

NH Rules in Excess Chart

The following chart was created pursuant to RSA 186-C:16-c, and documents all of the proposed special education rules which exceed the minimum requirements of state statute or federal law. For ease of convenience, this report is in a chart format which sets forth the rule number which is in excess, the nature of the rule, and state statute or federal law which is exceeded and the Department’s reason for exceeding the state or federal requirement.

For purposes of this chart, the Department of Education is utilizing the following definition of the term “exceeds”: “Any rule, which on its face, surpasses an explicit requirement of the current state statute or federal law.” In areas where the state statute or federal law is silent in a particular area, and the rule creates a requirement which is not a “policy or procedure” necessary to ensure that the federal requirement is met, the Department has identified these areas as being “in excess.” In areas where the federal law defers to the State to make a determination or if federal law mandates that the state must only have policies and procedures in effect, those particular rules will not be considered as being “in excess.”

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Ed 1102.02(n)	Evaluation process definition		No comparable federal language	*New proposed language- “evaluation process means....”	Provide clarification of process already done by districts. New proposed language added as a result of public comment.
Ed 1102.01(r)	Acquired brain injury		No comparable federal language	Definition of child with acquired brain injury	RSA 186-C:2 exceeds 34 CFR 300.8 Child with a Disability
Ed 1103.01(b)	Defining paraprofessional as “other individual”		34 CFR 300.321	This allow a paraprofessional to attend IEP meetings	State Board adopted this language since federal regulation does not identify what roles are considered “other individuals” in the special education process.

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Ed 1103.01(c)	IEP team members		34 CFR 300.321	* (c)-Proposed language adds a representative of DCYF and Guardian ad Litem to the list of other individuals who have knowledge or special expertise of the child	Federal law does not identify Guardian ad Litem as "other individual." DOE and DHHS believe that GAL have significant role with children in DCYF.
Ed 1103.01 (d)	IEP team members		34 CFR 300.321	(d)-Proposed language adds individual knowledgeable about vocational education to the IEP team where vocational or career and technical education programs are being considered.	DOE believes that this section should be expanded to include career and technical education
Ed 1103.01(e)	IEP Team 72 hour notice for excusal		No comparable language	*(e-re-lettered) LEA or parent shall notify the other party of the expected absence of a team member at least 72 hours before a scheduled meeting or upon learning of the expected absence of a team member, whichever is first.	State Board adopted this language as there is no comparable federal regulation that specifies amount of time for notice of excusal. Language provides notice of excusal in timely manner. New proposed language added as result of public comment.
Ed 1103.02(a)	Written invitation received by parent no fewer than 10 days before IEP meeting		No comparable federal language	(a)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, * New proposed language-adds language that allows the LEA to notify parent via electronic mail and that notice sent by mail 12 days prior to meeting shall be deemed received 10 days prior to a meeting.	This is a policy and procedure of the NHDOE. NHDOE does not believe in excess but rather clarifying "early enough" language in 300.322(a)(1) based on comment in Federal Register. New proposed language added as result of public

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Ed 1103.02(b)	Written notice of manifestation determination meeting		34 CFR 300.530(e)	Requires that LEAs notify the parent by receipt of written notice no fewer than 5 days before the manifestation review.	State Board adopted this language as there is no comparable federal regulation for timeline for written invites so that they can be given in a timely manner.
Ed 1106.01(c)	Referral of a child for special education		34 CFR 300.301(b)	Rule allows for a referral of a child for special education from "any source."	State Board adopted this language as it felt that the federal regulation was too limiting.
Ed 1106.01(d)	15 day timeline for the IEP team to act on a referral		No comparable federal language	(d) IEP team shall within 15 business days of referral, determine whether concerns raised by referral can be addressed utilizing existing pupil support services available to all children, whether additional information is required, and what evaluations, if any, is needed to address any remaining concerns raised by the referral about how the referral is determined.	State imposed timeline. This is a policy and procedure of the NHDOE. New proposed language added as result of public comment.
Ed 1107.01(c)	Evaluation Process		No comparable federal language. Federal IDEA only imposes timeline of 60 days for the completion initial evaluations.	(c) *New proposed language-adds that for initial evaluations the timeline for evaluation process is 60 days after receipt of parent consent.	State imposed timeline allowed by federal regulations and federal register comments. New proposed language added as result of public comment.
Ed 1107.01(d)	Reevaluations		No comparable federal language	*New proposed-for reevaluations, evaluation process completed	New proposed language added as a result of public

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				within 60 days after receipt of parental consent or at the conclusion of any extension.	comment.
Ed 1107.01 (f)	Evaluation		No comparable federal language	*(f) offers clarity by removing testing and replacing it with "a referral"	RSA 169-B:22 allows for a court to order testing for purposes of special education
Ed 1107.03(c)	Independent Educational Evaluations		34 CFR 300.502(a)(2), (c)(1), (e).-allows school district to adopt criteria and permits IEP team to disregard an independent evaluation that violates those local criteria.	The agency criteria determined by the LEA shall not be so restrictive that it effectively prohibits parent's choice. New proposed language-the LEA agency criteria to the extent that they exceed qualified examiner criteria or establish geographic limitations shall not be so restrictive that the parent does not have a choice of independent evaluators.	The State Board adopted this language to protect parent's choice for an educational evaluator. New proposed language added as a result of public comment.
Ed 1107.04(b)	Required assessments for suspected disabilities		300.304(c) describes the federal criteria in which evaluations must be conducted, including how to conduct, valid and reliable, administered by trained and knowledgeable personnel and administered in accordance with instructions.	b) Qualified examiners for specific disabilities shall be as set forth in Table 1100.1, "Required Assessments and Qualified Examiners by Type of Disability" as follows in Table 1100.1	State Board adopted language that clarifies federal language.
Ed 1107.04(d)	Disclosure of test results and other		No comparable federal language	Requires that upon request from a parent, the LEA shall provide access	State Board adopted this language to provide

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	records prior to IEP team meeting			to test results and other relevant educational records 5 days prior to IEP team meeting. *New proposed language-provides parents copies of each examiners evaluation and assessment reports at least 5 days prior to the meeting in which these reports would be discussed. Parents may pick up the reports or have them electronically mailed.	parents with opportunities to be fully informed regarding evaluations and procedural information. New proposed language added as a result of public comment.
Ed 1107.04(e)	Waiver of access to educational records			*New proposed language-parents may waive in writing (d)	Inform parents of right to waive access to educational records New proposed language added as result of public comment.
Ed 1107.05(a)	Evaluation Report		34 CFR 300.306	IDEA does not require written summary of the results for each evaluation	State Board adopted this language to provide parents with opportunities to be fully informed regarding evaluations and procedural information.
Ed 1107.05(b)(3)	Evaluation report requirements		No comparable federal language	Evaluation report must also contain information regarding parent's rights of appeal in accordance with Ed 1123 and description of parent's rights to independent evaluation.	State Board adopted this language to provide parents with opportunities to be fully informed regarding evaluations and procedural information.
Ed 1108.01(b)	Determination of Eligibility for Special Education		34 CFR 300.306	*New proposed language to add a chart that lists the area of suspected disability and additional team member's qualifications.	New proposed language added as a result of public comment.

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Ed 1108.01(b)(1)	Determination of Eligibility for Special Education		34 CFR 300.306	34 CFR 300.306 IDEA states a group of qualified professionals. IDEA does not reference a teacher certified in the area of disability *NHDOE is proposing to remove this language as the new proposed in (b) covers this.	State Board adopted this language to ensure that “a group of qualified professionals” included a professional that is certified in the area of suspected disability for eligibility purposes. This language puts into administrative rule the practice of that Bureau of Special Education engages in when monitoring districts
Ed 1108.01(b)(2)	Determination of Eligibility for Special Education		34 CFR 300.306	The rule states an individual knowledge 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 *DOE is proposing to remove this language	It is difficult to assess “as a result of having had personal contact with the child” is
Ed 1109.01(a) (2) (3) (5) (6) (9)	Elements of the IEP		34 CFR 300.320	(2) Language requires that length of school year and school day are required in the IEP (3) Language requires that types of service providers who would be responsible for implementing the	RSA-C: 16 (VI) Rulemaking gives authority to the State board of education to adopt rules regarding length of school year for children with disabilities.

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(10)				<p>IEP or names of those providers be listed in the IEP</p> <p>(5) Language requires signature of the parent or, where appropriate, student, and representative of the LEA stating approval of the provisions in the IEP</p> <p>(6) Language requires short-term objectives or benchmarks for all children unless the parent determines them unnecessary for all or some of the child's annual goals</p> <p>(9) Language requires a statement of how child's progress with goals will be measures and whether progress is sufficient to achieve annual goals by the end of the year</p> <p>(10) Language requires that an IEP include transition service needs beginning at age 14</p>	<p>State Board believes parents should have consent abilities for elements of and changes to their child's IEP.</p> <p>RSA 186-C:7,III requires this.</p> <p>Federal 300.320(a)(3)(i) requires measurement, but no regulation for sufficient by end of the year.</p> <p>No comparable federal regulation for transition at age 14.</p>
Ed 1109.(a)(11)	Elements of the IEP		34 CFR 300.320	<p>This is an excess of IDEA</p> <p>*DOE is proposing that this language be removed</p>	It is difficult to assess what a vocational education component is
Ed 1109.02 (a) (b) (d)	Transportation		No comparable federal language	<p>(a) Requires that all vehicles used to transport children by or on behalf of the school district be licensed under Saf-C 1307(NHDOS rule)</p> <p>(b) Requires that the drivers of such vehicles be licensed under NHDOS's rules</p> <p>(d) Requires contracted drivers to follow (a)-(b)</p>	State Board adopted this language in response to Department of Safety rules.

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Ed 1109.03(a)	When an IEP is in effect		No comparable federal language	*Proposed language adds the requirement of the LEA to provide special education, related services, supplementary aids and services, accommodations and modifications in accordance with the child's IEP. This language was previously in IDEA but was removed based on the assumption that LEA's provide the provisions of the IEP. The language proposed provides more detail.	No comparable federal regulation. DOE feels language will provide clarity for school districts and parents when working together implementing the IEPs.
Ed 1109.03(e)	Length of IEP		34 CFR 300.323	Language requires that the length of an IEP not exceed 12 months without a review and approval by the IEP team.	In excess because of the approval of the IEP team requirement and parent consent for the IEP.
Ed 1109.03(f)	Consideration of Educational History		No comparable federal language	Language requires that the child's educational history be reviewed when revising the IEP	State Board adopted this language since there is no comparable federal regulation.
Ed 1109.03(j)	Monitoring transition services	No comparable state language	No comparable federal language	Requires that school district personnel monitor transition services <i>other than those provided by a NH Department of Education approved special education program which the child attends</i> on no less than a weekly basis.	State Board adopted this language since there is no comparable federal regulation regarding personnel monitoring. New proposed language added as result of public comment.
Ed 1109.04(a)	Copies of the IEP	No comparable state language	No comparable federal language	Requires that each teacher and services provider be given a copy of the complete IEP	Federal law only requires that the IEP be accessible to each employee responsible for implementing IEP and that

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					the school district must inform the personnel of their specific responsibilities related to implementing the IEP. Our rule provides the entire IEP for notification of the personnel of their duties and additional information should the providers need it.
Ed 1109.04(b)	Implementation of the IEP	No comparable state language	No comparable federal language	LEA shall maintain written evidence documenting implementation of the IEP including all services, accommodation and modifications.	State Board adopted this language for accountability for implementation of the IEPs.
Ed 1109.06 (a) (b) (1) (2) (3) (c) (d)	Review of IEP	No comparable state language	No comparable federal language	(a) LEA shall develop and implement procedures designed to monitor that all IEPs are implemented. IEP team may be reconvened at any time. (b) upon a written request for an IEP team meeting by the parent, guardian, or adult student s the LEA will schedule and meet or provide notice as to why refuse to meet (c) a and b within 21 days from the receipt of the written request for an IEP meeting. (d) The LEA annually shall conduct at, or near, the end of the term of each IEP a meeting	State Board adopted this language since there is no comparable federal regulation regarding accountability for following up with a request from a parent to meet regarding the IEP.
Ed 1110.01(c)	Monitoring ESY	No comparable state language	No comparable federal language	Requires ESY services <i>other than those provided by a NH Department of Education approve special education program which</i>	State Board adopted this language as there is no comparable federal regulation regarding

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				<i>the child attends shall be monitored</i> by LEA personnel no less than <i>a weekly basis</i> .	supervision of personnel during ESY. New proposed language added as a result of public comment.
Ed 1111 and Ed 1113	Program Approval, Monitoring and Corrective Action	RSA 186-C:5	34 CFR 300.600	IDEA requires state monitoring and enforcement not program approval	Legislators passed this and State Board adopted rules
*Ed 1111.03(a)	Placement Decisions		34 CFR 300.116(a)(1)-placement decisions(1) Is made by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options;	*(section re-numbered) Proposed language -the IEP team shall make placement decisions in accordance with 34 CFR 300.116.	State Board adopted this language to clarify the group of persons etc. to be the IEP teams as these persons are required in the IEP team.
Ed 1111.03(f)	Home instruction		34 CFR 300.116	*Proposed language requires 10 hours of specially designed instruction and related services for home instruction.	Through the public hearing process, this was a comment
Ed 1111.04 Ed 1111.05	Home Instruction		34 CFR 300.115	The current rule excess the authority of the Bureau of Special Education *NHDOE is proposing to remove this	IDEA does not give State Agencies the authority to approve placements. Home Instruction is a placement made by the IEP team with the consent of a parent. IDEA does not give authority to a superintendent to provide written consent to an IEP

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					team decision for a shortened day
Ed 1113.04	Behavioral Interventions		No comparable federal language	Requires that positive behavioral interventions based on behavioral assessment address needs of children.	State Board adopted this language since there is no comparable federal regulation.
Ed 1113.05	Emergency Intervention Procedures		No comparable federal language	Crisis or emergency intervention procedures shall be included in IEP	State Board adopted this language to define what a crisis or emergency intervention may be for the child.
Ed 1113.11	Facilities and Location		No comparable federal language	Ed 321. Minimum Standards for School Sites better addresses educational space. Ed 321.11 Special Education Space *Proposing to remove this language	Addressed more comprehensively in Ed 321
Ed 1113.12(b)	Personnel standards		34 CFR 300.18 and 300.156	Language defines what paraprofessional personnel providing services to children shall and shall not do as part of their responsibilities.	State Board adopted this language
Ed 1114	Standards for Approval of Private Providers of Special Education and Non-LEA Programs			No comparable federal language regarding Standards for Approval of Private Providers of Special Education and Non-LEA Programs	State Board Adopted June 30, 2008. Rule adopted prior to effective date of RSA 186-C:16-c
Ed 1115.02(c)	Investigation and determination of the need for a surrogate parent		No comparable federal language	* Proposed language defines the term “not able to be located” regarding parents, also that the LEA provide evidence that it has contacted DCYF when the LEA cannot contact the parents.	RSA-C: 16 (VI) Rulemaking gives authority to the State board of education to adopt rules regarding appointing surrogate parents.

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					Clarifying language regarding “not able to be located.”
Ed 1115.05(d)	Removal of surrogate parent and appeal process		No comparable federal language	Procedures for removal of surrogate parent by commissioner within 30 days of receipt of written complaint to remove surrogate.	State Board adopted this rule to give a procedure to RSA 186-C:14 (IV) Surrogate Parent
Ed 1118.03	Incarcerated children under the age of 18		34CFR 300.102(a)(1)	Language provides that children under the age of 18 who are incarcerated have the right to be evaluated, identified and if appropriate, provided special education and related services.	State Board adopted this language to afford rights to the special education process for youth 18 years and younger who are incarcerated. No comparable federal regulation.
Ed 1119.01(b)(1) & (2)	LEA record retention of special education records	No comparable state language	No comparable federal language	*New proposed language requires that LEA’s retain special education records until the student’s 25 th birthday and maintain a copy of the last IEP until the student’s 60 th birthday. LEAs must provide notice of destruction policies upon student’s graduation or transfer of rights or whichever comes first. LEA shall provide public notice at least annually. New proposed also sets forth the same requirements for private providers except if the private providers have sent all of the student’s records to the recent LEA of record.	State Board adopted this language in response to a need in the special education field of some clarification regarding special education record retention both from districts and parents/adult students. Stakeholder input. New proposed language added as a result of public comment.

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Ed 1120.04(a) (3) (4) (5)	Parent Consent	Ed 1120.04(a)	34 300.300 (4)-no comparable federal language	(3) Requirements for parent consent before annual renewal of the IEP, placement, determining or (4) Determining or changing the disability classification; (5) Changing the disability category and changing the nature or extent of special education and related services. District may implement proposal when the parents fail to respond to written proposal.	34 CFR 300.300(d)(2) suggests that states may have additional consent requirements.
Ed 1120.04(c)	Parent consent		34 CFR 300.300(d)(3)	*Proposed language adds language regarding “partial consent” to the provisions of the IEP.	Previous language was also in excess with no follow up provision to “consent with conditions.” The initial proposal submitted to the State Board on 3/24/16 aligned the language of this section to IDEA requirements. Stakeholders did not approve and created language that makes the rule in excess again and adds more process for LEAs for parent consent.
Ed 1120.04(f)	Parent consent			*New proposed language adds <i>unless and until a party files for due process, in which case the IEP and placement shall be governed by 34 CFR 300.518.</i>	New proposed language added as result of public comment.
Ed 1121.04(a), (b) and (c)	Reconsideration of Commissioner’s decision		No comparable federal language	*(a) New proposed language provides that any party to the complaint may within 20 days of the commissioner’s decision make a	This allows for complainants to disagree with the decision and have the commissioner

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				written request to the commissioner for reconsideration of the decision and that any corrective action ordered be implemented during the reconsideration process. (b) New proposed language to change 20 days to 15 days for commissioner to issue a final decision. (c) New proposed to add or a NH Superior Court.	reconsider for 20 days. This exceeds the federal regulation of parents receiving final decisions of a complaint within 60 days of the receipt of the complaint by 35 days for the whole process. New proposed language added as a result of public comment.
Ed 1123.02(d)	Scheduling of mediation as a result of a due process filing		No comparable federal language	Requires convening a resolution meeting with parent within 15 days of due process complaint.	NH continues to proactively schedule mediation when parties request a due process hearing.
Ed 1123.02(e)	Prehearing conference		No comparable federal language	Requires prehearing conference to be held 17 days after resolution meeting.	This requirement is consistent with other state administrative hearing processes.
Ed 1123.24(b)	Hearing officers		No comparable federal language	Requires that hearing officers also be attorneys	State Board adopted this language since there is no comparable federal regulation.
Ed 1125	State Department of Education Enforcement			Rule is excessive to the basic requirements of IDEA, provides detail and procedure where there is no requirement of that level of specificity in federal language.	
Ed 1126	Education Monitoring of Educational			No comparable federal language regarding State department of	

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	Services and Programs for Children with Disabilities			Education Monitoring of Educational Services and Programs for Children with Disabilities	
Ed 1127	Children with Disabilities in Placements for which DCYF Has Financial Responsibility			No comparable federal language regarding Children with Disabilities in Placements for which DCYF Has Financial Responsibility	
Ed 1128	Special Education Catastrophic Aid			No comparable federal language regarding Catastrophic Aid	
Ed 1129	Rate Setting			No comparable federal language regarding Rate Setting	