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Bureau of Special Education FY'11 Memo #19

Date: February 18, 2011

To: Superintendents of Schools
Special Education Director

From: Office of the Commissioner of Education

Division of Instruction
Bureau of Special Education

Re: State Requirements Not Required by IDEA 2004

The purpose of this memo is to inform the local education agencies, the areas in which the June 30, 2008 newly adopted *New Hampshire Rules for the Education of Children with Disabilities* exceed the Federal IDEA Regulations.

New Hampshire State Requirements Not Required By IDEA 2004

1. Parental written consent is required in areas not specified by federal regulation.

Federal Regulations indicate that informed parental written consent must be provided prior to:

- Conducting an initial evaluation or reevaluation
- Initial provision of special education services
- 34 CFR 300.300(d)(2) details that states may have additional consent requirements.

New Hampshire State Requirements, since 1981, has required parental written consent for:

- *Annual renewal of the IEP*
- *Placement*
- *Changing the disability category*
- *Changing the nature or extent of special education and related services*

New Hampshire, in 2001, included in the *State Rules (Ed 1125.04(b) and Ed 1125.06)* a provision to allow the district to implement the LEA's proposal when the parents fail to respond to a written proposal.

2. Copies of the IEP are provided to all service providers.

New Hampshire State Requirements, Ed 1109.04 requires that each teacher and service provider listed as having responsibilities for implementing the student's IEP is provided with a copy of the IEP. The State Board of Education affirmed this provision when they were provided information in 2001 that the standard was not a copy of the IEP but that the teachers/services providers have knowledge of their responsibilities for the implementation of the IEP.

- Ed 1109.04 Copies of the IEP and Evidence of Implementation.
 - The LEA shall provide each teacher and service provider listed as having responsibilities for implementing the IEP with a copy of the complete IEP for working and monitoring purposes. In addition, the LEA shall provide a private school or non-LEA provider responsible for implementing the IEP with a copy of the IEP on or before the first day of the placement.

3. Written documentation that the special education was provided.

Federal Regulations indicate 34 CFR 300.323 details that each public agency must provide the special education and related services in accordance with the child's IEP.

New Hampshire State Requirements, Ed 1109.04(b) establishes that the LEA maintains written evidence documenting implementation of the IEP.

- (b) The LEA shall maintain written evidence documenting implementation of the IEP, including, but not limited to, the following:
 - (1) All special education and related services provided;
 - (2) Any supplementary aids and services provided;
 - (3) Programs modifications made; and
 - (4) Supports provided for school personnel implementing the IEP.

4. Reconsiderations of complaint decisions – Ed 1121.

Federal Regulations do not require reconsideration

New Hampshire State Requirements, Ed 1121.04 provides for a reconsideration of the findings in a 60 day complaint.

Ed 1121.04 Reconsideration and Appeals.

- (a) Any party to the complaint may, within 10 days of receipt of the commissioner's written decision under Ed 1121.02(b), make a written request to the commissioner for reconsideration of the decision.
- (b) Within 20 days of the receipt of the written request for reconsideration, the Commissioner shall:
 - (1) Review the investigator's report;
 - (2) Review the evidence presented in the investigation;
 - (3) If necessary, gather additional evidence;
 - (4) Review the decision; and
 - (5) Issue a final written decision.
- (c) Any party who is aggrieved by the final written decision of the commissioner under Ed 1121.04(b)(5) may appeal in accordance with RSA 541.
Chapter 541: REHEARINGS AND APPEALS IN CERTAIN CASES

5. Automatic scheduling of mediations when due process is filed.

Federal Regulations do not require scheduling of mediation.

The NHDOE continues to proactively schedule mediation when parties request a due process hearing. There is no specific requirement in federal law or regulation that requires this proactive scheduling.

6. Pre-hearing when due process is filed.

Federal Regulations do not require a pre-hearing when due process is filed.

The NHDOE, consistent with other state administrative hearing processes, schedules a pre-hearing prior to a special education due process hearing. There is no specific requirement in federal law or regulation to include a pre-hearing prior to a due process hearing.

7. Short-Term Objectives or Benchmarks as a default for all students with disabilities.

Federal regulations require CFR 300.320(a)(2)(ii): For children with disabilities who take alternate assessments aligned to alternate achievement standards, a description of benchmarks or short-term objectives.

New Hampshire State Requirements, Ed 1109.01(a)(6) requires that the elements of an IEP include short-term objectives or benchmarks for all children unless the parent determines them unnecessary for all or some of the child's annual goals.

8. Transition services will be detailed and provided in the IEP that is in effect when the student turns 14 or younger, if appropriate.

New Hampshire State Requirements, Ed 1109.01(a)(10) requires that some transition services begin at age 14. The federal standard is 16.

- (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

9. Child Management standards at Ed 1113.04 – Ed 1113.06, Ed 1114.07 – Ed 1114.09 have been revised to provide more specificity regarding acceptable interventions and procedures.

Federal does not require child management

New Hampshire State requirement, an authorization by a physician prior to the use of non-medical and physical restraints

Ed 1113.06 Use of Aversive Behavioral Interventions.

- If authorized in writing by a physician and an IEP team, the following interventions may be used:
 - (1) A non-medical mechanical restraint that physically restricts a student's movement; and
 - (2) Physical restraint, not in response to a threat of imminent, serious, physical harm.

10. When a request for an IEP Team meeting is received this rule details a process and timeframe for scheduling a meeting.

Federal does not require a specific time line

New Hampshire state requirement:

Ed 1109.06 Monitoring and Annual Review of IEPs.

- (a) The LEA shall develop and implement procedures designed to monitor that all IEPs are implemented. The IEP team may be reconvened at any time to review the provisions of the IEP.
- (b) The LEA, upon a written request for an IEP team meeting by the parent, guardian, or adult student shall:
- (1) Schedule a mutually agreeable time and date for an IEP team meeting;
 - (2) Convene the IEP team on the mutually agreeable time and date; or
 - (3) Provide the parent, guardian, or adult student with written prior notice detailing why the LEA refuses to convene the IEP team that the parent, guardian, or adult student has requested.
- (c) All activities detailed in Ed 1109.06(b) shall be completed within 21 days following the receipt of the written request for the IEP team meeting.
- (d) The LEA annually shall conduct at, or near, the end of the term of each IEP a meeting.
11. At least weekly on-site supervision of students with disabilities in non-special education ESY settings

Federal does not require at least weekly on-site supervision of students with disabilities in non-special education ESY settings

New Hampshire State requirement, Ed 1110.01(c) requires that districts supervise, at least weekly, students who are receiving ESY services outside of approved educational placements.

- (c) ESY services, provided in non-special education or district programs, shall be supervised, on site, by appropriately certified LEA personnel no less than once per week.

12. Ed 1103.01(d) Notification of team member's absence from meetings.

Federal does not require this

New Hampshire state requirement,

Ed 1103.01 IEP Team.

- (d) The LEA or parent shall notify the other party 72 hours before a scheduled meeting or upon learning of the expected absence of a team member, whichever is earlier.

13. Removal of Surrogate parent and appeal process

Federal does not require this.

New Hampshire state requirement,

ED 1115.05(d) states:

- (d) The Commissioner of Education, within 30 days of the receipt of a written complaint requesting the removal of a surrogate parent shall:
 - (1) Investigate the allegation(s) made in the written complaint;
 - (2) Render a decision that shall indicate whether:
 - a. The surrogate is meeting the requirements for being a surrogate parent;
 - b. The surrogate parent shall receive additional training;
 - c. The surrogate parent has not fulfilled the responsibilities of a surrogate parent and is removed; or
 - d. The surrogate parent has a conflict of interest with the child's interests and is removed.
- (e) Any party to a decision rendered under Ed 1115.05(d) within 10 days of receipt of the Commissioner's written decision under Ed 1115.05(d), may make a written request to the Commissioner for reconsideration of the decision.
- (f) Within 20 days of the receipt of the written request for reconsideration, the Commissioner shall:
 - (1) Review the evidence presented in the investigation;
 - (2) If necessary, gather additional evidence;
 - (3) Review the decision; and
 - (4) Issue a final written decision.
- (g) Any party who is aggrieved by the final written decision of the commissioner under Ed 1115.05(f) may appeal in accordance with RSA 541.

14. Acquired Brain Injury

Federal does not require an additional disability area of acquired brain injury.

New Hampshire state requirement, Ed 1102.01 states:

(r) "Child with acquired brain injury" (ABI) means brain injury that occurs after birth. It includes injury sustained by infection, disease, or lack of oxygen resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects a child's educational performance and requiring special education and or related services.

15. Program Approval for Public School Districts

Federal requires CFR 300.600 State monitoring and enforcement

New Hampshire state requirement, RSA 186-C:5 Program Approval, Monitoring, and Corrective Action and Ed 1111 and 1113.

16. Independent Nationally Recognized Organization

IDEA requires the Office of Special Education Programs (OSEP) to monitor states for a variety of activities.

New Hampshire state requirement, 186-C:5 (IX) The department, with input from the advisory committee on the education of children/students with disabilities, shall select and contract with an independent, nationally recognized organization in program evaluation and quality assurance to evaluate in 2010 and decennially thereafter, the effectiveness of the program approval and monitoring system, including whether it is carrying out activities in RSA 186-C:5 in an efficient manner. Such organization shall submit recommendations for any improvements to the commissioner, the state board of education, the governor, and the general court within 90 days of completing the program evaluation.

17. State Advisory Panel

Federal requires specific membership for the State Advisory Panel; CFR 300.168.

New Hampshire state requirement, 186-C:3-b(II) requires the following membership beyond CFR 300.168:

- Two members of the house education committee, appointed by the speaker of the house.
- Two members of the senate education committee, appointed by the president of the senate.
- One representative of the Disabilities Rights Center, recommended by the Disabilities Rights Center and appointed by the governor.
- One representative of the Parent Information Center, recommended by the Parent Information Center and appointed by the governor.
- Two individuals with disabilities who may have received special education services, one of whom may be a high school student, appointed by the governor.
- One individual representing children with disabilities who are home-schooled, appointed by the governor.
- A representative from the department of health and human services responsible for foster care, recommended by the commissioner of the department of health and human services and appointed by the governor.

Should you need further information or clarification, please contact Santina Thibedeau at (603) 271-6693 or sthibedeau@ed.state.nh.us.