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

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

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

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

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

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

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

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

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

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

- (a) Vision.
- (b) Vision impairment.
- (c) The interpretation of an assessment of health or academic achievement.

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

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

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

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

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

Sec. 63. NAC 388.400 is hereby amended to read as follows:

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

2. To determine whether an orthopedic impairment adversely affects ~~[a pupil’s ability to be educated,]~~ *the pupil’s educational performance*, an analysis must be conducted of ~~[his]~~ *the pupil’s* impairment to determine whether he can function in a regular classroom.

3. The ~~[multidisciplinary]~~ *eligibility* team must consist of:

(a) A school nurse or other person qualified to interpret an assessment of the health of the pupil;

(b) A regular classroom teacher of the pupil, or, if none, a person qualified to teach ~~[him;]~~ *the pupil.*

(c) A parent of the pupil;

(d) One of the following:

(1) A physical therapist;

(2) An occupational therapist; or

(3) Any other specialist whose presence on the team is deemed appropriate; and

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

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

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

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

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

Sec. 64. 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 ~~fa~~ ~~multidisciplinary~~ *the eligibility* team, comprised of the persons described in subsection 3, concludes that ~~he~~ *the pupil* has a health impairment other than an orthopedic impairment which could reasonably be interpreted as adversely affecting the educational performance of a pupil.

~~[As used in this section, "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. The ~~{multidisciplinary}~~ *eligibility* team must consist of:

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

4. The ~~{multidisciplinary}~~ *eligibility* team shall conduct an ~~{assessment}~~ *evaluation* of the pupil to determine ~~{whether he is eligible}~~ *eligibility* for special services and programs of instruction pursuant to this section. Such an ~~{assessment}~~ *evaluation* must:

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

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

- (a) Developmental history;
- (b) Cognitive abilities;

- (c) Social and emotional condition;
- (d) Academic achievement; and
- (e) Language and motor skills,

FLUSH of the pupil.

Sec. 65. 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}~~ *the eligibility* team, comprised of the persons described in subsection 5, concludes that:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) Voice therapy is recommended by:

(I) A physician; or

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

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

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

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

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

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

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

5. The ~~multidisciplinary~~ *eligibility* team must consist of:

- (a) A speech and language specialist;
- (b) A regular classroom teacher;
- (c) If the pupil has another disability in addition to ~~{his}~~ *the pupil's* speech and language impairment, a special education teacher;
- (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, school counselor, school psychologist or any other certificated or licensed professional.

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

- (a) The performance of the pupil relating to language, articulation, fluency or voice, as relevant to ~~{his}~~ *the pupil's* impairment;
- (b) The health of the pupil; and
- (c) If relevant to ~~{his}~~ *the pupil's* eligibility for the special services and programs of instruction referred to in this section, the cognitive abilities, academic achievement, and social and emotional condition of the pupil.

Sec. 66. 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}~~ *the eligibility* team, comprised of the persons described in subsection 2, concludes that ~~{he}~~ *the pupil* has a traumatic brain injury.

2. The ~~{multidisciplinary}~~ *eligibility* team must consist of:

- (a) A school psychologist;
- (b) A teacher of special education or a person with a specialized knowledge of traumatic brain injuries;
- (c) The regular teacher of the pupil, or, if none, a person qualified to teach ~~{him;}~~ *the pupil*;
- (d) A specialist of speech and language;
- (e) A school nurse or other person who is qualified to assess the health of the pupil;
- (f) A parent of the pupil; and
- (g) One or more persons with sufficient knowledge of the pupil to interpret information relating to ~~{his}~~ *the* social, emotional, developmental and familial condition ~~{}~~ *of the pupil*. Such persons may include an administrator of the school, a nurse, a counselor, a school psychologist or any other certificated or licensed professional.

3. In making a determination pursuant to subsection 1, the ~~{multidisciplinary}~~ *eligibility* team shall consider, without limitation:

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

4. In addition to the considerations required pursuant to subsection 3, the ~~{multidisciplinary}~~ *eligibility* team shall conduct an ~~{assessment}~~ *evaluation* of the pupil to determine whether ~~{he}~~ *the pupil* is eligible for special services and programs of instruction pursuant to this section.

Such an ~~{assessment must evaluate}~~ *evaluation must assess* the:

- (a) Health;

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

FLUSH of the pupil.

Sec. 67. NAC 388.410 is hereby amended to read as follows:

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

(a) ~~[His]~~ *The* measured cognitive abilities ~~[.]~~ *of the pupil*, as determined by an acceptable individual standardized test, are at least two standard deviations below the mean score for that test;

(b) ~~[His adaptive behavior,]~~ *The adaptive skills of the pupil*, in comparison with ~~[that]~~ *those* of members of ~~[his]~~ *the pupil's* chronological peer group, ~~[indicates that he]~~ *indicate that the pupil* is experiencing difficulty; and

(c) ~~[His]~~ *The* academic achievement *of the pupil* is generally consistent with ~~[his]~~ *the* cognitive abilities and adaptive ~~[behavior.]~~ *skills of the pupil.*

2. A pupil *with moderate mental retardation* is eligible for special services and programs of instruction ~~[for the moderately mentally retarded if the multidisciplinary]~~ *if the eligibility* team concludes that:

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

(b) ~~His adaptive behavior,~~ *The adaptive skills of the pupil*, in comparison with ~~{that}~~ *those* of members of ~~his~~ *the pupil's* chronological peer group, ~~indicates that he~~ *indicate that the pupil* has markedly lower capabilities; and

(c) ~~His~~ *The* academic achievement and speech and language development *of the pupil* is generally consistent with ~~his~~ *the* cognitive abilities and adaptive ~~behavior,~~ *skills of the pupil*.

3. A pupil *with severe mental retardation* is eligible for special services and programs of instruction ~~{for the severely mentally retarded if the multidisciplinary}~~ *if the eligibility* team concludes that:

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

(b) ~~His adaptive behavior,~~ *The adaptive skills of the pupil*, in comparison with ~~{that}~~ *those* of members of ~~his~~ *the pupil's* chronological peer group, ~~indicates that he~~ *indicate that the pupil* has extensively lower capabilities; and

(c) ~~His~~ *The* developmental functioning *of the pupil* is generally consistent with ~~his~~ *the* cognitive abilities and adaptive ~~behavior,~~ *skills of the pupil*.

4. A pupil *with profound mental retardation* is eligible for special services and programs of instruction ~~{for the profoundly mentally retarded if the multidisciplinary}~~ *if the eligibility* team concludes that:

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

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

(c) ~~His~~ *The* developmental functioning *of the pupil* is generally consistent with ~~his~~ *the* cognitive abilities and adaptive ~~behavior,~~ *skills of the pupil*.

5. The ~~multidisciplinary~~ *eligibility* team must consist of:

(a) A school psychologist;

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

(c) A speech and language specialist;

(d) A parent of the pupil; and

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

(1) Assessments of the health and adaptive ~~behavior,~~ *skills* of the pupil; and

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

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

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

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

(b) A regular classroom teacher;

- (c) An occupational therapist;
- (d) A physical therapist; and
- (e) Any other specialist whose presence on the team is deemed appropriate.

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

- (a) The cognitive abilities of the pupil;
- (b) The adaptive ~~{behavior}~~ *skills* of the pupil, including prevocational and vocational assessments if appropriate;
- (c) The health of the pupil, including a developmental history;
- (d) The academic achievement of the pupil; and
- (e) The performance of the pupil relating to speech and language.

Sec. 68. NAC 388.415 is hereby amended to read as follows:

388.415 1. A pupil *with a serious emotional disturbance* is eligible for special services and programs of instruction ~~{for the seriously emotionally disturbed if a multidisciplinary}~~ *if the eligibility* team, comprised of the persons described in subsection 4, concludes that:

- (a) The pupil exhibits one or more of the characteristics described in subsection 2;
- (b) These characteristics have been evident for at least 3 months;
- (c) The characteristics adversely affect the ability of the pupil to perform developmental tasks appropriate to ~~{his}~~ *the pupil's* age:

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

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

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

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

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

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

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

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

(c) A pervasive mood of unhappiness or depression.

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

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

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

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

FLUSH 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~~ *eligibility*

team concludes, based upon an ~~[assessment]~~ *evaluation* of the pupil, that ~~[he]~~ *the pupil* meets the criteria of eligibility set forth in NAC 388.330 to 388.440, inclusive.

4. The ~~[multidisciplinary]~~ *eligibility* team must consist of:

(a) A school psychologist;

(b) A regular classroom teacher;

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

(d) A parent of the pupil; and

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

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

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

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

(c) The performance of the pupil in ~~[his]~~ *the pupil's* current educational setting; and

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

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

Sec. 69. NAC 388.420 is hereby amended to read as follows:

388.420 1. A pupil *with specific learning disabilities* is eligible for special services and programs of instruction ~~[for pupils with specific learning disabilities if a multidisciplinary]~~ *if the eligibility* team, comprised of the persons described in subsection ~~{5,}~~ **4**, 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,]~~ **3**, 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]~~

(b) *Prior* 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.]~~ *discrepancy.*

2. 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]~~ *shall* prescribe this formula on the basis of consultation with an

appropriate representative of each public agency affected. In the case of a pupil under the age of 6 years, a discrepancy may be identified through the use of one or more tests of language concepts or academic readiness skills.

~~[4.]~~ *The discrepancy between predicted and actual achievement must be corroborated by classroom-based assessment.*

3. 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~~ *the pupil's* 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.—The multidisciplinary]~~

4. *The eligibility* team must consist of:

- (a) The regular *classroom* teacher of the pupil or, if ~~he~~ *the pupil* does not have a regular teacher, a teacher qualified to teach a pupil of ~~his~~ *the pupil's* age;
- (b) A special education teacher or specialist with knowledge in the area of the suspected disability;
- (c) A school psychologist;
- (d) A parent of the pupil; and
- (e) One or more persons qualified, because of personal knowledge of the pupil, to interpret information relating to ~~his~~ *the pupil's* health, family, and social and emotional condition. This

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

~~{6.}~~ 5. The conclusions of the ~~{multidisciplinary}~~ *eligibility* team concerning the eligibility of the pupil must be based upon an ~~{assessment}~~ *evaluation* of the pupil. The ~~{assessment}~~ *evaluation* must include:

(a) An ~~{evaluation}~~ *assessment* 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}~~ *the pupil's* current educational setting;
- (5) Any previous educational intervention on behalf of the pupil; *and*
- (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}~~ *the pupil's* classroom or, in the case of a pupil under school age, in an environment appropriate for a child of ~~{his}~~ *the pupil's* age. This observation must be conducted by someone other than the regular *classroom* teacher of the pupil.

~~{7.—The multidisciplinary}~~

6. *The eligibility* 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]~~ *the member's* conclusions or, if the report does not reflect the conclusions of a member, a statement of the conclusions of that member.

7. A reevaluation regarding the continuing existence of a severe discrepancy between predicted and actual achievement may be made based upon information other than the statistically valid formula prescribed by the department pursuant to subsection 2.

Sec. 70. NAC 388.425 is hereby amended to read as follows:

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

2. The ~~[multidisciplinary]~~ *eligibility* team must consist of:

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

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

(1) Subsections 6 and 7 of NAC 388.390;

(2) Subsections 5 and 6 of NAC 388.395;

(3) Subsection 3 of NAC 388.400;

(4) Subsection 4 of NAC 388.415;

(5) Subsection 3 of NAC 388.402;

(6) Subsection 2 of NAC 388.407; or

(7) Subsection 2 of NAC 388.387,

FLUSH whichever applies.

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

(a) The information described in subsection 7 of NAC 388.410; and

(b) To the extent its assessment is not provided for by paragraph (a) of this subsection, the information included in the assessment pursuant to:

(1) Subsections 8 and 9 of NAC 388.390;

(2) Subsections 7 and 8 of NAC 388.395;

(3) Subsections 4 and 5 of NAC 388.400;

(4) Subsection 5 of NAC 388.415;

(5) Subsections 4 and 5 of NAC 388.402;

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

(7) Subsection 3 of NAC 388.387,

FLUSH whichever applies.

Sec. 71. 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~~ *with a developmental delay if the eligibility* team, comprised of the persons described in subsections 2 and 3, concludes that he demonstrates a delay of at least two standard deviations in one, or at least one standard deviation in two or more, of the following areas:

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

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

- (a) A special education teacher or specialist in the field of early childhood education;
- (b) A licensed school psychologist or a licensed or certified psychologist with documented training in the assessment of preschool pupils with disabilities;
- (c) A parent of the pupil; and
- (d) One or more persons qualified, because of personal knowledge of the pupil, to interpret information relating to ~~his~~ *the pupil's* health, family, and social and emotional condition. This person may be, without limitation, an administrator, nurse, school counselor, school psychologist or any other certificated or licensed professional.

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

4. The conclusions of the ~~{multidisciplinary}~~ *eligibility* team concerning the identification of the pupil ~~{as developmentally delayed}~~ *with a developmental delay* must be based upon an ~~{assessment}~~ *evaluation* of the pupil. The ~~{assessment}~~ *evaluation* must include an assessment of the health, developmental functioning, and social and emotional condition of the pupil.

5. In a case governed by this section, a pupil may no longer be identified ~~{as developmentally delayed}~~ *with a developmental delay* if:

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

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

Sec. 72. NAC 388.435 is hereby amended to read as follows:

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

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

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

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

FLUSH

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

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

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

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

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

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

Sec. 73. NAC 388.440 is hereby amended to read as follows:

388.440 1. Except as otherwise provided in this 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~~ *reevaluated* at least once every 3 years. A

~~[reassessment]~~ *reevaluation* must be conducted more frequently if conditions warrant or if a ~~[reassessment]~~ *reevaluation* 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 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, *including, without limitation, members of the eligibility team*, determine *in accordance with section 13 of this regulation* that ~~[a reassessment is not necessary because]~~ *no additional data is needed to determine whether* the pupil continues to have a disability, the public agency shall notify the parents of the pupil of the ~~[determination]~~ *public agency's decision not to conduct additional assessments* and the reasons for ~~[it.]~~ *the decision*. 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.]~~ *that an assessment be conducted*.

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

4. Each ~~[reassessment]~~ *reevaluation* of a pupil must be conducted in the manner prescribed by the committee that developed the individualized educational program for the pupil pursuant to NAC 388.281 and other qualified personnel in accordance with the needs of the pupil. Such a

~~[reassessment]~~ *reevaluation* also must comply with the requirements set forth in *subsection 2 of NAC 388.300 and NAC 388.330, 388.335 ~~[.]~~ and 388.340.*

5. Upon the completion of the ~~[reassessment, the committee that developed the individualized educational program for the pupil pursuant to NAC 388.281]~~ *reevaluation, the eligibility team* shall issue a written report which includes a statement of any disability found to exist and the basis for any determination of continued eligibility. ~~[If the members of the committee disagree about the determination of eligibility, a minority report:~~

~~—(a) Must be prepared if required by paragraph (h) of subsection 7 of NAC 388.420; and~~

~~—(b) May be prepared in any other case.]~~

6. *A pupil must be reevaluated before a determination is made that the pupil no longer has a disability.*

Sec. 74. NAC 388.450 is hereby amended to read as follows:

388.450 1. A parent may request a public agency to pay for an additional, independent ~~[assessment]~~ *evaluation* of a pupil if the parent disagrees with the results of an ~~[assessment]~~ *evaluation* obtained by the department ~~[of education]~~ or the public agency. The public agency ~~[may]~~ *must, without unnecessary delay, either* request a hearing pursuant to NAC 388.300 if it believes that its ~~[assessment]~~ *evaluation* of the pupil is appropriate ~~[.]~~, *or ensure that an independent evaluation is provided at public expense.*

2. If at ~~[such]~~ a hearing *conducted pursuant to NAC 388.300*, the hearing officer decides that an additional, independent ~~[assessment]~~ *evaluation* is *necessary because the agency's evaluation was not* appropriate, the public agency shall pay for ~~[it.]~~ *the evaluation.* If the hearing officer decides that the ~~[assessment is not]~~ *evaluation is not necessary because the*

agency's evaluation was appropriate, the parent may obtain the additional ~~[assessment at his own]~~ *independent evaluation at the parent's personal* expense.

3. If the parent so requests, the public agency shall provide ~~[him]~~ *the parent* with information as to where an independent ~~[assessment]~~ *evaluation* may be obtained ~~[.]~~ *and the requirements of the agency relating to independent evaluations as set forth in subsection 6.*

4. If ~~[the parent obtains an independent assessment at his]~~ *an independent evaluation is obtained at the parent's* personal expense ~~[.]~~ *or at public expense,* the public agency shall consider the results of the ~~[assessment]~~ *evaluation* in any decision made with respect to the provision of a free appropriate public education. The results may be presented as evidence at a hearing regarding that pupil.

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

6. Whenever an independent ~~[assessment]~~ *evaluation* is obtained at the public agency's expense, the circumstances under which the ~~[assessment]~~ *evaluation* is obtained, including the location of the ~~[assessment]~~ *evaluation* and the qualifications of the examiner must be the same as the public agency uses when it initiates an ~~[assessment.]~~ *evaluation. Except as otherwise provided in this subsection, a public agency may not impose conditions or timelines on obtaining an independent evaluation at public expense.*

Sec. 75. NAC 388.355 is hereby repealed.

TEXT OF REPEALED SECTION

388.355 Assessment of information-processing skills.

1. If the essential learning processing ability of a pupil with a disability is assessed, the assessment must include the use of:

- (a) A standardized test which is designed; or
- (b) One or more portions of a standardized test which is statistically validated,

to measure such skills.

2. Any diagnostic decision concerning an assessment of information-processing skills must be made by a person qualified to administer and interpret tests of the kind described in this section.