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Bureau of Special Education FY'11 Memo #1

Date: August 4, 2010
To: Superintendents of Schools
Special Education Directors
Special Education Private Providers
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 special education directors areas in which our June 30, 2008 adopted *New Hampshire Rules for the Education of Children with Disabilities* exceed the Federal IDEA Regulations.

State Requirements Not Required By IDEA 2004

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

Federal Regulations indicate that informed 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.

NH, since at least 1981, has required consent for:

*Annual renewal of the IEP and Placement
Changing the disability category*

Changing the nature or extent of special education and related services

NH, 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.

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 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.

3. Written documentation that the special education was provided.

*34 CFR 300.323 details that each public agency must provide the special education and related services in accordance with the child's IEP.
Ed 1109.04(b) establishes that the LEA maintains written evidence documenting implementation of the IEP.*

4. Reconsiderations of complaint decisions – Ed 1121.

Ed 1121.04 provides for a reconsideration of the findings in a 60 day complaint. There is no specific mention of a reconsideration of complaints in federal law or regulation.

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

The NHDoE has proactively scheduled a 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.

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. How LEAs ensure the participation and disclosure of information from ESS to LEA.

The proposed rules at Ed 1105.04(b) require each LEA to have an interagency agreement with the ESS provider in their area. Federal law is silent on how the two agencies will communicate.

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

The rule at 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.

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

The rule at Ed 1109.01(a)(10) requires that some transition services begin at age 14. The federal standard is 16.

10. 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.

A physician signing-off on a restrictive intervention has been added to insure that the restrictive intervention is safe to use with the child.

12. Transportation of children with disabilities by their parents has been added at Ed 1109.02.

A rule has been added to detail when a parent may be reimbursed for providing transportation for their identified child.

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

The rule establishes a 21 day window when a written request for an IEP Team meeting is received.

14. The weekly on-site supervision of students with disabilities in non-special education ESY settings have been detailed at Ed 1110.01(c).

The rule requires that districts supervise, at least weekly, students who are receiving ESY services outside of approved educational placements.

15. The maximum class size for resource rooms is established at Ed 1113.10(f).

The rule establishes a maximum number of identified students that can be served in a resource room at one time.

16. Ed 1114.11 requires a employee and volunteer background investigation for private providers of special education.

The rule requires a criminal records check for all potential employees prior to a final offer of employment.

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

Requires the parties to notify the other party upon learning of an expected team member's absence 72 hours or upon learning of the absence.

18. Ed 1115.05(d) – (g) Surrogate parent removal and appeal process.

Provides for an administrative process of appeal when a surrogate parent has been removed.

19. Ed 1125.03(c) Students' status in programs that have had their approval revoked.

Authorizes the Commissioner to determine if students may remain in a program that is involved in an administrative or judicial process after the program's approval has been revoked.