

**STATE DEPARTMENT OF EDUCATION**

**BUREAU OF SPECIAL EDUCATION**



**RATE SETTING MANUAL  
WITH  
INSTRUCTIONS**

Revised December 16, 2009

**GOVERNOR OF NEW HAMPSHIRE**

***John Lynch***

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## TABLE OF CONTENTS

### New Hampshire Rate-Setting Rules

Section Ed 1129.01 Definitions	Page 1
Section Ed 1129.02 Rate Setting Proposal	Page 2
Section Ed 1129.03 Form 1129A: Cover Sheet	Page 2
Section Ed 1129.04 Form 1129B: Personnel	Page 2
Section Ed 1129.05 Form 1129C: Assets and Depreciation	Page 3
Form 1129C.1: Assets and Depreciation Assets Purchased with Donated Funds	Page 3
Section Ed 1129.06 Form 1129D: Program Data	Page 4
Section Ed 1129.07 Form 1129E: Revenues	Page 5
Section Ed 1129.08 Form 1129F: Expenses by Line Item	Page 6
Section Ed 1129.09 General Rate Setting Information	Page 16
Section Ed 1129.10 Allowable Costs	Page 18
Section Ed 1129.11 Non-Allowable Costs	Page 18
Section Ed 1129.12 Reasonable Costs	Page 19
Section Ed 1129.13 Direct Costs	Page 20
Section Ed 1129.14 Indirect Costs	Page 20
Section Ed 1129.15 Basis of Accounting	Page 20
Section Ed 1129.16 Method of Allocation	Page 20
Section Ed 1129.17 Form 1129.11: Rate Computation	Page 21
Section Ed 1129.18 Audit Requirements	Page 21
Section Ed 1129.19 Rate Notification	Page 22
Section Ed 1129.20 Hearing Mechanism	Page 23
Section Ed 1129.21 Joint Rate Setting Process	Page 26
Section Ed 1129.22 Joint Rate Notification	Page 27
Section Ed 1129.23 Joint Hearing Mechanism	Page 27

## 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:

- (a) "Accrual basis of accounting" means an accounting method which recognizes revenue when it is earned rather than when it is received, and expense is recognized when it is incurred rather than when it is paid.
- (b) "Advertising costs" means those costs of media services, solicitations of bids for goods and services, recruiting personnel and development of school brochures and program descriptions.
- (c) "Agency" means any private provider of special education services which has been approved by the department as a provider of special education and/or related services.
- (d) "Allowable costs" means those costs determined by the department to be reasonable in accordance with Ed 1129.12 and required for the operation of approved special education programs pursuant to Ed 1100.
- (e) "Consultant" means an independent contractor who is a member of a particular profession who provides professional services or expert advice to an agency.
- (f) "Direct costs" means costs which can be identified specifically with the organization's final cost objectives, as determined in accordance with Ed 1129.13.
- (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.
- (h) "Indirect costs" means those costs which have been incurred for common or joint objectives and cannot be readily identified with a particular final cost objective, as determined in accordance with Ed 1129.14.
- (i) "Length of the school year" means the total number of days during which the program provides services in the rate setting period.
- (j) "Program capacity" means the maximum number of children with disabilities that can be enrolled in a school, class or program as specified in Ed 1100.
- (k) "Related party" means all affiliates of an enterprise, including but not limited to the following:
  - (1) Its management and their immediate families;
  - (2) Its principal owners and their immediate families;
  - (3) Beneficial employee trusts that are managed by the management of the organization; and
  - (4) Any party that can or does deal with the organization and has ownership of, control over, or can significantly influence the management or operating policies of another party to the extent that an arms length transaction cannot be achieved.

- (l) "Reasonable costs" means those costs which are prudent, within cost limitations and are required for the operation of approved special education programs.
- (m) "Special education costs" means the sum of all costs less applicable credits.
- (n) "Surplus" means the positive net difference of revenue over expense from operations, regardless of whether that difference is called surplus, profit, excess of support and revenue over expense, or fund balance increase on the entity's books of account.

**Ed 1129.02 Rate Setting Budget Proposal.**

- (a) In order to obtain a rate for special education instruction, room and board, physical therapy, occupational therapy, speech therapy and counseling from the department, the agency shall complete a budget proposal and submit it to the department.
- (b) The department shall not act on any proposal which is incomplete, and/or which contains substantive errors or omissions. Any such proposal shall be returned for corrections and/or completion.
- (c) The agency shall submit the following in the budget proposal:
  - (1) Form 1129A: Cover Sheet;
  - (2) Form 1129B: Personnel;
  - (3) Form 1129C: Assets and Depreciation;
  - (4) Form 1129D: Program Data;
  - (5) Form 1129E: Revenues; and
  - (6) Form 1129F: Expenses by Line Item.

**Ed 1129.03 Form 1129A: Cover Sheet.**

- (a) The purpose of the cover sheet shall be to identify the agency making the budget proposal and to provide certification from the agency that the information in (b) below is correct.
- (b) When completing Form 1129A: Cover Sheet, the agency shall:
  - (1) Indicate whether the report being submitted is the original or an amended submission;
  - (2) Give the name, address, and telephone number of the agency;
  - (3) Give the accounting period;
  - (4) Give the name, title, mailing address and telephone number of the person completing the budget proposal;
  - (5) Give the name of the agency's authorized representative;
  - (6) Give the signature of the agency's authorized representative certifying that information within the budget proposal is correct and accurate to the best of the authorized representative's knowledge and that information was not deliberately omitted or falsified;
  - (7) Give the ownership type such as proprietorship, partnership, or corporation; and
  - (8) Give the operating agency type such as for profit or non-profit.

**Ed 1129.04 Form 1129B: Personnel.**

- (a) When completing Form 1129B: Personnel, the agency shall:
  - (1) Indicate whether the report being submitted is the original or an amended submission;
  - (2) Give the name of the agency;

- (3) Give the fiscal year or years for which the personnel report is being prepared, the month and year or years on which the fiscal year or years begin, and the month and year or years the fiscal year or years end;
  - (4) Give the date on which the original or amended personnel report is being prepared;
  - (5) Give each employee's full name;
  - (6) Give the field(s) of study and degree(s) received, if any, for each employee;
  - (7) Give each employee's annual wage or salary;
  - (8) Allocate that portion of each employee's wage or salary which pertains to administrative and general management activities;
  - (9) Allocate that portion of each employee's wage or salary which pertains to fundraising;
  - (10) Allocate that portion of each employee's wage or salary which pertains to other non-special education costs;
  - (11) Give the amount of each employee's wage or salary which pertains to special education instruction;
  - (12) Give the amount of each employee's wage or salary which pertains to any special education room and board costs;
  - (13) Give the amount of each employee's wage or salary which pertains to occupational therapy, physical therapy, speech therapy, and counseling activities;
  - (14) Give the total of general management costs, total costs of fund raising, and total costs of non-special education programs;
  - (15) Give the total of each employee's wage or salary which pertains to all special education programs; and
  - (16) Give the total of each employee's wage or salary which pertains to any special education room and board costs, and to occupational therapy, physical therapy, speech therapy, and counseling activities.
- (b) The allocation in (10) above, shall be the percentage of each employee's total work time which pertains to this activity. Agencies which do not have a fund raising activity shall indicate "N/A".
  - (c) The allocations in (11) above, shall be the percentage of each employee's total work time which pertains to this activity. Entities which do not have non- special education costs shall indicate "N/A".
  - (d) The allocation in (12) above, shall be the percentage of each employee's total work time which pertains to special education instruction.
  - (e) The allocation in (13) above, shall be the percentage of each employee's total work time which pertains to any special education room and board costs.
  - (f) The allocations in (14) above, shall be the percentage of each employee's total work time which pertains to these activities.

**Ed 1129.05 Form 1129C: Assets and Depreciation.**

When completing Form 1129C: Assets and Depreciation, the agency shall:

- (a) Indicate whether the report being submitted is the original or an amended submission;
- (b) Give the name of the agency;

- (c) Give the fiscal year or years for which the assets and depreciation report is being prepared, the month and year or years on which the fiscal year or years begin, and the month and year or years the fiscal year or years end;
- (d) Give the date on which the original or amended assets and depreciation report is being prepared;
- (e) Give the description of the item to be depreciated such as an electric typewriter or an automobile;
- (f) Describe how the item was acquired, using the following codes:
  - (1) "P" for items purchased;
  - (2) "D" for items donated; and
  - (3) "O" for other.
- (g) If "O" was used to describe the acquisition of any item in (7) above, an explanation shall be provided at the bottom of the form;
- (h) Give the month and year or years, using numerals, when the item was put into use or service;
- (i) Give the number of items acquired;
- (j) Give the amount actually paid for the item(s);
- (k) Give the estimated salvage or trade-in value of the item(s) at the end of its/their useful life;
- (l) Give the difference between the salvage value and the actual cost;
- (m) Give the expected number of years during which the item(s) will be effectively usable;
- (n) Give the quotient resulting from dividing the amount to be depreciated by the useful life;
- (o) Give the percent of time that the item(s) will be used for programs or activities funded by the department;
- (p) Give the result from multiplying the total annual depreciation by the percent of the time the item(s) will be used for programs or activities funded by the department; and
- (q) Give the total applicable annual depreciation amounts.

**Ed 1129.06 Form 1129D: Program Data.**

When completing Form 1129D: Program Data, the agency shall:

- (a) Indicate whether the report being submitted is the original or an amended submission;
- (b) Give the name of the agency;
- (c) Give the fiscal year or years for which the program data report is being prepared, the month and year or years on which the fiscal year or years begin, and the month and year or years the fiscal year or years end;
- (d) Give the date on which the original or amended program data report is being prepared;
- (e) Give a listing of each special education program or therapy for which a rate is being requested;
- (f) Give the maximum capacity of each program, as defined in Ed 1129.01(j), operating during the regular school year or years;



- (g) Give the length of the regular school year or years for each program;
- (h) Give the inclusive dates of the regular school year or years;
- (i) Give the maximum capacity of each program operating during the summer school year as defined in Ed 1129.01(j);
- (j) Give the length of the summer school for each program;
- (k) Give the inclusive dates of the summer school year or years;
- (l) Give the actual occupancy figures for each of the 12 months immediately preceding the preparation of the budget proposal, or for each month of operation, if a shorter period than 12 months; and
- (m) Give the units of service available for each therapy for which a rate is being requested.

**Ed 1129.07 Form 1129E: Revenues.**

- (a) When completing Form 1129E: Revenues, the agency shall:
  - (1) Indicate whether the report being submitted is the original or an amended submission;
  - (2) Give the name of the agency;
  - (3) Give the fiscal year or years for which the revenue report is being prepared, the month and year or years on which the fiscal year or years begin, and the month and year or years the fiscal year or years end;
  - (4) Give the date on which the original or amended revenue report is being prepared;
  - (5) Give program service fees from sources other than the department;
  - (6) Allocate costs among different funding sources when anticipated revenues for program funding come from sources other than the department such as revenues from local and federal governments, Medicaid, Medicare, private insurance, and special purpose funds;
  - (7) Give all revenue from sales of goods or services related to programs;
  - (8) Give all income from direct sales, contracts or services;
  - (9) Give all funds from United Way;
  - (10) Give all funds from towns, cities and/or counties;
  - (11) Give income from restricted or unrestricted contributions;
  - (12) Give interest, dividends, and capital gain distributions in cash from endowments;
  - (13) Give any federal grants, including:
    - a. Funds to supplement the cost of providing education to children with disabilities;
    - b. Funds to purchase or subsidize the purchase of food and the value of food commodities; and
    - c. Any other federal grants;
  - (14) Give all revenues from non-endowment savings accounts;
  - (15) Give all interest under general management, unless the interest is restricted and allocated for a specific use or program;
  - (16) Give all recognized gains on the sale of assets;
  - (17) Give all other revenues;
  - (18) Give any surplus generated in the most recent fiscal year;
  - (19) Give total of all revenue amounts;

- (20) Give total general management revenue amount to be allocated as specified by the department;
  - (21) Give total of all revenue amounts and general management amount to be allocated; and
  - (22) Give the amount of the department fees they are requesting.
- (b) All program service fees identified in (6) above shall be budgeted and reported.
  - (c) All revenue from private and public sources shall be budgeted and reported. All revenue in this category shall be allocated based on donor restrictions.
  - (d) All revenue line items shall be at least equal to the prior year's levels. If expected to be less, specific explanation and documentation shall be provided. The facility or entity shall apply for public and private sources of funds. If the facility or entity does not apply for public and private sources of funds, specific explanation and documentation shall be provided to the department.
  - (e) Rental income which can be allocated to specific programs shall be allocated on the basis of square footage or full-time equivalents of the program(s) involved. All rental income that cannot be identified to specific programs shall be included in general management. This shall include income from rental of computer hardware and/or software, and time-sharing income.
  - (f) The following shall apply to revenue allocations:
    - (1) All revenues shall be reported and the appropriate allocations made;
    - (2) A tuition rate shall be computed from expenses for which no revenue has been received from the following sources:
      - a. Receipts from federal government;
      - b. Cash receipts which reduce the cost of an item; and
      - c. Donations and gifts;
    - (3) Agencies shall allocate costs among different funding sources when revenues come from :
      - a. Government contracts or grants;
      - b. Medicaid, Medicare, private insurance; and
      - c. Specific purpose funds where applicable.
    - (4) Revenues and expenses of non-special education programs shall not be reported as special education activity; and
    - (5) Revenues received from school districts shall not be offset against costs when a tuition rate is calculated.
  - (g) Surplus equal to and for the purpose of funding 6 weeks' of wage and salary expense, including benefits and payroll taxes, may be retained by the entity and may be excluded from the amount of surplus to be carried forward.

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

- (a) When completing Form 1129F: Expenses by Line Item, the agency shall:
  - (1) Indicate whether the budget report being submitted is the original or an amended submission;
  - (2) Give the name of the agency;
  - (3) Give the fiscal year or years for which the budget report is being prepared, the month and year or years on which the fiscal year or years begin, and the month and year or years the fiscal year or years end;

- (4) Give the date on which the original or amended budget report is being prepared;
- (5) Give the total of expenses;
- (6) Give the total general management expenses to be allocated; and
- (7) Give expenses by line item as required in (b) - (ap) below.

(b) Salary and wages shall:

- (1) Be recorded in account 601; and
- (2) Include and comply with the following:
  - a. Payment for regular full and part-time personnel services accrued in whatever form by employees of the vendor during the fiscal year;
  - b. Premiums for overtime, extra pay-shifts, and multi-shift work;
  - c. All salary and wage costs shall be supported by documented payroll vouchers or a generally accepted documentation method; and
  - d. Payroll shall be further supported by time and attendance records for individual employees.

(c) Employee benefits shall:

- (1) Be recorded in account 602; and
- (2) Include and comply with the following:
  - a. All group fringe benefit plans provided to regular full and part-time employees, such as, Blue Cross/Blue Shield, retirement plans, and worker compensation;
  - b. Benefit plans shall be in conformance with state and federal law; and
  - c. The cost of fringe benefit plans shall be a percentage of total salaries and wages by program.

(d) Temporary staff shall:

- (1) Be recorded in account 603; and
- (2) Include and comply with the following:
  - a. All temporary personnel costs associated with staffing coverage needed due to employee absenteeism and/or staff vacancies; and
  - b. The amount of substitute coverage budgeted for direct service staff whose presence is considered essential for the day-to-day supervision of children with disabilities shall be determined by documented use and costs.

(e) Payroll taxes shall:

- (1) Be recorded in account 604; and
- (2) Include and comply with the following:
  - a. All payments made for F.I.C.A. and unemployment insurance;
  - b. F.I.C.A. shall equal the prevailing rate multiplied by the total F.I.C.A. salaries per program;
  - c. State and federal unemployment insurance shall equal the rate as determined by the applicable state and the federal agencies; and
  - d. If an agency elects to fund an unemployment compensation reserve, the agency shall not also include unemployment tax as an expense item.

- (f) Client evaluations shall:
  - (1) Be recorded in account 621; and
  - (2) Include and comply with the following:
    - a. All professional services purchased which are for purposes of obtaining any evaluations;
    - b. This shall not include the cost of any full or part-time staff, as reflected in the personnel budget, whose responsibilities include evaluations of children with disabilities; and
    - c. The amount budgeted for evaluations of children with disabilities shall be based upon past documented actual costs.
- (g) Client treatment or services shall:
  - (1) Be recorded in account 622; and
  - (2) Include all costs for purchasing specialized client services on a full or part-time basis.
- (h) Accounting and audit fees shall:
  - (1) Be recorded in account 623; and
  - (2) Include and comply with the following:
    - a. The cost of accounting and auditing services supplied by outside providers, including check-writing and payroll fees; and
    - b. These services shall not be provided by employees of, or other people who are affiliated with the agency. These costs shall be included in general management.
- (i) Legal fees shall:
  - (1) Be recorded in account 624; and
  - (2) Include and comply with the following:
    - a. All legal service costs which the agency expects to incur in order to fulfill obligations to the department;
    - b. No funds shall be used to pay any legal fees that involve litigation or disputes against the department or any other state agency; and
    - c. No funds shall be used to pay any fines, payback or other court-ordered payments as a result of investigation or litigation against the facility or program.
- (j) Other professional services and consultants shall:
  - (1) Be recorded in account 625; and
  - (2) Include and comply with the following:
    - a. Consultants and/or professional fees, such as program evaluations;
    - b. Fees incurred for any type of professional development and/or training shall be reflected in the appropriate professional development line item; and
    - c. Consultants' costs shall be allowed when:
      - 1. The nature and scope of the consultant's services rendered are necessary, pertain to the organization's functions, activities or programs or to nutritional services, and cannot be provided by the organization's employees or can be more economically performed by consultants than by employees;

2. The fee charged for the service by the individual or concern shall be consistent with the customary fees charged by similarly qualified consultants for the service rendered, is reasonable in relation to the services rendered and shall be supported by specific rationale in support of fee(s) charged;
3. The contractual agreement for the services is adequately specific and shall at minimum include fees charged, services to be provided, number of days to be worked, beginning and end date of contract and a product evaluation;
4. The consultants costs are reasonable as specified in Ed 1129.12 and they are not involved with the recovery of costs or funds from federal, state or local government;
5. The consultants are not trustees, directors, officers or employees of the organization nor of any parent organization; and
6. The need for contracting the services is in relation to the organization's capability in the particular area.

(k) Journals and publications shall:

- (1) Be recorded in account 631; and
- (2) Include the cost of all books, publications and training materials purchased for professional development/training purposes.

(l) In-service training shall:

- (1) Be recorded in account 632; and
- (2) Include and comply with the following:
  - a. All professional development and training costs for conferences, workshops, conventions, in-service training and tuition except for travel costs;
  - b. Travel costs shall be shown in staff transportation;
  - c. These professional development and training cost requests shall not exceed a total sum of money computed by multiplying the number of the program's full-time employees by \$300;
  - d. Costs of conferences or meetings shall be allowed when the primary purpose the conference is dissemination of technical information and is part of the facility's approved professional development plan; and
  - e. Allowable costs include meals, transportation, rental of facilities and other items incidental to such conferences.

(m) Conferences and conventions shall:

- (1) Be recorded in account 633; and
- (2) Include and comply with the following:
  - a. Expenses for attending any conferences, workshops, and conventions except travel costs; and
  - b. Travel costs shall be shown in Account 742, staff transportation.

(n) Other professional development shall:

- (1) Be recorded in account 634; and
- (2) Include any development costs not covered by the accounts above such as an individual staff member's tuition.

(o) Rent shall:

- (1) Be recorded in account 641; and
- (2) Include and comply with the following:
  - a. The cost of renting any building utilized for the facility or program;
  - b. Rental cost for space shall not exceed the cost of comparable space and facilities in the same locality;
  - c. Rentals shall be documented by a lease agreement;
  - d. Any leases shall stipulate the extent of the lessee's responsibility for renovations; and
  - e. The cost of lease purchase agreements shall not be included.
  - f. Allowable costs shall be as follows:
    1. Rental costs as specified in sale and leaseback agreements shall be allowable to the extent of actual costs had the organization continued to own the property;
    2. If any party as lessor is in common with the lessee, the rental costs shall be limited to actual costs, including but not limited to mortgage payments, insurance premium payments, and property taxes; and
    3. The cost of lease-purchase agreements shall be excluded as a rental expense.

(p) Heating costs shall:

- (1) Be recorded in account 643; and
- (2) Include and comply with the following:
  - a. All heating costs, such as electricity, gas or oil;
  - b. These costs shall be excluded if they are including in a rental or lease agreement; and
  - c. These costs shall be cost-allocated to programs and general management based upon square footage or full-time equivalents.

(q) Other utilities shall:

- (1) Be recorded in account 644; and
- (2) Include and comply with the following:
  - a. All other utility costs, such as electricity, water, sewage, gas;
  - b. These costs shall be excluded if they are included in a rental or lease agreement; and
  - c. These costs shall be cost-allocated to programs and general management based upon square footage or full-time equivalents.

(r) Maintenance and repairs shall:

- (1) Be recorded in account 645; and
- (2) Include and comply with the following:
  - a. The costs of materials and supplies needed for routine maintenance and repairs and/or maintenance contracts such as garbage removal and snowplowing;
  - b. These costs shall be excluded if they are included in a rental or lease agreement;
  - c. These costs shall be cost-allocated to programs and general management based upon square footage or full-time equivalents; and

- d. The following shall apply to repair and maintenance of plant:
  - 1. Costs incurred for necessary maintenance, repair and upkeep of property which do not add to its useful life but keep it in efficient operating condition shall be allowable when they are not included in rental or other charges for space; and
  - 2. Costs incurred for necessary maintenance, repair or upkeep of movable equipment which keep it in efficient operating condition shall be allowable.
- (s) Taxes shall:
  - (1) Be recorded in account 646; and
  - (2) Include and comply with the following:
    - a. Taxes which the organization is required to pay and which are paid or accrued in accordance with generally accepted accounting principles and payments made to local governments shall be allowable;
    - b. These costs shall be cost-allocated to programs and general management based upon square footage or full-time equivalents; and
    - c. Taxes for which an exemption is available and payments in lieu of taxes shall be disallowed.
- (t) Other occupancy costs shall:
  - (1) Be recorded in account 647; and
  - (2) Include and comply with the following:
    - a. Any other occupancy costs not covered by above accounts; and
    - b. Renovation costs shall be included in account 660 Capital Expenditures.
- (u) Office supplies shall:
  - (1) Be recorded in account 651; and
  - (2) Include and comply with the following:
    - a. Costs of consumable materials used for office operations, such as paper, pens notebooks, printed checks, photocopy supplies; and
    - b. These costs shall be cost-allocated to programs and general management based upon direct costs or full-time equivalents.
- (v) Building and household supplies shall:
  - (1) Be recorded in account 652; and
  - (2) Include and comply with the following:
    - a. Costs of consumable supplies used for buildings and grounds as well as all household supplies such as toilet paper, towels, crockery, flatware, cleaning supplies; and
    - b. These costs shall be cost-allocated to programs and general management based upon direct costs or full-time equivalents.
- (w) Educational and training supplies shall:
  - (1) Be recorded in account 653; and
  - (2) Include and comply with the following:
    - a. Costs of materials used in programs for children with disabilities, such as paper, pens, paint brushes, sets of practice materials, magazine or book subscriptions or children's use; and
    - b. These costs shall be cost-allocated to programs or direct costs or full-time equivalents.

- (x) Production and sales shall:
  - (1) Be recorded in account 654; and
  - (2) Include and comply with the following:
    - a. The cost of materials which are purchased for the purpose of making products which are to be sold; and
    - b. The production and sales expense shall not be more than the revenue generated from sales.
- (y) Food shall:
  - (1) Be recorded in account 655; and
  - (2) Include the cost of raw and prepared food goods:
- (z) Medical supplies shall:
  - (1) Be recorded in account 656; and
  - (2) Include and comply with the following:
    - a. The costs of services which would be available to children with disabilities if they were enrolled in a public school;
    - b. Costs of speech, physical or occupational therapy, or counseling if included in an IEP of a child with a disability, shall be allowable under a separate rate setting program and shall not be included as part of instruction and room and board rates;
    - c. The cost of a medical examination for an employee or applicants for employment, or the cost of furnishing any records required by the employer as a condition of employment shall be allowable; and
    - d. Other medical services or the costs of medical supplies provided by the agency's own staff shall not be included in this account. These costs are not allowed and shall be included in the non-special education section of expenditure Form 1129F.
- (aa) Capital expenditures shall:
  - (1) Be recorded in account 660; and
  - (2) Include and comply with the following:
    - a. The cost of furnishings and equipment valuing more than \$1,000 for each item;
    - b. Groups of items valuing \$1,000 or more, even if individual items are valued at less than \$1,000, shall be depreciated;
    - c. Compensation for the use of buildings, or other capital improvements and equipment shall be made through depreciation charges;
    - d. All other asset items used for program purposes costing \$1,000 or more having a useful life of one year or more shall be depreciated;
    - e. Reimbursement for capital expenditures shall be available through depreciation charges only;
    - f. Depreciation charges shall be based on historical acquisition cost less estimated salvage value of the asset;
    - g. Useful life shall be determined on the basis of the particular operating conditions and the generally accepted useful life of similar assets;
    - h. Property records shall be maintained and the straight-line method of computing depreciation shall be used;
    - i. All capital expenditures including purchases, major renovations and leasehold improvements for which department reimbursement is requested shall be included in the budget proposal;



- j. Any expenditure not so included shall not be reimbursed;
- k. The need to fund extraordinary or emergency capital expenditures shall be approved;
- l. These costs shall be cost allocated to programs and general management based upon square footage or full-time equivalents;
- m. Gains and losses on sale, retirement, or other disposition of property which qualify as depreciable shall be reflected as a credit or a charge to the program in which the asset was being used;
- n. The amount of the credit or charge under n. shall be the difference between the amount realized on the asset and the undepreciated basis;
- o. No gain or loss from the sale of depreciated property shall be recorded as a credit or charge under the following conditions:
  - 1. The gain or loss is, or could be, processed against a depreciation account;
  - 2. The property is given in exchange as part of the price of a similar asset and the gain or loss is taken into account in determining the depreciation costs basis of the new asset;
  - 3. A loss occurs from the failure to maintain permissible insurance;
  - 4. Gains or losses resulting from mass or extraordinary sales, retirements, or other dispositions shall be considered on a case-by-case basis; and
  - 5. Gains or losses resulting from the sale or exchange of non-special education assets or those not qualifying for depreciation are not allowable; and
- p. The following shall be excluded from allowable depreciation expense:
  - 1. Cost of land;
  - 2. Donated assets or assets purchased with donated funds;
  - 3. Assets acquired through grants from federal, state or local governments, or from private organizations, foundations, or companies;
  - 4. Idle or excess assets; and
  - 5. Depreciation expense computed under methods other than the straight line method.

(ab) Equipment rental shall:

- (1) Be recorded in account 670; and
- (2) Include and comply with the following:
  - a. Costs of renting equipment, such as copiers; and
  - b. The renting of postage meters shall be included in account 730, postage.

(ac) Equipment maintenance and repairs shall:

- (1) Be recorded in account 680; and
- (2) Include costs of equipment repairs, and service maintenance contracts or agreements.

(ad) Advertising shall:

- (1) Be recorded in account 700; and
- (2) Include and comply with the following:
  - a. Advertising costs for employee recruitment only;
  - b. Other advertising costs shall not be allowed;

- c. The costs of media services such as a newspaper, magazines, radio resulting from the recruitment of personnel, the solicitation of bids for goods and services; and
  - d. All other advertising, public relations or community education costs which cannot be demonstrated to have direct benefit to the education program shall not be allowable and shall be recorded in a program cost center not included in the special education rate base.
- (ae) Printing shall:
- (1) Be recorded in account 710; and
  - (2) Include costs of printing forms, leaflets and brochures, if the costs are specifically related to programs funded by the department.
- (af) Telephone and communications shall:
- (1) Be recorded in account 720; and
  - (2) Include costs related to telephones, telegrams, and similar communications expenses.
- (ag) Postage and shipping shall:
- (1) Be recorded in account 730; and
  - (2) Include costs related to postage stamps, trucking, delivery, and rental of postage meters.
- (ah) Vehicle leasing, maintenance and repair shall:
- (1) Be recorded in account 741; and
  - (2) Include and comply with the following:
    - a. Vehicle lease expense for vehicles used for program purposes;
    - b. Copies of vehicle leases and registrations.
    - c. The purchase of a vehicle shall be depreciated; and
    - c. Cost related to vehicle maintenance and repair.
- (ai) Client and staff transportation shall:
- (1) Be recorded in account 742; and
  - (2) Include and comply with the following:
    - a. Costs of travel directly related to the school education program;
    - b. Costs of transportation to and from the home of a child with a disability to the school program shall be the responsibility of the local school district and shall be excluded from the tuition rate;
    - c. The agency shall be compensated for the lease, purchase, maintenance and use of vehicles provided when they are needed for an approved education program;
    - d. Transportation, lodging, subsistence and related items incurred by employees who are on official business incidental to a special education program;
    - e. Such costs shall be charged on an actual cost basis or per diem/mileage basis provided that the method chosen is consistently applied to each event;
    - f. Cost of mileage for the business use of private vehicles at a rate not to exceed the prevailing reimbursement rate per mile used by the State of New Hampshire;

- g. If vehicles are leased or rented and include so-called "Free Mileage", such mileage shall not be eligible for reimbursement;
  - h. Any portion of vehicle expense which is reimbursed through depreciation charges shall be excluded from the mileage reimbursement rate; and
  - i. Cost of gasoline for leased or purchased facility vehicles used for program purposes.
- (aj) Professional liability and bonding shall:
- (1) Be recorded in account 761; and
  - (2) Include all costs to meet the department's requirements for professional liability and bonding.
- (ak) Vehicle insurance shall:
- (1) Be recorded in account 762; and
  - (2) include all vehicle insurance costs.
- (al) Comprehensive property and liability insurance costs shall:
- (1) Be recorded in account 763; and
  - (2) Include and comply with the following:
    - a. Comprehensive property and liability and directors' and officers' insurance costs;
    - b. Comprehensive general liability insurance against all claims of bodily injury, death, and property damage or loss shall be in amounts of not less than \$250,000 per claim and \$1,000,000 per incident;
    - c. Fire and extended coverage insurance covering all property shall be in an amount not less than 80% of the whole replacement value of the property;
    - d. Self-insurance costs but only if the agency provides documentation to show that sufficient self-insurance coverage is maintained to guard the program against those losses which would have been normally covered if the agency had purchased the appropriate level of insurance;
    - e. Only employee group insurance plans shall be approved;
    - f. Costs resulting from losses not covered under deductible insurance policy provisions, contracted for and in keeping with sound business practice; and
    - g. Actual losses which could have been covered by permissible insurance shall be excluded.
- (am) Membership dues shall:
- (1) Be recorded in account 770; and
  - (2) Include and comply with the following:
    - a. Dues, memberships and subscriptions in civic, business, technical and professional organizations;
    - b. Costs shall be allowable only when the benefit from membership is related to the organization's special education programs, the cost is reasonable in relation to the value or benefits received, and the expense is not for membership in an organization which devotes a substantial part of its activities to influencing legislation;
    - c. The total allowable amount of department funds that may be used for this expense shall not exceed \$2,000; and

d. Any amount over \$2,000 shall be shown under non-special education funded programs.

(an) Interest expense shall:

- (1) Be recorded in account 780; and
- (2) Include and complying with the following:
  - a. Interest costs for the purchase or improvement of capital assets which have been approved;
  - b. Interest on loans for working capital that are directly related to cash flow deficiencies which are beyond the entity's ability to control;
  - c. The interest rate shall not exceed the prevailing rates at the time the loan was secured;
  - d. Interest charges shall not be at a rate in excess of what a borrower would pay at the time the loan was taken;
  - e. Interest charges for borrowing for land, buildings and working capital that is in excess of program requirements shall be excluded;
  - f. Working capital as used in this section shall mean a loan obtained to provide temporary cash in order to meet a current cash shortfall arising from time differences between expense and revenue cycles; and
  - g. The entity shall bear responsibility for providing documentation that working capital deficiencies were beyond its control.

(ao) Other expenditures shall:

- (1) Be recorded in account 800; and
- (2) Include any other program costs not included in any of the above line items.

(ap) Parent overhead shall:

- (1) Be recorded in account 900; and
- (2) Include and comply with the following:
  - a. Charges to an organization's programs from a parent or affiliated organization provided that the charges are defined as allowable costs and that the charges are allocated to all programs on the same basis; and
  - b. If a program or facility includes charges for general management, parent overhead charges shall not also be reimbursable.

(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.**

- (a) Tuition rates shall be set based on the agency's budget proposal which shall be submitted on those forms prescribed in Ed 1129.02. Deadline for submission of all prescribed forms shall be the first of April, annually.
- (b) Any adjustments to the agency's budget proposal shall be made by the department based solely upon these rules and evaluation of required budget materials and information.

- (c) Rates shall become effective on July first, and shall be set annually.
- (d) Once the department has established a final rate for an agency, no further adjustments shall be made to the rate(s) for the fiscal year in which the agency's budget proposal was submitted.
- (e) The department shall notify the agency by certified mail of the established rate(s).
- (f) The daily and annual rate(s) established through this process shall be the maximum reimbursement paid to the agency on a per-child basis.
- (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.
- (h) Any parent organization or related party providing services, facilities, or supplies to an agency submitting a budget proposal shall make available documentation including but not limited to invoices, leases, loan-notes, insurance policies supporting the related party costs. The related party costs shall be considered services for the purposes of establishing rates.
- (i) Each agency shall establish a chart of accounts reflecting the functions specified in (i) below and shall maintain accounting records in accordance with the chart.
- (j) All revenues and expenditures shall be assigned to the following functions:
  - (1) General Management;
  - (2) Fund Raising;
  - (3) Other non special education costs;
  - (4) Special education programs - Instruction;
  - (5) Special education programs - Room and Board costs;
  - (6) Special education programs - Occupational therapy;
  - (7) Special education programs - Physical therapy;
  - (8) Special education programs - Speech therapy; and
  - (9) Special education programs - Counseling.
- (k) Rates for out-of-state agencies shall be set at the rate established by the rate-setting authority in the state where the agency is located. In states where no rate-setting authority exists, the department shall establish the rate payable to the agency through application of these rules. Requests for rate changes for out-of-state agencies shall be accompanied by a copy of the revised official rate notification from the rate-setting authority in the state where the agency operates.
- (l) Each agency shall submit the following information:
  - (1) A complete rate setting budget proposal as specified in Ed 1129.02(c)(1)-(6); and
  - (2) Actual data from the previous year or years to allow the department to compare the budget to actual expenditures for the year or years.
- (m) The agency shall submit a copy of the audited financial statements and special report made by an independent auditor as specified in Ed 1129.18. The actual data and independent auditors' reports shall be due within 120 days of completion of the fiscal year. The financial statements shall at a minimum contain supplemental schedules using the same line items and functions used in the budget submitted with the rate request.

- (n) A semi-annual Summary of Revenues and Expenditures report shall be prepared using the same line items and functions as used in preparation of the budget. The first summary shall contain information for the first 6 months of the fiscal year or years and shall be submitted with the rate setting proposal.

**Ed 1129.10 Allowable Costs.**

- (a) To be considered an allowable special education cost the following criteria shall be met:
- (1) The cost shall be reasonable within the definition of Ed 1129.12;
  - (2) The cost shall have a direct relationship to the policies and procedures of the organization;
  - (3) The cost shall be recognized by and reported in accordance with generally accepted accounting principles;
  - (4) The cost shall be supported by documentation including but not limited to:
    - a. Invoices;
    - b. Leases;
    - c. Loan-notes;
    - d. Insurance policies; and
    - e. Service contracts; and
  - (5) The cost shall pertain and be readily identifiable to an activity, function or program relative to the provision of special education and related services.
- (b) If personal vehicles or living accommodations are prerequisites for certain positions such expenses shall be approved.

**Ed 1129.11 Non-Allowable Costs.** The following shall not be allowed as special education costs:

- (a) Political and charitable contributions;
- (b) Investment expenses which are in excess of investment income;
- (c) Amusement of facility or program officers or employees or for non-organization related activities, entertainment, and any related costs such as meals, lodging, rentals, transportation and gratuities;
- (d) Ordinary living expenses which are normally assumed by parents of children attending public day schools;
- (e) Fees and expenses of trustees and directors;
- (f) Fines and penalties which are imposed by a court and/or which result from violations of or the failure to comply with federal, state, county or municipal law, rule, or regulation;
- (g) Bad debts, actual or estimated, resulting from uncollectible accounts or other claims, and related collection and legal costs;
- (h) Contributions to a contingency fund or any similar fund except for an unemployment reserve fund;
- (i) Advertising expenses except for personnel recruitment, bids for goods and services, | and medical services;
- (j) Organized fund raising expenses in excess of revenue received and applied to department programs;

- (k) The following organized fund raising costs:
  - (1) Solicitations of gifts;
  - (2) Bequests;
  - (3) Organized fund raising;
  - (4) Financial campaigns; and
  - (5) Endorsement drives.
- (l) Voluntary payments and contributions such as payments in lieu of real estate taxes;
- (m) Any expenses of the organization which are not reasonable as defined in Ed 1129.12 or unrelated to required special education or necessary related services;
- (n) Management fees or payments included in lease or rental agreements between parties who are related as defined in Ed 1129.01(k);
- (o) Reimbursement for expenditures or depreciation of personally owned or leased assets excluding motor vehicles;
- (p) Income and business profits taxes;
- (q) Bonuses of any nature conveyed and/or paid;
- (r) Charges by parties who are related as defined in Ed 1129.01(k) for services, facilities, and supplies furnished to the operating entity if such charges exceed the cost to the related party for providing the services, facilities or supplies;
- (s) Charges for investment counsel, staff and similar expenses incurred solely to enhance income from investments;
- (t) All personal expenses such as:
  - (1) Personal travel expenses;
  - (2) Laundry charges;
  - (3) Beverage charges;
  - (4) Gift certificates to staff and vendors;
  - (5) Flowers or parties for departing staff;
  - (6) Holiday parties;
  - (7) Repairs on a personal vehicle; and
  - (8) Rental expenses of personal apartments.
- (u) Medical services and supplies, other than those cited in Ed 1129.08(z);
- (v) Medical supplies or costs of medical supplies provided by the agency's own staff; and
- (w) Salaries for positions that are vacant for 2 consecutive years shall not be used in the calculation of the rate(s).

**Ed 1129.12 Reasonable Costs.**

- (a) The reasonableness of specific costs shall be determined by the department by applying (b), below.
- (b) Costs shall be allowed provided they can be justified by one or more of the following criteria:
  - (1) The cost shall be of a type necessary for the operation of the organization or performance of an activity or function of the program;
  - (2) The cost shall be consistent with accepted sound business practices, arms length bargaining, federal and state law, rules of the State Board of Education, or generally accepted accounting principles;
  - (3) The cost request shall not deviate by more than 5% from the average cost incurred in facilities and/or circumstances which are similar;

- (4) Year to year cost increase requests shall not deviate by more than one percentage point from those cost increases 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; and
- (5) The cost request can be explained by a minimum 10% fluctuation in school enrollment from year to year.

**Ed 1129.13 Direct Costs.**

- (a) Costs identified specifically with activities required for operation of an approved facility, function or program shall be treated as direct costs.
- (b) If costs are not allowable as special education costs, they shall be treated as direct costs and allocated with their share of the organization's indirect costs when they represent activities which:
  - (1) Include the salaries of non-executive personnel;
  - (2) Occupy space; or
  - (3) Benefit from the organization's direct costs, including, but not limited to, the types of costs listed in Ed 1129.16(c).

**Ed 1129.14 Indirect Costs.**

- (a) Indirect costs shall be allocated to all of the organization's activities pursuant to Ed 1129.16.
- (b) Indirect costs shall include, but not be limited to:
  - (1) Salaries and expenses of executives;
  - (2) Expenses for accounting;
  - (3) Costs of operating and maintaining facilities;
  - (4) Depreciation allowances on buildings and equipment; and
  - (5) General administration expenses.

**Ed 1129.15 Basis of Accounting.**

The system for reporting special education costs shall be based on the accrual basis of accounting.

**Ed 1129.16 Method of Allocation.**

- (a) When an organization has only one major purpose or when all its major functions benefit from its indirect costs to approximately the same degree, the direct allocation method shall be used. Under the direct allocation method all costs except general administration shall be treated as direct costs.
- (b) Costs shall be separated into 9 basic functions as outlined in Ed 1129.09(j).
- (c) Costs which directly benefit multiple final cost objectives of an organization and include such costs as depreciation, operation and maintenance of facilities, telephone and utilities shall be prorated individually as direct costs of each function using a base appropriate to the costs being prorated.
- (d) Indirect costs consisting exclusively of general administration and general expenses shall be distributed to the organization's functions using total direct costs of each activity as a base.



- (e) Organizations proposing to treat indirect costs in a manner different from (a) and (b) above shall submit a waiver request to the department which is:
  - (1) In writing;
  - (2) Signed by the person who has prepared the rate setting proposal; and
  - (3) Submitted not later than 120 days prior to the submission of a new rate proposal.
- (f) The department shall approve all requests received pursuant to (e) above unless the request(s) violates any requirement of Ed 1129 or generally accepted accounting principles.

**Ed 1129.17 Form 1129.11: Rate Computations for Instruction, Room and Board, Occupational Therapy, Physical Therapy, Speech Therapy and Counseling.**

- (a) On Form 1129.11, the agency shall calculate the rate for a special education program as follows:
  - (1) The agency shall compute the net expenses of the program;
  - (2) The net expenses of the program shall be equal to the total expenses from Form 1129F less the total revenues from Form 1129E;
  - (3) The agency shall multiply the program capacity rate by 90%;
  - (4) The agency shall compute the annual rate by dividing the net expenses of the program by 90% of the program capacity rate; and
  - (5) The agency shall compute the daily rate by dividing the annual rate by the length of the program year.
- (b) On Form 1129.11, the agency shall calculate the rates for special education therapies as follows:
  - (1) The agency shall compute the net expenses of the program;
  - (2) The net expenses of the program shall be equal to the total expenses from Form 1129F less the total revenues from Form 1129E;
  - (3) The agency shall record the units of service available as reported on Form 1129D; and
  - (4) The agency shall compute the therapy rate by dividing the net expenses of the program by the units of service available.

**Ed 1129.18 Audit Requirements.**

- (a) Audits shall be made in accordance with the U.S. Office of Management and Budget Circular A-133, Titled Audits of States, Local Governments and Non-Profit Organizations which was published in the Federal Register June 29, 1997.
- (b) Audits shall include an examination of the systems of internal control, systems established to insure compliance with laws and rules affecting the expenditure of LEA funds, and financial transactions and accounts.
- (c) The examinations required by (b), above, shall be used to determine whether:
  - (1) There is effective control over and proper accounting for revenues, expenses, assets and liabilities;
  - (2) The financial statements are presented fairly in accordance with generally accepted accounting principles;
  - (3) The department financial reports contain accurate and reliable financial data; and
  - (4) LEA funds are being expended in accordance with Ed 1129.

- (d) In order to accomplish the above purposes cited in (c) above, a representative number of charges to special education programs shall be tested to determine whether the charges:
- (1) Are required for the proper administration of the program;
  - (2) Were given consistent accounting treatment and applied uniformly to all activities of the organization;
  - (3) Were net of applicable credits;
  - (4) Did not include costs properly chargeable to the organization's other programs;
  - (5) Were properly recorded with the correct amount and date and supported by source documentation; and
  - (6) Were allocated equitably to benefiting activities, including non-special education activities.
- (e) Audits shall be made annually and include:
- (1) Financial statements, including footnotes, of the organization;
  - (2) The auditors' comments on the financial statements which shall:
    - a. Identify the statements examined and the period covered;
    - b. Identify the various special education programs for which a rate was set and the amounts of LEA funds received;
    - c. State that the audit was done in accordance with Ed 1129.18;
    - d. Express an opinion as to whether the financial statements are fairly presented in accordance with generally accepted accounting principles, but if an unqualified opinion cannot be expressed then the nature of the qualification shall be stated; and
    - e. Comment on the accuracy and completeness of the department financial reports, including an expression of negative assurance with respect to compliance with Ed 1129.
- (f) Work papers and reports shall be retained for a minimum of 3 years from the date of the audit report unless the auditor is notified in writing by the department of the need to extend the retention period. The work papers shall be made available upon request to the department.

**Ed 1129.19 Rate Notification.**

- (a) The department shall notify the agency by certified mail of the tentative rate(s) and the notification shall include any schedule of adjustments used in the determination of the tentative rate(s).
- (b) The agency shall review the notification and schedule of adjustments. If the agency has questions, problems, or both, with the tentative rate(s) the agency shall request a meeting with the department's rate setter within 14 working days of receipt of the notification letter from the department which states the tentative rate(s).
- (c) The request for a meeting with the department's rate setter shall state the specific reasons why the agency believes there was an error in the tentative rate(s).
- (d) Unless a written request for a meeting with the department's rate setter is received by the department within 14 working days of the agency's receipt of the letter or other written notification from the department which states the tentative rate(s), the tentative rate(s) shall become final.

- (e) If the agency requests a meeting with the department's rate setter concerning the tentative rate(s) and the results of that meeting do not satisfactorily resolve the concern(s) of the agency, the agency shall be informed by the department's rate setter of his/her right to a review pursuant to Ed 1129.20.
- (f) During any review held pursuant to Ed 1129.20, the agency's most recent approved final rate(s) shall remain in effect for billing purposes. If the agency has not had a previously approved final rate(s) adopted by the department, the agency may bill-for-services at the tentative rate(s).

**Ed 1129.20 Hearing Mechanism for Special Education Rates.**

- (a) A private provider of special education making a request for reconsideration of the rates established by the department shall adhere to the procedures set forth in (b) - (d) below.
- (b) A request for reconsideration shall be filed within 14 days of the date of the receipt of the notification letter which states the rate(s) and which is sent by the state to the agency.
- (c) A request for reconsideration shall be made in writing, shall be signed by a person duly authorized by the agency to submit the request for reconsideration and shall be filed with the Director, Division of Instruction, New Hampshire Department of Education.
- (d) The request for reconsideration shall state the specific reasons why the agency believes there was an error in the original determination.
- (e) The director shall render a decision in writing regarding the request within 14 days of the date on which the letter is received by the state. If the director determines that the request for reconsideration reasons are vague, he/she shall require that the agency file a more detailed statement of request for reconsideration. In such case, the requirements specified in (b) - (d) above shall apply to any such statements.
- (f) If the director agrees with any or all portions of the agency's request for reconsideration, the department's rate setter shall recalculate the agency's rate(s) accordingly.
- (g) If the director does not agree with any or all portions of the agency's request for reconsideration, the director shall notify the agency of his/her decision pursuant to the requirements set forth in (e) above.
- (h) Agencies who wish to appeal the decision of the director pursuant to Ed 1129.20(e) shall do so by filing an appeal with the Commissioner of Education, New Hampshire Department of Education.
- (i) The appeal shall be made in writing, shall be signed by a person duly authorized by the agency to submit the appeal and shall state specific reasons for the appeal.
- (j) The appeal shall be filed within 14 days of the date of the notification letter which states the decision of the director which is sent by the department to the agency.
- (k) The appeal shall be heard under RSA 541-A:31-36 by the Commissioner of Education or his/her designee and in accordance with Ed 200.

**541-A:31 Availability of Adjudicative Proceeding; Contested Cases; Notice, Hearing and Record. –**

- I. An agency shall commence an adjudicative proceeding if a matter has reached a stage at which it is considered a contested case or, if the matter is one for which a provision of law requires a hearing only upon the request of a party, upon the request of a party.
- II. An agency may commence an adjudicative proceeding at any time with respect to a matter within the agency's jurisdiction.
- III. In a contested case, all parties shall be afforded an opportunity for an adjudicative proceeding after reasonable notice. The notice shall include:
  - (a) A statement of the time, place, and nature of the hearing.
  - (b) A statement of the legal authority under which the hearing is to be held.
  - (c) A reference to the particular sections of the statutes and rules involved.
  - (d) A short and plain statement of the issues involved. Upon request an agency shall, when possible, furnish a more detailed statement of the issues within a reasonable time.
  - (e) A statement that each party has the right to have an attorney present to represent the party at the party's expense.
  - (f) For proceedings before an agency responsible for occupational licensing as provided in paragraph VII-a, a statement that each party has the right to have the agency provide a certified shorthand court reporter at the party's expense and that any such request be submitted in writing at least 10 days prior to the proceeding.
- IV. Opportunity shall be afforded all parties to respond and present evidence and argument on all issues involved.
- V.
  - (a) Unless precluded by law, informal disposition may be made of any contested case, at any time prior to the entry of a final decision or order, by stipulation, agreed settlement, consent order or default.
  - (b) In order to facilitate proceedings and encourage informal disposition, the presiding officer may, upon motion of any party, or upon the presiding officer's own motion, schedule one or more informal prehearing conferences prior to beginning formal proceedings. The presiding officer shall provide notice to all parties prior to holding any prehearing conference.
  - (c) Prehearing conferences may include, but are not limited to, consideration of any one or more of the following:
    - (1) Offers of settlement.
    - (2) Simplification of the issues.
    - (3) Stipulations or admissions as to issues of fact or proof, by consent of the parties.
    - (4) Limitations on the number of witnesses.
    - (5) Changes to standard procedures desired during the hearing, by consent of the parties.
    - (6) Consolidation of examination of witnesses by the parties.
    - (7) Any other matters which aid in the disposition of the proceeding.
  - (d) The presiding officer shall issue and serve upon all parties a prehearing order incorporating the matters determined at the prehearing conference.
- VI. The record in a contested case shall include all of the following that are applicable in that case:
  - (a) Any prehearing order.
  - (b) All pleadings, motions, objections, and rulings.
  - (c) Evidence received or considered.
  - (d) A statement of matters officially noticed.
  - (e) Proposed findings and exceptions.
  - (f) Any decision, opinion, or report by the officer presiding at the hearing.
  - (g) The tape recording or stenographic notes or symbols prepared for the presiding officer at the hearing, together with any transcript of all or part of the hearing considered before final disposition of the proceeding.
  - (h) Staff memoranda or data submitted to the presiding officer, except memoranda or data prepared and submitted by agency legal counsel or personal assistants and not inconsistent with RSA 541-A:36.
  - (i) Matters placed on the record after an ex parte communication.

- VII. The entirety of all oral proceedings shall be recorded verbatim by the agency. Upon the request of any party or upon the agency's own initiative, such record shall be transcribed by the agency if the requesting party or agency shall pay all reasonable costs for such transcription. If a transcript is not provided within 60 days of a request by a person who is a respondent party in a disciplinary hearing before an agency responsible for occupational licensing, the proceeding shall be dismissed with prejudice. Any party may record an oral proceeding, have a transcription made at the party's expense, or both, but only the transcription made by the agency from its verbatim record shall be the official transcript of the proceed
- VII-a. At the request of a party in any oral proceeding involving disciplinary action before an agency responsible for occupational licensing except for an emergency action under RSA 541-A:30, III, the record of the proceeding shall be made by a certified shorthand court reporter provided by the agency at the requesting party's expense. A request shall be submitted to the agency in writing at least 10 days prior to the day of the proceeding.
- VIII. Findings of fact shall be based exclusively on the evidence and on matters officially noticed in accordance with RSA 541-A:33, V.

**541-A:32 Intervention. –**

- I. The presiding officer shall grant one or more petitions for intervention if:
- (a) The petition is submitted in writing to the presiding officer, with copies mailed to all parties named in the presiding officer's notice of the hearing, at least 3 days before the hearing;
  - (b) The petition states facts demonstrating that the petitioner's rights, duties, privileges, immunities or other substantial interests may be affected by the proceeding or that the petitioner qualifies as an intervenor under any provision of law; and
  - (c) The presiding officer determines that the interests of justice and the orderly and prompt conduct of the proceedings would not be impaired by allowing the intervention.
- II. The presiding officer may grant one or more petitions for intervention at any time, upon determining that such intervention would be in the interests of justice and would not impair the orderly and prompt conduct of the proceedings.
- III. If a petitioner qualifies for intervention, the presiding officer may impose conditions upon the intervenor's participation in the proceedings, either at the time that intervention is granted or at any subsequent time. Such conditions may include, but are not limited to:
- (a) Limitation of the intervenor's participation to designated issues in which the intervenor has a particular interest demonstrated by the petition.
  - (b) Limitation of the intervenor's use of cross-examination and other procedures so as to promote the orderly and prompt conduct of the proceedings.
  - (c) Requiring 2 or more intervenors to combine their presentations of evidence and argument, cross-examination, and other participation in the proceedings.
- IV. Limitations imposed in accordance with paragraph III shall not be so extensive as to prevent the intervenor from protecting the interest which formed the basis of the intervention.
- V. The presiding officer shall render an order granting or denying each petition for intervention, specifying any conditions and briefly stating the reasons for the order. The presiding officer may modify the order at any time, stating the reasons for the modification.

**541-A:33 Evidence; Official Notice in Contested Cases. –**

- I. All testimony of parties and witnesses shall be made under oath or affirmation administered by the presiding officer.
- II. The rules of evidence shall not apply in adjudicative proceedings. Any oral or documentary evidence may be received; but the presiding officer may exclude irrelevant, immaterial or unduly repetitious evidence. Agencies shall give effect to the rules of privilege recognized by law. Objections to evidence offered may be made and shall be noted in the record. Subject to the foregoing requirements, any part of the evidence may be received in written form if the interests of the parties will not thereby be prejudiced substantially.
- III. Documentary evidence may be received in the form of copies or excerpts if the original is not readily available. Upon request, parties shall be given an opportunity to compare the copy with the original.
- IV. A party may conduct cross-examinations required for a full and true disclosure of the facts.

- V. Official notice may be taken of any one or more of the following:
- (a) Any fact which could be judicially noticed in the courts of this state.
  - (b) The record of other proceedings before the agency.
  - (c) Generally recognized technical or scientific facts within the agency's specialized knowledge.
  - (d) Codes or standards that have been adopted by an agency of the United States, of this state or of another state, or by a nationally recognized organization or association.
- VI. Parties shall be notified either before or during the hearing or by reference in preliminary reports or otherwise of the material noticed, including any staff memoranda or data, and they shall be afforded an opportunity to contest the material so noticed. The agency's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence.

**541-A:34 Examination of Evidence by Agency.** – If a majority of the officials of the agency who are to render the final decision in a contested case have not heard the case or read the record, the decision, if adverse to a party to the proceeding other than the agency itself, shall not be made until a proposal for decision is served upon the parties and an opportunity is afforded to each party adversely affected to file exceptions and present briefs and oral argument to the officials who are to render the final decision. The proposal for decision shall contain a statement of the reasons for the decision and shall set forth each issue of fact or law necessary to the proposed decision, prepared by the person who conducted the hearing or one who has read the record. The parties by written stipulation may waive compliance with this section.

**541-A:35 Decisions and Orders.** – A final decision or order adverse to a party in a contested case shall be in writing or stated in the record. A final decision shall include findings of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings. If, in accordance with agency rules, a party submitted proposed findings of fact, the decision shall include a ruling upon each proposed finding. Parties shall be notified either personally or by mail of any decision or order. Upon request, a copy of the decision or order shall be delivered or mailed promptly to each party and to a party's recognized representative.

**541-A:36 Ex Parte Communications.** – Unless required for the disposition of ex parte matters authorized by law, officials or employees of an agency assigned to render a decision or to make findings of fact and conclusions of law in a contested case shall not communicate, directly or indirectly, in connection with any issue before the agency, with any person or party, except upon notice and opportunity for all parties to participate. This notice requirement shall not apply to:

- I. Communications between or among agency personnel, or between the agency and legal counsel.
- II. Communications between or among the presiding officer and one or more personal assistants.

**Ed 200 - RULES OF PRACTICE AND PROCEDURE**

**Ed 1129.21 The Joint Rate Setting Process.**

- (a) The department shall jointly administer the joint rate setting process with the department of health and human services pursuant to the requirements of Ed 1129.21, Ed 1129.22 and Ed 1129.23.
- (b) An agreement signed by the commissioner of the department of health and human services and the commissioner of the Department of Education in March of 1999, "Agreement Between the New Hampshire Department of Education and the New Hampshire Department of Health and Human Services Relative to Students with Disabilities Ages Birth to Twenty One," shall be used as the basis for the administration of the joint rate setting process.
- (c) When rates are jointly set by the Department of Health and Human Services and the department in accordance with RSA 170-G:4, XVII and XVII-a, any conflicts identified by the state agencies existing between rate setting rules of the department of health and human services and the department shall be resolved by both state agencies applying the stricter of the 2 sets of rules.

**RSA 170-G:4, XVII.** Establish rates for all services, placements and programs which are paid for by the department pursuant to RSA 169-B:40, 169-C:27, 169-D:29, and any services required to be provided by the department pursuant to paragraph II of this section. When educational aspects are present in any service, placement or program subject to rate-setting by the department, rates for the educational component shall be addressed jointly by the department and the Department of Education.

**XVII-a.** Review annually the rates established for the purchase of services, placements and programs pursuant to paragraph XVII of this section. This annual review shall consider the effects of the established rates on current costs, quality and availability of services.

**Ed 1129.22 Joint Rate Notification.**

- (a) The department and the Department of Health and Human Services shall both notify the agency by certified mail of the tentative rate(s) and the notification shall include any schedule of adjustments used in the determination of the tentative rate(s).
- (b) The agency shall review the notification and schedule of adjustments. If the agency has questions, problems, or both, with the tentative rate(s) the agency shall request a joint meeting with the department's rate setter and the department of health and human services rate setter within 14 working days of receipt of the notification letter from the department and Department of Health and Human Services which states the tentative rate(s).
- (c) The request for a joint meeting with the department's rate setter and the department of health and human services rate setter shall state the specific reasons why the agency believes there was an error in the tentative rate(s).
- (d) Unless a written request for a meeting is received by the department and the Department of Health and Human Services within 14 working days of the agency's receipt of the notification letter from the department and the department of health and human services which states the tentative rate, the tentative rate(s) shall become final.
- (e) If the agency requests a joint meeting with both of the state's rate setters concerning the tentative rate(s) and the results of that meeting do not satisfactorily resolve the concern(s) of the agency, the agency shall be informed by both rate setters of his/her right to review pursuant to rules of the Department of Health and Human Services and the department.
- (f) During any review held pursuant to rules of the department of health and human services or the department, the agency's most recent approved final rate(s) shall remain in effect for billing purposes. If the agency has not had a previously approved final rate(s) adopted by the department and the department of health and human services, the agency may bill for services at the tentative rate(s).

**Ed 1129.23 Hearing Mechanism for Jointly Set Special Education Rates.**

- (a) A private provider of special education services making a request for reconsideration of the rates established jointly by the department and the department of health and human services shall adhere to the procedures set forth in (b) - (d) below.
- (b) A request for reconsideration made under (c) below shall be filed within 14 days of the date of receipt of the notification letter which states the rate(s) and which is sent by both state agencies to the private provider.
- (c) A request for reconsideration shall be made in writing, shall be signed by a person duly authorized by the agency to submit the request for reconsideration and shall be filed with the Director, DCYF and the Director, Division of Instruction, New Hampshire State Department of Education or their designees.

- (d) The request for reconsideration shall state the specific reasons why the agency believes there was an error in the original determination.
- (e) Both directors or their designees shall render a joint decision in writing regarding the request within 14 working days of the date on which the letter is received by both state agencies. If the directors or their designees determine that the request for reconsideration reasons are vague, they shall require that the private provider file a more detailed statement of request for reconsideration. In such case, the requirements specified in (b) - (d) above shall apply to any such statements.
- (f) If the directors agree with any or all portions of the agency's request for reconsideration, both state rate setters shall recalculate the agency's rates accordingly.
- (g) If the directors disagree with each other, and the agency wishes to pursue the issue, the agency shall appeal under RSA 541-A:31-36 as provided in (l) below.

**RSA 541-A:31-36 – See Ed 1129.20**

**Page #23**

- (h) If the directors do not agree with any or all portions of the agency's request for reconsideration, the directors shall notify the agency of their decision pursuant to the requirements set forth in (e) above.
- (i) Agencies who wish to appeal the decision of both directors pursuant to Ed 1129.23(e) shall do so by filing an appeal with the commissioner, Department of Education, and the Commissioner, Department of Health and Human Services.
- (j) The appeal shall be made in writing, shall be signed by a person duly authorized by the agency to submit the appeal and shall state specific reasons for the appeal.
- (k) The appeal shall be filed within 14 days of the date of the letter or other written notification which states the decision of the directors or their designees which is sent by the department and DCYF to the agency.
- (l) The appeal shall be heard under RSA 541-A:31-36 by the Commissioner of Education and the Commissioner of the Department of Health and Human Services or their designees in accordance with Ed 200 and He-C 200, provided that, if such rules are in conflict, the stricter rules shall apply.