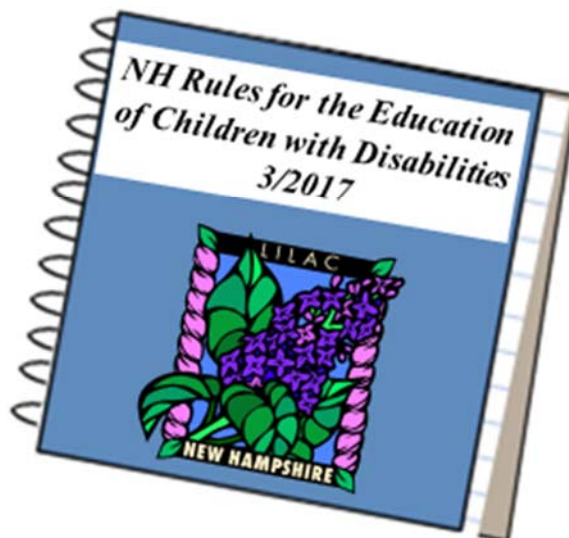


Handouts

The NH Rules – What's New?

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The Parent Information Center on Special Education provides information and support to parents and others so that they may participate effectively as team members in the Special Education process. While the staff are not attorneys and do not give legal advice, we do offer information on educational laws, regulations and best practices. This support is designed to assist parents in making informed decisions for their children.

NH Rules clarify that they implement IDEA & RSA 186-C

The Policy & Purpose of RSA 186-C

It is hereby declared to be the policy of the state that:

I. All children in New Hampshire be provided with equal educational opportunities. It is the purpose of this chapter to ensure that all children with disabilities have available to them a free appropriate public education in the least restrictive environment that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living.

II. The rights of children with disabilities and parents of such children are protected.

III. Local school districts, the department of education, and other public agencies or approved programs provide for the education of all children with disabilities.

Ed 1111.01 and RSA 186-C:1

Changes to a Few Definitions:

- In accordance with RSA 186-C, “facilitated IEP meeting” has been removed from the list of alternative dispute resolution options.
- The NH Rules updated the language, changing “charter school” to “chartered public school”.
- They no longer clarify that school districts are not required to use the developmental delay category (the prohibition against states requiring LEAs to use this category is in IDEA).

Ed 1102.01(i)

Ed 1102.01(p)

Ed 1102.01(s)

New Definition – “Evaluation Process”

Means “the completion of evaluations, reevaluations and assessments, a written summary report, and a meeting of the IEP team to review the results of the evaluations and assessments. When the purpose of the meeting is to determine eligibility for special education and related services, the evaluation process also includes the determination of eligibility”.

~ It also includes the requirement that the LEA provide parents (by mail unless the parent and LEA agree to another method) with copies of each examiner’s evaluation and assessment report(s) at least 5 days prior to the meeting at which the reports will be discussed.

Ed 1102.02((m) & (n) & Ed 1107.04(d) & (e)

Two More New Definitions

- “Health evaluation” means: “an evaluation that provides the IEP team with information on the child’s physical condition and may include, but is not limited to, a physical assessment, health screening, or both, a review of a child’s medical history, classroom observations of the child with health related concerns, identification of health barriers to learning etc., as determined by the IEP team”.
- “Professional licensed to provide a health evaluation”, which is: “anyone who under their specific licensing is qualified to provide a health evaluation. This may include, but is not limited to: a school nurse, a registered nurse, physician, psychiatrist, and naturopathic doctors”.

Ed 1102.03(b) & Ed 1102.04(m)

New or Revised Definitions

- “The NH Rules clarify that the “IEP” and “IEP Team” are as defined in IDEA, and consistent with the relevant sections of these Rules.
- A definition of “public expense” has been added. It means, “that the public agency either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parent, consistent with 34 CFR 300.103.”
- The definition for “related services” now refers to the IDEA regulations instead of the statute.

Ed 1102.03(h) & (i)

Ed 1102.04(p)

Ed 1102.04(s)

Changes to the IEP Team

- In addition to a paraprofessional, a representative of DCYF and an appointed Guardian ad Litem (GAL) shall be considered “other individuals” who have knowledge or special expertise regarding the child.
- When a vocational education program is being considered, an individual knowledgeable about the programs being considered is a member of the IEP team has been expanded to include “career and technical education”.
- For eligibility determination, the IEP team no longer includes an individual knowledgeable about the child as a result of having had personal contact with the child in the school, or for preschoolers, in another setting, or a teacher certified in each area of suspected disability.

Ed 1103.01(b) & (c) & (d)

Notice of an IEP Team Meeting

- Language was made more clear - the LEA or parent shall notify the other party of the expected absence of a team member at least 72 hours before a scheduled meeting or upon learning of the expected absence of a team member, whichever occurs 1st.
- Language was added to the requirement that a parent receive a written notice of an IEP team meeting no fewer than 10 days before an IEP team meeting, "If the parent(s) agrees in writing, the LEA may satisfy this requirement via transmittal by electronic mail. Such an agreement shall be effective until revoked in writing." "A notice sent by first class or certified U.S. mail 12 days prior to the meeting shall be deemed received 10 days before an IEP team meeting."

Ed 1103.01(e)

Ed 1103.02(a) & (d)

Disposition of Referral

- ❖ The timeline for a disposition of referral meeting is now 15 business days (includes referrals from a court).

Definition – 34 CFR 300.11(b): Business day means Monday through Friday, except for Federal and State holidays (unless holidays are specifically included in the designation of business day, as in §300.148(d)(1)(ii)).

- ❖ It has been clarified that this includes determining what testing is needed and providing the parent with a WPN and request for consent to conduct the evaluations.
- ❖ The 15-day timeline includes referrals that are received from a court.

Ed 1106.01(d) & (e)

Ed 1107.01(g)

Ed 1102.01(o)

Evaluation Timelines



- **For Initial Evaluations:** The evaluation process must be completed within 60 calendar days (no extensions)
- During that 60-day timeline, parents must be sent copies of all evaluation and assessment report(s) at least 5 days prior to the meeting.
 - (See next page)
- **For Re-evaluations:** The 60 day timeline may be extended by a specific number of days agreed to by the parent and the LEA, not to exceed 30 days..

Ed 1107.01(c) – (f)

Evaluation/Assessment Report(s)

- The LEA must provide parents with copies of (not just access to) each examiner’s evaluation and assessment report(s) at least 5 days prior to the meeting of the IEP team at which the evaluation and assessment report(s) will be discussed.
- The LEA shall provide the report(s) by sending the report(s) to the parents via US mail unless the parents and the LEA agree upon another method.
- However, the parent may waive the right to have these reports sent to them prior to the meeting.

Ed 1107.04(d) & (e)

Independent Educational Evaluations

The language was refined to read:

- The criteria established by the LEA, “as described in 34 CFR 300.502(a)(2) and 300.502(e), to the extent that they exceed qualified examiner criteria or establish geographic limitations, shall not be so restrictive that the parent does not have a choice of independent evaluators”.

Ed 1107.03(c)

Table of Qualified Examiners

Table 1100.1

Two changes were made:

- An error was corrected so that a school psychologist is no longer listed as someone who can evaluate a child’s communicative skills.
- The category for “vocational assessments” was removed.

Table 1100.1

The IEP

The NH Rules now specifically state, “The LEA shall provide special education, related services, supplementary aids and services, accommodations, and modifications to a child with a disability in accordance with the child’s IEP.”

Ed 1109.03(a)

The IEP

- In the IEP, the statement of transition service needs, that is included beginning by age 14 and that focuses on the student’s courses of study, now specifically lists as an example, career and technical education.
- A vocational education component for each child with a disability for whom vocational education is to be provided has been removed, but it has been clarified that all of the requirements for IEPs apply to the development, approval and implementation of any vocational or CTE component.

Ed 1109.01(a)(10) & (b)

Vocational or CTE Programs

- Career and technical education has been added to the requirement that a child with a disability shall be admitted to a regional vocational, or CTE program on the basis of vocational needs as outlined in the child’s IEP and availability of space. However, the LEA shall ensure that any child who requires vocational education and/or career and technology education as part of FAPE shall receive such services as determined by the IEP team in the least restrictive environment.

Ed 1111.01(b)

Monitoring Transition & ESY Services

- Both transition services and extended school year services, other than those provided by a NH Department of Education approved special education program which the child attends, are to be monitored by LEA personnel at least weekly. (This does not apply to services provided by an approved special education program and monitoring does not have to be on-site.)

Ed 1109.03(j) & Ed 1110.01(c)

Educational Placement

- In the placement section of the NH Rules, “continuum of alternative placements” has been changed to “continuum of alternative educational environments”.
- Added that instructional equipment & materials adequate to implement the IEP shall be provided by the LEA in an appropriate & timely manner.
- For preschool children, language was added emphasizing that placement is to be in the least restrictive environment.
- The tables listing alternative placement options for children with disabilities, ages 3 to 6 and ages 6 to 21 have been updated.

Ed 1111.02(a) & (b)

Ed 1113.09(a)

Table 1100.2 – Continuum of Alternative Learning Environments - Preschool

- Early childhood program (at least 50% children without disabilities)
- Home
- Early childhood special education program (may include multiple early childhood special education classes)
- Service provider location
- Separate school
- Residential facility

Table 1100.2

Table 1100.3 – Continuum of Alternative Learning Environments – Ages 6 to 21

- Regular education setting
- Resource room (up to 60% of the school day)
- Self-contained special education class (more than 60% of the school day)
- Separate Approved Special Education Program/School
- Full-time or part-time special day school
- Residential placement
- Home instruction (with limited exceptions, child will receive a full-day program)
- Hospital or institution



Parents may choose a chartered public school

Table 1100.3

Home Instruction



- Children with disabilities, ages 6 to 21, who are receiving home instruction, receive a full-day of instruction, unless the superintendent has excused the child from full-time attendance in accordance with RSA 193:1,I(c) or RSA 193:5. In these exceptional situations, the superintendent and parent shall agree on the number of hours per week of instruction, including special education and related services for the child.
- Home instruction as a placement must be determined by the IEP team and be in the least restrictive environment. Children receiving home instruction should be allowed to participate with nondisabled children to the maximum extent appropriate to the needs of the child.

Ed 1111.04

Home Instruction



- This section does not apply to children who have been removed from school as a result of suspension or expulsion for more than 10 days in a school year (the discipline requirements would apply).
- But ~ such children must be provided with services sufficient to enable the child to participate and progress in the general curriculum, make progress towards the annual goals in the child’s IEP, and if such services are provided through home instruction, must consist of a minimum of 10 hours of instruction, including the special education in the child’s IEP, and the related services in the child’s IEP.

Ed 1111.04

Preschool-Specific Placement Requirements

- When a preschool child receives some or all special education and related services in a regular early childhood program as determined by the IEP team, services must be provided by qualified personnel as identified in the IEP.
- In addition to the maximum number of 12 children in an early childhood special education class, the LEA must ensure that the individual needs of the children with disabilities can be met when determining the number of children to be enrolled and the staffing in the class.
- Preschool special education classes (for children ages 3 through 5) may include a 2 year old who turns 3 during the school year, or a 5 year old who turns 6 after September 30th of the school year.

Ed 1113.10(a) – (c)

2 Requirements Were Removed

- Classrooms and other instructional areas for children with disabilities shall be located in educational facilities that, in the judgment of the IEP team, are in the least restrictive environment.
- The physical space used for classrooms and other instructional programs and school activities for children with disabilities shall be of sufficient size to accommodate program modifications and accommodations necessary to implement the children’s IEPs and to provide for all other learning activities

The NH DOE states that these are not needed, as they are covered by the minimum standards for classrooms

Miscellaneous

- Language was added to specify that paraprofessional personnel shall “assist in the provision of special education and related services” and shall not “instruct a child with a disability”.
- Subsections on the length of the school day have been removed as they are no longer necessary with the changes in the home instruction and placement sections.

Ed 1113.12

Ed 1113.15

Behavior / Discipline

- References to RSA 126-U (NH’s state law limiting the use of restraint and seclusion in schools and facilities) have been added to the sections on behavioral interventions.
- A requirement has been added that private providers and other non-LEA programs “shall have written procedures for behavioral interventions that outline staff responsibilities with regard to procedures for personnel who are qualified and trained in behavioral crisis intervention response so that quick, organized responses can occur.”

Ed 1114.07(f)(7)

Ed 1114.21

Educational Surrogate Parents

- The sections, including language, on surrogate parents were updated by the NH DOE with the DHHS to ensure that children whose life circumstances require that they be represented by an educational surrogate parent receive timely and qualified representation.
- They provide for the appointment of an educational surrogate parent by the commissioner of the NH DOE or a judge who is actively overseeing the child’s case (however in either case, the surrogate parent must meet the requirements established in these rules).
- There are specific requirements established for unaccompanied homeless youth consistent with the McKinney Vento Homeless Assistance Act.

Ed 1115 & Ed 1116

Children Who May be Subject to Court-Ordered Residential Placement

- This section was updated (ex. references to the Philbrook Center were removed) with input from involved organizations. It is intended to assure the provision of a FAPE to children who may have disabilities and who may be subject to court-ordered residential placement.
- Includes involvement by the liable school district when DCYF is recommending a court-ordered residential placement or a change in a court-ordered residential placement to make recommendations about the appropriateness of the proposed placement.
- Provides notice of a team meeting to a representative of DCYF and the child’s Guardian ad Litem, and a copy of meeting records if they do not attend the meeting.

Ed 1117

Retention/Destruction of School Records

- Each LEA and private provider of special education must adopt a policy regarding the retention and destruction of special education records.
- They cannot destroy a student's special education records prior to the student's 25th birthday, except with prior written consent of the parent or the adult student. (A private provider may instead send the records to the LEA.)
- The LEA must maintain a copy of the student's last IEP until the student's 60th birthday.
- All records may be retained in electronic or other form.

Ed 1119.01(b)

Retention/Destruction of School Records

- The LEA and private provider must provide the parent or adult student a written notice of their document destruction policies upon the student's graduation or transfer of rights, whichever occurs first.
- The LEA also must provide public notice of its document destruction policy at least annually.

Ed 1119.01(b)

Approving the IEP

A parent may indicate that they:

- ❖ consent
- ❖ refuse consent (disagree)
- ❖ give partial consent (more on next page)

If a parent refuses consent for a proposed IEP or placement, the child's most recent agreed upon IEP/placement remains in effect unless the LEA & parent agree otherwise, until the matters are resolved unless one of them files for due process.

The requirement that the LEA file for a due process hearing if the parent refused consent for any IEP or placement after the initial one, a determination or change of the child's disability category, or change in the nature or extent of the services in the child's IEP and the LEA believed that their proposal was necessary to provide a FAPE has been removed.

Ed 1120.04(c) - (h)

What is Partial Consent?

When a parent refuses consent to 1 or more of the proposed services or activities and/or requests changes to services or activities in the initial proposal, the parent shall specify in writing, the items that they are refusing or requesting.

The LEA may not use a parent's refusal to consent for 1 service or activity or request for a new or different service/ activity to deny the child any other services/activities to which the parent has consented.

If the parent wants an additional or different service or activity, the parent (or LEA) may request an IEP team meeting to discuss the disputed service/activity (everything else is implemented).

The LEA may only refuse to convene the IEP team meeting if they determine that the requested changes/additions have already been addressed (meaning they do not expect a resolution), then must provide a WPN explaining why they refuse to convene the meeting.

Ed 1120.04(c) - (f)

Complaint

- If a party to a complaint wants to request a reconsideration of the decision, they may make a written request for reconsideration within 20 days of receipt of the commissioner's written decision (was previously 10 days), but the commissioner then has only 15 days (was 20 days) to decide whether to uphold or reverse the decision.
- However, any corrective action ordered by the commissioner for the benefit of a child with a disability shall be implemented and continue until the conclusion of the reconsideration and, unless reversed upon reconsideration or stayed, during any appeal.
- An appeal of the commissioner's final decision would be made to the NH Supreme Court or a NH Superior Court.

Ed 1121.04(a) - (c)

Due Process

- A hearing officer "shall not include in an order or in a final decision any terms or conditions repugnant to state or federal law resulting from a settlement agreement or a signed written agreement, reached by the parties at alternative dispute resolution".

Audits

- The phrase "within available resources" has been removed from the requirement that the department's office of business management shall audit all state and federal special education monies allocated to any public or private agency by the department.

Ed 1123.17(j)

Ed 1125.04

Corrective Action

- Previously when, through program approval of public and non-public programs, the department found areas of noncompliance, the program submitted a corrective action/improvement plan as to how the noncompliance would be corrected.
- Now, the department will include in their written report of findings, corrective actions for each area of non-compliance and timelines for which the corrective actions shall be completed.

Ed 1126.03(b)

Waivers

- To obtain a waiver for an additional student who does not meet the program's age range or program capacity, instead of submitting an application, the program will submit a request to the department. A detailed list of the information to be included in the request is provided.
- The LEA must provide the department with evidence (this was "assurances" previously) that the proposed placement will provide the student with a FAPE and with access to and the ability to progress in the general curriculum.
- The provision that "the private provider of special education for whom the department establishes rates pursuant to Ed 1129 and who chooses to accept a student under the waiver process shall have their approved rates adjusted for the balance of the fiscal year" has been removed.

Ed 1126.04

Miscellaneous and Financial Matters

- The date by which the DOE must mail application forms for emergency assistance was removed.
- Changes were made to several line items on the form for reimbursement.
- Several items were deleted from the list of what is excluded from allowable depreciation expense, including assets that are donated or acquired through grants or from private organizations, foundations or companies.

Ed 1128.06

Ed 1128.08 & Ed 1129.08

Financial Matters

- Salaries for executives included in the approved special education rate, for reporting purposes cannot exceed 75% of the average full-time salary for NH superintendents for the previous year (this was previously a fixed amount of \$75,000).
- Cost increases for private programs were previously tied to the consumer price index. Now, a year-to-year increase can either be measured by the price indices in the consumer price index or 5%, whichever is greater.
- Some of the details regarding the joint rate setting process between the department of education and the department of health and human services have been removed.

Ed 1129.08(aq)

Ed 1129.12(b)

Ed 1129.21
