

LCB File No. R085-99

PROPOSED REGULATION OF THE STATE BOARD OF EDUCATION

NOTICE OF INTENT

Notice of Hearing for the Adoption of Regulations of the Nevada State Board of Education/Nevada State Board for Occupational Education

The Nevada State Board of Education/Nevada State Board for Occupational Education will hold a public hearing on **Thursday, August 12, 1999** at the **Department of Education, Board Room 101, 700 East Fifth Street, Carson City.** The time for the public hearing has been scheduled as follows:

11:15 a.m. Public hearing on Proposed Revisions to Regulation, NAC 388, Special Education (First of Two Public Hearings)

The purpose of the hearing is to receive comments from all interested persons regarding the proposed revisions to regulation language that pertain to **Chapter 388** of the Nevada Administrative Code.

The purpose of the proposed revision is to address changes to federal law related to special education.

There is no anticipated economic effect of the regulation on the business that the agency regulates. There are no known adverse effects. The beneficial, immediate and long term effects will be to have state regulation consistent with federal requirements.

There is no anticipated economic effect on the public. There is no estimated cost for enforcement to the regulating agency.

The federal law affecting the proposed regulations is the Individuals with Disabilities Education Act, as amended March 12, 1999. There is no duplication of federal language. There is no duplication or overlap of state or local government agencies. The proposed regulations do not establish any new fees nor increase an existing fee of the regulating agency.

Persons wishing to comment upon the proposed action of the Nevada State Board of Education/Nevada State Board for Occupational Education may appear at the scheduled public hearing or may address their comments, data, views or arguments, in written form to the Nevada Department of Education, 700 East Fifth Street, Carson City, Nevada 89701-5096. Written submissions must be received by Department of Education **on or before August 4, 1999**. The following statement applies for hearings noticed above for possible Board adoption.: If no person who is directly affected by the proposed action appears to request time to make an oral presentation, the Nevada State Board of Education/Nevada State Board for Occupational Education may proceed immediately to act upon any written submissions.

A copy of this notice and the proposed regulation will be on file at the Nevada State Library Archives, 100 Stewart Street, Carson City, Nevada, for inspection by members of the public during business hours. Additional copies of the notice and the proposed regulation will be available at the Nevada Department of Education, 700 East Fifth Street, Carson City, 89701-5096, and in all counties at the main public library, for inspection and copying by members of the public during business hours. This notice and the text of the proposed regulation are also available at the State of Nevada Register of Administrative Regulations which is prepared and published monthly by the Legislative Counsel Bureau pursuant to NRS 233b.0653, and on the Internet at <http://www.leg.state.nv.us>. Copies of this notice and the proposed regulation will also be mailed to members of the public upon request. A reasonable fee may be charged for copies if it is deemed necessary.

Upon adoption of any regulation, the agency, if requested to do so by an interested person, either before adoption or within 30 days thereafter, will issue a concise statement of the principal reasons for and against its adoption and incorporate therein its reasons for overruling the consideration urged against its adoption.

This notice has been filed at the following locations: The office of the Nevada Department of Education in Carson City and Las Vegas, at the 17 Nevada School District Superintendents' Offices, the 17 county main public libraries, and at the Nevada State Library and Archives.

7/12/99

**STATE BOARD OF EDUCATION
STATE BOARD FOR OCCUPATIONAL EDUCATION**

RULES FOR PUBLIC TESTIMONY

1. In accordance with NRS 233B.060, the Board, before adopting, amending or repealing any permanent or temporary regulations shall give at least 30 days of notice.
2. The Board will endeavor to hold public hearings on its intended action in two separate locations. The Board does reserve the right to hold only one hearing. A public hearing held by video telecommunication, allowing access at two separate locations, will be considered as two hearings. Also, under NRS 233B.060, the board has the authority to promulgate emergency regulations which expire and then must go through the regular public hearing process.
3. All persons wishing to submit written testimony for a public hearing of the Board should do so at least five (5) working days before the scheduled public hearing.
4. Written submissions should be sent to the Board Secretary, State Board of Education, Department of Education, 700 East Fifth Street, Carson City, Nevada 89701-5096. All materials will be duplicated for distribution to the Board members.
5. Persons wishing to give oral testimony at the public hearing should sign in at the meeting on the cards provided and submit the card to the Board secretary.
6. Each person giving oral testimony is asked to provide a single page abstract of comments, if possible.
7. The Board President, at the time of the public hearing, may ask a person to condense their testimony so that all persons wishing to speak will have the opportunity. Time limits on testimony may be placed at the discretion of the Board President.

Adopted 3/21/93

PROPOSED REGULATION OF THE STATE BOARD OF EDUCATION

EXPLANATION - Matter in italics is new; matter in brackets ~~+~~ is material to be omitted.

AUTHORITY: §§1-23, NRS 388.520.

Section 1. Chapter 388 of NAC is hereby amended as follows:

CHAPTER 388 SPECIAL INSTRUCTIONAL SERVICES AND PROGRAMS

GENERAL PROVISIONS

- 388.001 Definitions.
- 388.005 "Academic achievement" defined.
- 388.015 "Adaptive ~~behavior~~ skills" defined.
- 388.023 "Assistive technology device" defined.
- 388.024 "Assistive technology service" defined.
- 388.028 "Autism" defined.
- 388.XXX** *"Business day" defined.*
- 388.XXX** *"Classroom-based assessment" defined*
- 388.031 "Cognitive abilities" defined.
- 388.033 "Collaborative or consulting services" defined.
- 388.XXX** *"Day" defined.*
- 388.XXX** *"Deaf blindness" defined.*
- 388.035 "Department" defined.
- 388.041 "Developmental functioning" defined.
- 388.XXX** *"Extended school year" defined.*
- 388.XXX** *"General curriculum" defined.*
- 388.043 "Gifted and talented" defined.
- 388.045 "Health" defined.
- 388.XXX** *"Health impairment" defined.*
- 388.047 "Hearing impairment" defined.
- 388.055 "Mental retardation" defined.
- 388.065 "Multiple impairments" defined.
- 388.067 "Orthopedic impairment" defined.
- 388.071 "Parent" defined.
- 388.073 "Participating agency" defined.
- 388.075 "Performance in the current educational setting" defined.
- 388.XXX** *"Positive behavior supports" defined*
- 388.083 "~~Pre-referral~~ **Prior** intervention" defined.

--4--

Agency Draft of Proposed Regulation R085-99

- 388.085 "Previous educational intervention" defined.
- 388.091 "Program of instruction" defined.
- 388.092 "Public agency" defined.
- 388.093 "Pupil with a disability" defined.
- 388.095 "Regular classroom teacher" defined.
- 388.101 "Related services" defined.
- 388.XXX "School day" defined.**
- 388.105 "Serious emotional disturbance" defined.
- 388.111 "Social and emotional condition" defined.
- 388.115 "Special education" defined.
- 388.117 "Specific learning disability" defined.
- 388.121 "Speech and language" defined.
- 388.125 "Speech and language impairment" defined.
- 388.131 "Superintendent" defined.
- 388.XXX "Supplementary aids and services" defined.**
- 388.133 "Transition services" defined.
- 388.XXX "Transition services for early childhood" defined.**
- 388.XXX "Travel training" defined.**
- 388.134 "Traumatic brain injury" defined.
- 388.135 "Unit" defined.
- 388.141 "Visual impairment" defined.
- 388.145 Educational programs for pupils with disabilities must comply with chapter.

ADMINISTRATION OF PROGRAMS FOR PUPILS WITH DISABILITIES
AND GIFTED AND TALENTED PUPILS

- 388.150 Maximum number of cases per teacher in unit; maximum size of class; exceptions.
- 388.165 Required licensing of teachers; exception.
- 388.180 Length of school day.
- 388.195 Rights of ~~child~~ *pupil* who attains age of majority.
- 388.215 Measures to identify, assess and serve pupils with disabilities.
- 388.245 Restrictions on placement of pupil with disability; continuum of alternative placements; annual determination of placement of pupil.
- 388.255 Basis for change in placement of pupil with disability.
- 388.265 Suspension, expulsion or exclusion of pupil with disability.
- 388.275 Development of interim individualized educational program.
- 388.281 Development, implementation, review and revision of individualized educational program.
- 388.282 Placement of pupil with disability in private school or facility.
- 388.283 Appointment of surrogate parent for pupil with disability.
- 388.284 Contents of individualized educational program.
- 388.287 Inspection and review of educational records of pupil.
- 388.288 Amendment of educational records; hearing.
- 388.289 Confidentiality of records.
- 388.290 Required facilities and space.
- 388.292 Notice of project to identify, locate or assess pupils or educational data.
- 388.294 Monitoring of units and programs.
- 388.296 Reports to department concerning programs and units.
- 388.300 Parental consent required; notice to parents of proposed or refused action; procedures for resolution of disputes.
- 388.305 Resolution of dispute by mediation.
- 388.XXX** *Expedited hearing.*
- 388.310 Resolution of dispute by hearing.
- 388.315 Appeal from decision of hearing officer.

DETERMINATION OF ELIGIBILITY FOR PLACEMENT OF PUPILS WITH DISABILITIES
AND GIFTED AND TALENTED PUPILS

- 388.330 Credentials required to make diagnostic decision.
- 388.335 Tests and devices for assessment.
- 388.377 Deadlines for conducting initial assessments.
- 388.XXX *Determination of needed evaluation data.***
- 388.340 Decisions concerning placement or eligibility.
- 388.345 Assessment of cognitive abilities.
- 388.350 Assessment of social and emotional condition.
- 388.355 Assessment of information-processing skills.
- 388.360 Assessment of adaptive ~~{behavior}~~ *skills*.
- 388.365 Assessment of health.
- 388.370 Assessment of speech ~~{and}~~ language *or other communication skills*.
- 388.375 Assessment of academic achievement.
- 388.380 Assessment of performance in current educational setting.
- 388.385 Assessment of previous educational intervention.
- 388.XXX *Assessment of functional behavior.***
- 388.387 Eligibility of pupil with autism.
- 388.390 Eligibility of pupil with hearing impairment.
- 388.395 Eligibility of pupil with visual impairment.
- 388.400 Eligibility of pupil with orthopedic impairment.
- 388.402 Eligibility of pupil with health impairment other than orthopedic impairment.
- 388.405 Eligibility of pupil with speech and language impairment.
- 388.407 Eligibility of pupil with traumatic brain injury.
- 388.410 Eligibility of *pupil with* mentally retardation ~~{ed pupil}~~.
- 388.415 Eligibility of *pupil with* emotional~~{y}~~ disturbance~~{ed}~~ ~~{pupil}~~.
- 388.420 Eligibility of pupil with specific learning disabilities.
- 388.425 Eligibility of pupil with multiple impairments.
- 388.430 Identification of certain pupils ~~{as}~~ *with* developmental~~{y}~~ delays ~~{ed}~~.
- 388.435 Eligibility of *pupils who are* gifted and talented ~~{pupil}~~.
- 388.440 Periodic ~~{reassessment}~~ *reevaluation* of pupil.
- 388.450 Independent ~~{assessment}~~ *evaluation* of pupil.

GENERAL PROVISIONS

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

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

NAC 388.005 "Academic achievement" defined. Except as otherwise provided in this section, "academic achievement" means the possession of basic reading skills and skills relating to oral expression, listening comprehension, written expression, reading comprehension, mathematics calculation and mathematics reasoning. In the case of a pupil under the age of 6, the term means academic readiness and the mastery of language concepts.

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

NAC 388.015 "Adaptive ~~behavior~~ skills" defined. "Adaptive ~~behavior~~ skills" includes ~~gross and fine motor skills~~, communication, self-~~help~~ care, ~~socialization, academic ability, daily living skills, vocational skills, leisure activities, recreational activities and community utilization~~ *home living, social skills, community use, self-direction, health and safety, functional academics, leisure, and work.* (Added to NAC by Bd. of Education, eff. 7-14-88)

NAC 388.023 "Assistive technology device" defined. "Assistive technology device" has the meaning ascribed to it in 34 C.F.R. § 300.5.

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

NAC 388.024 "Assistive technology service" defined. "Assistive technology service" has the meaning ascribed to it in 34 C.F.R. § 300.6.

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

NAC 388.028 "Autism" defined. "Autism" means a *spectrum disorder* ~~disability~~ which:

1. Refers to a group of developmental disorders such as Autistic Disorder, Asperger's Disorder, and Pervasive Developmental Disorder not otherwise specified (including Atypical Autism) that share certain characteristics;

~~1~~2. 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~~3. Is usually apparent before the age of 3 years; and

~~3~~4. Adversely affects the educational performance of a pupil causing significant delays or irregular patterns in learning, or both.

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

NAC 388.XXX “Business day” defined. “Business day” means Monday through Friday, except for federal and state holidays.

NAC 388.XXX “Classroom-based assessment” defined. “Classroom-based assessment” includes any form of academic work produced by the student in a classroom setting. These examples of performance become part of the data collected to assist in determining the student’s current levels of academic achievement in comparison to peers of the same age or grade level. Such forms of informal assessment may include, but are not limited to work samples, student portfolios, progress reports, teacher reports, curriculum-based measurements, and locally normed instruments.

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

NAC 388.033 "Collaborative or consulting services" defined. "Collaborative or consulting services" means the assistance provided by special education personnel *or other professionals* to regular *classroom* teachers regarding the assessment, teaching and evaluation of a pupil with a disability in a regular educational environment.
(Added to NAC by Bd. of Education, eff. 11-23-93)

NAC 399.XXX “Day” defined. “Day” means calendar day unless otherwise indicated as business day or school day.

NAC 388.XXX “Deaf blindness” defined. “Deaf blindness” means concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational needs that they cannot be accommodated in special education programs solely for pupils with deafness or pupils with blindness.

NAC 388.035 "Department" defined. "Department" means the department of education.
(Added to NAC by Bd. of Education, eff. 7-14-88)

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

NAC 388.XXX “Extended school year” defined. “Extended school year” means special education and related services that:

- 1. Are provided to a pupil with a disability beyond the normal school year of the public agency in accordance with the pupil’s individualized educational program and at no cost to the parents of the pupil; and*
- 2. Meet the State standards.*

NAC 388.XXX “General curriculum” defined. “General curriculum” means the goals and objectives defined by the local education agency, and the corresponding materials, equipment,

and/or instructional strategies to accomplish the educational functions of the agency for the enrolled students.

NAC 388.043 "Gifted and talented" defined. "Gifted and talented" means a person who possesses or demonstrates outstanding ability in one or more of the following:

1. General intelligence;
2. Academic aptitude in a specific area;
3. Creative thinking;
4. Productive thinking;
5. Leadership;
6. The visual arts; or
7. The performing arts.

(Added to NAC by Bd. of Education, eff. 9-13-91)

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

NAC 388.XXX "Health impairment" defined. "Health impairment" means having limited strength, vitality or alertness, including a heightened alertness to environment stimuli, that results in limited alertness with respect to the educational environment, that:

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

2. Adversely affects a pupil's educational performance.

NAC 388.047 "Hearing impairment" defined. "Hearing impairment" means an impairment of the hearing mechanism which affects sound integration and prevents or delays the normal development of speech and language.

(Added to NAC by Bd. of Education, eff. 7-14-88; A 11-23-93)-(Substituted in revision by NAC 388.025)

NAC 388.055 "Mental retardation" defined. "Mental retardation" means *significantly sub-average general intellectual functioning, existing concurrently with related limitations in two or more of the following applicable adaptive skill areas: communication, self-care, home living social skills, community use, self-direction, health and safety, functional academics, leisure and work. Mental retardation manifests before age 18 and adversely affects a pupil's educational performance.* ~~[a condition characterized by the possession of cognitive abilities which are significantly below average, with deficits in adaptive behavior and academic or developmental achievement.]~~

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

NAC 388.065 "Multiple impairments" defined. "Multiple impairments" means the occurrence of mental retardation with another disability, the combination of which causes severe educational ~~[problems]~~ *needs* for the pupil.

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

NAC 388.067 "Orthopedic impairment" defined. "Orthopedic impairment" means ~~[an impairment which adversely affects the ability of a person to benefit from or participate in an educational program without special education.]~~ *a severe orthopedic impairment that adversely affects a pupil's educational performance. The term includes impairments caused by congenital anomaly (e.g., clubfoot, absence of some member, etc.), impairments caused by disease (e.g., poliomyelitis, bone tuberculosis, etc.), and impairments from other causes (e.g., cerebral palsy, amputations, and fractures or burns that cause contractures).*

(Added to NAC by Bd. of Education, eff. 7-14-88; A 11-23-93)-(Substituted in revision by NAC 388.081)

NAC 388.071 "Parent" defined. "Parent" means *a natural or adoptive parent, a guardian but not the State if the child is a ward of the State, a person acting in the place of a parent, or a surrogate parent.* ~~[a 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.]~~ *A foster parent may act as a parent if:*

1. The natural parent's authority to make educational decisions on the pupil's behalf has been extinguished under state law; and

2. The foster parent:

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

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

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

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

NAC 388.073 "Participating agency" defined. "Participating agency" means any institution, entity or person that is likely to provide transition services to a pupil because ~~[it]~~ *the services* will have an impact on the pupil's ~~[in his]~~ adult life. (Added to NAC by Bd. of Education, eff. 11-23-93)

NAC 388.075 "Performance in the current educational setting" defined. "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.

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

NAC 388.XXX “Positive behavior supports” defined. “Positive behavior supports” means an intervention that integrates behavior analysis with person-centered planning. It is a process for designing individualized interventions focusing on promoting important positive behavior changes, as well as enhancing overall quality of life for persons in schools, homes, and community environments without the use of negative or aversive means.

NAC 388.083 "~~Pre-referral~~ **Prior** intervention" defined. "~~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 interventions in regular classrooms prior to a determination that a pupil is suspected of having a disability.**

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

NAC 388.085 "Previous educational intervention" defined. "Previous educational intervention" means a strategy, developed on the basis of individual need, designed to have a remediate effect upon any academic or behavioral difficulties of a pupil. The term does not include disciplinary procedures applied to a group of pupils unless, giving consideration to the individual needs of a pupil, such procedures are demonstrably more appropriate than other strategies.

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

NAC 388.091 "Program of instruction" defined. "Program of instruction" means a program of related or other educational services provided to a pupil with a disability.

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

NAC 388.092 "Public agency" defined. "Public agency" means any school district or other governmental entity responsible for providing education to a pupil with a disability.

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

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

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

NAC 388.095 "Regular classroom teacher" defined. "Regular classroom teacher" means a teacher having knowledge of the developmental and curricular needs of **the** pupil~~s~~, **and who is licensed to teach in the general education program.** ~~{at the grade level which he teaches.}~~

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

NAC 388.101 "Related services" defined. "Related services" has the meaning ascribed to it in 34 C.F.R. § 300.~~16~~.**24.**

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

NAC 388.XXX “School Day” defined. “School Day” means any day, including a partial day, that pupils are in attendance at school for instructional purposes, unless otherwise specified.

NAC 388.105 "Serious emotional disturbance" defined. "Serious emotional disturbance" means a severe emotional disorder that:

1. Is exhibited by a person for at least 3 months;
2. Adversely affects academic performance; and
3. Includes one or more of the following:
 - (a) An inability to learn which is not caused by an intellectual, sensory or health factor;
 - (b) An inability to engage in or to maintain interpersonal relationships with peers and teachers;
 - (c) Inappropriate behavior or feelings;
 - (d) A general and pervasive mood of unhappiness or depression;
 - (e) A physical symptom associated with a personal or academic problem; or
 - (f) The expression of fears regarding personal or academic problems.

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

NAC 388.111 "Social and emotional condition" defined. "Social and emotional condition" means the present thoughts, feelings and interactive behavior of a person.

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

NAC 388.115 "Special education" defined. "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~~ *settings*. The term includes instruction in physical education, *speech and language services, travel training, and vocational education*.

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

NAC 388.117 "Specific learning disability" defined. "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 in using spoken or written language. The disorder may manifest itself in imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations. The pupil exhibits* 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.

(Added to NAC by Bd. of Education, eff. 7-14-88; A 11-23-93)-(Substituted in revision by NAC 388.051)

NAC 388.121 "Speech and language" defined. "Speech and language" means skills relating to articulation, phonology, receptive language, expressive language, syntax, semantics, morphology, fluency and the use of the voice.

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

NAC 388.125 "Speech and language impairment" defined. "Speech and language impairment" means a disorder relating to language, articulation, fluency or the use of the voice which:

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

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

NAC 388.131 "Superintendent" defined. "Superintendent" means the superintendent of public instruction.

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

NAC 388.XXX "Supplementary aids and services" defined. "Supplementary aids and services" means aids, services, and other supports that are provided in regular education 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.

NAC 388.133 "Transition services" defined. "Transition services" *means a coordinated set of activities that:*

1. Is designed within an outcome oriented process that promotes movement from school to post-school activities, including post-secondary education, vocational training, integrated employment, continuing and adult education, adult services, independent living, or community participation,

2. Is based on the individual pupil's needs, taking into account the student's preferences and interests, and

3. Includes:

(a) Instruction;

(b) Related services;

(c) Community experiences;

(d) The development of employment and other post-school adult living objectives; and

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

4. Transition services for pupils with disabilities may be special education, if provided as specially designed instruction, or related services, if required to assist a pupil with a disability to benefit from special education.

~~[has the meaning ascribed to it in 34 C.F.R. § 300.18.]~~

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

NAC 388.XXX “Transition services for early childhood” defined. “Early childhood transition services” for pupils participating in early intervention programs pursuant to 20 U.S.C. §§ 1431 to 1445, inclusive, and who will participate in preschool programs for pupils ages three through five years, means a coordinated set of activities that:

- 1. Is designed to ensure that the transition is smooth and effective.*
- 2. Ensures that by the third birthday of the pupil, an Individualized Family Service Plan or an Individualized Education Program has been developed and is being implemented for the pupil consistent with the applicable NAC 388 provisions.*
- 3. Includes participation of the local education agency in transition planning conferences arranged by the designated lead agency of the infant and toddlers program under 20 U.S.C. §§ 1431-1445..*

NAC 388.XXX “Travel training” defined. “Travel training” means providing instruction, as appropriate to pupils with significant cognitive disabilities, and any other pupils with disabilities who require this instruction, to enable them to:

- 1. Develop an awareness of the environment in which the pupils live; and*
- 2. Learn the skills necessary to move effectively and safely from place to place within the environment.*

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

1. Cognitive abilities;
2. Speech;
3. Language;
4. Information processing;
5. Memory;
6. Attention;
7. Reasoning;
8. Abstract thinking;
9. Judgment;
10. Problem solving abilities;
11. Sensory, perceptual and motor skill abilities;

12. Psychosocial behavior; and

13. Physical functions,

of a person. The term does not include injuries to the brain that are congenital or degenerative or which are induced by trauma during birth.

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

NAC 388.135 "Unit" defined. "Unit" means a special education program unit as defined in subsection 3 of NRS 387.1211.

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

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

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

NAC 388.145 Educational programs for pupils with disabilities must comply with *this* chapter. Any educational program for pupils with disabilities in this state must be administered in accordance with the provisions of this chapter, *including private programs when pupils are placed in the private program by the public agencies.*

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

**ADMINISTRATION OF PROGRAMS FOR PUPILS WITH DISABILITIES
AND GIFTED AND TALENTED PUPILS**

NAC 388.150 Maximum number of cases per teacher in unit; maximum size of class; exceptions.

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

- ~~—(a) The hearing impaired, moderately mentally retarded or orthopedically impaired is 20.~~
- ~~—(b) The gifted and talented is 65.~~
- ~~—(c) The deaf and blind is 4.~~
- ~~—(d) Pupils with specific learning disabilities is 24.~~
- ~~—(e) The mildly mentally retarded is 24.~~
- ~~—(f) The severely or profoundly mentally retarded is 12.~~
- ~~—(g) Pupils with speech and language impairments is 60.~~
- ~~—(h) Pupils with speech and language impairments who are in a self-contained language program is 12.~~
- ~~—(i) Pupils with multiple impairments, serious emotional disturbances or traumatic brain injuries is 15.~~
- ~~—(j) Pupils with visual impairments is 16.~~
- ~~—(k) Pupils with orthopedic impairments or a health impairment described in subsection 1 of NAC 388.402 who are confined at home or in a hospital is 10 per week, or 14 per week if a teacher's aide is used in the unit.~~
- ~~—(l) Pupils in an early childhood program that is an integrated or self-contained center-based program is 24.~~
- ~~—(m) Pupils who are autistic is 12.~~
- ~~—(n) Pupils with a health impairment described in subsection 1 of NAC 388.402 is 20.~~

(a) School-age pupils placed in programs for mild to moderate disabilities who receive instruction provided by a generalist and who receive special education services through consultative, resource, or any combination of service delivery methods:

- (1) Pupils with specific learning disabilities is 22.*
- (2) Pupils with serious emotional disturbance is 22.*
- (3) Pupils with mild mental retardation is 22.*

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

- (1) Pupils with specific learning disabilities is 20.*
- (2) Pupils with serious emotional disturbance is 15.*
- (3) Pupils with moderate mental retardation is 20.*
- (4) Pupils with severe to profound mental retardation is 12.*

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

- (1) *Pupils with hearing impairments is 20.*
- (2) *Pupils with multiple impairments is 15.*
- (3) *Pupils with deaf-blindness is 4.*
- (4) *Pupils with orthopedic impairments and health impairments receiving special education services is 20.*
- (5) *Pupils with orthopedic impairments and health impairments receiving special education services in a home or hospital is 10.*
- (6) *Pupils with orthopedic impairments and health impairments receiving special education services through tele-teaching service delivery method is 15.*
- (7) *Pupils with speech and language impairments receiving speech and language therapy services is 50.*
- (8) *Pupils with speech and language impairments receiving special education services in self-contained classroom is 12.*
- (9) *Pupils with visual impairments is 16.*
- (10) *Pupils with traumatic brain injury is 15.*
- (11) *Pupils with autism is 12.*
- (12) *Pupils who are gifted and talented is 65.*

(d) Pupils under the age of six (6) years placed in early childhood non-specialized programs who receive special education services in a center-based classroom, integrated setting, or through consultative service delivery methods is 22.

~~[2.—The maximum number of cases per teacher in a unit for itinerant home based early childhood education or related services must be determined in the course of developing the individualized educational program for each pupil in the unit, on the basis of geographic considerations and according to the needs of each pupil and his parents.~~

~~3.—In a departmentalized program, the maximum number of cases per teacher is to be determined according to the number of individualized educational programs for which each teacher is responsible.~~

~~4.—Except as otherwise provided in this section,]~~

2. ~~T~~**T**he maximum size of a class per instructional period for:

~~[(a) The hearing impaired, orthopedically impaired, severely or profoundly mentally retarded, visually impaired, seriously emotionally disturbed or pupils with multiple impairments, autism or a health impairment described in subsection 1 of NAC 388.402 is 6.~~

~~—(b) The gifted and talented is 20.~~

~~—(c) Pupils who are deaf and blind is 4.~~

~~—(d) The mildly mentally retarded, pupils with specific learning disabilities or pupils who are developmentally delayed and in center based programs is 12.~~

~~—(e) The moderately mentally retarded or pupils with traumatic brain injuries is 10.~~

~~—(f) The orthopedically impaired or pupils with a health impairment described in subsection 1 of NAC 388.402 who receive homebound instruction by television is 5.~~

~~—(g) Pupils with speech and language impairments who are in a program for the language impaired is 8.~~

~~—(h) Pupils in early childhood programs for pupils with:~~

~~—(1) Hearing impairments, visual impairments, moderate mental retardation, serious emotional disturbances, orthopedic impairments, a health impairment described in subsection 1 of NAC 388.402 and multiple impairments is 6.~~

~~—(2) Speech and language impairments, mild mental retardation and specific learning disabilities is 8.~~

~~—(3) Severe mental retardation is 5.]~~

(a) School-age pupils placed in programs for mild to moderate disabilities who receive instruction provided by a generalist and who receive special education services through consultative, resource, or any combination of service delivery methods:

(1) Pupils with specific learning disabilities is 12.

(2) Pupils with serious emotional disturbance is 12.

(3) Pupils with mild mental retardation is 12.

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

(1) Pupils with specific learning disabilities is 12.

(2) Pupils with serious emotional disturbance is 6.

(3) Pupils with moderate mental retardation is 10.

(4) Pupils with severe to profound mental retardation is 6.

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

(1) Pupils with hearing impairments is 6.

(2) Pupils with multiple impairments is 6.

(3) Pupils with deaf-blindness is 4.

(4) Pupils with orthopedic impairments and health impairments receiving special education services is 6.

(5) Pupils with orthopedic impairments and health impairments receiving special education services through tele-teaching service delivery method is 15.

(6) Pupils with speech and language impairments receiving special education services in self-contained classroom is 8.

(7) Pupils with visual impairments is 6.

(8) Pupils with traumatic brain injury is 8.

(9) Pupils with autism is 6.

(10) Pupils who are gifted and talented is 20.

(d) Pupils under the age of six (6) years placed in early childhood non-specialized programs who receive special education services in a center-based classroom, integrated setting, or through consultative service delivery methods is 12.

(e) Pupils under the age of six (6) years placed in early childhood specialized programs is 6.

~~[5.]3~~ In the case of a heterogeneous program, the maximum number of cases per teacher and the maximum size of the class is to be determined according to the area of disability represented by the majority of the pupils in the program.

~~[6.]4~~. The maximum enrollment in a unit may be increased by 10 percent, or at least one pupil, without prior approval of the department.

~~[7.]5~~. If a teacher's aide is used in a unit, the maximum size of a class in the unit may be increased by not more than:

~~[(a) Four pupils in a unit for pupils who have multiple impairments or a health impairment described in subsection 1 of NAC 388.402 or are gifted and talented, hearing impaired, learning disabled, mildly or moderately mentally retarded, orthopedically impaired, seriously emotionally disturbed, speech and language impaired or visually impaired.~~

~~—(b) Two pupils in a unit for pupils who are severely or profoundly mentally retarded, have traumatic brain injuries or autism.~~

~~—(c) Two pupils in an early childhood program for pupils who have multiple impairments or a health impairment described in subsection 1 of NAC 388.402 or are hearing impaired, learning disabled, mildly or moderately mentally retarded, orthopedically impaired, seriously emotionally disturbed, speech and language impaired or visually impaired.~~

~~—(d) One pupil in a unit for pupils who are deaf and blind.]~~

(a) School-age pupils placed in programs for mild to moderate disabilities who receive instruction provided by a generalist and who receive special education services through consultative, resource, or any combination of service delivery methods:

- (1) Pupils with specific learning disabilities is 4.*
- (2) Pupils with serious emotional disturbance is 4.*
- (3) Pupils with mild mental retardation is 4.*

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

- (1) Pupils with specific learning disabilities is 4.*
- (2) Pupils with serious emotional disturbance is 4.*
- (3) Pupils with moderate mental retardation is 4.*
- (4) Pupils with severe to profound mental retardation is 2.*

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

- (1) Pupils with hearing impairments is 4.*
- (2) Pupils with multiple impairments is 4.*
- (3) Pupils with deaf-blindness is 1.*
- (4) Pupils with orthopedic impairments and health impairments receiving special education services is 4.*
- (5) Pupils with orthopedic impairments and health impairments receiving special education services in the home or hospital is 4.*

(6) Pupils with speech and language impairments receiving special education services in self-contained classroom is 4.

(7) Pupils with visual impairments is 4.

(8) Pupils with traumatic brain injury is 2.

(9) Pupils with autism is 2.

(10) Pupils who are gifted and talented is 4.

(d) Pupils under the age of six (6) years placed in early childhood non-specialized programs who receive special education services in a center-based classroom, integrated setting, or through consultative service delivery methods is 2.

(e) Pupils under the age of six(6) years placed in early childhood specialized programs is 2.

~~18-16~~. The maximum number of cases per teacher in each unit for a specific disability must not exceed the number prescribed pursuant to this section for the disability represented by the majority of pupils in the unit even if some or all of the pupils in the unit attend classes in a regular educational environment and the special education teacher only provides collaborative or consulting services regarding such pupils.

~~19-17~~. Exceptions to the maximum enrollments prescribed in this section may be made with the written approval of the department.

[Dep't of Education, eff. 12-15-77]-(NAC A by Bd. of Education, 2-7-83; 7-14-88; 9-13-91; 11-23-93)

NAC 388.165 Required licensing of teachers; exception.

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

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

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

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

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

NAC 388.180 Length of school day.

Except as otherwise provided by subsection 2 of NAC 387.131 and 387.286, a school day in session for a unit must consist of the minimum daily periods established for the grade by subsection 1 of NAC 387.131.

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

NAC 388.195 Rights of ~~[child]~~ *pupil* who attains age of majority.

1. Except as otherwise provided in subsection 2, any right accorded a parent under the provisions of this chapter devolves upon ~~[his]~~ *the parent's* child when that child attains the age of 18 years. *The public agency shall notify the pupil and parent of such transfer of rights.* ~~[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. Following the transfer of rights to the pupil, the public agency shall provide any notice required under NAC 388 to both the pupil and the parents.

~~[2]~~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]~~ *the pupil* pursuant to subsection 1 devolves upon ~~[his]~~ *the* guardian.

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

NAC 388.215 Measures to identify, ~~[assess]~~ *evaluate* and serve pupils with disabilities. 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 pupil's unique needs*. These measures must include:

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.

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

NAC 388.245 Restrictions on placement of pupil with disability; continuum of alternative placements; annual determination of placement of pupil.

1. A pupil with a disability may not be placed in a special class, 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.

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.

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 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 pupil's* needs or performance 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 the parents and other persons knowledgeable about the pupil, the meaning of the evaluation data, and the placement options*. A pupil must be placed in the school ~~he~~ *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.

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

NAC 388.255 Basis for change in placement of pupil with disability.

1. Except as otherwise provided in subsection 2. ~~A~~ any change in the placement of a pupil with a disability must be based upon:

~~1~~(a) The current individualized educational program of the pupil;

~~2~~(b) An assessment of the pupil made within the preceding 3 years; and

~~3~~(c) Information relating to the current educational performance of the pupil.

2. Any suspension, expulsion that will result in the removal of a pupil with a disability for more than 10 school days at a time or for more than 10 cumulative school days for a series of removals during any school year shall be in accordance with NAC 388.265 or the interim alternative educational setting provision of the Individuals with Disabilities Education Act (20 U.S.C. §§ 1400 et seq.).

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

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

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 *school days at a time or for more than 10 cumulative school days for a series of removals* during any school year except upon compliance with the provisions of this section.

2. Before initiating any suspension, expulsion or exclusion that will result in the removal of a pupil for more than 10 *school days at a time or for more than 10 cumulative school days for a series of removals* during 1 school year,

(a) ~~1~~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.

(b) The committee and other qualified personnel shall first consider, in terms of the behavior subject to disciplinary action, all relevant information, including:

- (i) Evaluation and diagnostic results, including the results or other relevant information supplied by the parents of the pupil;*
- (ii) Observations of the pupil; and*
- (iii) The pupil's individualized educational program and placement.*

(c) ~~It~~The committee and other qualified personnel, if any, shall determine ~~whether~~ that the ~~disciplinary problems of the pupil are associated with his disability and~~ behavior of the pupil was not a manifestation of the pupil's disability. Such a determination may be made only if the individualized educational program committee determines that:

(i) 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 placement;

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

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

(d) The committee and other qualified personnel shall prepare a report containing their findings and conclusions.

3. In the case of a pupil with a disability who is suspended, expelled or excluded for more than 10 school days in the school year, the public agency shall provide the pupil a free appropriate public education in accordance with the Individuals with Disabilities Education Act (20 U.S.C. §§ 1400 et seq.) beginning on the eleventh school day of the removal and during any subsequent removals in that school year.

(Added to NAC by Bd. of Education, eff. 7-14-88; A 9-13-91; 11-23-93; R039-98, 5-29-98)

NAC 388.275 Development of interim individualized educational program.

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, an eligibility determination under the provisions of NAC 388 must also be made.*

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~~ *an eligible* pupil in the manner provided by NAC 388.281.

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

NAC 388.281 Development, implementation, review and revision of individualized educational program. (NRS 388.520)

Except as otherwise provided in NAC 388.282:

1. Before providing special services and programs of instruction for pupils with disabilities, other than gifted and talented pupils, a public agency shall adopt a procedure whereby an individualized educational program is developed for each such pupil. 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.

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

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

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

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

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

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

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

(d) One or both of the pupil's parents *except as otherwise provided by subsections 7 and 8.*

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

~~(f) If *not otherwise a member of the committee*, ~~the committee is meeting to develop an initial program for a pupil,~~ a person who is familiar with the tests and other assessments performed on or by the pupil and their results; ~~and~~~~

~~(g) Except as otherwise provided by subsection ~~8~~ *6 and 9*, if the committee is meeting to develop an individualized educational program which includes transition services *or to consider the pupil's transition services needs*, the pupil and a representative of the participating agency~~;~~~~

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 *either the parent or the public agency representative* ~~they~~ deem appropriate to join the committee.

4. The public agency shall:

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

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

(c) Ensure that the pupil's individualized educational program is accessible to each regular education teacher, special education teacher, related service provider, and other service provider who is responsible for its implementation and that each is informed of his or her specific responsibilities related to implementing the pupil's individualized educational program.

(d) Ensure that each regular education teacher, special education teacher, related service provider, and other service provider who is responsible for the individualized educational program implementation is informed of the specific accommodations, modifications and supports that must be provided for the pupil in accordance with the individualized educational program.

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

~~(f)~~ Take whatever action is necessary, including arranging for an interpreter for parents who are deaf or whose native language is other than English, to ensure that parents who attend a committee meeting understand the proceedings;

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

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

5. The public agency shall:

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

(b) ~~The public agency shall give~~ **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~~[-]; and~~

(c) **Inform the parents of the right to invite individuals to participate as a member of the individualized educational program committee who have knowledge or special expertise regarding the pupil, including related service personnel as appropriate.**

~~5.]6.~~ If transition services for a pupil will be discussed at the meeting, the pupil must be invited to attend the meeting. ~~and~~ ~~T[+]his~~ purpose must be set forth specifically in the written notice **that shall be provided to the pupil and the pupil's** ~~to the~~ parents. The notice must be given sufficiently far in advance of the meeting to enable the parents to make arrangements to attend.

~~6.]7.~~ If the parents do not acknowledge receipt of the notice given pursuant to subsection 5, the public agency shall attempt to notify them by telephone or through a visit to their home or place of employment. If, after consultation concerning the time and place of the meeting, the parents are unable to attend the committee meeting in person, the public agency shall use reasonable efforts to secure their participation in the meeting by written, telephonic or other means. The public agency shall keep detailed records of any telephone calls, correspondence or visits made or had pursuant to this section and their results, if any.

~~7.]8.~~ 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.]9.~~ If the individualized educational program includes transition services and a representative of the participating agency does not attend the meeting, the public agency shall consult with the participating agency regarding the planning of such services. If the pupil for whom the individualized educational program is being developed does not attend the meeting and the program includes transition services, the public agency shall **take alternate steps and** document the alternative methods that ~~were~~ **are** used to ascertain the preferences and interests of the pupil at the meeting.

~~9.]10.~~ 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~~.

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

NAC 388.282 Placement of pupil with disability in private school or facility.

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

NAC 388.283 Appointment of surrogate parent for pupil with disability.

1. A public agency shall appoint or petition the superintendent to appoint a surrogate parent for a pupil with a disability, other than a gifted and talented pupil, when the:

(a) Parents cannot be identified;

(b) Location of a parent is not discovered after reasonable efforts; or

(c) Pupil is a ward of the state.

2. A person selected as such a surrogate parent must have no interest that conflicts with the interests of the pupil and have knowledge and skills that ensure the adequate representation of the pupil's interests. The surrogate parent must not be an employee of the public agency which is involved in the education or care of the pupil, but he may be paid by the public agency to serve as the surrogate parent.

3. The surrogate parent shall represent the pupil in all matters relating to the identification of a pupil, the assessment of any special educational needs of the pupil, the educational placement of

the pupil and the provision of a free appropriate program of public education to the pupil. The program must be provided for the pupil without any cost to the parent.

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

NAC 388.284 Contents of individualized educational program. (NRS 388.520)

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

(a) A statement of the pupil's present levels of educational performance, including, without limitation:

(1) If the pupil is preschool age, a description of how the disability of the pupil affects the participation of the pupil in appropriate activities.

(2) If the pupil is above preschool age, a description of how the disability of the pupil affects the involvement and progress of the pupil in the general curriculum.

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

(c) A statement of the specific special education, supplementary aids and services, and related services to be provided to the pupil, 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~~ *Beginning at age 14*, 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 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]~~ **Beginning at age 16**, a statement of the ~~[needs of the pupil for]~~ **needed** transition services, **including, if appropriate, a statement of** ~~[with regard to]~~ interagency **responsibilities or any needed linkages** ~~[services]~~. The committee may prepare such a statement before the pupil is 16 years of age if the committee determines that the statement is appropriate for the pupil. The statement required by this paragraph must be updated annually.

(g) The projected dates for the initiation of the modifications and services described in paragraphs (c) 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. 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. ***In implementing the requirements of this section, a public agency may not make unilateral decisions regarding the participation of pupils with disabilities in such examinations based upon disability label, placement, 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 attains the age of 18 years. The statement must be updated annually.

2. *The individualized educational program committee also shall:*

(a) In the case of a pupil whose behavior impedes his or her learning or that of others, consider, if appropriate, strategies including positive behavioral interventions, strategies, and supports to address that behavior;

(b) In the case of a pupil with limited English proficiency, consider the language needs of the pupil as those needs relate to the pupil's individualized educational program;

(c) In the case of a pupil who is blind, or visually impaired, provide for instruction in Braille and the use of Braille unless the individualized educational program committee determines, after an evaluation of the pupil's reading and writing skills, needs, and appropriate reading and writing media (including 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 peers and professional personnel in the pupil's language and communication mode, academic level, and full range of needs, including 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. *In implementing the requirements for participation, involvement, and progress in the general curriculum, the public agency must consider but may not require that goals and objectives for the general curriculum be reflected in a pupil's individualized education program unless determined appropriate for that pupil through the individualized educational program process.*

4. *In implementing services for extended school year, the public agency may not limit services to particular categories or unilaterally limit the type, amount, or duration of those services.*

5. *In implementing positive behavioral interventions and supports, the public agency shall include:*

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

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

(c) methods to enhance the independence and quality of life for pupils with disabilities;

(d) the use of the least restrictive methods to respond to and reinforce the behavior of pupils with disabilities; and

(e) a process for designing interventions based upon 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.

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

~~4~~6. 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.

(Added to NAC by Bd. of Education, eff. 2-7-83; A 7-14-88; 11-23-93; R039-98, 5-29-98)

NAC 388.287 Inspection and review of educational records of pupil.

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~~ *In no case more* than 45 days after the request has been made. Both the parents and the public agency may obtain and respond with reasonable interpretations and explanations of the information contained in the educational records.

2. The parents may:

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

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

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

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

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

(a) Name of the person;

(b) Date access was given;

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

(d) List required by subsection 6.

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

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

7. If the public agency charges a fee for copies of records which are made for parents, the amount of the fee must not effectively prevent the parents from exercising their right to inspect and review those records. No fee may be charged for the search or retrieval of the information. (Added to NAC by Bd. of Education, eff. 2-7-83; A 7-14-88; 11-23-93)

NAC 388.288 Amendment of educational records; hearing.

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~~ *the parent* of ~~his~~ *the* 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 *public agency must notify the parent of the right to include a statement* ~~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 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)~~) and the regulations adopted thereunder. (Added to NAC by Bd. of Education, eff. 2-7-83; A 7-14-88; 11-23-93)

NAC 388.289 Confidentiality of records.

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

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

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

NAC 388.290 Required facilities and space.

~~[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.}~~

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

NAC 388.292 Notice of project to identify, locate or assess pupils or educational data.

1. Before a public agency begins a major project involving the identification, location or assessment 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 the rights under ~~{Section 438 of the General Education Provisions Act (20 U.S.C. §§ 1221 et seq.) and}~~ the Family Educational Rights and Privacy Act of 1974 (20 U.S.C. §§ ~~{1221 note,}~~ 1232~~{(g)}~~), and the related regulations.

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

NAC 388.294 Monitoring of units and programs.

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

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

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

NAC 388.296 Reports to department concerning programs and units.

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

2. A public agency shall submit the requested information regarding each unit receiving apportionment to the special education branch of the department at the beginning of each school year and as changes occur.

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

NAC 388.300 Parental consent required; notice to parents of proposed or refused action; procedures for resolution of disputes. (NRS 388.520)

1. Except as otherwise provided in this section or NAC 388.440, *informed written consent shall be obtained before conducting an initial evaluation or reevaluation and before the initial provision of special education and related services to a pupil with a disability.* ~~[pupil may not be assessed, reassessed or provided with special education and related services without the written consent of his parents.]~~ If a parent does not provide written consent for the ~~[preplacement assessment]~~ *initial evaluation, reevaluation,* or the initial provision of special education, the public agency may request a hearing pursuant to this section.

2. Parental consent is not required:

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

(b) Before administering a test or other assessment that is administered to all pupils unless before administration of that test or assessment, consent is required of 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 parent has failed to respond.

~~[2]~~3. (a) 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)]~~(1) Placement of the pupil;

~~[(b)]~~(2) Identification or ~~[assessment]~~ *evaluation* of any special educational needs of the pupil; or

~~[(c)]~~(3) 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.

(b) If the notice relates to an action proposed by the public agency that also requires parental consent, the agency may give notice at the same time it requests parent consent.

~~[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 parents]~~ *that the parents have* rights in the matter, ~~[including his right to:]~~ *and if the notice is not an initial referral for evaluation, the means by which a statement of parent rights can be obtained.*

~~[(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.]~~

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

6. (a) *A statement of the parents' rights shall be given to parents at a minimum:*

(1) *Upon initial referral for evaluation;*

(2) *Upon each notification of an individualized educational program meeting;*

(3) *Upon reevaluation of the pupil; and*

(4) *Upon receipt of a request for a due process hearing.*

(b) *The statement of the parents' rights shall include a full explanation of all procedural safeguards available to the parents, including:*

(1) *Independent educational evaluation;*

(2) *Prior written notice;*

(3) *Parent consent;*

(4) *Access to educational records;*

(5) *Opportunity to present complaints to initiate due process hearings;*

(6) *The pupil's placement during the pendency of due process proceedings;*

(7) *Procedures for students who are subject to placement in an interim alternative educational setting;*

(8) *Requirements for unilateral placement by parents of pupils in private schools at public expense;*

(9) *Mediation;*

(10) *Due process hearings, including requirements for disclosure of evaluation results and recommendations;*

(11) *State level appeals;*

(12) *Civil actions;*

(13) *Attorneys' fees; and*

(14) *The state complaint procedures, including a description of how to file a complaint and the timelines under these provisions.*

~~[5]~~7. (a) If the parent desires a hearing regarding the public agency's proposal or refusal, ~~[he]~~ *the parent* must ~~[(a) S]~~ submit a written request for the hearing to the head of the public agency. ~~[and]~~ *The notice must include:*

(1) *The name of the pupil;*

(2) *The address of the residence of the pupil;*

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

(4) *A description of the nature of the problem of the pupil relating to the proposed or refused initiation or change, including facts relating to the problem; and*

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

(b) *A public agency may not deny or delay a parent's right to a due process hearing for failure to provide the notice required in paragraph (a).*

~~[(b) Include with the request a statement of his reasons for opposing the public agency.]~~

~~[6]~~8. Within 5 days after ~~[he receives]~~ *receipt of* a request pursuant to subsection 5, the head of the public agency shall request the superintendent of public instruction to appoint a hearing officer. The superintendent, upon receiving such a request, shall:

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

(b) Notify the parties of the appointment. The hearing officer appointed must ~~[not]~~ *have no 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]~~ *the individual* for ~~[his]~~ *the* services as a hearing officer.

~~[7]~~9. Except as otherwise provided in *NAC 388.255 or* this subsection or as the parties otherwise agree~~[:]~~:

(a) ~~T[+]~~he pupil ~~[must]~~ *shall* remain in ~~[his]~~ *the* 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.

(b) 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.

(c) If the decision of the review officer in an appeal taken pursuant to NAC 388.315 agrees with the pupil's parents that a change in placement is appropriate, that placement shall be treated as an agreement between the public agency and the parents for purposes of this subsection.

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

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

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* 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. (Added to NAC by Bd. of Education by R039-98, eff. 5-29-98)

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

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 parents of the right to request a resolution of the dispute through a mediation process pursuant to NAC 388.305.

~~(e)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 ~~fa~~ persons who ~~has~~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, 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. 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. *Written findings of fact and decision shall be made available to any party to the hearing. At the option of the parent, electronic findings of fact and decision shall be made available to the parent.*

11. The hearing officer:

(a) ~~S~~*s* shall render ~~his~~ findings of fact and decision in writing and mail a copy of the decision to the parties within 45 days after the date the head of the public agency receives the request for the hearing. ~~[The hearing officer may extend the time for rendering a decision for a specific number of days upon the request of either party. Written findings of fact and decision must be made available to any party to the hearing. Upon the request of a parent, electronic findings of fact and decision must be made available to the parent.]~~

(b) May, except for expedited due process hearings requested by parents or the public agency on matters related to the suspension, expulsion or exclusion of a pupil with a disability under NAC 388.265, extend the time for rendering a decision for a specific number of days upon the request of either party.

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.

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

NAC 388.XXX Expedited hearing.

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

(a) A manifestation determination; or

(b) A placement determination under 20 U.S.C. §§ 1415(k), including the determination of an appropriate interim alternative educational setting.

2. A public agency may request an expedited hearing during the pendency of a due process hearing, when the interim alternative educational setting expires and the public agency maintains that it is dangerous for the pupil to be in the current placement.

3. The expedited hearing shall be conducted in accordance with the provisions of NAC 388.310, except that no requests for an extension of the time for rendering a decision shall be granted.

4. The decision of the hearing officer is final unless a party appeals from the decision by initiating a civil action in a court of competent jurisdiction within 30 days after receipt of the decision of the hearing officer. A party may file a cross appeal within 10 days after he receives notice of the initial appeal.

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

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

(a) Examine the entire record of the hearing;

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

(c) Seek any additional evidence necessary and, if a hearing is held to receive additional evidence, afford the parties the rights set forth in NAC 388.310;

(d) Afford the parties an opportunity for oral or written argument, or both, at the discretion of the reviewing officer;

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

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

(g) Mail copies of ~~his~~ *the review officer's* 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, electronic findings of fact and decision shall be made available to the parent.*

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 after removing any personally identifiable information of the pupil. The findings and decisions must be available for public inspection.

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

NAC 388.XXX Procedure for complaints.

1. An organization or individual may file a complaint with the Nevada superintendent of public instruction stating that a public agency has violated a requirement of the Individuals with Disabilities Education Act, or of the regulations implementing that Act, or of the state regulations contained herein at NAC 388.150 through 388.450. The complaint must be in writing and must include the facts related to the alleged violation.

2. The Nevada department of education must complete its review and render its decision within 60 days of receipt of the written complaint. If the department finds that the public agency has violated the federal or state requirements referenced in paragraph 1, the department shall require that the public agency take corrective actions to remediate any such violation.

3. Public agencies required to take corrective actions shall do so and provide documentation of actions taken in accordance with the decision and order of the Nevada department of education.

DETERMINATION OF ELIGIBILITY FOR PLACEMENT OF PUPILS WITH DISABILITIES
AND GIFTED AND TALENTED PUPILS

NAC 388.XXX Prior intervention

1. If a pupil is experiencing educational or behavioral difficulty but is not yet suspected of having a disability, the public agency may attempt to remediate those difficulties through the provision of prior interventions. NAC 388.420.1(b) requires that the effectiveness of prior interventions be considered when determining eligibility for special education and related services under the category of specific learning disabilities.

(a) During the time prior interventions are being provided, parents have the right to ask for an evaluation of the pupil if the parents suspect the pupil has a disability and may qualify for special education programs and services.

(b) If the public agency suspects the pupil has a disability, the public agency can not refuse to conduct the evaluation or delay the evaluation until the prior intervention process has been completed.

(c) If the public agency disagrees with the parents and does not suspect the pupil has a disability, it may refuse to conduct an evaluation. Written notice of this refusal must be provided in accordance with NAC 388.300, and parents may request a due process hearing on the matter of the public agency's refusal to initiate an evaluation.

2. The public agency shall:

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

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

(c) Based in part on the results of the prior interventions, determine whether the pupil is suspected of having a disability and should therefore be evaluated in accordance with NAC 388.330 through 440.

3. If the educational difficulties or behaviors of concern are shown to be resistant to regular education interventions, or if the interventions are determined to require continued and substantial effort and may require the provision of special education and related services, the public agency shall then conduct an evaluation to determine eligibility for special education. Informed parental consent in accordance with NAC 388.300.1 must be obtained before the public agency conducts such an evaluation.

NAC 388.330 Credentials required to *administer and interpret an assessment*. ~~make diagnostic decision.~~ Any person responsible for ~~making a diagnostic decision~~ *administering and interpreting an assessment* pursuant to NAC 388.330 to 388.440, inclusive, must:

1. Possess a license or certificate in the area of ~~his~~ professional discipline; and
2. Be trained in the area of assessment in question.
(Added to NAC by Bd. of Education, eff. 7-14-88)

NAC 388.335 Tests and devices for assessment.

Any test or other device for assessment used pursuant to NAC 388.330 to 388.440, inclusive, must comply with the procedures set forth in 34 C.F.R. § 300.532.
(Added to NAC by Bd. of Education, eff. 7-14-88; A 9-13-91; 11-23-93)

NAC 388.XXX Determination of needed evaluation data. As part of an initial evaluation and as part of any reevaluation, a review of existing evaluation data shall be conducted as follows:

(a) A group that includes the individualized educational program committee and other qualified professionals, including the eligibility team members shall:

(1) Review existing evaluation data on the pupil including:

- (i) Evaluations and information provided by the parents of the pupil;*
- (ii) Current classroom-based assessments and observations; and*
- (iii) Observations by teachers and related services providers; and*

(2) On the basis of that review, and input from the pupil's parents, identify what additional data, if any, are needed to determine:

- (i) Whether the pupil has a particular category of disability, or, in case of a reevaluation of a pupil, whether the child continues to have such a disability;*
- (ii) The present levels of performance and educational needs of the pupil;*
- (iii) 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*
- (iv) 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.*

(b) The group described in paragraph (a) of this section may conduct its review without a meeting.

NAC 388.337 Deadlines for conducting initial ~~assessments~~ *evaluations*.

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; 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.

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

NAC 388.340 Decisions concerning placement or eligibility. (NRS 388.520)

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~~ *the pupil's* family, ~~his~~ *the pupil's* teacher or a test of aptitude or achievement.

2. In making a determination of eligibility, a pupil shall not be determined to be a pupil with disability if the determinant factor for such determination is lack of instruction in reading or math or limited English proficiency.

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

~~2~~*4.* Any decision of ~~a~~*the* ~~multidisciplinary~~ *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) M~~*m*ust be justified in a written report, to be kept in the records of the pupil maintained by the public agency~~;~~ ~~and~~. *A copy of the evaluation report and the documentation of determination of eligibility shall be given to the parent.*

5. ~~[(e) May be made by a majority of the team.]~~ 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 of NAC 388.420 and may be prepared in any other case.

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

NAC 388.345 Assessment of cognitive abilities.

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]~~ 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, 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.

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

NAC 388.350 Assessment of social and emotional condition.

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

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

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

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.

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

~~[NAC 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.~~

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

NAC 388.360 Assessment of adaptive ~~[behavior]~~ *skills*.

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

- (a) *Communication;*
- (b) *Self-care;*
- (c) *Home living;*
- (d) *Social skills;*
- (e) *Community use;*
- (f) *Self-direction;*
- (g) *Health and safety;*
- (h) *Functional academics; and*
- (i) *Leisure and work.*

2. Any ~~[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 behavior~~[at]~~ scale.

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

NAC 388.365 Assessment of health.

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

- (a) A review of the developmental history;
- (b) Hearing and vision screening;

- (c) A physical examination;
- (d) An audiological assessment;
- (e) A physical therapy assessment; and
- (f) An occupational therapy assessment of the pupil.

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

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

NAC 388.370 Assessment of speech ~~{and}~~ language, *or other communication skills*.

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 *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 must be made by a speech and language specialist.

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

NAC 388.375 Assessment of academic achievement.

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.

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

NAC 388.380 Assessment of performance in current educational setting.

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

- (a) Except as 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 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.

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

NAC 388.385 Assessment of previous educational intervention. If, with respect to a pupil with a disability, evidence of any previous educational intervention is assessed, the assessment may include consideration of the feasibility of:

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

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

NAC 388.XXX Assessment of functional behavior. If the functional behavior of a pupil is assessed, the assessment shall include:

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

2. *Systematic observation of the immediate antecedent events associated with each instance of the display of the targeted inappropriate behavior;*
3. *Systematic observation and analysis of the consequences following the display of the behavior to determine the function the behavior serves for the individual, i.e., to identify the specific environmental or physiological outcomes produced by the behavior. The communicative intent of the behavior is identified in terms of what the individual is either requesting or protesting through the display of the behavior;*
4. *Ecological analysis of the settings in which the behavior occurs most frequently. Factors to consider should include the physical setting, the social setting, the activities and the nature of instruction, scheduling, the quality of communication between the individual and staff and other students, the degree of participation, 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 behaviors (e.g., medication levels sleep cycles, health, diet); and*
6. *Review of history of the behavior to include the effectiveness of previously used behavioral intervention.*

NAC 388.387 Eligibility of pupil with autism , *a spectrum disorder*. (NRS 388.520)

1. A pupil is eligible for special services and programs of instruction ~~[for the autistic]~~ if the ~~[multidisciplinary]~~ *eligibility* team, comprised of the persons set forth in subsection 2, determines that ~~[he]~~ *the pupil meets the criteria under NAC 388.028, having autism, a spectrum disorder.* ~~[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 teacher of the pupil, or, if none, a person qualified to teach ~~[him]~~ *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* 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~~ *evaluation* must ~~evaluate~~ *assess* the:

- (a) Health *and medical status*;
- (b) Developmental history, *to include developmental rate and sequence, with a clear statement of strengths and weaknesses*;
- (c) Cognitive abilities;
- (d) Social and emotional condition *in multiple settings*;
- (e) Academic achievement;
- (f) Adaptive ~~behavior~~ *skills*; ~~and~~
- (g) *Speech, ~~H~~ language, or other communication skills*; and
- (h) ~~motor skills~~; *Consider the following factors:*
 - (1) *Sensory regulation*;
 - (2) *Self help, independent living skills*;
 - (3) *Problem behavior*;
 - (4) *Symbolic and pretend play*;
 - (5) *Activities/special interests; and*
 - (6) *Motor skills.*

of the pupil.

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

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

1. Except as otherwise provided in subsection 3, a pupil with a hearing impairment is eligible for the special services and programs of instruction for the deaf if ~~a multidisciplinary~~ *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~~ *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.

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 is eligible for the special services and programs of instruction for the hard of hearing if the ~~multidisciplinary~~ *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 is eligible for the special services and programs of instruction for the deaf or hard of hearing, as appropriate, if the ~~multidisciplinary~~ *eligibility* team concludes that he meets the criterion set forth in paragraph (c) of subsection 1 or paragraph (c) of subsection 2, whichever applies, notwithstanding ~~his~~ *the pupil's* failure to meet the other criteria set forth in subsection 1 or 2.
4. A pupil with a hearing impairment is eligible for the special services and programs of instruction for the deaf and blind if the ~~multidisciplinary~~ *eligibility* team concludes that he meets the criteria set forth in subsection 1, 2 or 3, whichever applies, and the criteria set forth in NAC 388.395.
5. A pupil under the age of 6 years is not ineligible, because of ~~his~~ age, for the special services and programs of instruction referred to in this section.
6. 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~~ 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.

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

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

1. A pupil with a visual impairment is eligible for the special services and programs of instruction for the severely visually impaired if ~~a multidisciplinary~~ *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~~ vision, the probable result of which will be one or both of the conditions described in paragraphs (a) and (b).

2. A pupil with a visual impairment is eligible for the special services and programs of instruction for the moderately visually impaired if the ~~multidisciplinary~~ *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~~ vision, the probable result of which will be the condition described in paragraph (a).

3. A pupil with a visual impairment is eligible for the special services and programs of instruction for the deaf and blind if the ~~multidisciplinary~~ *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~~ 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~~ 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.

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

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

1. A pupil with an orthopedic impairment is eligible for special services and programs of instruction ~~for the orthopedically impaired~~ if ~~a multidisciplinary~~ *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~~ *a pupil's educational performance*. As used in this subsection, "orthopedic impairment" includes any impairment resulting from:

- (a) A congenital anomaly, including clubfoot or the absence of a member;

(b) Disease, including poliomyelitis or bone tuberculosis; or

(c) Any other cause, including cerebral palsy, a neuromuscular disorder, an amputation, a fracture or a burn causing a contracture.

2. To determine whether an orthopedic impairment adversely affects a pupil's ability to be educated, an analysis must be conducted of ~~his~~ *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~~ *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 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 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.

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

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

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 3, concludes that he has a health impairment other than an orthopedic impairment which could reasonably be interpreted as adversely affecting the educational performance of a pupil. ~~[As used in this section, "health impairment" 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]~~ *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 conducted pursuant to subsection 4 may also include an evaluation of the:
- (a) Developmental history;

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

of the pupil.

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

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

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 the nature or severity of ~~[his]~~ *the* impairment, which is not feasible in ~~[his]~~ *the pupil's* current educational setting because:
 - (1) Intensive remedial techniques or strategies, which can only be implemented in a clinical or therapeutic setting, are required to improve ~~[his]~~ *the pupil's* communication skills;
 - (2) The nature of ~~[his]~~ *the* impairment requires that the pupil receive the services of a teacher of the speech and language impaired; or
 - (3) ~~[His]~~ *The* 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]~~ *a* 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 pupil's* cognitive abilities and level of development; or

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

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

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

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

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

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

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

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

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

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

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

(1) Voice therapy is recommended by:

(I) A physician; or

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

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

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

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

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

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

4. A pupil under the age of 6 years is not ineligible, because of ~~his~~ age, 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~~ *a* 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* 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.

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

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

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 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 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. 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 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 is eligible for special services and programs of instruction pursuant to this section. Such an ~~[assessment]~~ **evaluation** must ~~[evaluate]~~ **assess** the:

(a) Health;

(b) Developmental history;

- (c) Cognitive abilities;
- (d) Social and emotional condition;
- (e) Academic achievement;
- (f) Language and motor skills;
- (g) Sensory and perceptual abilities; and

(h) Attention, comprehension, judgment and problem-solving skills, of the pupil.
 (Added to NAC by Bd. of Education, eff. 11-23-93; A by R039-98, 5-29-98)

NAC 388.410 Eligibility of *pupil with* mental~~[hy]~~ retardation~~[ed pupil]~~. (NRS 388.520)

1. A pupil is eligible for special services and programs of instruction for *pupils with* ~~[the]~~ mild~~[hy]~~ mental~~[hy]~~ retard~~[ed]ation~~ if a ~~[multidisciplinary]~~ *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]~~ *The* adaptive ~~[behavior]~~ *skills of the pupil*, in comparison with that of members of ~~[his]~~ *the pupil's* chronological peer group, indicates that ~~[he]~~ *the pupil* is experiencing difficulty; and

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

2. A pupil is eligible for special services and programs of instruction for *pupils with* moderate~~[hy]~~ mental~~[hy]~~ retard~~[ed]ation~~ ~~[the—moderately—mentally—retarded]~~ if the ~~[multidisciplinary]~~ *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]~~ *The* adaptive ~~[behavior]~~ *skills of the pupil*, in comparison with that of members of ~~[his]~~ *the pupil's* chronological peer group, indicates that ~~[he]~~ *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 pupil's* cognitive abilities and adaptive ~~[behavior]~~ *skills*.

3. A pupil is eligible for special services and programs of instruction for *pupils with* severe~~[ly]~~ mental~~[ly]~~ retard~~[ed]~~ation ~~[the severely mentally retarded]~~ if the ~~[multidisciplinary]~~ *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]~~ *The* adaptive ~~[behavior]~~ *skills of the pupil*, in comparison with that of members of ~~[his]~~ *the pupil's* chronological peer group, indicates that ~~[he]~~ *the pupil* has extensively lower capabilities; and

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

4. A pupil is eligible for special services and programs of instruction for *pupils with* profound~~[ly]~~ mental~~[ly]~~ retard~~[ed]~~ation ~~[the profoundly mentally retarded]~~ if the ~~[multidisciplinary]~~ *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]~~ *The* adaptive ~~[behavior]~~ *skills of the pupil*, in comparison with that of members of ~~[his]~~ *the pupil's* chronological peer group, indicates that ~~[he]~~ *the pupil* has extremely limited capabilities; and

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

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.

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.

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

NAC 388.415 Eligibility of *pupil with* emotional~~{ly}~~ *disturbance*~~{ed}~~ ~~{pupil}~~. (NRS 388.520)

1. A pupil is eligible for special services and programs of instruction ~~{for the seriously emotionally-disturbed}~~ if ~~{a multidisciplinary}~~ *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. 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 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 pupil's* health, development, 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.

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* current educational setting; and
- (d) Any previous educational intervention on behalf of the pupil.

6. As used in **this** section, "social~~ly~~ maladjust~~ed~~*ment*" and "conduct problem" mean behavior characterized by knowledge of social expectations and intentional disregard of those expectations.

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

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

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

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

~~(b)~~ Except as otherwise provided in subsection ~~4~~ **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~~ **Prior** intervention strategies have not remedied the ~~deficit~~ **discrepancy**.

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

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

(a) The regular 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~~ 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* 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 teacher of the pupil.

~~{7}~~6. The ~~{multidisciplinary}~~ *eligibility* team must prepare a written report of its conclusions.

(a) The report must include:

- ~~{a}~~1) A statement as to whether the pupil has a specific learning disability;
- ~~{b}~~2) The basis for making that determination;
- ~~{c}~~3) A description of the relevant behavior noted during the observation of the pupil;
- ~~{d}~~4) A statement of the relationship of that behavior to the academic functioning of the pupil;
- ~~{e}~~5) Any educationally relevant medical findings;
- ~~{f}~~6) 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~~{f}~~;
- ~~{g}~~7) The conclusion of the team concerning the effect upon the pupil of any environmental, cultural or economic disadvantage; and

(H)8) A certification by each member of the team that the report reflects ~~his~~ *each individual's* conclusions or, if the report does not reflect the conclusions of a member, a statement of the conclusions of that member.

(b) A reevaluation determination regarding the continuing existence of a severe discrepancy may be made based upon information other than the statistically valid formula prescribed by the department.

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

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

1. A pupil who meets the requirements for eligibility set forth in NAC 388.410 for *pupils with* ~~the~~ mental~~ly~~ retard~~ed~~ation is eligible for the special services and programs of instruction for persons with multiple impairments if ~~a multidisciplinary~~ *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,

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,

whichever applies.

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

NAC 388.430 Identification of certain pupils ~~as~~ *with* developmental~~ly~~ delays ~~ed~~. (NRS 388.520)

1. Except as otherwise provided in subsection 5, a pupil under the age of 6 years may be identified~~as~~ *with a* developmental~~ly~~ delay~~ed~~ if ~~a multidisciplinary~~ *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~~ *with a* developmental~~ly~~ delay~~ed~~ 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 *having a* developmental~~ly~~ delay~~ed~~ 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 reaches the age of 6 years on or before September 30 of the current school year.
(Added to NAC by Bd. of Education, eff. 7-14-88; A 11-23-93; R039-98, 5-29-98)

NAC 388.435 Eligibility of *pupil who is* gifted and talented ~~pupil~~.

1. Except as otherwise provided in subsection 2, a pupil 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

(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 is not ineligible, because of ~~his~~ 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.

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

NAC 388.440 Periodic ~~[reassessment]~~ *reevaluation* of pupil. (NRS 388.520)

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] the 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 the eligibility team members* determine *in accordance with NAC 388.XXX*, that ~~[a reassessment is not necessary because]~~ *no additional data are needed to determine whether* the pupil continues to have a disability, the public agency shall notify the parents of the pupil of the ~~[determination]~~ *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]~~ *that an assessment be conducted*. ~~[A pupil must be reassessed before a determination is made that the pupil no longer has a disability.]~~

3. *Parental consent is not required before:*

(a) *Reviewing existing data as part of an evaluation or a reevaluation; or*

(b) *Administering a test or other evaluation that is administered to all pupils unless, before administration of that test or evaluation, consent is required of parents of all pupils.*

~~[3.]4.~~ 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.]5.~~ *Parental consent is required if additional assessments are conducted as part of reevaluation.* 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 NAC ~~388.330,~~ 388.335, *and 388.340.*

~~[5.]6.~~ Upon the completion of the ~~[reassessment]~~ *reevaluation*, the ~~[committee that developed the individualized educational program for the pupil pursuant to NAC 388.281]~~ *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.]~~

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

(Added to NAC by Bd. of Education, eff. 7-14-88; A 9-13-91; 11-23-93; R039-98, 5-29-98)

NAC 388.450 Independent ~~[assessment]~~ *evaluation* of pupil.

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 educational evaluation is provided at public expense.*

2. If at such a hearing 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. If the hearing officer decides that the ~~[assessment]~~ *evaluation is not necessary because the agency's evaluation was appropriate* ~~[is not appropriate]~~, the parent may obtain the additional ~~[assessment]~~ *evaluation* at ~~[his]~~ *the parent's personal* ~~[own]~~ 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 agency criteria applicable for independent educational evaluations as set forth in paragraph 6 of this section.*

4. If ~~[the parent obtains]~~ an independent ~~[assessment]~~ *evaluation is obtained* at ~~[his]~~ *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 for the criteria described in this paragraph, a public agency may not impose conditions or timelines related to obtaining an independent educational evaluation at public expense.*

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