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(CONTINUED)****(Series 6600)**

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SPECIAL EDUCATION

Statement of Assurances

The Emerson-Hubbard Public Schools assures that:

- The district will abide by all state and federal laws and regulations relating to special education;
- A Free Appropriate Public Education is available to all children with disabilities from birth through the school year in which the student reaches 21 years of age, including children who have been suspended or expelled from school; and
- The district has a goal of providing full educational opportunity for all children with disabilities consistent with the state's full educational opportunity goal.

Performance Goals and Indicators

Emerson-Hubbard Public Schools will use performance indicators established by the state to assess progress toward achieving those goals that, at a minimum, address the performance of children with disabilities on assessments, dropout rates and graduation rates.

Emerson-Hubbard Public Schools will provide the Nebraska Department of Education with information necessary to enable the state to carry out its duties, including those duties relating to the performance of children with disabilities participating in special education programs under the Individuals with Disabilities Education Act.

The special education policies are to be interpreted to be in compliance with federal and state law and regulations. In the event of changes in law or regulations, the school administration shall be authorized to implement modifications of practice to comply with such changes (whether the changes impose more or less stringent procedural or substantive requirements) until such time as amended policies or regulations are adopted by the Board of Education.

Date of Adoption (or Last Revision):

December 13, 2010

Legal Reference:

**Federal Regulation 34 CFR
300; Nebraska Statutes 79-1110
to 79-1178; 92 NAC 51-004.01**

SPECIAL EDUCATION

Free Appropriate Public Education

Emerson-Hubbard Public Schools shall insure that children with verified disabilities, from date of diagnosis to age 21, including children who have been suspended or expelled from school, have available to them a free appropriate public education (FAPE) which includes special education and related services to meet their unique needs in detention facilities, correctional facilities, jails and prisons and eligible resident children.

1. Emerson-Hubbard Public Schools shall ensure that a FAPE is available to any individual child with a disability who needs special education and related services, even though the child is advancing from grade to grade. The determination that such a child is eligible for such services is to be made on an individual basis by the multidisciplinary evaluation team.
2. Exceptions to the Requirements to Provide a Free Appropriate Public Education:

Students with disabilities who have graduated from high school with a regular high school diploma are not eligible to receive a FAPE.
 - a. The exception does not apply to students who have graduated but have not been awarded a regular high school diploma.
 - b. Graduation from high school with a regular diploma constitutes a change in placement requiring written prior notice in accordance with state and federal laws.
3. Participation in or attendance at programs by children with verified disabilities from date of diagnosis to age five shall be voluntary as specified by the parent.

Date Regulation Reviewed by the Board of Education:

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**Federal Regulation 34 CFR
300; Nebraska Statutes 79-1110
to 79-1178; 92 NAC 51-004.01,
004.02**

SPECIAL EDUCATION

Guidelines for Use of Specific Behavior Modification Strategies

Behavior modification is one of several education techniques used in day-to-day instruction. This technique assumes that all or most learning takes place through positive and/or negative reinforcement.

The term “behavior modification” includes reinforcement techniques commonly employed by classroom teachers, as well as specific techniques used for students such as timeout rooms, restraints, aversive and/or non-aversive techniques, etc.

Use of some highly specific behavior modification strategies can be quite effective. Use of such strategies can also be easily misunderstood by parents and/or other public audiences; therefore, the following guidelines for using behavior modification practices should be observed:

Procedures:

An individual plan for using specific/unique behavior modification strategies with a student should be developed, as determined appropriate, using the following procedures:

- a. Describe specific behavior to be modified/acquired;
- b. Describe the technique(s) to be used;
- c. Determine who will be responsible for administering the technique;
- d. Document whether the student has a choice in the technique to be used;
- e. Document that parents/guardian and the student have been informed of the technique and approve of the plan;
- f. Document that medical clearance has been obtained to use the technique, where appropriate;
- g. Document that the building administrator has approved the plan;
- h. Describe the timelines established such as frequency, duration, termination, etc.
- i. Describe how the technique will be determined to have been successful or unsuccessful.
- j. School staff are prohibited from requiring a child to obtain a prescription for a controlled substance as a condition for attending school, receiving an evaluation or receiving special education services.

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**Federal Regulation 34 CFR
300; Nebraska Statutes 79-1110
to 79-1178; 92 NAC 51-
004.11D1**

SPECIAL EDUCATION

Identification of Students with Disabilities

Childfind

Emerson-Hubbard Public Schools ensures that all children with disabilities residing in Emerson-Hubbard Public Schools, including children with disabilities who are homeless children or wards of the state and children with disabilities attending nonpublic schools, regardless of the severity of their disabilities, and who are in need of special education and related services, are identified, located and evaluated and a practical method is developed and implemented to determine which children with disabilities are currently receiving special education and related services.

Identification, Evaluation and Verification

Emerson-Hubbard Public Schools ensures that children with disabilities are evaluated in accordance with state and federal laws. Procedures to ensure that assessment and evaluation materials and procedures utilized for the purposes of evaluation and placement of children with disabilities will be selected and administered so as not to be racially or culturally discriminatory. Such materials or procedures shall be provided and administered in the language and form most likely to yield accurate information on what the child knows and can do academically, developmentally and functionally, unless it is not feasible to provide or administer, and no single procedure shall be the sole criterion for determining an appropriate educational program for a child.

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Legal Reference:

**Federal Regulation 34 CFR
300; Nebraska Statutes 79-1110
to 79-1178; 92 NAC 51-006.01**

SPECIAL EDUCATION

Childfind

All children with disabilities residing in Emerson-Hubbard Public Schools, including children with disabilities who are homeless children or wards of the state and children with disabilities attending nonpublic schools, regardless of the severity of their disabilities, and who are in need of special education and related services, are to be identified, located, and evaluated and a practical method is to be developed and implemented to determine which children with disabilities are currently receiving needed special education and related services.

For infants and toddlers, Emerson-Hubbard Public Schools shall demonstrate targeted efforts to meet the needs of children from historically underserved populations, particularly minority, low-income, inner-city and rural populations, and children with disabilities who are wards of the state.

The Childfind requirements apply to highly mobile children with disabilities (such as migrant and homeless children) and to children under the age of three who are involved in a substantiated case of child abuse or neglect or who are identified as affected by illegal substance abuse, or withdrawal symptoms resulting from prenatal drug exposure.

The Childfind efforts will be made for children who are suspected of being a child with a disability and in need of special education, even though they are advancing from grade to grade.

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**Federal Regulation 34 CFR
300; Nebraska Statutes 79-1110
to 79-1178; 92 NAC 51-006.01A**

SPECIAL EDUCATION

Identification Procedures

1. Student Assistance Team (SAT)

For a school-age student, a general education student assistance team or a comparable problem-solving team shall be used prior to referral for multidisciplinary team evaluation.

The SAT or comparable problem-solving team shall utilize and document problem-solving and intervention strategies to assist the teacher in the provision of general education.

If the student assistance team or comparable problem-solving team feels that all viable alternatives have been explored, a referral for multidisciplinary evaluation shall be completed. A referral shall include information from the SAT or comparable problem-solving team, and a listing of the members of the SAT or comparable problem-solving team.

2. Informed Parental Consent

Informed parental consent must be obtained by Emerson-Hubbard Public Schools before:

Conducting an initial multidisciplinary evaluation;

Conducting a reevaluation; and

Initial placement of a child with disabilities in a program providing special education and related services or early intervention services to infants and toddlers.

Parental consent for evaluation shall not be construed as consent for initial placement.

Parental consent is not required before:

Reviewing existing data as part of an evaluation or reevaluation; or

Administering a test or other evaluation that is administered to all children unless, before administration of that test or evaluation, consent is required of parents of all children.

SPECIAL EDUCATION

Identification Procedures (Continued)

3. Parental Refusal to Consent

If the parent does not provide consent for an initial evaluation or the parent fails to respond to a request to provide the consent, Emerson-Hubbard Public Schools may pursue the initial evaluation by utilizing the procedures described in state and federal laws.

If the parent refuses to consent to the receipt of special education and related services, or the parents fail to respond to a request to provide the consent: Emerson-Hubbard Public Schools need not make available a free appropriate public education to the child and need not convene an IEP meeting or develop an IEP for the child for the services for which Emerson-Hubbard Public Schools requested such consent.

For infants and toddlers, if consent is not given, Emerson-Hubbard Public Schools shall make reasonable efforts to ensure that the parents:

Are fully aware of the nature of the evaluation or the services that will be available;
and

Understand that the child will not be able to receive the evaluation or services unless consent is given.

The parents of an infant or toddler may determine that they, their child, or other family members will accept or decline any early intervention service, and may decline such a service after first accepting it, without jeopardizing other early intervention services.

Date Regulation Reviewed by the Board of Education:

December 13, 2010

Legal Reference:

**Federal Regulation 34 CFR
300; Nebraska Statutes 79-1110
to 79-1178; 92 NAC 55-
006.01C; 92 NAC 51-009.06**

SPECIAL EDUCATION

General Evaluation Procedure Requirements

Consistent with federal and state laws, Emerson-Hubbard Public Schools may initiate a request for an initial evaluation to determine if the child is a child with a disability. Except for infants and toddlers, Emerson-Hubbard Public Schools shall conduct a full and individual evaluation for each child being considered for special education and related services before the initial provision of special education and related services to a child with a disability. The initial evaluation shall determine whether a child is a child with a disability and the educational needs of the child. Emerson-Hubbard Public Schools insures, at a minimum, that the following requirements are met:

1. Assessments and other evaluation materials used to assess a child are selected and administered so as not to be discriminatory on a racial or cultural basis; and are provided and administered in the language and form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally unless it is not feasible to provide or administer and are used for purposes for which the assessments or measures are valid and reliable.

For infants and toddlers, tests and other evaluation materials and procedures are administered in the native language of the parent or other mode of communication, unless it is clearly not feasible to do so.

2. A variety of assessment tools and strategies are used to gather relevant functional, developmental and academic information about the child, including information provided by the parent, and information related to enabling the child to be involved in and progress in the general education curriculum (or for a preschool child, to participate in appropriate activities) that may assist in determining whether the child is a child with a disability and the content of the child's IEP.
3. Materials and procedures used to assess a child with limited English proficiency are selected and administered to insure that they measure the extent to which the child has a disability and needs special education, rather than measuring the child's English language skills.
4. Any standardized tests that are given to a child have been validated for the specific purpose for which they are used; and are administered by trained and knowledgeable personnel in accordance with instructions provided by the producer of the assessments. If an assessment is not conducted under standard conditions, a description of the extent to which it varied from standard conditions (e.g., the qualifications of the person administering the test, or the method of the test administration) must be included in the evaluation report.

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Assessment Procedures and Requirements (Continued)

5. Tests and other evaluation materials include those tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient. No single measure or assessment is used as the sole criterion for determining whether a child is a child with a disability and for determining an appropriate educational program for the child.
6. Tests are selected and administered so as best to insure that if a test is administered to a child with impaired sensory, manual, or speaking skills, the test results accurately reflect the child's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the child's impaired sensory, manual, or speaking skills (unless those skills are the factors that the test purports to measure).
7. The child is assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities. The evaluation is sufficiently comprehensive to identify all of the child's special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified.
8. Technically-sound instruments are used that assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors. Assessment tools and strategies provide relevant information that directly assists persons in determining the educational needs of the child.
9. In interpreting evaluation data for the purpose of determining if a child is a child with a disability and the educational needs of the child, multidisciplinary teams shall draw upon information from a variety of sources, including aptitude and achievement tests, parent input, teacher recommendations, physical condition, social or cultural background and adaptive behavior, and insure that information obtained from all these sources is documented and carefully considered and will be carefully considered and used in the development of the child's IEP.

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Legal Reference:

**Federal Regulation 34 CFR
300; Nebraska Statutes 79-1110
to 79-1178; 92 NAC 51-006.02**

SPECIAL EDUCATION

Multidisciplinary Evaluation Team (MDT) Requirements

1. Evaluation of Students

- a. The multidisciplinary evaluation team (including the child's parents) shall be responsible for the analysis, assessment and documentation of educational and developmental abilities and needs of each child referred for the purpose of individual evaluation. Using the documentation collected and the Nebraska Department of Education verification criteria, the multidisciplinary team shall make all verification decisions. Documented information shall be collected to facilitate the development of a statement of present level of development and educational performance on the IFSP or IEP.
- b. The multidisciplinary evaluation team members shall be composed of such individuals as required by state and federal law.
- c. For students attending nonpublic schools, an administrator or a designated representative of the nonpublic school shall be a member of the team.
- d. In making a determination of eligibility, a child shall not be determined to be a child with a disability if the determining factor is lack of appropriate instruction in reading (including in the essential components of reading instruction as defined by federal laws), lack of instruction in math or limited English proficiency.
- e. If a determination is made that a child has a disability and needs special education and related services, an IEP must be developed for the child in accordance with state and federal laws.
- f. Referral, notice to parents and parental consent shall be completed in a reasonable period of time. The initial multidisciplinary team evaluation shall be completed within 60 days of receiving parental consent for the evaluation. This 60-day period shall not apply if either (1) the child has enrolled in Emerson-Hubbard Public Schools after consent for evaluation was given to the child's previous school, the child's previous school is making sufficient progress on the evaluation to ensure prompt completion and the parent and Emerson-Hubbard Public Schools agree to a specific time period when the evaluation will be completed or (2) the parent repeatedly fails or refuses to produce the child for the evaluation.

2. Multidisciplinary team written reports

- a. The team shall prepare a written report of the results of the evaluation.
- b. The report shall include a statement of: whether the child qualifies as a student with a disability based on the eligibility criteria and definition of "children with disabilities"

SPECIAL EDUCATION

Multidisciplinary Evaluation Team (MDT) Requirements (Continued)

contained in the Nebraska Department of Education Rules; the basis for making the determination; the child's educational needs; and a listing of the team members.

- c. For a child with a suspected learning disability, the report shall also include:
 - 1) a statement of whether the student has a specific learning disability based on criteria and the definition as issued by the Nebraska Department of Education;
 - 2) the relevant behavior noted during the observation of the student; the relationship of that behavior to the student's academic functioning; the educationally relevant medical findings, if any; and the determination of the team concerning the effects of environmental, cultural, or economic disadvantage;
- d. In determining whether a child has a specific learning disability, the team may use a process that determines if the child responds to scientific, research-based intervention (Response to Intervention Process) as a part of the evaluation procedures, or a process that demonstrates a severe discrepancy between intellectual ability and achievement (Severe Discrepancy Process).
- e. Each team member shall certify in writing whether the report reflects his or her conclusion. If it does not reflect his or her conclusion, the team member shall submit a separate statement presenting his or her conclusion.
- f. A copy of the evaluation report and the documentation of determination of eligibility shall be given to the parent.

3. Further Evaluation or Non-Verification

- a. Should a multidisciplinary evaluation team recommend that further evaluation of a student may be necessary by an outside agency, the building principal should contact the director of special education. Supplemental evaluation must be approved by the director of special education.
- b. For a school-age student who, after initial MDT evaluation, does not qualify for special education services or for a student with a verified disability who, upon reevaluation, no longer qualifies for special education services, a problem-solving team shall document a plan to assist the teacher(s) in the provision of regular education.

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Federal Regulation 34 CFR
300; Nebraska Statutes 79-1110
to 79-1178; 92 NAC 51-006.02

SPECIAL EDUCATION

Eligibility for Special Education

Except for infants and toddlers, Emerson-Hubbard Public Schools shall provide special education services only to children with verified disabilities. For infants and toddlers early intervention services may begin prior to completion of a full and individual initial evaluation in accordance with Nebraska Department of Education Rules.

Date Regulation Reviewed by the Board of Education:

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Legal Reference:

**Federal Regulation 34 CFR
300; Nebraska Statutes 79-1110
to 79-1178; 92 NAC 51-006.04**

SPECIAL EDUCATION

Reevaluations

A reevaluation of each child with a previously verified disability shall be conducted not more than once a year, unless the parent and the school district agree otherwise; and shall be conducted at least every three years unless the parent and the school district agree that a reevaluation is unnecessary.

Review of Existing Evaluation Data

As part of an initial evaluation (if appropriate) and as part of any reevaluation, the IEP team and other qualified professionals, as appropriate, shall:

Review existing evaluation data on the child, including evaluations and information provided by the parents of the child, current classroom-based local or state assessments and classroom-based observations, and observations by teachers and related services providers; and on the basis of that review, and input from the child's parents, identify what additional data, if any, are needed to determine:

1. whether the child is a child with a disability and the educational needs of the child or, in case of a reevaluation of a child, whether the child continues to have such a disability and such educational needs;
2. the present levels of academic achievement and related developmental needs of the child;
3. whether the child needs special education and related services, or in the case of a reevaluation of a child, whether the child continues to need special education and related services; and
4. whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the individualized education program of the child and to participate, as appropriate, in the general curriculum.

Emerson-Hubbard Public Schools shall administer such assessments and other evaluation measures as may be needed to produce the data identified by the IEP team.

The IEP team and other qualified professionals may conduct its review without a meeting.

SPECIAL EDUCATION**Reevaluations (Continued)**

If the IEP team and other qualified professionals, as appropriate, determine that no additional data are needed to determine whether the child continues to be a child with a disability and to determine the child's educational needs, the district:

Shall notify the child's parents of:

That determination and the reasons for the determination; and

The right of such parents to request an assessment to determine whether the child continues to be a child with a disability and to determine the child's educational needs for the purpose of services under federal and state special education laws.

Emerson-Hubbard Public Schools shall not be required to conduct such an assessment unless requested to by the child's parents.

Emerson-Hubbard Public Schools shall evaluate a child with a disability in accordance with federal and state special education laws before determining that the child is no longer a child with a disability. However, Emerson-Hubbard Public Schools need not conduct an evaluation before the termination of a student's eligibility due to graduation from secondary school with a regular high school diploma, or to exceeding the age eligibility for a free appropriate public education. For a child whose eligibility terminates under these circumstances, Emerson-Hubbard Public Schools shall provide the child with a summary of the child's academic achievement and functional performance, which shall include recommendations on how to assist the child in meeting the child's postsecondary goals.

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**Federal Regulation 34 CFR
300; Nebraska Statutes 79-1110
to 79-1178; 92 NAC 51-006.05**

SPECIAL EDUCATION

Independent Educational Evaluation

The parents of a child with a disability have the right to obtain an independent educational evaluation of the child at public expense if the parent disagrees with an evaluation obtained by the Emerson-Hubbard Public Schools. Public expense means that Emerson-Hubbard Public Schools either pays for the full cost of the evaluation or insures that the evaluation is otherwise provided at no cost to the parent.

If a parent requests an independent educational evaluation at public expense, Emerson-Hubbard Public Schools will, without unnecessary delay, either:

1. Initiate a hearing to show its evaluation is appropriate or
2. Insure that an independent educational evaluation is provided at public expense, unless Emerson-Hubbard Public Schools demonstrates at a hearing that the evaluation obtained by the parent did not meet school district criteria.

Emerson-Hubbard Public Schools shall provide to parents, upon request for an independent educational evaluation, information about where an independent educational evaluation may be obtained and the Emerson-Hubbard Public Schools criteria applicable for independent educational evaluation.

The Emerson-Hubbard Public School District will provide the parent with a list of qualified professional agencies/individuals in the area. These providers will be those whose rates have been approved by the Nebraska Department of Education. Such lists will indicate the availability of qualified individuals within the geographic area specified.

Qualifications of examiners for the Emerson-Hubbard Public School District are in accordance with Rule 51 of the Nebraska Department of Education. Locations of any evaluation provider shall be within reasonable distance of the Emerson-Hubbard Public School District.

The Emerson-Hubbard Public School District will establish maximum allowable charges for an independent educational assessment. Maximum allowable charges for an independent assessment allow parent/guardian to choose from among qualified professional agencies/persons. Parents have the opportunity to demonstrate that unusual circumstances justify an independent assessment that does not fall within this regulation.

If Emerson-Hubbard Public Schools initiates a hearing and the final decision is that the school district's evaluation is appropriate, the parent still has the right to an independent educational evaluation, but not at public expense.

SPECIAL EDUCATION

Independent Educational Evaluation (Continued)

If a parent requests an independent educational evaluation, Emerson-Hubbard Public Schools may ask for the parent's reason why he or she objects to the public evaluation. However, the explanation by the parent may not be required and the school district may not unreasonably delay either providing the independent educational evaluation at public expense or initiating a due process hearing to defend the public evaluation.

If the parent obtains an independent educational evaluation at private expense, the results of the evaluation:

Must be considered by Emerson-Hubbard Public Schools, if it meets district criteria, in any decision made with respect to the provision of a free appropriate public education to the child; and

May be presented as evidence at a hearing regarding that child.

If an independent educational evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria that the school district uses when it initiates an evaluation, to the extent those criteria are consistent with the parent's right to an independent educational evaluation.

Except for the criteria previously mentioned, Emerson-Hubbard Public Schools may not impose conditions or timelines related to obtaining an independent educational evaluation at public expense.

If a parent/guardian obtains an independent assessment without notifying the school district, the school district will not be obligated to pay the expense of such evaluation if the district's evaluation is determined to be appropriate.

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Legal Reference: **Federal Regulation 34 CFR
300; Nebraska Statutes 79-1110
to 79-1178; 92 NAC 51-006.07**

SPECIAL EDUCATION

Individualized Education Program (IEP)

Emerson-Hubbard Public Schools ensures that an Individualized Education Program (IEP) or an Individualized Family Service Plan (IFSP) is developed, reviewed and revised for each child with a disability in accordance with state and federal laws.

Date of Adoption (or Last Revision):

December 13, 2010

Legal Reference:

**Federal Regulation 34 CFR
300; Nebraska Statutes 79-1110
to 79-1178; 92 NAC 51-007**

SPECIAL EDUCATION

IEP Team Participants

Emerson-Hubbard Public Schools will insure and document that each IEP team includes the following participants:

1. The parents of a child with a disability or documentation of attempts to arrange a mutually agreed on time and place.
2. Not less than one regular education teacher of the student (if the child is, or may be, participating in the regular education environment). The regular education teacher of the child, as a member of the IEP team, shall, to the extent appropriate, participate in the development, review and revision of the IEP of the child including assisting in the determination of appropriate positive behavioral interventions and supports and other strategies and the determination of supplementary aids and services, program modifications, and support for school personnel.
3. Not less than one special education teacher, or where appropriate, at least one special education provider of the child;
4. A representative of the Emerson-Hubbard Public Schools who:
 - a. Is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities;
 - b. Is knowledgeable about the general education curriculum; and
 - c. Is knowledgeable about the availability of resources of the school district. The district may designate another member of the IEP team to also serve as the school district representative, if the above criteria are satisfied.
5. An individual who can interpret the instructional implications of evaluation results, who may be a member of the team previously described.
6. At the discretion of the parent or the district, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate (the determination of the knowledge or special expertise of the individual shall be made by the party (parents or district) who invited the individual to be a member of the IEP); and
7. Whenever appropriate, the child with a disability;
8. For students attending nonpublic schools, a representative of the nonpublic schools. If the representative cannot attend, other methods shall be used to insure participation by the nonpublic school, including individual or conference telephone calls;

SPECIAL EDUCATION

IEP Team Participants (Continued)

9. For students receiving services from an approved service agency, a representative of the service agency. If the representative is not in attendance, other methods shall be used to insure participation by the approved service agency, including written communication, or individual or conference telephone calls;
10. For students of any age, if the purpose of the meeting is consideration of transition services.
 - a. The student. If the student does not attend, Emerson-Hubbard Public Schools will take other steps to insure that the student's preferences and interests are considered.
 - b. A representative of any other agency that is likely to be responsible for providing or paying for the transition services included in the student's IEP. If an agency invited to send a representative to the meeting does not do so, Emerson-Hubbard Public Schools will take other steps to obtain the participation of the other agency in the planning of any transition services.
11. IEP Attendance
 - a. A member of the IEP Team shall not be required to attend an IEP meeting, in whole or in part, if the parent of a child with a disability and the school district agree that the attendance of such member is not necessary because the member's area of the curriculum or related services is not being modified or discussed in the meeting.
 - b. A member of the IEP Team may be excused from attending an IEP meeting, in whole or in part, when the meeting involves a modification to or discussion of the member's area of the curriculum or related services, if:
 - 1) the parent and the school district consent to the excusal (a parent's agreement and consent shall be in writing); and
 - 2) the member submits, in writing to the parent and the IEP Team, input into the development of the IEP prior to the meeting.
12. In the case of a child who was previously served as an infant or toddler under Part C of the Individuals with Disabilities Education Act, an invitation to the initial IEP meeting shall, at the request of the parent, be sent to the Part C service coordinator or other representative of the Part C system to assist with the smooth transition of services.

SPECIAL EDUCATION

IEP Team Participants (Continued)

Parent Participation

The school district shall take steps to insure that one or both of the parents of the child with a disability are present at the IEP conference or are afforded the opportunity to participate, including:

1. Notifying parents of the IEP conference early enough to insure that they will have an opportunity to attend and scheduling the meeting at a mutually agreed on time and place.
2. The notification must indicate the purpose, time and location of the meeting and who will be in attendance and inform the parents of the provisions of federal and state laws. If the purpose of the meeting is the consideration of transition services for a student, the notification must also:
 - a. Indicate that the purpose of the meeting is consideration of the needed transition services.
 - b. Indicate that Emerson-Hubbard Public Schools will invite the student to the meeting; and
 - c. Identify any other agency that will be invited to send a representative.
3. If neither parent can attend, Emerson-Hubbard Public Schools will use other methods to insure parent participation, including individual or conference telephone calls.
4. A meeting may be conducted without a parent in attendance if Emerson-Hubbard Public Schools is unable to convince the parents they should attend. In this case, the district must have a record of its attempts to arrange a mutually agreed on time and place such as:
 - a. Detailed records of telephone calls made or attempted and the results of the calls;
 - b. Copies of correspondence sent to the parents and any responses received; and
 - c. Detailed records of visits made to the parent's home or place of employment and the results of those visits.
5. Emerson-Hubbard Public Schools will take whatever action is necessary to insure that the parent understands the proceedings of an IEP conference, including arranging for an interpreter for parents who are deaf or whose native language is other than English.
6. Emerson-Hubbard Public Schools will provide a copy of the IEP to parents at no cost.

Date Regulation Reviewed by the Board of Education:

Legal Reference:

December 13, 2010

**Federal Regulation 34 CFR
300; Nebraska Statutes 79-1110
to 79-1178; 92 NAC 51-007.03**

SPECIAL EDUCATION

IEP Meeting

1. Emerson-Hubbard Public Schools is responsible for initiating and conducting meetings for the purpose of developing, reviewing and revising an IEP for a student with a verified disability.
2. Before a student with a disability is placed in, or referred to, a nonpublic school or facility, the district shall initiate and conduct a meeting to develop an IEP for the student.
3. After a student with a disability enters a nonpublic school or facility, any meetings to review and revise the student's IEP may be initiated and conducted by the nonpublic school or facility at the discretion of Emerson-Hubbard Public Schools.
4. If the nonpublic school or facility initiates and conducts these meetings, Emerson-Hubbard Public Schools will insure that the parents and nonpublic representative:
 - a. Are involved in any decision about the student's IEP; and
 - b. Agree to any proposed changes in the IEP before those changes are implemented.
5. An IEP meeting must be held within thirty (30) calendar days of the verification of the child's disability.
6. After the initial IEP meeting, IEP's must be in effect at the beginning of each school year.
7. The IEP team shall review the student's IEP periodically, but not less frequently than annually, to determine whether the annual goals for the student are being achieved.
8. In making changes to a child's IEP after the annual IEP meeting for a school year, the parent of a child with a disability and the school district may agree not to convene an IEP meeting for the purposes of making such changes, and instead may develop a written document to amend or modify the child's current IEP.
9. To the extent possible, the school district shall encourage the consolidation of reevaluation meetings for the child and other IEP meetings for the child.
10. When conducting IEP Team meetings and placement meetings and carrying out administrative matters (such as scheduling, exchange of witness lists and status conferences), the parent of a child with a disability and the school district may agree to use alternative means of meeting participation, such as video conferences and conference calls.

Date Regulation Reviewed by the Board of Education:

Legal Reference:

December 13, 2010

Federal Regulation 34 CFR

**300; Nebraska Statutes 79-1110
to 79-1178; 92 NAC 51-007.09**

SPECIAL EDUCATION

IEP Contents

The Individual Education Program (IEP) is a written statement for a student with a verified disability which specifies the special education and related services necessary to assure that child a free, appropriate public education.

The IEP shall include:

1. A statement of the student's present levels of academic achievement and functional performance, including:
 - a. How the student's disability affects the student's involvement in and progress in the general curriculum (i.e., the same curriculum as for nondisabled students); or
 - b. For preschool children, as appropriate, how the disability affects the child's participation in appropriate activities; and
 - c. For children with disabilities who take alternate assessments aligned to alternate achievement standards, a description of benchmarks or short-term objectives;
2. A statement of measurable annual goals, including academic and functional goals, designed to:
 - a. Meet the child's needs that result from the student's disability to enable the student to be involved in and make progress in the general education curriculum (i.e., the same curriculum as for nondisabled students) or for preschool children, as appropriate, to participate in appropriate activities; and
 - b. Meet each of the student's other educational needs that result from the student's disability.
3. A description of how the child's progress toward meeting the annual goals will be measured and when periodic reports on the progress the child is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards) will be provided;
4. A statement of the special education and related services and supplementary aids and services based on peer-reviewed research to the extent practicable to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided for the child:
 - a. To advance appropriately toward attaining the annual goals;
 - b. To be involved in and progress in the general curriculum and to participate in extracurricular and other nonacademic activities; and

SPECIAL EDUCATION

IEP Contents (Continued)

- c. To be educated and participate with other students with disabilities and non-disabled students in the activities described in this section.
- 5. An explanation of the extent, if any, to which the student will not participate with nondisabled students in the regular class and in the activities previously described.
- 6. A statement of any individual appropriate accommodations or modifications that are necessary to measure the academic achievement and functional performance of the child on state and district-wide assessments; and if the IEP team determines that the student shall take an alternate assessment on a particular district-wide assessment of student achievement, a statement of why:
 - a. The child cannot participate in the regular assessment, and
 - b. The particular alternate assessment selected is appropriate for the child;
- 7. The projected date for the beginning of the services and modifications described in #3 and the anticipated frequency, location, and duration of those services and modifications;
- 8. Beginning not later than the first IEP to be in effect when the child is 16, and updated annually thereafter:
 - a. Appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment and, where appropriate, independent living skills;
 - b. The transition services (including courses of study) needed to assist the child in reaching these goals; and
 - c. If a participating agency, other than the school district, fails to provide the transition services described in the IEP, the school district shall reconvene the IEP Team to identify alternative strategies to meet the transition objectives of the child set out in the IEP.
- 9. The plan of transportation and any special conditions necessary for safe transport of the child with a verified disability shall be part of the IEP, when applicable.
- 10. In developing, reviewing or revising each child's IEP:
 - a. The IEP team shall consider the strengths of the child and the concerns of the parents for enhancing the education of their child.

SPECIAL EDUCATION

IEP Contents (Continued)

- b. The IEP team shall consider the results of the initial evaluation or most recent evaluation of the child, and the academic, developmental and functional needs of the child.
 - c. As appropriate, the IEP team shall consider the results of the child's performance on any general state and district-wide assessment programs.
 - d. In the case of a child whose behavior impedes his or her learning or that of others, the IEP team shall consider the use of positive behavioral interventions and supports and other strategies to address that behavior.
 - e. In the case of a child with limited English proficiency, the IEP team shall consider the language needs of the child as these needs relate to the child's IEP.
 - f. In the case of a child who is blind or visually impaired, the IEP team shall provide for instruction in Braille and the use of Braille unless the IEP team determines, after an evaluation of the child's reading and writing skills, needs, and appropriate reading and writing media (including an evaluation of the child'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 child.
 - g. The IEP team shall consider the communication needs of the student and in the case of a student who is deaf or hard of hearing, shall consider the student's language and communication needs, opportunities for direct communications with peers and professional personnel in the student's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the student's language and communication mode.
 - h. The IEP team shall consider whether the student needs assistive technology devices and services.
11. If the IEP team determines that a student needs a particular device or service (including an intervention, accommodation, or other program modification) in order for the student to receive a free appropriate public education (FAPE), the IEP team must include a statement to that effect in the student's IEP.

Date Regulation Reviewed by the Board of Education:

December 13, 2010

Legal Reference:

**Federal Regulation 34 CFR
300; Nebraska Statutes 79-1110
to 79-1178; 92 NAC 51-007.07**

SPECIAL EDUCATION

Revising the IEP

The IEP team shall revise the IEP as appropriate to address:

1. Any lack of expected progress toward the annual goals and in the general education curriculum, where appropriate;
2. The results of any reevaluation conducted;
3. The information about the student provided to, or by, the parents;
4. The student's anticipated needs; or
5. Other matters.

Date Regulation Reviewed by the Board of Education:

December 13, 2010

Legal Reference:

**Federal Regulation 34 CFR
300; Nebraska Statutes 79-1110
to 79-1178; 92 NAC 51-007.10**

SPECIAL EDUCATION

IEP Accountability

1. Emerson-Hubbard Public Schools will provide special education and related services to a student with a disability in accordance with the student's IEP and make a good faith effort to assist the child to achieve the goals and objectives or benchmarks listed in the IEP.
2. Neither the district, a teacher, nor other person will be held accountable if a student does not achieve the growth projected in the annual goals and benchmarks or objectives. However, the district may establish its own accountability system regarding teacher, school or district performance.
3. Nothing in this regulation limits a parent's right to ask for revisions of the student's IEP or to invoke due process procedures if the parent feels that the efforts required are not being made.

Date Regulation Reviewed by the Board of Education:

December 13, 2010

Legal Reference:

**Federal Regulation 34 CFR
300; Nebraska Statutes 79-1110
to 79-1178; 92 NAC 51-007.11**

SPECIAL EDUCATION

Students with Disabilities in Adult Prisons

1. The following requirements do not apply to students with disabilities who are convicted as adults under state law and incarcerated in adult prisons:
 - a. The requirements relating to participation of students with disabilities in general assessments; and
 - b. The requirements relating to transition and planning and transition services do not apply with respect to such students who will reach age 21 before they will be eligible to be released from prison, based on consideration of their sentence and eligibility of early release.
2. The IEP team of a student with a disability, who is convicted as an adult under state law and incarcerated in an adult prison, may modify the student's IEP or placement if the state has demonstrated a bona fide security or compelling penological interest that cannot otherwise be accommodated.

Date Regulation Reviewed by the Board of Education:

December 13, 2010

Legal Reference:

**Federal Regulation 34 CFR
300; Nebraska Statutes 79-1110
to 79-1178; 92 NAC 51-007.12**

SPECIAL EDUCATION

Programs for Children who Transfer School Districts

- A. Transfer within the same state — In the case of a child with a disability who transfers school districts within the same academic year, who enrolls in a new school, and who had an IEP that was in effect in Nebraska, Emerson-Hubbard Public Schools shall provide such child with a free appropriate public education, including services comparable to those described in the previously held IEP, in consultation with the parents until such time as the school district adopts the previously held IEP or develops, adopts and implements a new IEP that is consistent with federal and state law.
- B. Transfer from outside the state — In the case of a child with a disability who transfers school districts within the same academic year, who enrolls in a new school and who had an IEP that was in effect in another state, Emerson-Hubbard Public Schools shall provide such child with a free appropriate public education, including services comparable to those described in the previously held IEP, in consultation with the parents until such time as the school district conducts an evaluation, if determined to be necessary, and develops a new IEP, if appropriate, that is consistent with federal and state law.
- C. Transmittal of records —
 - 1. When a student transfers into Emerson-Hubbard Public Schools from another school, Emerson-Hubbard Public Schools shall take reasonable steps to promptly obtain the student's records from the transferring school, including the student's IEP and supporting documents and any other records relating to the provision of special education and related services.
 - 2. When a student transfers out of Emerson-Hubbard Public Schools and a request is received to transfer the student's records to the student's new school, Emerson-Hubbard Public Schools shall take reasonable steps to promptly respond to such request.

Date Regulation Reviewed by the Board of Education:

December 13, 2010

Legal Reference:

**Federal Regulation 34 CFR
300; Nebraska Statutes 79-1110
to 79-1178; 92 NAC 51- 007.08**

SPECIAL EDUCATION

Transition from Early Intervention Services to Preschool Programs

Infants and toddlers with disabilities will be provided early intervention services in accordance with the law. The district will provide transition services as the child transitions to Part B preschool services according to law.

Date of Adoption (or Last Revision):

December 13, 2010

Legal Reference:

**Federal Regulation 34 CFR
300; Nebraska Statutes 79-1110
to 79-1178; 92 NAC 51-007.17**

SPECIAL EDUCATION

Individual Family Service Plan (IFSP) Transition Plan

For students younger than age three who are determined to be eligible for early intervention services under state and federal laws, the Individual Family Service Plan (IFSP) shall include the steps to be taken to support the transition of the child to preschool services to the extent that those services are considered appropriate, or other services that may be available, if appropriate. These include: (a) discussions with, and training of, parents regarding future placements and other matters related to the child's transition; (b) procedures to prepare the child for changes in the service delivery, including steps to help the child adjust to, and function in, a new setting; and (c) with parental consent, the transmission of information about the child to ensure continuity of services, including evaluation and copies of IFSPs that have been developed and implemented.

Date Regulation Reviewed by the Board of Education:

December 13, 2010

Legal Reference:

**Federal Regulation 34 CFR
300; Nebraska Statutes 79-1110
to 79-1178; 92 NAC 51-
007.13B**

SPECIAL EDUCATION

Transition to Preschool Programs

1. Emerson-Hubbard Public Schools or the agency with which it contracts for services coordination shall convene, with the approval of the child's family, a conference including the family and school district at least 90 days (and at the discretion of all such parties, up to six months) before the child's third birthday or at least 90 days before completion of the early intervention program. The purpose of the meeting is to:
 - a. Insure a smooth and effective transition to preschool programs assisted under Part B of the IDEA for toddlers receiving early intervention services;
 - b. Review the child's program options for the period from the child's third birthday through the remainder of the school year; and
 - c. Describe how the family will be included in the transition plans; and
 - d. Establish a transition plan.
2. In the case of a child with a disability aged three through five (or a two-year-old child with a disability who will turn age three during the school year), the IEP Team shall consider the individualized family service plan that is developed in accordance with Nebraska Department of Education law and the individualized family service plan may serve as the IEP of the child if using that plan as the IEP is agreed to by the school district and the child's parents.

Date Regulation Reviewed by the Board of Education:

December 13, 2010

Legal Reference:

**Federal Regulation 34 CFR
300; Nebraska Statutes 79-1110
to 79-1178; 92 NAC 51-007.17**

SPECIAL EDUCATION

Participation in District-wide Assessments

Emerson-Hubbard Public Schools ensures that all children with disabilities are included in all state and district-wide assessment programs, including assessments described in the Elementary and Secondary Education Act of 1965, with appropriate accommodations, modifications and alternate assessments where necessary, and as indicated in their respective individualized education programs.

Date of Adoption (or Last Revision):

December 13, 2010

Legal Reference:

**Federal Regulation 34 CFR
300; Nebraska Statutes 79-1110
to 79-1178; 92 NAC 51-004.05**

SPECIAL EDUCATION

Participation in State and District-wide Assessments

- A. In the case of a district-wide assessment, Emerson-Hubbard Public Schools shall develop guidelines for the provision of appropriate accommodations and modifications.
- B. In the case of a district-wide assessment, the school district shall develop and implement guidelines for the participation of children with disabilities in alternate assessments for those children who cannot participate in regular assessments with accommodations or modifications as indicated in their respective individualized education programs. The guidelines shall provide for alternate assessments that:
 - 1. Are aligned with the Nebraska Department of Education's challenging academic content standards and challenging student academic achievement standards; and
 - 2. If the Nebraska Department of Education has adopted alternate academic achievement standards permitted under the regulations promulgated to carry out the Elementary and Secondary Education Act of 1965, measure the achievement of children with disabilities against those standards.
- C. Emerson-Hubbard Public Schools will make available to the public, and report to the public with the same frequency and in the same detail as they report on the assessment of nondisabled children, the following:
 - 1. The number of children with disabilities participating in regular assessments and the number of those children who were provided accommodations in order to participate in those assessments.
 - 2. The number of children with disabilities participating in alternate assessments.
 - 3. The performance results of children with disabilities on regular assessments and on alternate assessments if the number of children with disabilities participating is sufficient to yield statistically reliable information and reporting that information will not reveal personally identifiable information about an individual student, compared with the achievement of all children, including children with disabilities on those assessments.

Date Regulation Reviewed by the Board of Education:

December 13, 2010

Legal Reference:

**Federal Regulation CFR 300,
Nebraska Statutes 79-1110 to
79-1178; 92 NAC 51-004.05A**

SPECIAL EDUCATION

Least Restrictive Environment

To the maximum extent appropriate, students with disabilities, including students in public or nonpublic schools or other care facilities, will be educated with students who are not disabled; and special classes, separate schooling, or other removal of students with disabilities from the regular educational environment will occur only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

Date of Adoption (or Last Revision):

December 13, 2010

Legal Reference:

**Federal Regulation 34 CFR
300; Nebraska Statutes 79-1110
to 79-1178; 92 NAC 51-008.01**

SPECIAL EDUCATION

Least Restrictive Environment (LRE) Requirements

1. Before any action is taken with respect to the initial placement of a student with disabilities, Emerson-Hubbard Public Schools shall provide a comprehensive individual multidisciplinary evaluation of the student's development and educational needs. For infants and toddlers, early intervention services may begin prior to completion of a full and individual initial evaluation.
2. In interpreting the information on the student's IEP or IFSP to make placement decisions, Emerson-Hubbard Public Schools shall:
 - a. Draw upon the information from the student's present level of development or educational performance, physical condition, social or cultural background and adaptive behavior;
 - b. Insure that information obtained from all of these sources is documented and carefully considered.
 - c. Insure that the placement decision is made by a group of persons, including persons knowledgeable about the student, the meaning of the evaluation data, and the placement options; and
 - d. Insure that the placement decision is made in conformity with the least restrictive environment requirements in this section and based on the student's unique needs and not on the student's disability.
3. Emerson-Hubbard Public Schools shall assure an array of special education placement options are available. Those options shall include: instruction in regular classes; supplemental services such as resource room; itinerant instruction or consultative services to be provided in conjunction with regular class placement; special classes; special schools; home instruction and instruction in hospitals and institutions.
4. The need for related services of an instructional nature shall be documented on the IEP or IFSP present level of performance, goals, and objectives, and shall be based on documented diagnostic evidence. Determination of the need for a related service for a student with a verified disability does not require the additional verification of a secondary disability.
5. Emerson-Hubbard Public Schools shall insure that the parents of a child with a disability are members of any group that makes decisions on the educational placement of their child.
 - a. If neither parent can participate in a meeting in which a decision is to be made relating to the educational placement of their child, the district shall use other methods to insure their participation, including individual or conference telephone calls, or video conferencing.

- b. A placement decision may be made by a group without the involvement of the parents, if the district is unable to obtain the parents' participation in the decision. In this case, the district must have a record of its attempt to insure their involvement.
 - c. Emerson-Hubbard Public Schools shall make reasonable efforts to insure that the parents understand, and are able to participate in any group discussions relating to the educational placement of their child, including arranging for an interpreter for parents with deafness, or whose native language is other than English.
- 6. Emerson-Hubbard Public Schools shall insure that the educational placement of a student with a verified disability:
 - a. Is determined at least annually;
 - b. Is based on his or her IEP; and
 - c. Is as close as possible to the student's home.
- 7. The various array of placement options must be available to the extent necessary to implement the IEP for each child with a verified disability;
- 8. Unless a student's IEP or IFSP requires some other arrangement, the student must be educated in the school which he or she would attend if not disabled.
- 9. In selecting the least restrictive environment, consideration must be given to any potential harmful effect on the child or others and the quality of services which he or she needs. A child with a disability must not be removed from education in age-appropriate regular classrooms solely because of needed modifications in the general curriculum.
- 10. Emerson-Hubbard Public Schools will take steps to provide nonacademic and extracurricular services and activities, including meals and recess periods, in the manner necessary to afford each school-age student with a verified disability an equal opportunity for participation in those services and activities with students who are not disabled to the maximum extent appropriate to meet the needs of each child. Nonacademic and extracurricular services and activities may include counseling services, athletics transportation, health services, recreational activities, special interest groups or clubs sponsored by the district, referrals to agencies that provide assistance to individuals with disabilities, and employment of students, including both employment by the school district and assistance in making outside employment available.

Date Regulation Reviewed by the Board of Education:

December 13, 2010

Legal Reference:

**Federal Regulation 34 CFR
300; Nebraska Statutes 79-1110
to 79-1178; 92 NAC 51-008.01**

SPECIAL EDUCATION

Placement Requirements

Emerson-Hubbard Public Schools may place a child with verified disabilities in special education programs provided:

1. Written consent to initially place the student in the proposed program is obtained from the parent; or
2. An order to place the student in the proposed program is obtained from a Department of Education appointed hearing officer or court of competent jurisdiction.

Date Regulation Reviewed by the Board of Education:

December 13, 2010

Legal Reference:

**Federal Regulation 34 CFR
300; Nebraska Statutes 79-1110
to 79-1178; 92 NAC 51-008.02**

SPECIAL EDUCATION

Children in Nonpublic Schools

Children with disabilities in nonpublic schools and facilities are provided special education and related services in accordance with an Individualized Education Program (IEP), at no cost to their parents, if the child is placed in, or referred to, nonpublic schools or facilities by Emerson-Hubbard Public Schools as a means of carrying out the requirements of the Individuals with Disabilities Education Act (IDEA) or any other applicable law requiring the provision of special education and related services to all children with disabilities. Children served by nonpublic schools or facilities as a result of a referral by the Emerson-Hubbard Public Schools will have all the rights they would have if served by the Emerson-Hubbard Public Schools.

Emerson-Hubbard Public Schools is not required to pay for the cost of education, including special education and related services, of a child with a disability at a nonpublic school or facility if Emerson-Hubbard Public Schools made a free appropriate public education available to the child and the parents elected to place the child in such nonpublic school or facility.

If the parents of a child with a disability, who previously received special education and related services under the authority of the Emerson-Hubbard Public Schools, enroll the child in a nonpublic elementary or secondary school without the consent of or referral by the Emerson-Hubbard Public Schools, a court or a hearing officer may require the Emerson-Hubbard Public Schools to reimburse the parents for the cost of the enrollment if the court or hearing officer finds that the Emerson-Hubbard Public Schools had not made available a free appropriate public education to the child in a timely manner prior to that enrollment.

The cost of the reimbursement may be reduced or denied if at the most recent IEP meeting that the parents attended prior to the removal of the child from the Emerson-Hubbard Public Schools, the parents did not inform the IEP team that they were rejecting the placement proposed by the district to provide a free appropriate public education to their child, including stating their concerns and their intent to enroll their child in a nonpublic school at public expense; or 10 business days (including any holidays that occur on a business day), prior to the removal of the child from the school district, the parents did not give written notice to the Emerson-Hubbard Public Schools of the information required above. The cost of reimbursement will not be reduced or denied for failure to provide the information required if the parent is illiterate and cannot write in English, if compliance with the requirement would likely result in physical or serious emotional harm to the child, if the school prevented the parent from providing the information or if the parents had not received required notice of the parents' responsibility to provide notice to the Emerson-Hubbard Public Schools.

SPECIAL EDUCATION

Children in Nonpublic Schools (Continued)

The reimbursement may also be reduced or denied if prior to the parents' removal of the child from Emerson-Hubbard Public Schools, the school district informed the parents, through the required notice of its intent to evaluate the child (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parents did not make the child available for the evaluation.

The reimbursement may also be reduced or denied upon a judicial finding of unreasonableness with respect to actions taken by the parents.

Date of Adoption (or Last Revision):

December 13, 2010

Legal Reference:

**Federal Regulation 34 CFR
300; Nebraska Statutes 79-1110
to 79-1178; 92 NAC 51-015.01**

SPECIAL EDUCATION

Students Placed in or Referred to a Nonpublic School or Facility by the District as a Means of Providing Special Education and Related Services

1. Emerson-Hubbard Public Schools shall insure that a child with a disability who is placed in or referred to a nonpublic school or facility by the district:
 - a. Is provided special education and related services in conformance with an Individualized Education Plan (IEP) at no cost to the parents;
 - b. Is provided an education that meets the standards, including the requirements of this section, that apply to education provided by Emerson-Hubbard Public Schools; and
 - c. Has all of the rights of a child with a disability who is served by the Emerson-Hubbard Public Schools.
2. Emerson-Hubbard Public Schools shall disseminate copies of applicable standards to each nonpublic school and facility to which the district has referred or placed a child with a disability.
3. Special education programs and support services may be provided by contracting with another school district, approved cooperative, or with a Department of Education provisionally-approved service provider. Responsibility for compliance with state and federal regulations for programs for children with disabilities remain with the Emerson-Hubbard Public Schools.
4. Emerson-Hubbard Public Schools shall be responsible for the development and maintenance of the IEP and the participation in all IEP meetings and shall assure that IEP meetings are arranged with the contracted program and the parents.

Date Regulation Reviewed by the Board of Education:

December 13, 2010

Legal Reference:

**Federal Regulation 34 CFR
300; Nebraska Statutes 79-1110
to 79-1178; 92 NAC 51-015.01**

SPECIAL EDUCATION

Students Placed in a Nonpublic School by Parents if Free Appropriate Public Education (FAPE) is at Issue

1. Emerson-Hubbard Public Schools will not pay for the cost of education, including special education and related services of a child with a disability at a nonpublic school or facility if Emerson-Hubbard Public Schools made free appropriate public education (FAPE) available to the child and the parents elected to place the child in a nonpublic school or facility. However, the school district shall include that child in the population whose needs are addressed consistent with this regulation.
2. Disagreements between a parent and the district regarding the availability of a program appropriate for the child, and the question of financial responsibility, are subject to the due process procedures.
 - a. If the parents of a child with a disability, who previously received special education and related services under the authority of the school district, enroll the child in a nonpublic preschool, elementary or secondary school without the consent or referral by the school district, a court or a hearing officer may require the school district to reimburse the parents for the cost of that enrollment if the court or hearing officer finds that the school district had not made a free appropriate public education available to the child in a timely manner prior to that enrollment and that the private placement is appropriate.
 - b. A parental placement may be found to be appropriate by a hearing officer or a court even if it does not meet the state standards that apply to education provided by the school district.
3. The cost of reimbursement described in section 2a above may be reduced or denied if:
 - a. At the most recent Individualized Education Program (IEP) meeting that the parents attended prior to removal of the child from the public school, the parents did not inform the IEP team that they were rejecting the placement proposed by the school district to provide a free appropriate public education to their child, including stating their concerns and their intent to enroll their child in a nonpublic school at public expense; or
 - b. At least 10 business days (including any holidays that occur on a business day), prior to the removal of the child from the public school, the parents did not give written notice to the school district of the information described in section 3a above, or

SPECIAL EDUCATION

Students Placed in a Nonpublic School by Parents if Free Appropriate Public Education (FAPE) is at Issue (Continued)

- c. Prior to the parents' removal of the child from the public school, the school district informed the parents, through notice requirements, of its intent to evaluate the child (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parents did not make the child available for such evaluation; or
 - d. Upon judicial finding of unreasonableness with respect to actions taken by the parents.
- 4. Notwithstanding the notice requirements of 3.a. and 3.b., the cost of reimbursement may not be reduced or denied for failure to provide the notice if: the parent is illiterate and cannot write in English; compliance with 3.a. and 3.b. would likely result in physical or serious emotional harm to the child; the school prevented the parent from providing such notice, or the parents had not received prior written notice, of the parents' responsibility to provide such notice to the Emerson-Hubbard Public Schools.

Date Regulation Reviewed by the Board of Education:

December 13, 2010

Legal Reference:

**Federal Regulation 34 CFR
300; Nebraska Statutes 79-1110
to 79-1178; 92 NAC 51-015.02A**

SPECIAL EDUCATION

Children Enrolled in a Nonpublic School by Parents if Free Appropriate Public Education (FAPE) is not at Issue

- A. “Nonpublic school children with disabilities,” for purposes of this regulation, means children with disabilities enrolled by their parents in nonpublic school or facilities other than children with disabilities covered under Regulation 6606.1.
1. Emerson-Hubbard Public Schools shall locate, identify, and evaluate all nonpublic school children with disabilities, including religious-school children residing in the jurisdiction of the school district. The activities undertaken to carry out this responsibility for nonpublic school children with disabilities must be comparable to activities undertaken for children with disabilities in public schools.
 2. Emerson-Hubbard Public Schools shall consult with appropriate representatives of nonpublic school children with disabilities on how to carry out the activities described in section 1.
 3. Services provided to nonpublic school children with disabilities may be provided on-site at a child’s nonpublic school, including a religious school, to the extent consistent with law.
- B. Emerson-Hubbard Public Schools may lease a classroom in a nonpublic school building. If properly drafted, the lease transforms the classroom into a public school classroom during the times covered by the lease. The Board of Education may offer the special education programs as enumerated in state and federal laws in a leased classroom in a nonpublic school building. It does not, however, have an unqualified legal duty to do so.
1. Emerson-Hubbard Public Schools may not use special education funds for classes that are organized separately on the basis of school enrollment or religion of the children if:
 - a. The classes are at the same site; and
 - b. The classes include children enrolled in public schools and children enrolled in nonpublic schools.
 2. Emerson-Hubbard Public Schools may not use special education funds to finance the existing level of instruction in a nonpublic school or to otherwise benefit the nonpublic school. The district will use the special education funds to meet the specific needs of children enrolled in nonpublic schools rather than the needs of a nonpublic school or the general needs of the children enrolled in a nonpublic school.
 3. Emerson-Hubbard Public Schools may use special education funds to make district personnel available in other than public facilities to the extent necessary to provide services designed for students enrolled in a nonpublic school and if those benefits are not normally provided by the nonpublic school.

SPECIAL EDUCATION

**Children Enrolled in a Nonpublic School by Parents if FAPE is not at Issue
(Continued)**

4. Emerson-Hubbard Public Schools may use special education funds to pay for the services of an employee of the nonpublic school if the employee performs the services outside of his or her regular hours of duty; and the employee performs the services under the district's supervision and control.
5. Emerson-Hubbard Public Schools may place equipment and supplies in a nonpublic school for the period of time needed for the provision of special education and related services.
 - a. The district will insure that the equipment or supplies placed in a nonpublic school are used only for the purpose of providing special education and related services; and can be removed from the nonpublic school without remodeling the nonpublic school facilities.
 - b. The district will remove equipment or supplies from a nonpublic school if it is no longer needed for the purpose of providing special education and related services or if it is necessary to avoid use of the equipment or supplies for other than special education purposes.
 - c. Special education funds will not be used for repairs, minor remodeling or the construction of nonpublic school facilities.
 - d. The district will keep title to and exercise continuing administrative control of all property, equipment and supplies that the school district acquires with special education funds for the benefit of nonpublic school children with disabilities.

Date Regulation Reviewed by the Board of Education:

December 13, 2010

Legal Reference:

**Federal Regulation 34 CFR
300; Nebraska Statutes 79-1110
to 79-1178; 92 NAC 51-015.03**

SPECIAL EDUCATION

Procedural Safeguards

Emerson-Hubbard Public Schools ensures that children with disabilities and their parents are afforded the procedural safeguards required in state and federal laws.

Confidentiality

Emerson-Hubbard Public Schools complies with the requirements contained in state and federal laws relating to the confidentiality of records and information.

Date of Adoption (or Last Revision):

December 13, 2010

Legal Reference:

**Federal Regulation 34 CFR
300; Nebraska Statutes 79-1110
to 79-1178; 92 NAC 51-009.01**

Accessibility and Confidentiality of Records

- A. Emerson-Hubbard Public Schools shall protect the confidentiality of personally identifiable information at collection, storage, disclosure and destruction stages.
 - 1. The principal of each school in the district shall assume responsibility of any personally identifiable information.
 - 2. All persons collecting or using personally identifiable information must receive training regarding the state's policies and procedures.
 - 3. The district shall maintain, for public inspection, a current listing of the names and positions of those employees within the district who may have access to personally identifiable information.
- B. The parents of a child with a disability or the child with a disability, if the child has attained 18 years of age (type and severity of the child's disability shall be taken into consideration), shall be afforded an opportunity to inspect and review all education records with respect to the identification, evaluation and educational placement of the child and the provision of a Free Appropriate Public Education (FAPE) to the child or the provision of early intervention services to infants and toddlers.
- C. Emerson-Hubbard Public Schools shall provide notice consistent with federal and state laws to ensure that parents of children with disabilities have the opportunity to participate in meetings for the purposes of identification, evaluation, educational placement and FAPE.
 - 1. A meeting does not include informal or unscheduled conversations involving district personnel and conversations on issues such as teaching methodology, lesson plans, or coordination of service provision if those issues are not addressed in the child's IEP.
 - 2. A meeting does not include preparatory activities that district personnel engage in to develop a proposal or response to a parent proposal that will be discussed at a later meeting.
- D. Emerson-Hubbard Public Schools shall permit parents to inspect and review any education records relating to their children which are collected, maintained or used by the district.
 - 1. Emerson-Hubbard Public Schools shall comply with such a request without unnecessary delay and before any meeting regarding an Individualized Education Program (IEP) or hearing relating to the identification, evaluation or placement of the child, and in no case more than 45 days after the request has been made.
 - 2. The right to inspect and review education records includes:
 - a. The right to a response from the district to reasonable requests for explanation and interpretations of the records;

SPECIAL EDUCATION

Accessibility and Confidentiality of Records (Continued)

- b. The right to request that the district provide copies of the records containing the information if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records; and
 - c. The right to have a representative of the parent inspect and review the records.
- 3. Emerson-Hubbard Public Schools shall comply with such a request without unnecessary delay and before any meeting regarding an Individualized Education Program (IEP) or hearing relating to the identification, evaluation or placement of the child, and in no case more than 45 days after the request has been made.
- 4. The right to inspect and review education records includes:
 - a. The right to a response from the district to reasonable requests for explanation and interpretations of the records;
 - b. The right to request that the district provide copies of the records containing the information if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records; and
 - c. The right to have a representative of the parent inspect and review the records.
- E. Emerson-Hubbard Public Schools shall keep a record of parties obtaining access to education records collected, maintained or used (except access by parents and authorized employees of the district), including the name of the party, the date access was given, and the purpose for which the party is authorized to use the records.
- F. If any education record includes information on more than one child, the parents of those children shall have the right to inspect and review only the information relating to their child or to be informed of that specific information.
- G. Emerson-Hubbard Public Schools shall provide parents, on request, a list of the types and locations of education records collected, maintained or used by the district.
- H. A parent who believes that information in education records collected, maintained, or used is inaccurate or misleading, or violates the privacy or other rights of the child, may request Emerson-Hubbard Public Schools to amend the information.
 - 1. The district shall decide whether to amend the information in accordance with the request within a reasonable period of time of receipt of the request.
 - 2. The district shall decide whether to amend the information in accordance with the request within a reasonable period of time of receipt of the request.

SPECIAL EDUCATION

Accessibility and Confidentiality of Records (Continued)

3. If the district decides to refuse to amend the information in accordance with the request, it shall inform the parents of the refusal, and advise the parent of the right to a local administrative review to be conducted in accordance with federal and state laws.
- I. Parental consent must be obtained before personally identifiable information is disclosed to anyone other than officials of Emerson-Hubbard Public Schools collecting or using the information unless specifically not required in the Family Education Rights and Privacy Act and its implementing regulations, 34 CFR Part 99.
- J. Emerson-Hubbard Public Schools shall retain special education records for five (5) years after the completion of the activities for which special education funds were used.
 1. The district shall inform parents when personally identifiable information collected, maintained, or used is no longer needed to provide educational services to the child.
 2. The information which is no longer necessary to provide educational services to the child must be destroyed at the request of the parents. However, a permanent record of a student's name, address and phone number, his or her grades, attendance record, classes attended, grade level completed and year completed may be maintained without time limitation.

Date Regulation Reviewed by the Board of Education:

December 13, 2010

Legal Reference:

**Federal Regulation 34 CFR
300; Nebraska Statutes 79-1110
to 79-1178; 92 NAC 51-009.01**

SPECIAL EDUCATION

Procedural Timelines

- A. For all students, except for infants and toddlers, each of the procedural steps necessary to provide a free appropriate public education shall be carried out within the specified time periods.
 - 1. Referral, notice to parents, parental consent, and multidisciplinary team evaluation shall be completed within the timelines provided in Regulation 6601.4.
 - 2. Upon completion of a multidisciplinary team verification decision, the district shall provide a reasonable notification and conduct an individual education program conference within 30 calendar days.
 - a. Parental consent for initial placement shall be requested within five school days of the IEP conference.
 - b. Special education placement shall be completed within five (5) school days of receipt of parental consent.
- B. For infants and toddlers, each of the procedural steps necessary to provide early intervention services shall be carried out within the specific time periods.
 - 1. A referral must be made by the district to the Services Coordination office within two working days of the district becoming aware of an infant or toddler who may be eligible for services.
 - 2. Notice of parents and parental consent shall be completed within a reasonable time period.
 - 3. A multidisciplinary team evaluation must be completed within 45 calendar days from the date of referral. In the event of exceptional circumstances that make it impossible to complete the evaluation within 45 days, the district will document those circumstances, inform the parent of the time estimated by the district to complete the evaluation and develop and implement an interim IFSP as necessary.
 - 4. Upon completion of a multidisciplinary team verification decision and within 45 days of the referral, the district will participate in an individual family service plan conference.
 - 5. Special education placement shall be completed within five school days of receipt of parental consent.

Date Regulation Reviewed by the Board of Education:
Legal Reference:

December 13, 2010
Federal Regulation 34 CFR
300; Nebraska Statutes 79-1110
to 79-1178; 92 NAC 51-009.02

SPECIAL EDUCATION

Prior Written Notice

- A. Prior written notice shall be given to the parents of a child with a disability a reasonable time before Emerson-Hubbard Public Schools:
1. Proposes to initiate or change the identification, evaluation or educational placement of a child or the provision of a free appropriate public education.
 2. Refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of a free appropriate public education to the child.
 3. Such prior written notice shall include:
 - a. A description of the action proposed or refused by the school district;
 - b. An explanation of why the district proposes or refuses to take the action;
 - c. A description of any options the district considered and the reasons why those options were rejected;
 - d. A description of each evaluation procedure, assessment, record or report the school district uses as a basis for the proposal or refusal;
 - e. A description of any other factors which are relevant to the district's proposal or refusal;
 - f. A statement that the parents of a child with a disability have protection under the procedural safeguards of federal and state law and if this notice is not an initial referral for evaluation, the means by which a copy or description of the procedural safeguards can be obtained;
 - g. Sources for parents to contact to obtain assistance in understanding the provisions of this part.
 4. This notice must be written in language understandable to the general public and provided in the native language of the parents or other mode of communication used by the parents unless it is clearly not feasible to do so.
 5. If the native language or other mode of communication of the parents is not a written language, the school district shall take steps to insure:
 - a. That the notice is translated orally or by other means to the parents in his or her native language or other mode of communication;
 - b. That the parents understand the content of the notice; and
 - c. That there is written evidence that the requirements of this section have been met.

Date Regulation Reviewed by the Board of Education:
Legal Reference:

December 13, 2010
Federal Regulation 34 CFR
300; Nebraska Statutes 79-1110
to 79-1178; 92 NAC 51-009.03

SPECIAL EDUCATION

Procedural Safeguards Notice

1. A copy of the procedural safeguards available to the parents of a child with a disability shall be given by the school district to the parents, only once per year, except that a copy shall also be given to the parents:
 - a. Upon initial referral or parental request for evaluation;
 - b. Upon request by a parent; and
 - c. Upon receipt by the school district of the first occurrence of the filing of a petition in a special education due process case.
2. The procedural safeguards notice shall include a full explanation of all of the procedural safeguards relating to:
 - a. Independent educational evaluation;
 - b. Prior written notice;
 - c. Parental consent;
 - d. Access to educational records;
 - e. Opportunity to file due process hearings;
 - f. The child's placement during pendency of due process proceedings;
 - g. Procedures for students subject to placement in an interim alternative educational setting;
 - h. Requirements for unilateral placement by parents of children in nonpublic schools at public expense;
 - i. Mediation;
 - j. Due process hearings, including requirements for disclosure of evaluation results and recommendations;
 - k. Civil actions, including the time period in which to file such actions;
 - l. Attorney's fees; and
 - m. The state complaint procedures including a description of how to file a complaint with the Nebraska Department of Education and the timelines under those procedures.
3. The notice of the procedural safeguards provided to the parent must be in writing in language understandable to the general public and provided in the native language of the parent.
4. The school district may place a current copy of the procedural safeguards notice on its Internet website if such website exists.
5. The school district may provide required notices to parents by an electronic mail (e-mail) communication if the parent elects to receive notices in such manner.
- 6.

Date Regulation Reviewed by the Board of Education:
Legal Reference:

December 13, 2010
Federal Regulation 34 CFR
300; Nebraska Statutes 79-1110
to 79-1178; 92 NAC 51-009.04

SPECIAL EDUCATION

Informed Parental Consent

- A. Informed parental consent must be obtained by Emerson-Hubbard Public Schools before:
 - 1. Conducting an initial multidisciplinary evaluation;
 - 2. Conducting a reevaluation; and
 - 3. Initial placement of a child with disabilities in a program providing special education and related services or early intervention services to infants and toddlers.
- B. Parental consent for evaluation shall not be construed as consent for initial placement described in federal and state laws.
- C. Parental consent is not required before:
 - 1. Reviewing existing data as part of an evaluation or reevaluation; or
 - 2. Administering a test or other evaluation that is administered to all children, unless before administration of that test or evaluation, consent is required of parents of all children.
- D. Informed parental consent need not be obtained for reevaluation if the school district can demonstrate it has taken reasonable measures to obtain that consent and the child's parent has failed to respond.
- E. Emerson-Hubbard Public Schools may not use a parent's refusal to consent to one service or activity under federal and state laws to deny the parent or child any other service, benefit or activity of the school district, except as required by federal and state law.

Date Regulation Reviewed by the Board of Education:

December 13, 2010

Legal Reference:

**Federal Regulation 34 CFR
300; Nebraska Statutes 79-1110
to 79-1178; 92 NAC 51-009.05**

SPECIAL EDUCATION

Parental Refusal to Consent

If the parent does not provide consent for an initial evaluation or the parent fails to respond to a request to provide the consent, the school district will follow the procedures set forth in Regulation 6601.2.

Date Regulation Reviewed by the Board of Education:

December 13, 2010

Legal Reference:

**Federal Regulation 34 CFR
300; Nebraska Statutes 79-1110
to 79-1178; 92 NAC 51-009.06**

SPECIAL EDUCATION

Appointment of Surrogates

1. Emerson-Hubbard Public Schools shall insure that the rights of a student with a disability are protected if:
 - a. No parent can be identified;
 - b. The district, after reasonable efforts, cannot locate the parents;
 - c. The child is an unaccompanied homeless youth; or
 - d. The student is a ward of the state or court.
2. The duty of the district includes the assignment of an individual to act as a surrogate for the parents. This must include a method for determining whether a child needs a surrogate parent and for assigning a surrogate parent to the child.
3. The school district may select a surrogate parent in any way permitted under state law and the district shall make reasonable efforts to ensure the assignment of a surrogate not more than 30 calendar days after there is a determination that the child needs a surrogate.
4. In order to qualify, a surrogate parent must be a person who:
 - a. Has no interest that conflicts with the interest of the student he or she represents;
 - b. Has knowledge and skills that insure adequate representation of the student;
 - c. Is not an employee of any public agency which is involved in the education or care of the student. A person who otherwise qualifies to be a surrogate parent is not an employee of the agency solely because he or she is paid by the agency to serve as a surrogate parent;
 - d. For infants and toddlers, a person assigned as a surrogate parent may not be an employee of any state agency or a person, or an employee of a person, providing early intervention services to the child or to a family member of the child. A person who otherwise qualifies to be a surrogate parent is not any employee solely because he or she is paid by a public agency to serve as a surrogate parent.
5. The surrogate parent may represent the student in all matters relating to:
 - a. The identification, evaluation and educational placement of a student; and
 - b. The provision of a free appropriate education to the student.
 - c. For infants and toddlers, in all matters related to:
 - 1) The evaluation and assessment of the child;
 - 2) Development and implementation of the child's Individualized Family Service Plans (IFSPs) including annual evaluations and periodic review;
 - 3) The ongoing provision of early intervention services to the child; and
 - 4) Any other rights established federal and state laws.

SPECIAL EDUCATION

Appointment of Surrogates (Continued)

6. The services of the surrogate parent shall be terminated when:
 - a. The student is no longer eligible for a surrogate parent;
 - b. A conflict of interest develops between the interest of the student and the interest of the surrogate parent; or
 - c. The surrogate parent fails to fulfill his or her duties as a surrogate parent.
7. Issues arising from the selection, appointment, or removal of a surrogate parent shall be resolved through hearings established under federal and state laws.
8. The surrogate parent and Emerson-Hubbard Public Schools shall not be liable in civil actions for damage for acts of the surrogate parent unless such acts constitute willful and wanton misconduct.

Date Regulation Reviewed by the Board of Education:

December 13, 2010

Legal Reference:

**Federal Regulation 34 CFR
300; Nebraska Statutes 79-1110
to 79-1178; 92 NAC 51-009.08**

SPECIAL EDUCATION

Complaint Procedures

A complaint regarding alleged violation of requirements set forth in the Nebraska Department of Education Special Education Rules may be submitted in writing to the Department of Education, Special Education Office. The Emerson-Hubbard Public Schools will comply with the requirements of the complaint process.

Date Regulation Reviewed by the Board of Education:

December 13, 2010

Legal Reference:

**Federal Regulation 34 CFR
300; Nebraska Statutes 79-1110
to 79-1178; 92 NAC 51: 009.09**

SPECIAL EDUCATION

Mediation Procedures

The following procedures have been established and will be implemented to allow the resolution of certain disputes through a mediation process:

A. Applicable Disputes

These procedures apply to the following types of disputes: Complaints with respect to any matter relating to the identification, evaluation or educational placement of a child or the provision of a free appropriate public education to a child, under the Individuals with Disabilities Education Act, including matters arising prior to the filing of a due process hearing. The procedures shall be available whenever a hearing concerning such a complaint has been requested in accordance with Nebraska Department of Education Rule 55.

B. Mediation Process

1. The mediation process:
 - a. Shall be voluntary on the part of the parties;
 - b. Will not be used to deny or delay a parent's right to a due process hearing or any other rights under IDEA. The parties may, however, voluntarily agree to extend the time for a due process hearing and, if the dispute is resolved through mediation, may voluntarily agree to a resolution of the complaint without further hearing; and
 - c. Is to be conducted by a qualified and impartial mediator trained in effective mediation techniques.
2. Where an applicable dispute exists, Emerson-Hubbard Public Schools may offer parents that choose not to use the mediation process an opportunity to meet, at a time and location convenient to the parents, with a disinterested party who is under contract with an appropriate alternative dispute resolution entity. The disinterested party would encourage the use, and explain the benefits, of the mediation process to the parents.
3. The mediators who may be used include such mediators as are on the list of qualified mediators maintained by the Nebraska Department of Education. In the absence of such a list, the mediators shall include individuals approved by the Superintendent who may require that the mediator have appropriate special education mediation training.

SPECIAL EDUCATION

Mediation Procedures (Continued)

4. The cost of the mediation is to be paid by the state. In the absence of an agreement from the state to pay for any particular mediation process, the parties to the mediation process shall mutually agree to a division of the cost of mediation in advance.
5. The mediator will be expected to schedule the sessions in a timely manner and at convenient locations.
6. In the case that a resolution is reached to resolve the complaint through the mediation process, the parties shall execute a legally binding agreement that sets forth such resolution and that:
 - a. states that all discussions that occurred during the mediation process shall be confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding;
 - b. is signed by both the parent and a representative of the agency who has the authority to bind such agency; and
 - c. is enforceable in any state court of competent jurisdiction or in a district court of the United States.
7. Discussions that occur during the mediation process are to be confidential. Such discussions may not be used as evidence in any subsequent due process hearings or civil proceedings.

Date Regulation Reviewed by the Board of Education:

December 13, 2010

Legal Reference:

**Federal Regulation 34 CFR
300; Nebraska Statutes 79-1110
to 79-1178; 92 NAC 51: 009.10**

SPECIAL EDUCATION

Resolution Meeting Procedures

- A. Whenever a due process complaint has been filed under Nebraska Department of Education Rule 55, the school district shall convene a meeting with the parents and the relevant member or members of the IEP Team who have specific knowledge about the facts identified in the complaint.
 - 1. The meeting must occur within 15 days of receiving notice of the parents' complaint;
 - 2. The meeting shall include a representative of the school district who has decision-making authority;
 - 3. The meeting may not include an attorney of the school district unless the parent is accompanied by an attorney;
 - 4. At the meeting the parents of the child shall discuss their complaint, and the facts that form the basis of the complaint, and the school district is provided the opportunity to resolve the complaint, unless the parents and the school district agree in writing to waive such meeting, or agree to use the mediation process.
- B. If the school district has not resolved the complaint to the satisfaction of the parents within 30 days of the receipt of the complaint, the due process hearing may occur, and all of the applicable timelines for a due process hearing shall commence.
- C. In the case that a resolution is reached to resolve the complaint at the meeting, the parties shall execute a legally binding agreement that:
 - 1. is signed by both the parent and a representative of the school district or approved cooperative who has the authority to bind such agency; and
 - 2. is enforceable in any State court of competent jurisdiction or in a district court of the United States.
 - 3. allows either party to void such agreement within three business days of the agreement's execution.

Date Regulation Reviewed by the Board of Education:

December 13, 2010

Legal Reference:

**Federal Regulation 34 CFR
300; Nebraska Statutes 79-1110
to 79-1178; 92 NAC 51:009.11**

SPECIAL EDUCATION

Due Process Hearings

- A. A parent or Emerson-Hubbard Public Schools may initiate a hearing on any of the matters described in federal and state laws relating to the identification, evaluation or educational placement of the child with a disability or the provision of a free appropriate public education (FAPE) to the child by filing a petition pursuant to federal and state laws.
- B. When a hearing is initiated, the Emerson-Hubbard Public Schools will inform the parents of the availability of mediation described in federal and state laws.
- C. Emerson-Hubbard Public Schools will inform the parent of any free or low-cost legal and other relevant services available in the area if the parent requests the information or if the parent or Emerson-Hubbard Public Schools initiates a hearing.
- D. Any party to a due process hearing has the right to be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities.

Date Regulation Reviewed by the Board of Education:

December 13, 2010

Legal Reference:

**Federal Regulation 34 CFR
300; Nebraska Statutes 79-1110
to 79-1178; 92 NAC 51:009.13**

SPECIAL EDUCATION

Transportation

Emerson-Hubbard Public Schools ensures that transportation will be provided to any special education student who qualifies for special education transportation under federal and state special education laws.

Date of Adoption (or Last Revision):

December 13, 2010

Legal Reference:

**Federal Regulation 34 CFR
300; Nebraska Statutes 79-1110
to 79-1178; 92 NAC 510-014.01**

SPECIAL EDUCATION

Responsibility for Transportation

- A. Emerson-Hubbard Public Schools shall provide school transportation for a child with a disability who is a resident of the school district and:
 - 1. who is forced to leave the school district temporarily because of lack of educational services;
 - 2. who is enrolled in a special education program of the district and either:
 - a. the child is required to attend a facility other than what would be the normal school of attendance of the child to receive appropriate special education services; or
 - b. the nature of the child's disability is such that special education transportation is required.
 - 3. who is younger than age five, including such children who are wards of the court.
- B. Emerson-Hubbard Public Schools shall not provide for the transportation expenses of children with a disability who are residents of the school district if such children are able to use regular transportation services provided by the district unless:
 - 1. Alteration of the routes of such regular transportation is required to transport children with a disability; or
 - 2. Alteration is required of the equipment or vehicles used in such regular transportation in order to accommodate children with a disability.
- C. For students with disabilities participating in the Option Enrollment Program, the transportation services included on the student's IEP shall be provided by the district from which the student optioned.
- D. Emerson-Hubbard Public Schools shall not be relieved of the obligation to provide transportation for an eligible child with a disability because of the inability or unwillingness of the child's parents to provide transportation. No eligible child with a disability will be denied or have limitations placed on the child's receipt of special education services required by an IEP or IFSP as a result of the inability or unwillingness of parents to provide transportation.
- E. Emerson-Hubbard Public Schools shall select an efficient and effective means of transportation for the child with a disability at a reasonable cost. The district shall provide the required transportation by one of the following means:

SPECIAL EDUCATION

Responsibility for Transportation (Continued)

1. Paying a parent for transporting his or her child for actual miles traveled and claimed:
 - a. transportation expense reimbursement shall be equal to the statutory amount for each mile or fraction thereof actually traveled between the place of residence and the program of attendance;
 - b. reimbursement for the transportation expenses of children with a disability transported by the parents of such children shall be made upon receipt of claims submitted by such parents to the Board of Education. Such claims shall be documented and subject to audit. The claims shall: state the names of the children transported, the dates they were transported, the mileage incurred in such transportation; and contain a statement that the claim is a true and correct report of mileage; and bear the signature of the parent;
 - c. Except when a parent is transporting only his or her child, Emerson-Hubbard Public Schools requires that the driver and vehicle meet the transportation standards of federal and state laws;
2. Operating vehicles for the purpose of transporting children with disabilities;
3. Contracting for transportation services for children with disabilities;
4. Purchasing services from a common carrier; or
5. Arranging for such other transportation as is proper and necessary to transport children with disabilities.

Date Regulation Reviewed by the Board of Education:

December 13, 2010

Legal Reference:

**Federal Regulation 34 CFR
300; Nebraska Statutes 79-1110
to 79-1178; 92 NAC 51-014.01;
92 NAC 91 and 92.**

SPECIAL EDUCATION

Transportation: Nonpublic School Students

- A. If necessary for the child to benefit from or participate in special education services, a nonpublic school child with a disability must be provided transportation:
 - 1. From the child's school or the child's home to a site other than the nonpublic school; and
 - 2. From the service site to the nonpublic school, or to the child's home, depending on the timing of the services.
- B. Emerson-Hubbard Public Schools is not required to provide transportation from the child's home to the nonpublic school.

Date Regulation Reviewed by the Board of Education:

December 13, 2010

Legal Reference:

**Federal Regulation 34 CFR
300; Nebraska Statutes 79-1110
to 79-1178; 92 NAC 51-015.05A**

SPECIAL EDUCATION

Personnel Standards

Emerson-Hubbard Public Schools ensures that all personnel necessary to carry out the requirements of the Individuals with Disabilities Act are appropriately and adequately prepared to provide special education and related services to children with disabilities.

Date of Adoption (or Last Revision):

December 13, 2010

Legal Reference:

**Federal Regulation 34 CFR
300; Nebraska Statutes 79-1110
to 79-1178; 92 NAC 51-010.01**

SPECIAL EDUCATION

Special Education Personnel Development

The director of special education will develop a comprehensive system of personnel development which shall include:

1. Inservice training of general and special education instructional and support personnel;
2. Procedures to assure that all personnel necessary to discharge the purposes of this policy are properly endorsed and adequately trained;
3. Special and general educators, parents and other education personnel shall have input into the district and individual building plans which assess the inservice and professional development needs of staff in the provision of educational services for students with disabilities; and
4. The director of special education and building principals shall be responsible for acquiring and disseminating to personnel significant “best and promising practices” information derived from district strategic planning, study groups, educational research and demonstration projects and best educational practices and materials developed through such planning.

Date Regulation Reviewed by the Board of Education:

December 13, 2010

Legal Reference:

**Federal Regulation 34 CFR
300; Nebraska Statutes 79-1110
to 79-1178; 92 NAC 51-010.07**

SPECIAL EDUCATION

Discipline Action for Special Education Students

Disciplinary actions of students shall be taken in accordance with federal and state laws relating to students with disabilities. Emerson-Hubbard Public Schools will report data on disciplinary actions to the Nebraska Department of Education as required by state law.

Date of Adoption (or Last Revision):

December 13, 2010

Legal Reference:

**Federal Regulation 34 CFR
300; Nebraska Statutes 79-259
and 79-1110 to 79-1178;
92 NAC 51-004.06 and 16**

SPECIAL EDUCATION

Discipline Actions for Special Education Students

Violation of Rules for Student Conduct

Special education students may be suspended for violation of student conduct rules to the same extent as other students, subject to the limitations and procedures imposed by federal and state laws and regulations. The limitations and procedures vary depending on the length of the suspension in question, the nature of other suspensions of the student during the school year and the student's conduct or rule violation. School personnel may consider any unique circumstances on a case-by-case basis when determining whether to change the placement of a child with a disability who violates a code of student conduct.

A. Suspensions of Less than 10 Consecutive School Days

- 1. When the student has not been suspended for 10 days or more during the school year and this suspension will not cause the student to be suspended for more than 10 days during the school year.**

Regular Procedures. A special education student may be suspended from school for 10 consecutive school days or less under the same procedures as students without disabilities. For suspensions of one to five school days, the process for short-term suspensions shall be followed. For suspensions of six to 10 school days, the process for long-term suspensions shall be followed. The length of the suspension should be the same as it would be if the student were not in special education.

Inform IEP Manager. The building principal or designee should inform the student's IEP manager of the suspension.

Services During Suspension. Services do not need to be provided to a special education student who is suspended for less than 10 consecutive school days and who has not been suspended for more than 10 days during the school year, except to the extent services would be provided to a student without disabilities.

- 2. When the student has been suspended for more than 10 days during the school year or this suspension will cause the student to be suspended for more than 10 days during the school year.**

Regular Procedures. The regular procedures for a short-term or long-term suspension, as appropriate, shall be followed.

Inform IEP Manager. The building principal or designee should inform the student's IEP manager of the suspension.

SPECIAL EDUCATION

Discipline Actions for Special Education Students (Continued)

Determine if a Change in Placement will Occur because of the Suspension. The principal or the principal's designee and the IEP manager shall make a determination of whether a "change of placement" has or will occur as a result of the suspension. The regulations set out the following standard for this purpose: "The child is subjected to a series of removals that constitute a pattern because they cumulate to more than 10 school days in a school year and because of factors such as the length of each removal, the total amount of time the child is removed and the proximity of the removals to one another." The IEP manager is encouraged to have this determination made by the IEP team if reasonably possible considering the length of the suspension and scheduling concerns.

- a. **If it has been determined that the suspension will not cause a change in placement.**

IEP Meeting to Develop FBA Plan and Develop or Review and Modify BIP (Optional). The IEP team may convene an IEP team meeting if determined appropriate to conduct a functional behavioral assessment (FBA) or develop or modify a behavioral intervention plan (BIP).

Services During Suspension. Services do not need to be provided to a special education student who is suspended for less than 10 consecutive school days even if the student has been suspended for more than 10 days during the school year, except to the extent services are necessary to provide the student a free appropriate public education and to the extent services would be provided to a student without disabilities. The school representative making the decision of what if any services to provide during the suspension shall consult with at least one of the student's teachers.

- b. **If it has been determined that the suspension will cause a change in placement.**

The procedures for a change of placement as provided in Section D are to be followed when the suspension will cause a change in placement.

B. **Expulsions or Suspensions of More than 10 Consecutive School Days**

Regular Procedures. The regular process for long-term suspensions or expulsions will be followed. The length of the long-term suspension or expulsion should be the same as it would be if the student were not in special education. The building principal or designee should immediately notify the student's IEP team member of the decision to recommend the long-term suspension or expulsion.

Additional Procedures. The procedures for a change of placement as provided in Section D are to be followed for long-term suspensions of more than 10 consecutive school days or expulsions.

SPECIAL EDUCATION

Discipline Actions for Special Education Students (Continued)

C. Suspension of 45 School Days (Weapon, Drugs or Serious Bodily Injury)

A special education student may be placed in an interim alternative educational setting for 45 school days or less without regard to whether the student's conduct is determined to be a manifestation if the student does any of the following at school (which includes school grounds and vehicles owned, leased or contracted by the school and vehicles being driven for a school purpose by a school employee or designee) or a school function:

1. Carries or possesses a weapon (for this provision, "weapon" is defined as anything which may be used for, or is readily capable of, causing death or serious bodily injury, including a pocketknife with a blade of two and one-half inches in length or more); or
2. Knowingly possesses or, sells illegal drugs or sells or solicits the sale of a controlled substance (for this provision, an "illegal drug" means a controlled substance but does not include a controlled substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any provision of federal law and "controlled substance" means any Schedule I, II, III, IV or V substance).
3. Inflicts serious bodily injury (for this provision, a "serious bodily injury" means a bodily injury which involves a substantial risk of death; extreme physical pain; protracted and obvious disfigurement; or protracted loss or impairment of the function of a bodily member, organ or mental faculty and "bodily injury" means a cut, abrasion, bruise, burn or disfigurement; physical pain; illness; impairment of the function of a bodily member, organ or mental faculty; or any other injury to the body, no matter how temporary).

The following steps will apply:

Regular Procedures. The process for long-term suspensions or expulsions will be followed. The length of the placement in the alternative educational setting should be the same as it would be if the student were not in special education, subject to the 45-school-day limit if the conduct is a manifestation.

Additional Procedures. The procedures for a change of placement as provided in section D are to be followed when the interim alternative educational placement will be for a period longer than 10 school days or be for less than 10 school days and result in a change of placement. The exception is that the student shall be subject to being placed in the interim alternative educational setting for up to 45 school days, even if the student's conduct is determined to have been a manifestation.

SPECIAL EDUCATION

Discipline Actions for Special Education Students (Continued)

D. Change of Placement Procedures

Inform IEP Manager. The building principal or designee should inform the IEP manager when the student has been referred to the Office of Student Services for consideration of action which would be a change of placement, which includes any suspension of more than 10 days or an expulsion.

Transmit Records. The special education and disciplinary records of the student should be made available to the person(s) making the final determination regarding the disciplinary action.

Notice of Decision and Safeguards. The student's parents shall be notified of the decision to change the student's placement and be given the procedural safeguard notice. This notice should be given on or before the date the decision to make the change in placement is made.

Manifestation Determination. The school, the parent and relevant members of the IEP Team (as determined by the parent and the school) shall, within 10 school days of the decision to change placement as a result of a disciplinary suspension or expulsion, make a manifestation determination. The manifestation determination is not required to be made in an IEP team meeting; however, an IEP team shall be convened for this purpose unless it is not reasonably possible to do so. The manifestation determination is to be made based on a review of all relevant information in the student's file, including the student's IEP, any teacher observations and any relevant information provided by the parents. The student's conduct will be determined to be a manifestation if either:

1. the conduct in question was caused by or had a direct and substantial relationship to the student's disability; or
2. the student's conduct was the direct result of the school district's failure to implement the IEP.

If Conduct Not a Manifestation. If it is determined that the conduct of the student was not a manifestation, the disciplinary suspension may be applied to the student in the same manner and for the same duration as would be applied to a student without a disability, except that the student shall be provided with such services so as to enable the student to participate in the general education curriculum, although in another setting, and to receive those services and modifications described in the student's current IEP that will enable the child to progress toward meeting the goals set out in the student's IEP. The IEP team shall determine the interim alternative educational setting for the student.

SPECIAL EDUCATION

Discipline Actions for Special Education Students (Continued)

If Conduct a Manifestation. If it is determined that the conduct of the student was a manifestation of the student's disability, the IEP team shall:

1. conduct an FBA and implement a behavioral intervention plan (BIP) for the student if a functional behavioral assessment (FBA) had not been conducted prior to the student engaging in the conduct for which the student is to be disciplined.
2. review the student's BIP and modify it as necessary to address the student's behavior if a BIP had been previously developed; and
3. return the child to the placement from which the student was removed, unless the parent and the school district agree to a change of placement as part of the modification of the behavioral intervention plan.

Behavioral Services. A student placed in an interim alternative educational setting for disciplinary reasons shall be provided, as appropriate, a functional behavior assessment and behavior intervention services and modifications that are designed to address the student's conduct so that it does not recur.

E. Applicability of Regulation

The procedures and requirements of this regulation are applicable to students who have been determined to be eligible for special education and related services and to students who assert the protections of this regulation or the law and regulations pertaining to the discipline of special education students if the district had knowledge that the student is a child with a disability before the behavior that precipitated the disciplinary action occurred.

The district may be deemed to have knowledge that the student is a child with a disability if, before the student engaged in the conduct that precipitated the disciplinary action:

1. the parent of the student has expressed concern in writing to supervisory or administrative personnel of the district or a teacher of the child that the student is in need of special education and related services;
2. the parent of the student has requested a special education evaluation; or
3. the teacher of the student, or other personnel of the district, has expressed specific concerns about a pattern of behavior demonstrated by the student directly to the director of special education or to other supervisory personnel of the district.

Such knowledge will not be deemed to exist if the parent of the student has not allowed an evaluation of the student for purposes of special education eligibility or has refused special education services or the student has been evaluated and it was determined that the student is not a child with a disability for purposes of special education services.

If the school district does not have knowledge that the student is a child with a disability prior to taking disciplinary action, the student may be subjected to the same disciplinary measures as a student who engaged in comparable behaviors may be disciplined.

SPECIAL EDUCATION

Discipline Actions for Special Education Students (Continued)

If a request for an evaluation of the student is received during the time a student is suspended or expelled, the evaluation is to be conducted in an expedited manner. If the student is determined to be a child with a disability, the student shall be provided with special education and related services except that, pending the results of the evaluation, the student shall remain in the educational placement determined appropriate by the school authorities.

F. Referral to and Action by Law Enforcement and Judicial Authorities

The school may report a crime committed by a child with a disability to appropriate authorities and may not prevent State law enforcement and judicial authorities from exercising their responsibilities with regard to crimes committed by a child with a disability. When a report is made of a child with a disability committing a crime, the school officials shall ensure that copies of the special education and disciplinary records of the child are transmitted for consideration by the appropriate law enforcement.

Date Regulation Reviewed by the Board of Education:

December 13, 2010

Legal Reference:

**Federal Regulation 34 CFR
300; Nebraska Statutes 79-259
and 79-1110 to 79-1178; NAC
51-004.06 and 16**