



# NEBRASKA

## DEPARTMENT OF EDUCATION

### The Individuals with Disabilities Education Act (IDEA) 92 NAC 51 (Rule 51)

#### Kindergarten Age Eligible (5 year-old) Preschool IEP and LRE Guidance

Revised April 2024



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## Purpose

This memo provides guidance related to determining a child's least restrictive environment for kindergarten age eligible five-year-olds (**who will not turn six before January 1<sup>st</sup> of the kindergarten school year**) who receive special education services.

## Key Points from Nebraska Statute and NDE Rules 11 and 51

- Neb. Rev Stat. §79-1101 defines an early childhood education program as “any prekindergarten part-day or full-day program with a stated purpose of promoting social, emotional, intellectual, language, physical and aesthetic development and learning for children from birth to mandatory attendance age and family development and support” (Emphasis added).
- Neb. Rev Stat. §79-214 “the school board of any school district shall not admit any child into the kindergarten of any school of such school district unless such child has reached the age of five years on or before July 31 of the calendar year in which the school year for which the child is seeking admission begins.”
- 92 NAC 11-002.27 states “Prekindergarten program means all early childhood part-day or full-day center-based programs (may be called preschool, Head Start, childcare, Sixpence or some other name depicting a center-based program) and/or home-based programs provided for children who have not reached the age of five on or before July 31 of the current school year.”
- 92 NAC 51-007.07B2 states that “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.”
- 92 NAC 51-007.07B7 states “The IEP team shall consider whether the child needs assistive technology devices and services.”
- 92 NAC 51-007.07C3 states “Each school district or approved cooperative shall ensure assistive technology devices or assistive technology services, or both, as defined in Rule 51-003.02 and 51-003.03 are made available to any child with a disability if required as part of the child's special education, related services, or supplementary aids and services.
- 92 NAC 51-008-01C2 states that “The placement decision is made in conformity with the least restrictive environment requirements in Rule 51-008.01 and based on the child's unique needs and not on the child's disability.” (Emphasis added)
- 92 NAC 51-008.01E2 states “The school district shall insure that the educational placement of a child with a verified disability is based on his or her individual education program (IEP).”
- 92 NAC 51-008.01G requires that unless a child's IEP requires some other arrangement, the child must be educated in the school which he or she would attend if not disabled.

*Failure to meet the requirements of Rule 51 will result in non-compliance and the need to develop a corrective action plan and review or revise the child's IEP. Failure to meet the requirements of Rule 11 will result in loss of program approval.*

## Procedure Guidance

- 1) All children in Nebraska, including children with disabilities, are entitled to attend kindergarten when they meet the age eligibility requirement. Kindergarten is intended to be a program for 5-year-olds, and schools have a responsibility to support the learning of all children in the kindergarten program.
- 2) IEP Teams may consider an additional year of preschool for five-year-olds who have an IEP, but such placements must be based upon the individual educational needs of the student. It is also important to note the child's date of birth, as any child **who will turn six before January 1<sup>st</sup> of the current school year is considered to be of compulsory age and must attend kindergarten** (an additional year of preschool cannot be considered).
- 3) When the IEP Team convenes to discuss the least restrictive environment for a five-year-old with an IEP, they must **first** discuss the accommodations and modifications that would be necessary for the child's successful participation and progress in kindergarten.
  - a. Parent desire to delay kindergarten entrance is not a justifiable reason for preschool placement.
  - b. Nebraska is a 'come as you are' state. Issues such as toileting or a child's need for rest breaks would not be justifiable reasons to necessitate a preschool placement for a child.
  - c. Children with fragile medical conditions could still be placed in a kindergarten setting where accommodations are made for frequent rest/medical breaks, and the length of the school day or curriculum items can be modified through their IEP as needed.
  - d. Cost of needed accommodations, modifications, and supports is not allowable as a justification to delay entry into kindergarten.
- 4) After the IEP Team has discussed/considered a child's accommodations and modifications for kindergarten participation and attendance, determined the child will not turn six years of age prior to January 1<sup>st</sup> of the current school year, and ultimately decided that the child's least restrictive environment is an additional year in the preschool classroom, the IEP Team must document this decision on the child's IEP. This can be documented within the Present Levels of Performance, or some other appropriate location in the IEP. The team must document the following on the IEP:
  - a. A description of all the kindergarten accommodations and modifications that were considered/discussed.
  - b. An explanation of why the preschool placement has been determined to be a better placement than kindergarten.
- 5) If the IEP Team determines that the child should, with all appropriate accommodations and modifications, attend kindergarten, but the child's family does not wish for the child to attend kindergarten, then the family has the following options:

- a. The family may choose to have their child attend a private preschool, community-based preschool program, center-based childcare, or development center, licensed or non-licensed childcare, or family/parent home for the school year and the child receives their special education services and supports at the school.
  - o In any of the above situations, the family may bring the child to the school to receive their special education services and supports and would be entitled to reimbursement for mileage to and from a set location within district boundaries. The district may also provide transportation (within district boundaries) to and from the school.
- b. The family may choose to withdraw their consent for services for the school year and request a new evaluation to determine the child's eligibility for special education services upon their enrollment in kindergarten.

Schools have the responsibility to meet the learning needs of kindergarten children as they come to school. Schools also have the right to determine the grade level placement of children at the time of enrollment. Parents have the right to make their decision about when to enroll their child based on what they believe is best for their child and what options are available to them. If a school or ESU offers kindergarten as part of a multiage PreK-Kindergarten program, it is the intent of Rule 11 that the kindergarten-age children enrolled move on to the next age/grade level with their same-age peers the following year.

## Contact Information

**If you have any questions about any of these items, our team is available to assist you:**

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