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Bureau of Special Education FY'11 Memo #24

Date: April 5, 2011

TO: Superintendents of Schools
Special Education Directors
Business Administrators

FROM: Office of the Commissioner

Division of Instruction
Bureau of Special Education

RE: Amended - New Hampshire Rules for the Education of Children with Disabilities

The most current copy of the New Hampshire Rules for Children with Disabilities may be found at:
www.education.nh.gov/instruction/special_ed/documents/nh_rules_amendment_november2010.pdf

The State Board of Education amended the New Hampshire Rules to read as follows. You will find these amendments included when you open the link above.

Ed 1102.01 Definitions A-C, effective November 10, 2010

(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.

(s) "Child with a developmental delay" means a child with a developmental delay as defined in RSA-186-C:2 I-a who:

- (1) Is experiencing developmental delays in one or more of the following areas:
 - a. Physical development;
 - b. Cognitive development;
 - c. Communication development;
 - d. Social or emotional development; or
 - e. Adaptive development; and

(2) By reason thereof, needs special education and related services, as measured by appropriate diagnostic instruments and procedures consistent with Ed 1107 and identified in compliance with 34 CFR 300.111(b). However, pursuant to 34 CFR 300.111(b)(2), these rules:

- a. Shall not require that an LEA adopt and use the term "developmental delay" for any children; and

b. Shall not relieve the LEA of any duty to provide a free appropriate public education to children who qualify for special education based on another eligibility category.

(t) "Child with a disability" means:

(1) "Child with a disability" as defined in 34 CFR 300.8 who is 3 years of age or older but less than 21 years of age and who has not yet received a regular high school diploma as provided in 34 CFR 300.102;

(2) A child with a developmental delay as defined in Ed 1102.01(s) above; and

(3) A child with acquired brain injury as defined in Ed 1102.01(r) above.

Ed 1120.05 Parental Refusal of Consent, Initiation of Due Process Hearing by LEA, effective November 10, 2010

(d) If a parent refuses consent or fails to respond for the initial provision of special education services, the LEA shall not pursue the initial provision of special education services by initiating a due process hearing under Ed 1123.

(e) If at any time subsequent to the initial provision of special education and related services, the parent of a child revokes consent in writing for the continued provision of special education and related services, pursuant to 34 C.F.R §300.300(b)(4) the LEA:

(1) Shall not continue to provide special education and related services to the child;

(2) Shall provide a prior written notice; in accordance with 34 C.F.R §300.503 before ceasing the provision of special education and related service;

(3) Shall not use the mediation or due process procedures to obtain an agreement or ruling that the services may be provided to the child;

(4) Shall not be considered in violation of the requirement to make FAPE available to the child; and

(5) Shall not be required to convene the IEP Team meeting or develop an IEP for the child;

(f) If a parent refuses consent to any proposal included in Ed 1120.04(a)(3), (4), or (5), and if the proposal is necessary to provide a free appropriate public education to the child, the LEA shall initiate a hearing.

(g) A public agency shall 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.

Ed 1120.06 Parental Failure to Respond; Implementation of Changes by LEA, effective November 10, 2010

(c) The processes provided for in Ed 1123 can be requested by either party at any time subject to the exceptions of Ed 1120.05(d) and (e).

Ed 1107.04(b)-Table 1100.01 Required Assessments and Qualified Examiners by Type of Disability, effective November 10, 2010

"TRAUMATIC BRAIN INJURY / ACQUIRED BRAIN INJURY"

With the passing of P.L. 111-256, Rosa's Law, "mental retardation" has been changed to "intellectual disability."

For more information, please contact Santina Thibedeau, sthibedeau@ed.state.nh.us or 271-6693.