NEW HAMPSHIRE RULES FOR THE EDUCATION OF CHILDREN WITH DISABILITIES

STAKEHOLDER INPUT

INTRODUCTION

The New Hampshire Department of Education, Bureau of Special Education will be entering into the rule making process, in the near future, in order to readopt with amendment, the New Hampshire Rules for the Education of Children with Disabilities (NH Rules). These NH Rules were originally amended on 6/30/2008 and they expire on 6/30/2016.

FORMAL RULE-MAKING PROCESS

The New Hampshire Department of Education is providing an opportunity for public input regarding items of clarification in the NH RULES. This power point presentation highlights the areas in which the NH RULES need clarification to further assist the community in understanding the regulations.

Each section is outlined and contain the recommended clarification points to add to existing language.

1. The words with ~~cross out line~~ are those to be omitted

2. and the words in ***bold italics*** are language to be added to the existing rule, which is in regular type.

ED 1101 PURPOSE AND SCOPE

Ed 1101.01 Purpose. The purpose of Ed 1100, adopted by the state board of education, is to insure that all children with disabilities have available to them a free, appropriate, public education pursuant to the Individuals with Disabilities Education Improvement Act of 2004, 20 U.S.C. 1400, and ~~the~~ [~~final regulations of the U.S. Department of Education issued by the Secretary of Education on August 14, 2006;~~] ***implementing regulations found in*** 34 CFR 300 et seq ***and RSA 186-C:1.*** [~~The further purpose of Ed 1100 is to adopt rules that are consistent with 20 U.S.C. 400 .~~]

Clarification-IDEA has not been re-authorized by the USDOE so the changed language refers to the Federal Regulations as they are.

PART 1101.02 DEFINITIONS

- ~~(i) "Alternative dispute resolution" means the following processes that can be used to resolve an issue or issues in dispute:~~
  - ~~(1) A facilitated (IEP) meeting~~
  - ~~(2) (LEA) Mediation;~~
  - ~~(3) State Mediation; and~~
  - ~~(4) A Neutral Conference.~~

Removed- already addressed in Ed 1122.01.

- (y) "Core academic subjects" means "core academic subjects" as defined in 34 CFR 300.10. [~~and includes~~ ~~:~~
- ~~(1) English;~~
- ~~(2) Reading or language arts;~~
- ~~(3) Mathematics;~~
- ~~(4) Science;]~~

Citing these is not all inclusive of 34 CFR 300.10 and therefore it was removed.

DEFINITIONS CONTINUED..

Ed 1102.03

- ~~(f) "Homeless child with a disability" [has the meaning] as detailed in 34 CFR 300.19.~~

This definition is in error to 34 CFR 300.19

- (g) "Independent educational evaluation" means "independent educational evaluation" as defined in 34 CFR 300.502(a)(3)(i) ***and***
- ***(ii) Public expense….***
- (h) "Individualized education program" (IEP) means "individualized education program" as defined in 34 CFR 300.22 ***and Ed 1109.***
- (i) "Individualized education program team" (IEP team) means "individualized education program team" as defined in 34 CFR 300.23 ***and Ed 1103.01(b) and (c)***.

Clarification

DEFINITIONS CONTINUED…

Ed 1102.04

- (q) "Related services" means "related services" as defined in ~~20 USC 1401 Sec. 602 (26)(A)~~ ***34CFR 300.34.***

Clarification Rationale-refer to federal language as in other sections of the Rules.

DEFINITIONS CONTINUED AND ED 1103.01

- (c) When a ~~vocational education~~ ***career and technical education*** component is being considered, the IEP team membership shall include an individual knowledgeable about the ~~vocational education~~ ***career and technical education*** program being considered.

Changing to current language

ED 1103.02 AND ED 1105.04

Ed 1103.02 Parent Participation.

- (a) The LEA shall ensure that the parent or parents of the child with a disability receive a written ~~invitation~~ ***notice*** no fewer than 10 days before an IEP meeting.

Align with language in 34 CFR 300.322(b)(1)

- ***(b)*** Provided that for a manifestation determination review under 34 CFR ***300.5302 (e)[***(~~c~~)***]***, the LEA shall ensure that the parent or parents receive a written ~~invitation~~ ***notice*** no fewer than 5 days before the review.

Typo. Should be 300.530(e)

- ***(c)*** The notice shall include the purpose, time, location ***of the meeting*** and ***the*** identification of the participants.

Rationale-for ease of the reader, these were made into separate items.

Ed 1105.04 Child Find for Children Currently Receiving Family Centered Early Supports and Services

- (f) The LEA shall report in NHSEIS whether a child referred by ***family centered early supports and services*** [~~FCESS~~] is a child determined to be a child with a disability or if the child is found not eligible as a child with a disability.

ED 1107 EVALUATION

Ed 1107.01

- (f) If [~~testing~~] ***a referral*** is ordered by a court, the evaluation process shall be completed within the time limit set by the court. If the court fails to provide a time limit, the evaluation process, including a written summary report, shall be completed within 60 days after receipt of the court's directive.

Rationale-align with RSA 169-B:22

ED 1108 DETERMINATION OF ELIGIBILITY FOR SPECIAL EDUCATION

Ed 1108

(b) For determination of eligibility, the composition of the IEP team described in 34 CFR 300.306 shall also include:

- (1) A teacher certified in each area of suspected disability; and
- ~~(2) An individual knowledgeable about the child as a result of having had personal contact with the child in the school or, if the child is below school age, at another setting .~~

Rationale-The NHDOE does not know how to ensure the fidelity of "knowledgeable" and "personal contact".

ED 1109 THE INDIVIDUALIZED EDUCATION PROGRAM

Ed 1109

(a) (10) A statement of transition services that meets the requirements of 34 CFR 300.43 and 34 CFR 300.320(b), with the exception that a plan for each student with a disability beginning at age 14 or younger, if determined appropriate by the IEP team, shall include a statement of the transition service needs of the student under the applicable components of the student's IEP that focuses on the student's courses of study such as participation in advanced-placement courses or [~~a vocational education~~; ~~and~~] ***career and technical education.***

More current language

[~~(11) A vocational education component for each child with a disability for whom vocational education is to be provided.~~**]**

Removal Rationale-This seems to be language from prior rules. IDEA no longer refers to "components" of an IEP.

(b) All of the requirements for the IEP specified in Ed 1109.01(a) shall apply to the development, approval, and implementation of the ~~vocational education~~ ***career and technical education*** component.

ED 1109 THE INDIVIDUALIZED EDUCATION PROGRAM

Ed 1109.04 Copies of the IEP and Evidence of Implementation

- (c) A summary of the child's academic achievement and functional performance, including recommendations on how to meet ***post*** secondary goals, shall be provided to the child prior to the child's eligibility termination described in 34 CFR 300.305(e)(2).

34 CFR 300.305(e)(3) refers to post secondary goals.

Ed 1109.03 When an IEP is in Effect; IEP Meetings; Development, Review and Revision of an IEP; Transition Services.

- ***(a) The LEA shall provide specifically designed instruction, special education services, related services, and accommodations and/or modifications to a child with a disability in accordance with the child's IEP.*** IEPs shall be in effect in accordance with 34 CFR 300.323.

Rationale for adding this language-There is no Ed, CFR or RSA that uses this specific language regarding provision of services. This language refers to an actual NH Rule to address violations of special education law. This language was formerly in effect in IDEA law in 2002.

ED 1111 PLACEMENT IN THE LEAST RESTRICTIVE ENVIRONMENT

- (b) A child with a disability shall be admitted to regional ~~vocational education~~ ***career and technical education*** center programs 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~~ ***career and technology education*** as part of FAPE shall receive such services as determined by the IEP team in the least restrictive environment.

Changed to use more current language.

- ~~Ed 1111.02 Placement Decisions.~~
- ~~(a) The IEP team shall make placement decisions in accordance with 34 CFR 300.116.~~
- ~~(b) Preschool children with disabilities shall be educated in a [setting]~~ ~~***learning environment***~~ ~~that is appropriate to implement the IEP or IFSP~~ ~~***and is the least restrictive environment consistent with 34 CFR 300.116, placements***~~.

ED 1111 CONTINUED….

- ~~[(c) Preschool children with disabilities may receive their special education program at any of the settings listed in Table 1100.02 as follows:~~
- ~~Table 1100.02 Continuum of Learning Settings for Preschool~~

~~Community Early Childhood Setting~~
~~Home Setting~~
~~Early Childhood Special Education – Partially Integrated Setting~~
~~Early Childhood Special Education – Specialized/Therapeutic Setting~~
~~Early Childhood Special Education – General Self-Contained Setting~~
~~Early Childhood Special Education – Specialized Self-Contained Setting~~
~~Separate School Setting~~
~~Residential Setting]~~

Moved into the proper order of special education process

Consistent with Table 1100.2 and 1100.3

Ed 1111.02 Continuum of Alternative ~~Placements~~ ***Educational Environments***

- (a) The LEA shall comply with the requirements of 34 CFR 300.115, relative to continuum of alternative ~~placements~~ ***educational environments as set forth in Table 1100.3 and table 1100.4.***

- (b) School districts shall, at a minimum, give evidence that the continuum of alternative ~~learning~~ [~~settings~~] ***educational environments*** from least restrictive to most restrictive set forth in Table 1100.2, "Continuum of Alternative ~~Learning Settings~~ ***Educational Environments*** for ~~Preschool~~ ***Children Ages 3-5.***" and as set forth in Table 1100.[~~3~~]**2**, "Continuum of Alternative ~~Learning~~ ***Educational*** Environment***s for ~~preschool~~ Children Ages 6-21" and as set forth in Table 1100.4, "Continuum of Alternative Educational Environments –Ages 6-21*** is available or would be made available as placements for children with disabilities, including children of preschool age.

ED 1111 CONTINUED…

- ~~Ed 1111.03 Continuum of Alternative Placements .~~
- ~~(a) The LEA shall comply with the requirements of 34 CFR 300.115, relative to continuum of alternative placements.~~
- ~~(b) School districts shall, at a minimum, give evidence that the continuum of alternative learning [settings]~~ ~~***environment***~~ ~~from least restrictive to most restrictive set forth in Table 1100.2, "Continuum of Alternative Learning Settings for Preschool" and as set forth in Table 1100.[3]~~**2**~~, "Continuum of Alternative Learning Environment~~~~***s for preschool" and as set forth in Table 1100.3, "Continuum of Alternative Learning Environment –Ages 6-21***~~ ~~is available or would be made available as placements for children with disabilities, including children of preschool age.~~

Moved to another section to organize process

ED 1111 CONTINUED…

- Ed 1111.03 Placement Decisions.
- (a) The IEP team shall make placement decisions in accordance with 34 CFR 300.116.
- (b) Preschool children with disabilities shall be educated in a***n***[~~setting~~] ***educational environment*** that is appropriate to implement the IEP or IFSP ***and is the least restrictive environment consistent with 34 CFR 300.116, placements***.
- ~~[(c) Preschool children with disabilities may receive their special education program at any of the settings listed in Table 1100.02 as follows:~~

Rationale-change terminology to educational environments to align with IDEA 300.8(c)(9), 300.114(a)(2)(ii).

ED 1111 CONTINUED…..

- Table 1100.[~~3~~]**2** Continuum of Alternative ~~Learning~~ ***Educational*** Environments – ~~Preschool~~ ***Ages 3-5.***

Preschool Educational Environments	Description
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 [a] ***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.

Clarification

ED 1111 CONTINUED…

Educational Environments	Description
Regular ~~classroom~~ ***Education Setting***	A child with a disability attends regular class with supports and services required in the IEP.
~~Regular classroom with consultative assistance~~	~~A child with a disability attends a regular class with assistance being provided to the classroom teacher by consulting specialists~~ ~~.~~
~~Regular classroom with assistance by specialists~~	~~A child with a disability attends a regular class with services, provided to the child by specialists.~~
~~Regular classroom plus r~~Resource room ~~help~~	A child with a disability attends a regular class and receives assistance at or through the special education resource room ~~program.~~ ***for no more than 60% of the child's school day.***
~~Regular classroom plus part-time special class~~	~~A child with a disability attends a regular class and a self-contained special education classroom.~~
~~Full-time special class~~ ***Self-contained Special Education Class***	A child with a disability attends a self-contained special class ~~full-time.~~ ***for more than 60% of their school day.***
~~Full-time or part-time special day school~~ ***Separate Approved Special Education Program/School***	A child with a disability attends a publicly or privately operated ~~special day program full-time or part-time~~ ***special education program/school.~~***
Full-time residential placement	A child with a disability attends a publicly or privately operated residential program full-time.
Home Instruction	A child with a disability receives all or a portion of her/his special education program at home ~~in accordance with Ed 1111.05.~~
Hospital or institution	A child with a disability receives special education while in a hospital or institution.

ED 1111 CONTINUED……

- ~~Ed 1111.04 Children with Disabilities in Private Providers of Special Education and other non-LEA Programs Placed or Referred by Public Agencies. The placement of a child with a disability in an approved private school, facility, or program by the IEP team shall provide special education and related services:~~
- ~~(a) At no cost to the parent.~~
- ~~(b) In the least restrictive environment.~~
- ~~(c) In accordance with the child's IEP.~~
- ~~(d) By personnel that meet the department's certification standards.~~

Rationale for removal-not needed. Process is outlined in 300.116(a)(2).

ED 1111.05 HOME INSTRUCTION FOR SCHOOL-AGED CHILDREN

~~[1111.05~~

- ~~Ed (a) Home instruction for children at least 6 years of age but less than 21 years of age shall not include parent-designed home education programs as authorized in Ed 315.~~
- ~~(b) Home instruction for children at least 6 years of age but less than 21 years of age shall:~~
- ~~(1) Provide the child with access to the general curriculum, as required in 34 CFR 300.320;~~
- ~~(2) Be in compliance with RSA 186-C:15, relative to number of days per year of instruction;~~
- ~~(3) Minimally include 10 hours per week of specially designed instruction as specified in the child's IEP so that the child will progress in the general curriculum as required in 34 CFR 300.320 and meet all IEP goals;~~
- ~~(4) Include related services as specified in the child's IEP, provided any related services so provided shall be in addition to the 10 hours of specially designed instruction required under (3);~~
- ~~(5) Be implemented by personnel qualified in accordance with 34 CFR 300.156 and section 2122 of the ESEA; and~~
- ~~(6) Allow for the child to participate with nondisabled children to the maximum extent appropriate to the needs of the child, as required by 34 CFR 300.117.~~

Rationale for removal of Ed 111.05 entirely- The NHDOE has no authority to accept or deny the IEP Teams' decision of placement.

ED 1111.05 CONTINUED….

~~Ed 1111.05~~

~~(c) When a child is physically or mentally unable to attend school and the IEP team recommends that a school week of less than the required hours detailed in Ed 1111.05 (b)(3) be provided:~~

- ~~(1) The superintendent shall provide written consent prior to implementation of the shortened school week;~~
- ~~(2) The parent shall provide written consent prior to implementation of the shortened school week;~~
- ~~(3) The LEA shall send a copy of the written consent to the state director of special education;~~
- ~~(4) The LEA shall send a copy of the written consent to the child's parent;~~
- ~~(5) The LEA shall place a copy of the consent in the child's school records;~~

~~(d) Consent shall not be granted by the superintendent if it would cause a serious adverse effect upon the child's educational progress pursuant to RSA 193:1, I(c).~~

~~(e) The LEA's obligation to provide a FAPE to the child shall still be in effect even if the child is provided services for less than the number of hours detailed in Ed 1111.05 (b)(3).~~

~~(f) Except as provided in (g) below, temporary home-based programs shall not exceed 45 days in a school year.~~

ED 1111.05 CONTINUED….

~~Ed 1111.05~~

~~(g) When the IEP team determines that an IEP for a child with a disability should be implemented at home for more than 45 days the LEA shall:~~

- ~~(1) Describe, in writing, the specific circumstances resulting in the need for the home instruction;~~
- ~~(2) Develop an IEP which includes all the elements in 34 CFR 300.320; and~~
- ~~(3) Develop a written plan for the transition of the child into a less restrictive environment which shall include the following:~~

~~a. Objective criteria for determining when the student will no longer require a home-based program and will receive special education services in a school-based program;~~

~~b. Specific activities for each phase of the transition; and~~

~~c. The specific time frame for each phase of the transition process.~~

ED 1111.05 CONTINUED….

~~Ed 1111.05~~

~~(h) For an IEP to be implemented at home for more than 45 days, at least 10 days prior to the 46th day of the home instruction the LEA shall submit the following to the state director of special education of the department:~~

- ~~(1) The agreed upon IEP developed pursuant to Ed 1111.05(g)(2);~~
- ~~(2) The name, title, employer, and a copy of the certification, license, or other appropriate statement of qualifications for each of the individuals implementing the home instruction, including all teachers, therapists, aides, consultants and supervisors;~~
- ~~(3) Minutes of the IEP team meeting at which the decision to implement the home instruction was made, including:~~
  - ~~a. The basis for the decision as set forth in Ed 1111.05(g)(1); and~~
  - ~~b. A list of the specific documentation reviewed by the team such as physician's reports, test results, reports of professionals knowledgeable about the child's disability, pertinent information from any other relevant source; and~~
- ~~(4) The written plan for the transition of the child as described in Ed 1111.05(g)(3).~~

ED 1111.05 CONTINUED…

~~Ed 111.05~~

~~(i) The state director of special education of the department or designee shall review all the documentation and, if the proposal complies with Ed 1111.05(h), inform the LEA in writing that the proposal complies with Ed 1111.05(h) and is approved.~~

~~(j) If the director does not approve the proposal under (i) above, the director shall:~~

- ~~(1) Require additional information in writing to determine whether or not the proposal complies with Ed 1111.05(h); request additional information in writing;~~
- ~~(2) Inform the LEA in writing if there are alternatives to the proposed home instruction that are less restrictive; or~~
- ~~(3) Inform the LEA in writing that, based on the submitted documentation, because the proposed home instruction in excess of 45 days is not the least restrictive environment for the child as required by Ed 1111.01, the proposal is not approved.~~]

ED 1113-REQUIREMENTS FOR THE DEVELOPMENT AND OPERATION OF PROGRAMS FOR CHILDREN WITH DISABILITIES ADMINISTERED BY LOCAL EDUCATION AGENCIES

Ed 1113.08 Curricula.

(a) The LEA shall ensure that every preschool child with a disability has full access to ~~a preschool curriculum and~~ appropriate preschool activities, in compliance with 34 CFR 300.320***(a)(1)(ii)*** **[**(4)**]**.

Removal rationale-IDEA does not talk about preschool curriculum but rather preschool activities. More appropriate reference is 300.320(a)(1)(ii).

(b) The LEA shall ensure that every child with a disability has full access to the LEA's general curriculum, in compliance with 34 CFR 300.320(a)(4).

~~(c) To the extent that the LEA's curricula require accommodations and modifications, to meet the unique needs of a child with a disability, the LEA shall provide those necessary related services and program accommodations and modifications .~~

~~(d) A child's IEP shall not be considered as a complete or total curriculum for that child~~.

Removal rationale-Ed 1113.08(b) referencing 34 CFR 300.320(a)(4) covers (c) and (d).

ED 1113 CONTINUED…

Ed 1113.10 Class Size and Age Range

- ~~(a) Children with disabilities in preschool programs shall be 3 and 5 years of age or a 2 year old who turns 3 during the school year or a 5 year old who turns 6 after September 30 of the school year grouped by developmental and achievement levels with an age and developmental level of not more than 3 years.~~ ***(a) The following shall apply to the early childhood program for children with disabilities ages 3 through 5:***
  - ***(1) 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***
  - ***(2) Qualified personnel shall provide services as identified in the IEP or IFSP.***

- ~~(b) The preschool community outreach program shall:~~
  - ~~(1) Be coordinated, supervised and monitored by qualified district personnel;~~
  - ~~(2) Ensure access to a curriculum for preschoolers;~~
  - ~~(3) Provide services as identified in the child's IEP/IFSP by qualified personnel; and~~
  - ~~(4) Utilize early childhood settings set forth in Table 1100.03 for placements that meet the RSA 170-E.~~

ED 1113.10 CONTINUED…

Ed 1113.10

(b) **[**(~~c~~)**]** The following shall apply to the home program for children with disabilities ages 3 through 5:

- (1) A preschool child may receive some or all special education and related services in the child's home, as determined by the IEP team; and
- (2) Qualified personnel, as identified in the IEP or IFSP, shall provide services in the home.
-

(c) **[**(~~d~~)**]** The following shall apply to early childhood special education programs ***which are made up of early childhood special education classes:***

- (1) An early childhood special education ~~program~~ ***class*** shall be considered a special education ~~program~~ ***class*** when it includes less than 50% children without disabilities;

ED 1113.10 CONTINUED….

(2) ***There may be more than one early childhood special education class in an early childhood special education program.***

(3) The LEA shall ensure the individual needs of the preschool children with disabilities can be met when determining the number of children to be enrolled and staffing in the early childhood special education class.

(4) Preschool children with disabilities will be placed in an early childhood special education program consistent with Ed 1111.01(a) and 34 CFR 300.114;

(5) ~~Early childhood special education programs shall, to the greatest extent possible, include students of comparable developmental and/or functional levels; and~~ Preschool children in an early childhood special education ~~programs~~ ***class*** shall be between the ages of 3 and 5 years of age or a 2 year old who turns 3 during the school year or a 5 year old who turns 6 after September 30 of the school year;

Clarification of the process and removing redundancies.

ED 1113.10 CONTINUED…

(6) [(~~2~~)***]***The minimum teacher to student ratio in all early childhood special education ~~programs~~ ***class*** shall be:

- a. One qualified teacher for one to 8 preschool students;
- b. One qualified teacher and one qualified paraprofessional for 8-12 preschool students unless the needs presented by the severity of the disabilities warrants the assignment of additional staff; or
- c. Two qualified teachers for 8-12 preschool students;

(7) **[**(~~3~~)**]** The maximum number of preschool children in an early childhood special education ~~programs~~ ***class*** shall be 12;

(8) [~~(6)~~] Regardless of the specific teacher-student ratio, each program shall provide personnel who are endorsed in the area of disability consistent with the student population of the program.

ED 1113 CONTINUED…

- Ed 1113.11 Facilities and Location.
- ~~(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 .~~
- ~~(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.~~
- ~~(e)] Any building or facility in which a child's IEP is implemented, other than a child's own home, shall meet :~~

~~(1) The licensing requirements of RSA 170-E, if a child day care agency;~~

~~(2) The requirements for physical facilities under Ed 1114.14(c) relating to New Hampshire health and fire rules; and~~

- ~~(3) The standards for educational space and special education space in Ed 321.10 and Ed 321.11 .~~

Removal rationale-all of this is addressed in the Minimum Standards for Public Schools Ed 321.10 and the Bureau has no additional requirements.

ED 1113 CONTINUED…..

- ~~***(g)*** [(f)] An LEA shall comply with Ed 306.06 regarding school facilities in which the IEPs of children with disabilities are implemented~~.

Rationale-this is a responsibility of school district for ALL students.

Ed 1113.13

~~(c) LEAs shall provide all children with disabilities an equal opportunity to complete a course of studies leading to a regular high school diploma. Awarding of any document other than a regular high school diploma shall not end a child with a disability's eligibility for FAPE pursuant to 34 CFR 300.102~~.]

Removal rationale-This is addressed in Ed 1113.13(a).

ED 1113 CONTINUED…

- Ed 1113.15 The Length of the School Day

- ~~(b) For a child with a disability in elementary school or high school the school day shall be a minimum of at least 180 days in each year, or the equivalent number of hours if approved by the commissioner of the department of education consistent with the provisions of RSA 189:1, RSA 189:2, RSA 189:24, and RSA 189:25 and Ed 306.18-Ed 306.21 .~~
- ~~(c) When, due to a child's limited physical and **or** emotional stamina [or physical or emotional stamina], the IEP team recommends a school day of less than the required minimum under Ed 1113.15(b), written consent shall be obtained from the superintendent of schools and the parent prior to implementing a shortened school day. A copy of the written consent shall be sent to the director of the bureau of special education of the department. A copy of the written consent shall be given to the parent, and another copy of the written consent shall be placed in the child's school records. If it would cause a serious adverse effect upon a child's educational progress pursuant to RSA 193:1, I(c), a superintendent shall not excuse a child from the required minimum school day. The LEA's obligation to provide FAPE to a child shall still be in effect even if the child attends school for a shortened school day.~~
- ~~(d) An approved shortened school day, due to the conditions outlined in (c), shall not be extended beyond the end of the current school year~~

Removal rationale-this is now addressed in the Minimum Standards for all Students in Ed 306.18 and RSA 186-C:15. No federal authority for a state agency to give approval or deny approval for a decision the IEP team has made. And the Bureau has no additional requirements.

ED 1115 SURROGATE PARENTS

Ed 1115.01 Commissioner's Responsibility; Basis for Appointment of Surrogate by Commissioner

- (b) In order to protect the educational rights of children with disabilities, the commissioner or designee shall appoint a surrogate parent when the child's parent is not known, the child is under legal ~~guardianship~~ ***custody*** of ~~DCYF~~ ***Division of Children, Youth and Family (DCYF) the child is under guardianship of DCYF per RSA 463***, ***a judge overseeing the case of a child may appoint a surrogate parent,*** or ~~a court has issued a written order for a surrogate parent~~ ***the child is an unaccompanied youth as defined in section 725(6) of the McKinney Vento Homeless Assistance Act (42U.S.C 1143a(6)) who may be or is a child with a disability***.

Rationale for changes-RSA 186-C:14, III refers to legal custody. Addition of McKinney-Vento references found in the law.

ED 1115 CONTINUED……

Ed 1115.02 Initiating a Request for Appointment of a Surrogate Parent

- (a) ~~Any employee of an LEA, the department, or a residential school or hospital, any physician, any judicial officer, or any other person who knows or believes that a child's parent is not known, or is not able to be located, or that the child is under legal guardianship~~ ***custody*** ~~of DCYF, or any person who knows or believes that a court has issued a written order for a surrogate parent, shall initiate the appointment of a surrogate parent, pursuant to Ed 1115.02(b).~~ ***Anyone with knowledge of a child, who may be or is a child with a disability, can make a referral to an LEA requesting an educational surrogate parent. When the child is found not eligible for an educational surrogate parent, the LEA will notify the person who made the referral in writing within 15 days of completing the investigation .***
- ***(b) The LEA shall initiate the appointment of a surrogate parent, pursuant to Ed 1115.02.***
- ***(c)*****[**~~(b)~~**]** The process for appointment of a surrogate parent shall be initiated by submitting a written referral to the superintendent of schools or the superintendent's designee.
- ***(d)*****[**~~(c)~~**]** A copy of the referral shall be sent to the commissioner of education or the commissioner's designee.

Changed/added language to clarify the process. Conferred with DCYF regarding language.

ED 1115 CONTINUED…..

Ed 1115.03 Investigation and Determination of the Need for a Surrogate Parent

- (b) ~~Procedures used to determine whether or not the child's parent is in fact unknown or if the child is under legal guardianship of DCYF, or if a court has issued a written order for a surrogate parent, shall include but not be limited to, sending a written notice, by certified mail, of the need for parental participation in the special education process to the last known address of the parent or following the procedures in (e) below.~~ ***A parent shall be considered unknown when there is no written record of the existence of such a person available to the superintendent of schools or the superintendent's designee .***
- ***(1) Evidence is required to show that Division of Children, Youth and Families was contacted regarding the parent not being known. Such documentation shall include, but not be limited to: telephone call or email sent with date, time, person contacted or agency contacted.***

Clarification of the process

ED 1115 CONTINUED….

- ~~(c) The notice under Ed 1115.03(b) shall include:~~
  - ~~(1) A request for the parent to participate in the special education process for the child;~~
  - ~~(2) A description of parental rights;~~
  - ~~(3) A statement within 14 days of receipt of the certified letter that the parent does not want or is unable to act as the child's educational decision-maker at this time; and~~
  - ~~(4) A statement that the parent may resume responsibility as the child's educational decision-maker upon written notification to the LEA.~~

- (***c)[(***~~d~~)] A parent shall be considered ~~unknown~~ ***"not to be located"*** when ~~there is no written record of the existence of such a person available to the superintendent of schools or the superintendent's designee.~~ ***When the LEA cannot discover the whereabouts of the parent as documented by a record of its attempts to contact the parent such as:***
  - ***(1) Evidence that Division of Children, Youth and Families has been contacted regarding the parent not being able to be located with documentation of telephone call or email sent with date, time, person contacted or agency contacted .***

Clarification of the process. DCYF in agreement of the changes/additions of language.

ED 1115 CONTINUED…

- ~~(e A parent shall be considered "not able to be located" when :~~
  - ~~(1) The parent notifies the LEA in writing that the parent does not want or is unable to act as the child's educational decision-maker at this time; or~~
  - ~~(2) The public agency cannot discover the whereabouts of the parent as documented by a record of its attempts to contact the parent, such as:~~
    - ~~a. Detailed records of telephone calls made or attempted, including:~~

(list deleted as well)

Clarification of the process.
DCYF agreement with language.

- ***(d) The LEA shall mail a written notice, by certified mail, of the need for parental participation in the special education process, to the last known address of the parent .***
- ***(e) The notice under Ed 115.03(d) shall include:***
- ***(1) A request for the parent to participate in the special education process for the child,***
- ***(2) A description of parental rights,***
- ***(3) A statement within 14 days of receipt of the certified letter the LEA will apply to have a surrogate parent appointed for the child unless the parent responds in writing and***
- ***(4) Upon location of a parent, the parent may resume responsibility as the child's educational decision-maker upon written notification to the LEA.***

ED 1115 CONTINUED….

- (f) The child shall be determined to be a ward of the state under this section when, ~~the parent's rights have been terminated or relinquished~~ as documented in court records, ~~or the parent is deceased.~~ ***the child is in legal custody of DCYF.***
- ***(g) A judge overseeing the case of a child, who may be or is a child with a disability, may appoint a surrogate parent for a child.***
- ***(h) The LEA's homeless liaison shall determine if the child is an unaccompanied homeless youth as defined in section 725(6) of the McKinney Vento Homeless Assistance Act (42 U.S.C 1143a(6)) who may be or is a child with a disability.***

<u>Ed 1115.04 Requesting Appointment of a Surrogate Parent</u>

- (b)(2)
  - e. The child's ~~biological~~ ***birth*** mother and ~~biological~~ ***birth*** father, if known, and whose parental rights have not been ~~relinquished~~ ***surrendered*** or terminated;

ED 1115 CONTINUED…

Ed 1115.04(b)(6)

- (6) A written statement by the superintendent of schools or the superintendent's designee attesting that ***the LEA investigated the child's need for a surrogate parent and the LEA determined that*** :
- a. The LEA investigated the child's need for a surrogate parent and the LEA determined that the child's parent is unknown or not able to be located;
- b. The child is under legal ***custody of DCYF or*** guardianship of DCYF ***per RSA 463 as documented in a court order***; or
- c. ~~A court has issued a written order for a surrogate parent and that the child is therefore in need of a surrogate parent; and~~ ***The LEA's homeless liaison has signed a statement that the child is an unaccompanied homeless youth as defined in section 725(6) of the McKinney Vento Homeless Assistance Act (42 U.S.C 1143a(6)) who may be or is a child with a disability; or***
- ***d. A judge overseeing the case of a child, who may be or is a child with a disability, has appointed a surrogate parent as documented in a court order; and***

ED 1115 CONTINUED…

Ed 1115.04(b)(7)

- (7) Documentation of efforts to contact the parent as described in Ed 1115.03~~.~~***, as well as a copy of evidence of documentation that DCYF has been contacted or copies of court orders showing DCYF has legal custody or guardianship per RSA 463 or that a judge has appointed an educational surrogate parent .***

Clarification of process. Added language approved by DCYF.

Ed 1115.05 Appointment

(d)(2)

- ***e. The surrogate parent resigns, dies, or is removed pursuant to this section.***

(h)(2)

- (2) The child ceases to be under legal ***custody of DCYF or*** guardianship of DCYF ***per RSA 463***;

ED 1115 CONTINUED…

Ed 1115.05(h)

- ~~(4) In the case of a parent who has requested a surrogate parent because the parent is unable to act as the child's educational decision maker, the parent notifies the LEA in writing that the parent is able to resume responsibility as the child's educational decision-maker~~.

Remove rationale-redundancy

Ed 1115.06 Selection of Surrogate Parents

(a)

- (10) Have no interest that conflicts ***personally or professionally*** with the interest of the child he or she represents;
- (11) Are not employees of a***n SEA, LEA or any other*** public agency which is involved in the education or care of the child; and

ED 1115 CONTINUED…

- ~~Ed 1115.09 Surrogate Parents for Children Placed in Homes for Children, Health Care Facilities, or State Institutions.~~
- ~~(a) Notwithstanding the requirements of Ed 1115, Ed 1115.09(b) shall apply for children in placements pursuant to RSA 169-B, RSA 169-C or RSA 169-D.~~
- ~~(b) Upon a DCYF or DYDS referral meeting the requirements of Ed 1115.02, the commissioner shall appoint a surrogate parent in accordance with Ed 1115.05 except as noted below:~~
  - ~~(1) The process for appointment of a surrogate parent shall not exceed 45 days from the date on which the department receives the request for appointment;~~
  - ~~(2) If a parent objects to the appointment of a surrogate parent, the decision whether or not to appoint a surrogate parent shall be made within 55 days of the date on which the superintendent of schools or department received the referral; and~~
  - ~~(3) In all instances where information from the liable LEA is necessary to make a determination whether a surrogate parent should be appointed, it shall be the responsibility of the liable LEA to provide, in a timely manner, all the information necessary to complete the process of determining whether a surrogate parent should be appointed.~~

Removal rationale-In all of these cases, if the parent was not representing their child then the child wouldn't be in legal custody of DCYF, therefore the Rules under Ed1115 would cover these children.

ED 1117 EDUCATION OF CHILDREN PLACED IN HOMES FOR CHILDREN, HEALTH CARE FACILITIES, OR STATE INSTITUTIONS

~~Ed 1117.01 Purpose and Scope.~~

- ~~(a) The purpose of this part is to assure the provision of a FAPE as defined in Ed 1102.[44]~~***~~02(s)~~*** ~~to children with or who might have [educational] disabilities who are in residential placement or placements awaiting disposition of the courts and committed juvenile students with or who might have educational disabilities to the extent that such students are not covered under Ed 1127.~~

(Strike out entire section)

Rationale for removal of Ed 1117-programs no longer exist

PART ED 1119 CONFIDENTIALITY OF INFORMATION

~~Ed 1119.01 Definitions. Except where the context makes another meaning clear, the following words have the meaning indicated when used in Ed 1119:~~

- ~~(a) "Participating agency" means "participating agency" as defined in 34 CFR 300.611(c).~~

Delete-34CFR 300.611(c) is referenced in Ed 1119.02

Ed 1119.02

(b)An LEA may destroy special education records for students who have exited special education, no fewer than 7 years prior to date of destruction. An LEA must inform the public on three separate occasions, at least 30 days prior to date of destruction.

***(c)*[**(~~b~~)**]** Each participating agency shall comply with the safeguard provisions of 34 CFR 300.623. The department or the LEA shall provide notice to parents in accordance with 34 CFR 300.612

~~Ed 1119.03 Children's Rights.~~

- ~~(a) Each public agency shall comply with 34 CFR 300.625, relating to children's rights.~~
- ~~(b) The rights of parents under Ed 1100 shall be transferred to the child as provided in Ed 1120.01(b).~~

Already addressed in Ed 1120.01(b) referencing 34 CFR 300.320© and 300.520.

ED 1119 CONTINUED…

~~Ed 1119.05 Prior Consent for Disclosure Required~~

- ~~(a) Consent for disclosure of personally identifiable information shall be made in accordance with 34 CFR 300.622.~~
- ~~(b) If a parent of a child with a disability or the eligible child refuses to provide consent to release personally identifiable information, the LEA shall initiate a court proceeding to obtain a court order if it still wishes to disclose the information.~~

Already addressed in Ed 1119.02(a). 34 CFR 300.622 refers to this as "Consent" whereas NH created title "Prior Consent for Disclosure Required"

- ~~Ed 1119.06 Prior Consent for Disclosure Not Required in Certain Situations. Consent shall not be required when the conditions of 34 CFR 300.535 apply.~~

Remove from this section- 300.535 is already addressed in Ed 1124.01

PART ED 1120 PROCEDURAL SAFEGUARDS

Ed 1120.04 Parental Consent

- (c) Parents of children with disabilities shall have 14 days after the sending of written prior notice under Ed 1120.03 to sign documents included with the notice to indicate consent, ~~consent with conditions,~~ or ~~denial~~ ***refusal*** of consent.
- ***(1) A public agency may not use a parent's refusal to consent to one service or activity to deny the child services, benefits or activities that the parent has agreed to .***

Rationale-Clarification of the process. Language from 34 CFR 300.300(d)(3) and Ed 1120.05(g).

(2) A parent or a public agency may file a due process complaint on any of the matters described in 300.503(a) (1) and (2) and Ed 1120.04(a) (relating to the identification, evaluation or educational placement of a child with a disability, or the provision of FAPE to the child), pursuant to 34CFR 300.507 .

Rationale-Clarification of the process regarding when districts and parents don't agree on one or more provisions of the IEP. This includes services.

ED 1122 ALTERNATIVE DISPUTE RESOLUTION

Ed 1122.01 Availability of Alternative Dispute Resolution.

Alternative dispute resolution shall be voluntary and available to parents and LEAs in accordance with RSA 186-C:23 and 34 CFR 300.506.

- RSA 186-C:23 ~~(including revisions proposed by HB 766)~~ Alternative Dispute Resolution. –
  - I. In order to encourage informal resolution of differences of opinion regarding the provision of special education, the following methods of alternative dispute resolution shall be available to parents and school districts:
    - ~~(a) Facilitated team meeting~~ ***Neutral Conference***
    - (b) Mediation.
    - ~~(c) Neutral conference.~~

NOTE: This is an edit in the NH Rules Book. General Court listing of the NH Rules does not cite RSA's. This is the proper wording and order according to RSA 186-C:23,I.

Removal Rationale-RSA 186-C:23 law changed in 2015 removing facilitated individualized education program meetings from this process

ED 1123 POSTHEARING MATTERS

Ed 1123.22

(a) The decision of a hearing officer shall be implemented immediately, except as provided in Ed 1123.23, unless a delay is agreed to in writing by both parties, or one party files a timely appeal under 34 CFR 300.5**[.]**16(a) to a court of competent jurisdiction. Unless an appeal to court is filed by either party, or a delay is agreed to, the hearing officer's decision shall be fully implemented within 30 days.

Typographical Error-Should read 34 CFR 300.516(a).

ED 1126 STATE DEPARTMENT OF EDUCATION MONITORING OF EDUCATIONAL SERVICES AND PROGRAMS FOR CHILDREN WITH DISABILITIES

Ed 1126.03

~~(c) Those monitored programs found to be in noncompliance shall :~~

- ~~(1) Submit to the bureau of special education a corrective action/improvement plan including proposed activities, timelines, and evidence by which any noncompliance specific to a student and/or systemic noncompliance will be corrected;~~
- ~~(2) Include in the corrective action/improvement plan an assurance from the superintendent or director of the public or nonpublic program that the plan will be implemented within the designated timeline; and~~
- ~~(3) Correct all noncompliance within the corrective action timeline but in no case no later than one year from the notification of the identified noncompliance.~~

~~(d) The bureau of special education in the department shall take one of the following steps:~~

- ~~(1) Accept the plan as written;~~
- ~~(2) Require modification to the plan;~~
- ~~(3) Modify the plan and accept the modified plan; or~~
- ~~(4) Reject the plan and order the appropriate enforcement actions specified in Ed 1125.02(e).~~

Rationale for removal-The NHDOE is now developing the corrective action plans for correction of non-compliance.

ED 1126 CONTINUED…

Ed 1126.03

- (d)[(e)]
  - (3) The private provider of special education, public academy or other non-LEA program shall receive provisional approval if:
    - ~~a. The program has been identified with an area(s) in need of correction~~ ;
    - ~~b. The program has an approved corrective action plan in place;~~
      - ***a*[~~c~~].** The issue(s) of non-compliance are systemic in scope; and
      - ***b*[~~d~~].** Students in the program are receiving a FAPE.

Rationale for removal-This offers a clearer definition of provisional approval.

Ed 1126.07(a)

(4) Identification of the child's specific special education program and if necessary, related services, the extent to which the child will not participate with nondisabled children in regular educational programs as required by 34 CFR 300.3***20(a)(5)[~~47~~]***, and the projected date for initiation and anticipated duration of the special education or special education and related services;

Typographical error. Should say 300.320(a)(5).

ED 1127 CHILDREN WITH DISABILITIES IN PLACEMENTS FOR WHICH DCYF HAS FINANCIAL RESPONSIBILITY

Ed 1127.01 Definitions

- (a) "Children in placement for which DCYF has financial responsibility" means all children receiving special education or special education and related services whose placements were made pursuant to RSA 169-B, RSA 169-C or RSA 169-D, except children [~~at the Philbrook center while~~] awaiting disposition of the court following arraignment pursuant to RSA 169-B:13.

Rationale for removal-program closed

ED 1129 RATE SETTING

Ed 1129.02

- (a) In order to obtain a rate for special education instruction, ~~room and board~~, physical therapy, occupational therapy, speech therapy and counseling from the department, the agency shall complete a budget proposal and submit it to the department.

Rationale for removal-the NHDOE does not monitor for residential facilities. DHHS monitors this and sets its own rates. NHDOE will use their established rates.

- ***(b) The room and board rate will be established by the Department of Health and Human Services***
- **(c) [**(~~b~~)**]** The department shall not act on any proposal which is incomplete, and/or which contains substantive errors or omissions. Any such proposal shall be returned for corrections and/or completion.
-
-

ED 1129 CONTINUED…

***(d)*[**(~~c~~)**]** The agency shall submit the following in the budget proposal:

- (1) Form 1129A: Cover Sheet;
- (2) Form 1129B: Personnel;
- (3) Form 1129C: Assets and Depreciation;
- (4) Form 1129D: Program Data;
- (5) Form 1129E: Revenues; and
- (6) Form 1129F: Expenses by Line Item.

ED 1129 CONTINUED…

Ed 1129.09

(j) All revenues and expenditures shall be assigned to the following functions:

- (1) General Management;
- (2) Fund Raising;
- (3) Other non special education costs;
- (4) Special education programs - Instruction;
- ~~(5) Special education programs - Room and Board costs;~~
- (6) Special education programs - Occupational therapy;
- (7) Special education programs - Physical therapy;
- (8) Special education programs - Speech therapy; and
- (9) Special education programs - Counseling.

ED 1129 CONTINUED….

Ed 1129.16

- (b) Costs shall be separated into ***8*** ~~9~~ basic functions as outlined in Ed 1129.09(j).

Ed 1129.17

Ed 1129.17 Form 1129.11: Rate Computations for Instruction, ~~Room and Board~~, Occupational Therapy, Physical Therapy, Speech Therapy and Counseling.

ED 1129 CONTINUED…

Ed 1129.21

~~(a) The department shall jointly administer the joint rate setting process with the department of health and human services pursuant to the requirements of Ed 1129.21, Ed 1129.22 and Ed 1129.23.~~

- ~~(b) An agreement signed by the commissioner of the department of health and human services and the commissioner of the department of education in March of 1999, "Agreement Between the New Hampshire Department of Education and the New Hampshire Department of Health and Human Services Relative to Students with Disabilities Ages Birth to Twenty One," shall be used as the basis for the administration of the joint rate setting process.~~
- ~~(c) When rates are jointly set by the department of health and human services and the department in accordance with RSA 170-G:4, XVII and XVII-a, any conflicts identified by the state agencies existing between rate setting rules of the department of health and human services and the department shall be resolved by both state agencies applying the stricter of the 2 sets of rules.~~

Rationale for removal-This is an old practice that the NHDOE no longer does.

ED 1129 CONTINUED…

Ed 1129.22 Joint Rate Notification.

- ~~(a) The department and the department of health and human services shall both notify the agency by certified mail of the tentative rate(s) and the notification shall include any schedule of adjustments used in the determination of the tentative rate(s).~~
- ~~(b) The agency shall review the notification and schedule of adjustments. If the agency has questions, problems, or both, with the tentative rate(s) the agency shall request a joint meeting with the department's rate setter and the department of health and human services rate setter within 14 working days of receipt of the notification letter from the department and department of health and human services which states the tentative rate(s).~~
- ~~(c) The request for a joint meeting with the department's rate setter and the department of health and human services rate setter shall state the specific reasons why the agency believes there was an error in the tentative rate(s).~~
- ~~(d) Unless a written request for a meeting is received by the department and the department of health and human services within 14 working days of the agency's receipt of the notification letter from the department and the department of health and human services which states the tentative rate, the tentative rate(s) shall become final.~~
- ~~(e) If the agency requests a joint meeting with both of the state's rate setters concerning the tentative rate(s) and the results of that meeting do not satisfactorily resolve the concern(s) of the agency, the agency shall be informed by both rate setters of his/her right to review pursuant to rules of the department of health and human services and the department.~~
- ~~(f) During any review held pursuant to rules of the department of health and human services or the department, the agency's most recent approved final rate(s) shall remain in effect for billing purposes. If the agency has not had a previously approved final rate(s) adopted by the department and the department of health and human services, the agency may bill for services at the tentative rate(s).~~

ED 1129 CONTINUED…

Ed 1129.23 Hearing Mechanism for Jointly Set Special Education Rates.

- ~~(a) A private provider of special education services making a request for reconsideration of the rates established jointly by the department and the department of health and human services shall adhere to the procedures set forth in (b) - (d) below.~~
- ~~(b) A request for reconsideration made under (c) below shall be filed within 14 days of the date of receipt of the notification letter which states the rate(s) and which is sent by both state agencies to the private provider.~~
- ~~(c) A request for reconsideration shall be made in writing, shall be signed by a person duly authorized by the agency to submit the request for reconsideration and shall be filed with the director, DCYF and the director, division of instruction, New Hampshire state department of education or their designees.~~
- ~~(d) The request for reconsideration shall state the specific reasons why the agency believes there was an error in the original determination.~~
- ~~(e) Both directors or their designees shall render a joint decision in writing regarding the request within 14 working days of the date on which the letter is received by both state agencies. If the directors or their designees determine that the request for reconsideration reasons are vague, they shall require that the private provider file a more detailed statement of request for reconsideration. In such case, the requirements specified in (b) - (d) above shall apply to any such statements.~~
- ~~(f) If the directors agree with any or all portions of the agency's request for reconsideration, both state rate setters shall recalculate the agency's rates accordingly.~~

ED 1129 CONTINUED…

- ~~(g) If the directors disagree with each other, and the agency wishes to pursue the issue, the agency shall appeal under RSA 541-A:31-36 as provided in (l) below.~~
- ~~(h) If the directors do not agree with any or all portions of the agency's request for reconsideration, the directors shall notify the agency of their decision pursuant to the requirements set forth in (e) above.~~
- ~~(i) Agencies who wish to appeal the decision of both directors pursuant to Ed 1129.23(e) shall do so by filing an appeal with the commissioner, department of education, and the commissioner, department of health and human services.~~
- ~~(j) The appeal shall be made in writing, shall be signed by a person duly authorized by the agency to submit the appeal and shall state specific reasons for the appeal.~~
- ~~(k) The appeal shall be filed within 14 days of the date of the letter or other written notification which states the decision of the directors or their designees which is sent by the department and DCYF to the agency.~~
- ~~(l) The appeal shall be heard under RSA 541-A:31-36 by the commissioner of education and the commissioner of the department of health and human services or their designees in accordance with Ed 200 and He-C 200, provided that, if such rules are in conflict, the stricter rules shall apply.~~