

**Guide  
Revisions / Additions  
&  
Information You Need to  
Know  
About The**

**NEW HAMPSHIRE RULES FOR  
THE  
EDUCATION OF CHILDREN  
WITH DISABILITIES**

**Created by  
The Bureau of Special Education  
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**This is a summary of many, but not all, of the changes, revisions and additions to the NEW HAMPSHIRE RULES FOR THE EDUCATION OF CHILDREN WITH DISABILITIES.**

**Green**      **Green text identify N.H. Rules that are generally clear and self-explanatory**

**Blue**        **Blue text identify N.H. Rules that may require some explanation**

**Red**         **Red text identify new N.H. Rules that may require additional explanation**

**PART Ed 1102 DEFINITIONS**

**Ed 1102.01 Definitions A-C**

(a) “Academic achievement” means the student’s level of academic performance when measured against the general education curriculum.

(b) “Accommodation” means any change in instruction or evaluation determined necessary by the IEP team that does not impact the rigor and/or validity of the subject matter being taught or assessed.

(d) “Administrative case management” means the following activities that are not direct instruction but that are necessary to facilitate a student’s special education:

- (1) Scheduling IEP meetings;
- (2) Coordinating evaluations, and IEP drafting;
- (3) Visiting potential student placement environments;
- (4) Communicating with a parent; and
- (5) Updating progress reports for meeting IEP goals.

(e) “Administrative due process hearing” means a hearing conducted in compliance with Ed 1123 and in compliance with the provisions of 34 CFR 300.507 – 300.518.

(g) “Alternate achievement standards” means the expectation of performance established by the New Hampshire department of education consistent with the Elementary and Secondary Education Act of 1965, as amended (ESEA).

(h) "Alternate assessment" means those assessments developed pursuant to the provisions of 34 CFR 300.704(b)(4)(x) and sections 1111(b) and 6111 of ESEA.

(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.

(m) “Aversive behavioral interventions” means those procedures that subject a child with a disability to physical or psychological harm or unsupervised confinement or that deprive the child of basic necessities such as nutrition, clothing, communication, or contact with parents, so as to endanger the child’s physical, mental, or emotional health.

(n) “Behavior intervention plan” means the positive behavior interventions and supports incorporated in the student’s IEP.

(q) “Child find” means the system detailed in Ed 1105.

(s) “Child eligible for special education but not currently receiving services” means a child who has been evaluated and determined to be child with a disability who is not currently receiving special education services due to one or more of the following factors:

- (1) The child is 2.5 years of age and has been determined to be eligible for special education;
- (2) The child’s current condition prevents the delivery of special education services;
- (3) The child’s parent, legal guardian, surrogate parent, or adult student has refused services;
- (4) The child has dropped out of school; or
- (5) The child is no longer attending school.

(t) “Collaborative program” means the cooperative agreements that school districts or school administrative units, or both, may enter into under RSA 186-C:8.

(w) “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;
- (5) Foreign languages;
- (6) Civics and government;
- (7) Economics;
- (8) Arts;
- (9) History; and
- (10) Geography.

(z) “Curriculum for preschoolers” means all of the organized educational activities and/or experiences that are offered within the early childhood program to address all aspects of development and to promote meaningful learning experiences regarding preschoolers, their families and their community.

### **Ed 1102.02 Definitions D-G**

(e) “Diploma” means a regular high school diploma that reflects the achievement of the academic standards adopted by the local school board for earning a regular high school diploma detailed in Ed 306.

(f) “Disability” means a disability as defined in 34 CFR 300.8.

(g) “Disinterested party” means a party who has no personal or professional interest in the outcome of a dispute in which they mediate.

(i) “Early intervening services” means the coordinated services for students in kindergarten through grade 12 who are not currently identified as needing special education or related services but who need additional academic and behavior support, with emphasis on services for students in kindergarten through grade 3, as defined in 34 CFR 300.226.

(k) “Electronic mail” means the secure electronic exchange of information necessary to comply with the requirements of the Act, New Hampshire statutes, and Ed 1100.

(m) “Elementary and Secondary Education Act” (ESEA) means the Elementary and Secondary Education Act of 1965.

(o) “Extracurricular and nonacademic activities” means those activities and services detailed in 34 CFR 300.107.

(p) “Facilitated IEP meeting” means an IEP meeting at which an impartial facilitator, trained by the department, assists parties to conduct special education meetings.

(q) “Family centered early supports and services” means the array of comprehensive supports and services for families who reside in NH with children, birth through age 2, who have developmental delays, are at risk for substantial developmental delays, and/or have established conditions.

(t) “Functional behavioral assessment” means an assessment of a student’s behavior.

(u) “Functional goal” means a measurable outcome that is developed by the IEP team to address a need detailed in the analysis of the student’s functional performance.

(v) “Functional performance” means how the child demonstrates skills and behaviors in cognition, communication, motor, adaptive, social/emotional and sensory areas.

(w) “Functionally blind” means “functionally blind” as defined in RSA 186-C:2-VI.

**Ed 1102.03 Definitions H-M**

(b) “Highly qualified teacher” means “highly qualified teacher” as defined in 34 CFR 300.18 and 34 CFR 300.156(c).

(c) “Home education” means “home education” as defined in RSA 193-A:4, and includes the term home schooling.

(e) “Home instruction” means a home-based LEA placement as detailed in Ed 1111.05 that provides home instruction for school-aged children.

(f) “Homeless child with a disability” has the meaning as detailed in 34 CFR 300.19.

(l) “Interim alternative educational setting means the setting, as determined by the IEP team pursuant to 34 CFR 300.530(g) through 34 CFR 300.532, in which a child with a disability receives services when removed from placement for disciplinary reasons.

(m) “Interpreter services” means interpreting services provided by an interpreter for the deaf and hard of hearing who is licensed in accordance with Int 300 and RSA 326-I:2,IV that are necessary for a parent, surrogate parent, guardian, or adult student to participate in the special education process.

(n) “Interpreting services for a child with a disability” means “interpreting services for a child with a disability” as defined in 34 CFR 300.34(c)(4).

(s) “Manifestation determination” means the process by which the IEP team determines whether the behavior that violated a student code of conduct is a manifestation of a student’s disability pursuant to 34 CFR 300.530(e).

(t) “Mediation” means an alternative dispute resolution process in which an impartial mediator assists the parties in resolving issues in dispute pursuant to RSA 186-C:24.

(u) “Migratory child with disabilities” means a “migratory child” as defined in 20 U.S.C. 6399(2) who has been identified as a child with a disability.

(v) “Modification” means any change in instruction or evaluation determined necessary by the IEP team that impacts the rigor and validity or rigor or validity, of the subject matter being taught or assessed.

**Ed 1102.04 Definitions N-R**

(a) “National Instructional Materials Access Center (NIMAC) means the center established pursuant to 34 CFR 300.172.

(b) “National Instructional Materials Accessibility Standard” (NIMAS) means the standards defined in 34 CFR 300.172.

(c) “Native language” means “native language” as defined in 20 U.S.C. 7011(11).

(d) “New Hampshire Special Education Information System” (NHSEIS) means a computer-based special education data base and retrieval system that confidentially maintains personally identifiable data used for program development, monitoring, compliance, and reporting to the state board of education, the New Hampshire legislative bodies, and the U.S. Department of Education.

(e) “Neutral conference” means “neutral conference” as defined in RSA 186-C:23-b.

(f) “Nonacademic services” means those services and activities set forth in 34 CFR 300.117.

(k) “Private provider of special education” means a private or nondistrict special education program that provides the educational component of a child’s IEP and is subject to program approval under Ed 1114. Private provider of special education does not mean a public charter school or a public academy.

(l) “Private school” means any school that meets the provisions of a non public school as defined in Ed 401.01(c) and is not a charter school.

(m) “Public academy” means a public academy as defined in RSA 194:23, II.

(q) “Related services” means “related services” as defined in 20 USC 1401 Sec. 602 (26)(A).

(r) “Response to scientific, research-based intervention” (RTI) means the process by which individual student instruction and student academic performance is evaluated using research based models of instruction prior to identifying a child with a learning disability as detailed in Ed 1107.02.

## **Ed 1102.05 Definitions S-Z**

(e) “Services plan” means a written statement developed and implemented in accordance with 34 CFR 300.137 through 34 CFR 300.139 that describes the special education and related services that the LEA will provide to a parentally (–)placed child with a disability who is enrolled in a private school and has been designated to receive services, including the location of the services and any transportation necessary consistent with 34 CFR 300.132.

(f) “Special factors” means the factors that the IEP team shall consider when the team develops each child’s IEP, as provided in 34 CFR 300.324(a)(2) and in Ed 1100.

(g) “Specialist in the assessment of intellectual functioning” (SAIF) means a person certified to administer certain individualized tests by the bureau of credentialing of the department in accordance with Ed 500.

(h) “State advisory committee” means the advisory committee appointed pursuant to RSA 186-C:3-b and 34 C.F.R. 300.167.

(j) “Student code of conduct” means a written policy of expectations adopted by the LEA, SAU, or private provider of special education.

(n) “Universal design” means “universal design” as defined in 34 CFR 300.44.

(o) “Written affirmation means “written affirmation” as described in 34 CFR 300.135.

(p) “Written prior notice” means “prior notice by the public agency” as described in 34 CFR 300.503.

## **PART Ed 1103 PARTICIPANTS IN THE SPECIAL EDUCATION PROCESS**

### **Ed 1103.01 IEP Team.**

(a) The composition of the IEP team, for the purposes of Ed 1103, shall be as provided in 34 CFR 300.321.

(b) A paraprofessional shall be considered an “other individual” who has knowledge or special expertise regarding the child as referred to in 34 CFR 300.321(a)(6).

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

(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.

### **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 no fewer than 10 days before an IEP meeting, provided that for a manifestation determination review under 34 CFR 300.532(c), the LEA shall ensure that the parent or parents receive a written invitation no fewer than 5 days before the review. The notice shall include the purpose, time, location and identification of the participants.

(b) The notice requirements in Ed 1103.02(a) shall be waived with the written consent of the parent.

(c) Parent participation shall be in accordance with 34 CFR 300.322 and 34 CFR 300.501(b)- 34 CFR 300.501(c).

(d) The public agency shall take whatever action is necessary to ensure that the parent(s) understands the proceedings at the IEP meeting consistent with 34 CFR 300.322(e).

**PART Ed 1105 CHILD FIND**

**Ed 1105.01 Responsibilities of the Local Education Agency.**

(c) The child find system shall contain specific provisions to meet the particular circumstances pertinent to the following groups of persons:

(1) For children from 2.5 years of age, the LEA shall use the special education process, to find, identify and evaluate all children who are potentially children with disabilities and who are suspected by the LEA of being in need of special education or special education and related services thereby ensuring that an IEP will be developed and implemented for any child who is eligible for special education by age 3; and

(2) The LEA, using the special education process, shall find, identify, and evaluate all children suspected to be children with disabilities who are 2.5 years of age or older but less than 21 years of age.

(e) The LEA shall provide the SEA, using NHSEIS, the following information:

(1) Data concerning children suspected, evaluated, and determined eligible for special education; and

(2) Data concerning children suspected, evaluated, and determined not eligible for special education

**Ed 1105.02 LEA Child Find Program.**

(b) Any person may refer a child under the age of 21 years to the IEP team for reasons including but not limited to the following:

(4) Inability to progress or participate in developmentally appropriate preschool activities; and

(5) Receiving service from family centered early support and services.

(i) The LEA shall ensure that child find activities are completed within the applicable timelines.

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

- (a) The LEA shall develop a written early transition process for children exiting family centered early supports and services which assures that any child who is potentially a child with a disability is evaluated and eligibility for special education is determined prior to the child's third birthday. If the child is determined to be a child with a disability eligible for special education and related services, the LEA shall ensure that an IEP is developed and implemented on or before the child's third birthday.
- (b) The transition process in Ed 1105.04(a) shall include a written interagency agreement between the LEA and the local area agencies, as defined by RSA 171-A:2, I-b responsible for the provision of family centered early supports and services in that community.
- (c) The agreement shall include but not be limited to LEA and area agency policies, practices and procedures regarding:
  - (1) Practices that will enable family centered early supports and services and LEA personnel to collaborate effectively;
  - (2) When and how data and information will be shared, including a statement of confidentiality;
  - (3) A plan for maximum efficiency of meetings, including consolidation of meetings when appropriate;
  - (4) A process to ensure that the transition conference planning activities and other meetings are scheduled at mutually agreeable times for families, family centered early supports and services and LEA staff;
  - (5) Transition activities that will be in place such as home and program visits, observations, and evaluations as needed;
  - (6) LEA child find activities under Ed 1105 including details about LEA and family centered early supports and services, area agency responsibilities, and timelines for notification to the LEA for child find and referral to the LEA for eligibility determination;
  - (7) Coordination between LEA and family centered early supports and services to conduct evaluations and assessments for determination of eligibility for special education that includes how evaluations or assessments previously administered to the child will be conducted and utilized;
  - (8) Participation in transition meetings and who should participate in the transition meeting, with the understanding that the special education process team for referral, evaluation, IEP development, and placement are the same; and
  - (9) Specific provisions that regardless of the child's date of birth in late spring, summer, or early fall, an IEP is developed and implemented on or before the child's third birthday.

## **PART Ed 1107 EVALUATION**

### **Ed 1107.01 Evaluation.**

(d) Upon written consent of the parties the 45 day time limit required by Ed 1107.01(c) may be extended by no more than 15 days.

(e) Children served by family centered early supports and services the evaluation process, including a written summary report, shall be completed prior to the child's third birthday.

(f) If testing 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.

### **Ed 1107.02 Evaluation Requirements for Children with Specific Learning Disabilities**

(a) For purposes of evaluating whether a child has a specific learning disability one or more of the following criteria shall be used:

(1) A discrepancy model between intellectual skills and achievements;

(2) A process that determines if the child responds to scientific, research-based intervention as part of the evaluation procedures described in 34 CFR 300.307(a)(2); and

(3) Other alternative research-based procedures as described in 34 CFR 300.307(a)(3).

(b) Each LEA shall adopt a policy describing the evaluation procedures and standards that will be used to evaluate whether a child has a specific learning disability.

**Ed 1107.03 Independent Educational Evaluations.**

(c) The agency criteria determined by the LEA shall not be so restrictive that it effectively prohibits parent's choice.

**Table 1100.1 Required Assessments and Qualified Examiners by Type of Disability**

Disability	Assessments Required	Qualified Examiners
	Adaptive Behavior	Associate School Psychologist Certified Educator Guidance Counselor Psychiatrist Psychologist S.A.I.F.** School Psychologist Licensed Social Worker

(d) Upon request from the parents, the LEA shall provide access to test results and other relevant educational records 5 days prior to the IEP team meeting.

## **PART Ed 1108 DETERMINATION OF ELIGIBILITY FOR SPECIAL EDUCATION**

(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.

## **PART Ed 1109 THE INDIVIDUALIZED EDUCATION PROGRAM**

### **Ed 1109.01 Elements of an Individualized Education Program.**

- (6) Short-term objectives or benchmarks for all children unless the parent determines them unnecessary for all or some of the child's annual goals;
- (7) Short-term objectives or benchmarks for all children who take alternate assessment based on alternate achievement standards;
- (8) A statement of how the child's progress toward meeting the annual goals shall be provided to the parents;
- (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

**Ed 1109.02 Transportation.**

(a) All vehicles used to transport children with disabilities provided by or on behalf of a school district shall be maintained in safe working order and be inspected and licensed according to the New Hampshire department of safety rules as provided in Saf-C 1307 and RSA 266:7.

(b) All drivers of such vehicles shall be licensed according to department of safety rules.

(c) Parents of a child with a disability shall not be required to meet the standards of Ed. 1109.02 (a) – (b) when providing transportation to their own child.

(d) Any contracted providers of transportation for children with disabilities, including parents transporting children other than their own, shall comply with the standards of Ed.1109.02 (a) – (b).

(e) Each person who transports children other than their own in a private passenger vehicle to or from school or a school related activity shall not be required to obtain a school bus driver's certificate pursuant to RSA 263:29 and these rules, as long as he/she is not under contract or reimbursement agreement with a municipality.

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

(c) For children whose unique educational needs require IEPs which exceed the standard school year, the requirements of Ed 1110.01 shall be followed.

(i) Transition services may be provided by a participating agency other than the LEA consistent with 34 CFR 300.324(c) to ensure there is no interruption in the services detailed in the child's IEP.

(j) Transition services shall be monitored by LEA personnel, on no less than a weekly basis.

**Ed 1109.04 Copies of the IEP and Evidence of Implementation.**

(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.

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

**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 for the purpose of assessing the effectiveness of the present plan and to design an IEP, including extended school year services when appropriate.

**PART Ed 1110 EXTENDED SCHOOL YEAR SERVICES**

**Ed 1110.01 Extended School Year Services.**

- (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.

**PART Ed 1111 PLACEMENT OF CHILDREN WITH DISABILITIES**

**Ed 1111.01 Placement in the Least Restrictive Environment.**

(b) A child with a disability shall be admitted to regional vocational 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 as part of FAPE shall receive such services as determined by the IEP team in the least restrictive environment.

**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

**Ed 1111.03 Continuum of Alternative Placements.**

(d) Preschool children with disabilities may receive their special education program in any of the environments listed in Table 1100.3 as follows:

**Table 1100.3 Continuum of Alternative Learning Environments – Preschool**

<u>Preschool Educational Environments</u>	<u>Description</u>
Early childhood program	A preschool child with a disability attends an early childhood program.
Home	A preschool child with a disability receives some or all of his/her supports and services in the child’s home.
Special education program	A preschool child with a disability attends a special education program.
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.

**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:**

(d) By personnel that meet the department’s certification standards.

**Ed 1111.05 Home Instruction for School-Aged Children.**

- (5) Be implemented by personnel qualified in accordance with 34 CFR 300.156 and section 2122 of the ESEA; and
  
- (f) Except as provided in (g) below, temporary home-based programs shall not exceed 45 days in a school year.
  
- (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.
  
- (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:

**PART Ed 1112 PARENTALLY PLACED CHILDREN WITH DISABILITIES**

Ed 1112.03 Children with Disabilities Receiving Home Education. Children with disabilities who are receiving home education under RSA 193-A shall not be considered to be children attending a private school.

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

**Ed 1113.04 Behavioral Interventions.**

(a) Positive behavioral interventions based on the results of a behavioral assessment shall serve as the foundation of any program used to address the behavioral needs of students.

(b) An LEA, other public agency, private provider of special education or other non-LEA program shall not employ any aversive behavioral interventions;

(c) Aversive and deprivation behavioral interventions shall include:

- (1) Any procedure intended to cause physical pain;
- (2) Aversive mists, noxious odors, and unpleasant tastes applied by spray or other means to cause an aversive physical sensation;
- (3) Any non-medical mechanical restraint that physically restricts a student's movement;
- (4) Contingent food/drink programs;
- (5) Electrical stimulation;
- (6) Placement of a child in an unsupervised or unobserved room from which the child can not exit without assistance; and
- (7) Physical restraint, unless in response to a threat of imminent, serious, physical harm.

**Ed 1113.05 Emergency Intervention Procedures.** All crisis or emergency intervention procedures that include aversive behavioral interventions shall be included in the student's IEP and shall comply with Ed 1113.04 except as detailed in Ed 1113.06 however nothing in these rules shall preclude the use of intervention in response to the threat of imminent, serious physical harm.

**Ed 1113.06 Use of Aversive Behavioral Interventions.**

(a) 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.

(b) Aversive behavioral interventions may only be used when:

- (1) At least 2 written positive behavioral interventions were previously implemented without success;
- (2) The individual implementing the restrictive intervention has been trained and is knowledgeable in the use of positive interventions, restrictive treatment procedures, and alternatives for de-escalation of problem behavior;
- (3) A behavioral intervention plan detailing the use of the restrictive procedure has been developed and incorporated as a part of the IEP;
- (4) A description of the target behavior that will be addressed using the restrictive intervention is included in the IEP;
- (5) A description of the measurable criteria stating the expected change in the target behavior or behaviors is included in the IEP;
- (6) A specific time limit for the use of the restrictive behavioral intervention procedure is detailed in the IEP;
- (7) A system is developed to record the frequency, duration, and results of the intervention;
- (8) A system is developed to regularly inform the parents of the progress in changing the target behavior using the restrictive intervention procedures; and
- (9) The parent or parents have given informed consent to the use of the restrictive intervention procedures separate from the consent for the IEP.

**Ed 1113.07 Prohibition on Mandatory Medication.** As provided in 34 CFR 300.174, an LEA, other public agency, private provider of special education or other non-LEA program shall not require parents to obtain a prescription for substances identified under schedules I, II, III, IV, or V in section 202(c) of the Controlled Substance Act, 21 U.S.C. 812(c), for a child as a condition of attending school, receiving an evaluation, or receiving services.

**Ed 1113.10 Class Size and Age Range.**

(d) The following shall apply to early childhood special education programs:

- (1) An early childhood special education program shall be considered a special education program when it includes less than 50% children without disabilities;
- (2) The minimum teacher to student ratio in all early childhood special education programs 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;
- (3) The maximum number of preschool children in an early childhood special education programs shall be 12;
- (4) Preschool children in an early childhood special education programs 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;
- (5) Early childhood special education programs shall, to the greatest extent possible, include students of comparable developmental and/or functional levels; and
- (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.

(e) The following shall apply to a self-contained special education class grades K - 12:

- (1) A special education class shall be considered self-contained when children with disabilities spend more than 60 percent of their day in that setting;
- (2) A minimum teacher to student ratio in all self-contained programs shall be:
  - a. One qualified teacher for one to 8 students;
  - b. One qualified teacher and one qualified paraprofessional for 8 to 12 students unless the needs presented by the severity of disabilities warrants the assignment of additional staff; or
  - c. Two qualified teachers for 8 to 12 students;

- (3) The maximum number of children in a self-contained classroom shall be 12;
- (4) Children ages 6 – 16 in self-contained special education classes shall have an age range of not more than 4 years;
- (5) Self-contained programs shall, to the greatest extent possible, include students of comparable developmental and/or functional levels;
- (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;
- (7) Children in self-contained special education classes on the elementary level shall have an age range of not more than 4 years; and
- (8) On the junior and senior high school levels, children in self-contained classes shall have an age range of not more than 4 years and an academic range of not more than 5 years.

(f) The following shall apply to resource rooms:

(1) Resource rooms shall serve children with disabilities for no more than 60 percent of the child's school day as an adjunct to assignment to regular educational programs;

(2) Children with disabilities shall not receive all of their academic instruction in resource rooms;

(3) The total number of children with disabilities being served in the resource room at any given time shall not exceed 12 children without the assistance of support personnel;

(4) The maximum number of children with disabilities served in a resource room at any given time shall be 20; and

(5) The LEA shall ensure that the abilities of the resource room teacher match the needs of the children with disabilities and that the resource room teacher is capable of implementing the IEPs of all the children with disabilities assigned to the resource room.

**Ed 1114.05 Program Requirements.**

(j) All administrative, instructional, and related service staff shall hold appropriate certification or licensure for the position in which they function as required by the state of New Hampshire, and other licensing entities. The determination of credentials required shall be made by the department.

(k) Students enrolled in private providers of special education shall participate in the statewide education improvement and assessment program as provided in RSA 193-C and as required by 34 CFR 300.157 and 300.320.

**Ed 1114.07 Behavioral Interventions.**

(a) Positive behavioral interventions based on the results of a behavioral assessment shall serve as the foundation of any program used to address the behavioral needs of students.

(b) Each private facility or other non-district program shall have a written statement of the policies and procedures followed by the program in managing student behavior. This statement shall be provided to the sending LEA and the parent at the time each child with a disability becomes enrolled in the program, at the time of the annual review of the child's educational progress, and any time the facility or non-district program's policies and procedures for managing behavior are revised.

(c) A private facility or other non-district program shall not employ any measure which is aversive or depriving in nature or which subjects a child with a disability enrolled in that program to humiliation or unsupervised confinement or to abuse or neglect as defined in RSA 169-C, the Child Protection Act, or which deprives the child of basic necessities such as nutrition, clothing, communication, or contact with parents, so as to endanger the child's mental, emotional, or physical health consistent with Ed. 1114.07.

(d) Each private facility or other non-district program shall train staff in child management techniques. The program shall administer discipline equitably and with respect and courtesy towards the child.

(e) Each private facility or other non-district program shall have a written procedure based on state and federal law concerning the reporting of suspected instances of child abuse.

(f) An LEA, other public agency, private provider of special education or other non-LEA program shall not employ any aversive behavioral interventions;

(g) Aversive and deprivation behavioral interventions shall include:

(1) Any procedure intended to cause physical pain;

(2) Aversive mists, noxious odors, and unpleasant tastes applied by spray or other means to cause an aversive physical sensation;

(3) Any non-medical mechanical restraint that physically restricts a student's movement;

(4) Contingent food/drink programs;

(5) Electrical stimulation;

(6) Placement of a child in an unsupervised or unobserved room from which the child can not exit without assistance; and

(7) Physical restraint, unless in response to a threat of imminent, serious, physical harm.

Ed 1114.08 Emergency Intervention Procedures. All crisis or emergency intervention procedures that include aversive behavioral interventions shall be included in the student's IEP and shall comply with Ed 1114.07 except as detailed in Ed 1114.09.

Ed 1114.09 Use of Aversive Behavioral Interventions.

(a) 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; or
- (2) Physical restraint, not in response to a threat of imminent, serious, physical harm.

(b) Aversive behavioral interventions may only be used when:

- (1) At least 2 written positive behavioral interventions were previously implemented without success;
- (2) The individual implementing the restrictive intervention has been trained and is knowledgeable in the use of positive interventions, restrictive treatment procedures, and alternatives for de-escalation of problem behavior;
- (3) A behavioral intervention plan detailing the use of the restrictive procedure has been developed and incorporated as a part of the IEP;
- (4) A description of the target behavior that will be addressed using the restrictive intervention is included in the IEP;
- (5) A description of the measurable criteria stating the expected change in the target behavior or behaviors is included in the IEP;
- (6) A specific time limit for the use of the restrictive behavioral intervention procedure is detailed in the IEP;
- (7) A system is developed to record the frequency, duration, and results of the intervention;
- (8) A system is developed to regularly inform the parents of the progress in changing the target behavior using the restrictive intervention procedures; and
- (9) The parent or parents have given informed consent to the use of the restrictive intervention procedures separate from the consent for the IEP.

**Ed 1114.10 Qualifications and Requirements for Instructional, Administrative, and Support Personnel.**

(a) All administrative, instructional, and related service staff shall hold appropriate certification for the position in which they function as required by the state of New Hampshire or other licensing entity. Evidence of such qualification shall be on record with the program.

(f) Each private provider of special education or other non-LEA program shall complete a background investigation and a criminal history records check on every selected applicant prior to employment consistent with Ed 1114.11.

**Ed 1114.11 Employee and Volunteer Background Investigations.**

(a) Each private provider of special education or other non-LEA program, including any individual providing direct services to the student pursuant to Ed 1126.05, shall complete a background investigation, consistent with the provisions of RSA 189:13-a, prior to a final offer of employment.

**Ed 1115.05 Appointment.**

(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.

**PART Ed 1116 ALTERNATIVE METHODS FOR THE APPOINTMENT OF SURROGATE PARENTS**

**Ed 1116.02 Assignment of a Surrogate Parent for an Unaccompanied Child who is or may be a Child with a Disability.**

(b) From the date of school enrollment, the school district's local homeless education liaison shall have a maximum of 30 days to appoint a surrogate parent for the unaccompanied homeless youth.

(c) For the purposes of Ed 1116.02, the local homeless education liaison shall be considered a designee of the commissioner of education.

(d) The local homeless education liaison shall select surrogate parents in accordance with Ed 1115.06.

(e) Training of surrogate parents shall be accomplished in accordance with Ed 1115.07.

(f) The responsibilities of surrogate parents assigned by the local homeless education liaison shall be as set forth in Ed 1115.08.

(g) In the case of a child who is an unaccompanied homeless youth, appropriate staff of emergency shelters, transition shelters, independent living programs and street outreach programs may be appointed as temporary surrogates by their respective agencies until such time as the school's local homeless education liaison can make a permanent appointment in accordance with 34 CFR 300.519(f).

(h) In no case, may the appointment of temporary surrogates exceed 30 days.

(i) Within 10 days from the date an individual is appointed as a surrogate parent under Ed 1116.02, the local homeless education liaison shall notify the commissioner of education or the commissioner's designee of the name, date of birth and NHSEIS number of the child if applicable and the name, address and telephone number of the surrogate parent.

**Ed 1116.03 Appointment of a Surrogate Parent by Court Order for a Child who is or may be a Child with a Disability.**

- (a) For the purposes of Ed 1116.03, a judge who oversees the care of a child shall be considered a designee of the commissioner of education.
- (b) For a child who is a ward of the state, a judge who oversees the care of that child shall appoint a surrogate parent to represent that child in education matters provided that:
  - (1) The surrogate parent is selected in accordance with Ed 1115.06;
  - (2) Training of surrogate parents shall be accomplished in accordance with Ed 1115.07; and,
  - (3) The responsibilities of surrogate parents assigned by judges to oversee the care of children shall be consistent with those responsibilities outlined in Ed 1115.08.
- (c) Within 10 days from the date an individual is appointed by a judge as a surrogate parent under Ed 1116.03, an official of the court shall notify the commissioner of education or the commissioner's designee of the name, date of birth of the child and the name, address and telephone number of the individual who has been appointed as surrogate parent.

**Ed 1116.04 Appointment of Foster Parents as Surrogate Parents Pursuant to RSA 186-C:14-a.**

(a) For the purposes of Ed 1116.04, the director of a child placement agency licensed under RSA 170-E who assigns a surrogate parent to make educational decisions on behalf of a foster child as provided in Ed 1116.04(b) and (c) shall be considered a designee of the commissioner of education.

(b) In addition to the appointment of a foster parent as a surrogate parent through the department and by court order, a director of a child placing agency licensed under RSA 170-E that has placed a child with a foster parent may also assign a surrogate parent to make educational decisions on behalf of a foster child for the duration of the foster placement provided that:

- (1) The natural parents' parental rights have been terminated by a court of law or by death;
  - (2) The foster parent is in an on-going, long term relationship with the child for at least one year;
  - (3) The foster parent is willing to make educational decisions required of parents under federal and state law;
  - (4) The foster parent has no interest that would conflict with the child; and
  - (5) The foster parent has demonstrated to the commissioner of the department of education or the commissioner's designee that he or she has the knowledge and skills to represent the child adequately in educational decision making by:
    - a. Either fulfilling all of the requirements specified in Ed 1115.07 (b) through (f) and successfully passing a background check which includes a fingerprint check; or
    - b. Attaining a minimum score of 80 on the final exam given to surrogate parent candidates and successfully passing a background check which includes a fingerprint check.
- (c) Within 10 days from the date an individual is appointed as a surrogate parent under Ed 1116.04, the director of the child placing agency shall notify the commissioner of education or the commissioner's designee and the name, date of birth, address and telephone number of the foster parent who has been assigned as a surrogate parent.

**Ed 1117.08 Determination of Liable School District.** LEAs shall follow the provisions of RSA 193:12, VI when determining residency issues in regard to determination of the legally liable school district.

## **PART Ed 1120 PROCEDURAL SAFEGUARDS**

### **Ed 1120.04 Parental Consent.**

(a) An LEA shall obtain informed, written consent from the parent of a child with a disability prior to:

(7) Annual access to public insurance and when changes in services paid by public insurance are made; and

**Ed 1120.08 Public and Private Insurance** An LEA shall comply with the requirements detailed in 34 CFR 300.154 and He-M 1301 when proposing accessing public and private insurance.

(b) When accessing private insurance the LEA shall:

(1) Obtain informed parental consent each time it proposes accessing private insurance; and

(2) Notify the parents that the parents' refusal to allow access to their private insurance does not relieve the public agency of its responsibility to ensure that all services detailed in the IEP are provided to the child are provided at no cost to the parents.

(c) Part B Funds shall be available to be used if an LEA is unable to obtain parental consent to use a parents' private insurance to pay for specific services including deductibles or co-pay.

(d) Proceeds of public benefits or insurance or private insurance shall not be treated as program income for purposes of 34 CFR 80.25.

(e) Reimbursements from federal funds such as Medicaid shall not be considered "State or local funds" for purposes of maintenance of effort provisions of 34 CFR 300.163 and 34 CFR 300.203.

**PART Ed 1125 STATE DEPARTMENT OF EDUCATION ENFORCEMENT**

**Ed 1125.02 Enforcement Procedures.**

(c) In the event the written report shows that the LEA, other public agency, private provider of special education, or other non-LEA program has not complied with orders issued by the department, the commissioner of education shall give the written notice of the further enforcement action to be taken.

(d) When taking enforcement action, the commissioner shall consider:

- (1) Severity, length and/or the repetitive nature of the same or other noncompliance;
- (2) Whether good faith effort was made to correct the problem;
- (3) The impact on children who are entitled to FAPE; and
- (4) Whether the nature of the noncompliance is individual or systemic.

- (e) Enforcement action shall include but not be limited to:
- (1) Corrective action plan development, implementation, and monitoring;
  - (2) Voluntary and mandatory technical assistance as determined by the department;
  - (3) Mandatory, targeted professional development as determined by the department;
  - (4) Directives ordering specific corrective or remedial actions, including but not limited to withdrawing program approval, pending an appeal;
  - (5) Targeting or redirecting the use of federal special education funds in the areas of concern;
  - (6) Formal referral to the bureau of credentialing for review in accordance with Ed. 511.02;
  - (7) Order the cessation of operations of discrete programs operated by a school district, collaborative program, private provider of special education, public academy, or state institution for the benefit of children with disabilities;
  - (8) Require redirection of federal funds to remediate noncompliance of more than one year;
  - (9) Making no further payments of state or federal funds to the LEA or other public agency until the department determines that there is no longer any failure to comply with the orders;
  - (10) Order, in accordance with a final state audit resolution determination, the repayment of misspent or misapplied state and/or federal funds;
  - (11) In the case of an LEA or other public agency, refer the matter to the department of justice for further action; and
  - (12) In the case of a private provider of special education or other non-LEA program, order all school districts with students placed in the private provider of special education to relocate the students for whom each district is responsible to other programs or facilities that are in compliance with the IDEA and Ed 1100.
- (f) Reviews of programs to ensure compliance which shall include:
- (1) Desk audit;
  - (2) Scheduled on-site reviews; and
  - (3) Unannounced on-site reviews.
- (g) The frequency of the program reviews shall take place consistent with the provisions of (d)-(f).
- (1) Weekly;
  - (2) Monthly; or
  - (3) Quarterly.

**Ed 1125.03 Opportunity for a Hearing.**

(c) During the pendency of any administrative or judicial proceeding regarding the enforcement procedures ordered in Ed 1125 the commissioner of education shall determine whether students might remain in the program.

**PART Ed 1126 STATE DEPARTMENT OF EDUCATION MONITORING OF EDUCATIONAL SERVICES AND PROGRAMS FOR CHILDREN WITH DISABILITIES**

**Ed 1126.03 Program Approval of Public and Non-Public Programs.**

- (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).

(e) The bureau of special education in the department shall issue an approval of the program as follows:

(1) An LEA program shall remain approved unless disapproved. In the event that standards are not met, the bureau of special education shall monitor and enforce a corrective action plan and apply appropriate sanctions as necessary to ensure compliance;

(2) The private provider of special education, public academy or other non-LEA program shall receive approval by the bureau of special education if their program meets the standards established by the IDEA and Ed 1100;

(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;
- c. The issue(s) of non-compliance are systemic in scope; and
- d. Students in the program are receiving a FAPE.

(4) Private providers of special education, public academies or other non-LEA programs who are provisionally approved shall not accept any additional students with disabilities until fully approved;

(5) An LEA, public academy, private provider of special education, public agency, or other non-LEA program shall have its approval revoked when the LEA, public academy, private provider of special education, public agency, or other non-LEA program does not provide FAPE and has not corrected the issue(s) of noncompliance within the timeframe specified by the department or when a condition exists endangering the health, welfare or safety of children and youth with disabilities in attendance. The commissioner of education shall take action including, but not limited to, immediate disapproval of the program pursuant to Ed. 1125; and.

(6) The approval status of all public academies, private providers of special education, public agencies, or other non-LEA programs shall be posted on the department of education's website on an ongoing basis.

(f) For the establishment of new or changes to existing programs, the LEA, public academy, private provider of special education, public agency, or other non-LEA program shall submit a completed application that meets the standards established by IDEA and Ed 1100. Upon initial approval of the application a visit shall be scheduled by the bureau.

(g) Incomplete applications for new or changed programs shall only be considered for up to 6 months from date the program was informed of their program approval status.

(h) No students may be placed/attend a program until the application process is complete and the program has received a notice of initial approval and/or final approval.

**Ed 1126.04 Waiver Process for Placements in Approved In-State Programs.**

(a) The LEA may submit an application to the department to place an additional student who does not meet the approved public or private in-state program's age range or program capacity.

(b) The department shall review the LEA application and shall approve said application if it meets the criteria set forth in Ed 1126.04(e)-(f):

(c) The LEA or private in-state special education program, upon the department's approval of the assurances and application detailed in Ed 1126.04(d)-(e), may annually:

(1) Accept one student who meets an approved special education program's "disabilities served" but is below or above the program's age range by no more than one year, or

(2) Accept one student who meets the program's age-range and disabilities served, but whose acceptance will result in the program exceeding its program capacity by no more than one additional student.

(d) No more than one student may be placed in any approved public or private special education program pursuant to Ed 1126.04.

(e) The LEA shall provide the department with assurances that:

(1) The proposed placement will provide the student a FAPE; and

(2) The proposed placement will provide the student access to and the ability to progress in the general curriculum.

(f) The department shall provide an application and process to assist the LEAs to meet the requirements in Ed 1126.04(e).

(g) An LEA shall not place a child with a disability pursuant to Ed 1129.04 until the LEA has received written approval from the department. The department shall approve or disapprove the placement within 5 business days.

(h) The private provider of special education for whom the department establishes rates pursuant to Ed 1129 and who chooses to accept a student under Ed 1129.04(c)(2) shall have their approved rates adjusted for the balance of the fiscal year

**PART Ed 1128 SPECIAL EDUCATION CATASTROPHIC AID**

**Ed 1128.03 Limitations on Reimbursement.** A responsible school district shall:

(a) Be eligible for reimbursement only for those direct costs which are included in the IEP of a child with a disability, and which qualify as special education and related services.

(b) Not be reimbursed for:

- (1) Costs which exceed rates established by Ed 1129 for tuition, instruction, room and board, and related services; or
- (2) Indirect costs.

**PART Ed 1129 RATE SETTING**

**Ed 1129.01 Definitions.** Except where the context makes another meaning clear, the following words have the meaning indicated when used in Ed 1129:

(g) “Executive” means the person performing the administrative functions and duties that are necessary to the general supervision and direction of the operations of the agency, including, but not limited to:

- (1) Hiring and firing of personnel;
- (2) Administrating supervision of the personnel;
- (3) Supervising the maintenance of educational records;
- (4) Maintenance of payroll, bookkeeping and other records; and
- (5) Supervising the maintenance and repairs of the facility.

**Ed 1129.08 Form 1129F: Expenses by Line Item.**

(aq) Salaries of executives included in the approved special education rate shall be recorded in account 601. Regardless of the actual salary, for the department rate setting purposes, executive staff salaries shall be reported at a maximum of \$75,000 for the state fiscal year, and subsequently increased annually by no more than the increase for that year as measured by such price indices as the consumer price index or other similar publications from the New Hampshire department of employment security or United States department of labor.

**Ed 1129.09 General Rate Setting Information.**

(g) The daily and annual rate or rates or related service rates established through this process shall be the maximum amount charged to a public agency without the specific written approval of the responsible public agency.