

## **The NH Rules for the Education of Children with Disabilities – What’s New?**

*Prepared by the Parent Information Center on Special Education, a project of the Parent Information Center*

On March 23, 2017 the State Board of Education voted unanimously to adopt the revised Ed 1100, *NH Rules for the Education of Children with Disabilities (NH Rules)*, which are NH’s special education regulations. The *NH Rules* implement the Federal and State special education laws. The adoption of these rules caps off a more than 18-month process, during which parents, educators, and others provided input at informational listening sessions, public hearings, and stakeholder group meetings, or by providing written comments on the proposed revisions to the *NH Rules*. Below is a summary of the changes that are likely to be of most interest to parents and other laypeople in the field.

### **The NH Rules now clarify that they implement IDEA and our State special education law, RSA 186-C. The policy and purpose of RSA 186-C, adapted from that in IDEA is:**

*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.*

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).

There is a new definition for “evaluation process”. It 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.

The definition of “evaluation” clarifies that it includes all of the requirements in the evaluation section of these rules, including the new requirement that the LEA provide parents with copies of each examiners evaluation and assessment report(s) at least 5 days prior to the meeting of the IEP team at which the reports will be discussed. They are required to mail the report(s) to the parents unless the parents and LEA agree on another method (e.g. parents could offer to pick up the reports or agree to have them emailed).

A definition was added for a “health evaluation”. It 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”.

There is also a new definition for a “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”.

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.

Changes to the IEP team:

- The NH Rules now clarify that, 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.
- The requirement that 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”.
- When eligibility is being determined, the IEP team no longer must include 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.

It has been clarified that 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 first.

Language has been 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.” Also, “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.”

The timeline for a disposition of referral meeting is now 15 business days. 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. This includes referrals that are received from a court.

The timeline for the initial evaluation is now 60 calendar days with no extensions. During that time, parents must be sent copies of all evaluation and assessment report(s) at least 5 days prior to the meeting.

For reevaluations, the same 60 day timeline is in effect, however the parent and LEA may agree to an extension of a specific number of days, not to exceed 30 days.

The language regarding criteria set by the LEA for independent educational evaluations has been clarified. The criteria, “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”.

Two changes were made in the table of qualified examiners:

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

The LEA must provide parents with copies (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 can waive the right to have these reports sent to them prior to the meeting.

A statement has been added to the NH Rules that, “(a) 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.”

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 career and technical education component.

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.)

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.

In the placement section of the NH Rules, “continuum of alternative placements” has been changed to “continuum of alternative educational environments”.

For preschool children, language has been added to emphasize 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 to read:

Table 1100.2 Continuum of Alternative Educational Environments – Ages 3-5

<u>Preschool Educational Environments</u>	<u>Description</u>
Early childhood program	A preschool child with a disability attends an early childhood program that includes at least 50% nondisabled children.
Home	A preschool child with a disability receives some or all of his/her supports and services in the child’s home.
Early childhood special education program	A preschool child with a disability attends an early childhood special education program which can include any of the classrooms described in Ed 1113.10(c)(5).
Service provider location	A preschool child with a disability receives supports and services from a service provider.
Separate school	A preschool child with a disability attends a publicly or privately operated separate day school facility designed specifically for children with disabilities.
Residential facility	A preschool child with a disability attends a publicly or privately operated residential school or residential medical facility on an inpatient basis.

**Table 1100.3 Continuum of Alternative Learning Environments – Ages 6-21**

<u>Educational Environments</u>	<u>Description</u>
Regular Education Setting	A child with a disability attends regular class with supports and services required in the IEP.
Resource room	A child with a disability attends a regular class and receives assistance at or through the special education resource room for no more than 60% of the child’s school day.
Self-contained Special Education Class	A child with a disability attends a self-contained special class for more than 60% of their school day.
Separate Approved Special Education Program/School	A child with a disability attends a publicly or privately operated special education program/school.
Residential placement	A child with a disability attends a publicly or privately operated residential program.
Home Instruction	A child with a disability receives all or a portion of his or her special education program at home
Hospital or institution	A child with a disability receives special education while in a hospital or institution.

The section on home instruction was revised so that 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.

**186-C: 15 Length of School Year.** – I. The length of the school year and school day for a child with a disability shall be the same as that provided by the local school district for a child without a disability of the same age or grade, except that the local school district shall provide an approved program for an extended period when the child’s individualized education program team determines that such services are necessary to provide the child with a free appropriate public education.

**193:1 Duty of Parent; Compulsory Attendance by Pupil.** – I. A parent of any child at least 6 years of age and under 18 years of age shall cause such child to attend the public school to which the child is assigned in the child’s resident district. Such child shall attend full time when such school is in session unless: (a) The child is attending a New Hampshire public school outside the district to which the child is assigned or an approved New Hampshire private school for the same time;

(b) The child is receiving home education pursuant to RSA 193-A and is therefore exempt from this requirement;

(c) The relevant school district superintendent has excused a child from attendance because the child is physically or mentally unable to attend school, or has been temporarily excused upon the request of the parent for purposes agreed upon by the school authorities and the parent. Such excused absences shall not be permitted if they cause a serious adverse effect upon the student’s educational progress. Students excused for such temporary absences may be claimed as full-time pupils for purposes of calculating state aid under RSA 186-C: 18 and adequate education grants under RSA 198:41;

**193:5 Exemption From Attendance.** – Whenever it shall appear to the superintendent of schools that the welfare of any child will be best served by the withdrawal of such child from school, the superintendent or a majority of the members of the school board shall make recommendation to the commissioner of education, who shall, if the facts warrant it, make an order exempting such child from attendance for such period of time as seems best for the interest of such 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.

While 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), 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.

Language was added emphasizing that instructional equipment and materials adequate to implement the IEP shall be provided by the LEA in an appropriate and timely manner.

In the section regarding class size and age range for preschool children, language was added clarifying that a preschool child may receive some or all special education and related services in a regular early childhood program as determined by the IEP team, and that qualified personnel shall provide services as identified in the IEP.

This section also clarifies that special education programs are made up of early childhood special education classes (classes with fewer than 50% children without disabilities).

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.

While preschool special education classes are for children, ages 3 through 5 years of age, they may include a 2 year old who turns 3 during the school year, or a 5 year old who turns 6 after September 30<sup>th</sup> of the school year.

The following 2 requirements were removed from the NH Rules (determined unnecessary by the NH DOE):

- Ed 1113.11(c) 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.
- Ed 1113.11(d) 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.

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.

References to RSA 126-U have been added to the sections on behavioral interventions.

Additionally, 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."

The sections on surrogate parents were updated by the NH Department of Education in consultation with the Department of Health and Human Services 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 department of education 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.

Language has been updated, with "biological or adoptive parents" instead of "natural parents" and "parents" instead of "mother and father".

The section on the education of children who may be subject to court-ordered residential placement was updated 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.

One requirement is that "when a court is considering or DCYF is recommending a court ordered residential placement for a child with a disability, the liable school district shall make a recommendation to the court as to where the child's educational needs can be met in accordance with state and federal education laws. In doing so, the school district shall address factors including the impact of the proposed change in placement on the child's current IEP; whether the proposed change in placement or a change in placement as a result of a proposed placement change, is appropriate and in the least restrictive environment; whether the proposed placement is appropriate for the implementation of the child's IEP; and what changes shall be made to implement the child's IEP in the proposed placement.

The school district also shall provide written notice of an IEP team meeting to a representative of DCYF and the child's appointed Guardian ad Litem so they may choose to attend the team meeting. If they do not attend the meeting, the school district shall notify the parents, and then provide DCYF with a copy of any special education records developed during or as a result of the meeting.

Additional procedures were included for situations when the court has ordered an immediate court-ordered residential placement or a change in the court-ordered residential placement. Procedures were also updated for when a liable school district has not been identified or is in dispute.

A requirement was added that each LEA and private provider of special education shall adopt a policy regarding the retention and destruction of special education records. Neither can destroy a student's special education records prior to the student's 25<sup>th</sup> birthday, except with prior written consent of the parent, or where applicable the adult student. All records may be retained in electronic or other form. A private provider may destroy a student's records so long as they have sent copies of all of the student's special education records to the most recent LEA of record. The LEA must maintain a copy of the student's last IEP until the student's 60<sup>th</sup> birthday. 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.

The "consent with conditions" option was removed and replaced with "partial consent". Parents can now indicate "consent" "refusal of consent" or "partial consent".

If a parent does not want a particular activity of service, the parent can refuse consent for that service or activity, specify the service or activity, and give consent to everything else. The NH Rules are very clear that the LEA "shall not use a parent's refusal to consent to one service or activity or request of additional services, or activities to deny the child any other services or activities to which the parent has consented."

If on the other hand, the parent wants an additional or different service or activity or a change in the services or activities proposed in the IEP, the parent can give partial consent, but must specify in writing the items they are refusing or requesting. The parent may request an IEP team meeting to discuss the disputed service or activity. Everything else (to which the parent has consented) will go into effect. The LEA may also schedule an IEP team meeting at a mutually agreeable time and date.

If the team meeting is held, it gives the parent and the LEA another chance to try to resolve the disputed service or activity, or to determine that they are unable to reach agreement and utilize formal dispute resolution options.

The LEA may only refuse to convene the IEP team meeting if it determines that the requested changes and/or additions to the IEP have been addressed at a prior IEP team meeting (meaning that they determine that there is no point in meeting further), in which case, the LEA must issue a WPN explaining why they refuse to convene the meeting. The parent's disagreement with the service or activity would still be reflected in the WPN, and the parent could then decide whether to utilize formal dispute resolution options. The parent and the LEA retain the right to file for a due process hearing at any time.

If a parent refuses consent for a proposed IEP or placement, the child's most recent agreed upon IEP and/or placement shall remain in effect unless the LEA and parent agree otherwise, until the matters are resolved unless and until a party files for due process, in which case the IEP and placement shall be governed by the "stay put" procedures under due process hearings in IDEA.

Previously, if the LEA proposed a new IEP or placement (any IEP or placement except the first one), an initial or changed determination of the child's disability category, or proposed a 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 to the child, if the parent refused consent, the LEA was required to file for a due process hearing. This requirement has been removed.

If a party to a complaint wants to request a reconsideration of the decision, the party 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.

It has been clarified that an appeal of the commissioner's final decision would be made to the NH Supreme Court or a NH Superior Court.

The *NH Rules* now state that 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".

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.

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.

In the section on obtaining 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.

References to the Philbrook center have been removed.

The specific date (by the first Friday in April) by which the department must mail application forms for emergency assistance to all school districts has been removed. The definitions that only applied to this section have also been removed.

Several changes were made in the items to be listed by line item 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.

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.

It is important for parents of children with disabilities, youth with disabilities, educators and others to understand the revisions to the *NH Rules for the Education of Children with Disabilities*. The NH Department of Education has posted text of the final approved NH Rules for the Education of Children with Disabilities at: [http://www.education.nh.gov/instruction/special\\_ed/documents/newly\\_adopted\\_nh\\_rules.pdf](http://www.education.nh.gov/instruction/special_ed/documents/newly_adopted_nh_rules.pdf)

The Parent Information Center (PIC) will conduct free informational workshops on the new *NH Rules*. Please visit PIC's websites at [www.picnh.org](http://www.picnh.org) or [www.nhspecialled.org](http://www.nhspecialled.org) to learn about upcoming workshops and training opportunities, as well as how parent groups, schools, agencies or organizations can host a PIC workshop. PIC has also posted an unofficial copy of the reauthorized *NH Rules*, including cited text from Federal and State laws, on our websites at [www.nhspecialled.org](http://www.nhspecialled.org) and [www.nhpic.org](http://www.nhpic.org).

The Parent Information Center on Special Education is a project of the Parent Information Center, providing training, information and resources on special education issues to families, educators and others.

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