

NH Standards in Excess Chart

The following chart was created pursuant to [RSA 186-C: 16-c](#), and documents all of the proposed special education standards 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 standard number which is in excess, the nature of the standard 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 standard, 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 standard creates a requirement which is not a “policy or procedure” or clarification 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 standards will not be considered as being “in excess.” In areas where the standard has been created as a point of clarification of federal regulation, where the general applicability adopted is to implement, interpret or make specific a statute enforced or administered, this will not be considered “in excess.”

Standard Number	Nature of the Standard	State Minimum Requirement Exceeded? Yes/No	Federal Minimum Requirement Exceeded? Yes/No	Language in the Standard	Reason for Exceeding
Ed 1102.01(f)	Definitions Adult student	Yes, there is no comparable language in RSA 186-C	Yes, there is no comparable federal language for emancipated minor	Means a child with a disability who is (1) 18 years of age or older but less than 21 years of age and not adjudicated incompetent; or (2) emancipated minor pursuant to state law	The State Standard adds the requirement that an adult student could also be an emancipated minor which adds a NH process to the definition of adult student.
Ed 1102.01(j)	Approved program	No RSA 186-C:2	Yes, there is no comparable federal language for program approval of special education programs	Means a program of special education as defined in RSA 186-C:2,II	NH has a process for approving special education programs for students with disabilities. NH Standards developed pursuant to RSA 186-C:2,II

Ed 1102.01 (r)	Child with acquired brain injury	Yes, there is no comparable language in RSA 186-C	Yes, there is no comparable federal language  Additional disability category not identified in IDEA	Definition of Child with acquired brain injury	State Board felt that in addition to Traumatic brain injury there should be a definition for Child with acquired brain injury to distinguish between how such an injury is acquired. This definition adds an additional disability category that is not in the federal regulations.
Ed 1102.01(t)	Child with a disability	No RSA 186-C:2, I	Yes, as 34 CFR 300.8 lists the federal disability categories.	Means (1) a child with a disability as defined in 34 CFR 300.8 who is 3 years of age or older but less than 21 years of age and who has not yet received a regular high school diploma as provided in 34 CFR 300.102; (2) A child with a developmental delay as defined in Ed 1102.01(s) above; and (3) A child with acquired brain injury as defined in Ed 1102.01(r) above.	Number (3) referring to a child with acquired brain injury as part of the definition causes the Standard to be in excess as it refers to an additional category of disability that is not defined in federal regulation.
Ed 1102.01(u)	Child eligible for special education but not currently receiving services	Yes, there is no comparable language in RSA 186-C	Yes, there is no comparable federal language	A child who has been evaluated and determined to be a child with a disability who is not currently receiving special education services due to one or more of the following factors: (1) the child is at least 2.5 years of age and has been determined to be eligible for	This Standard creates a process outside of IDEA which makes it excessive.

				special education; (2) the child's current condition prevents the delivery of special education services; (3) the child's parent, legal guardian, surrogate parent, or adult student has refused services; (4) the child has dropped out of school; or (5) the child is no longer attending school.	
Ed 1102.01(aa)	Curriculum for preschoolers	Yes, there is no comparable language in RSA 186-C	Yes, there is no comparable federal language Federal regulation uses preschool activities not curriculum	Means all of the organized educational activities, experiences, or both that are offered within the early childhood program to address all aspects of development and to promote meaningful learning experiences regarding preschoolers, their families and their community.	This Standard requires a higher level of curriculum when the federal regulations only require preschool activities.
Ed 1102.02(n)	Evaluation process	Yes, there is no comparable language in RSA 186-C	Yes, there is no comparable federal language	Means the completion of initial evaluations, reevaluations and assessments, a written summary report, and a meeting of the IEP team to review the results of the evaluations and assessments. When the purpose of the meeting is to determine eligibility for special education and related services, the evaluation process also includes determination of eligibility.	The NH evaluation process includes a written summary report which is not required in federal regulation.

Ed 1102.02(v)	Functionally blind	No  Definition in RSA 186-c:2, VI	Yes, there is no comparable federal language	RSA provides definition of functionally blind based on certain criteria	Standard developed in response to the RSA and need to define functionally blind in our state.
Ed 1102.03(b)	Health evaluation	Yes, there is no comparable language in RSA 186-C	Yes, there is no comparable federal language	Means an evaluation that provides the IEP team with information on the child's physical condition and may include but is not limited to (1) a physical assessment, health screening, or both; (2) a review of a child's medical history; (3) classroom observations of the child with health-related concerns; and (4) identification of health barriers to learning as determined by the IEP team.	This definition is a process as opposed to a definition. Provides additional information to the IEP team for determination.
Ed 1102.04(q)	Qualified examiner	Yes, there is no comparable language in RSA 186-C	Yes, there is no comparable federal language	Means a person licensed or certified in the state in which the evaluation is performed, who performs a formal diagnostic assessment in the area of disability in which the person is qualified to perform the assessment as set forth in Ed 1107.04, Qualified Examiners.	Standard provides for the qualifications of an examiner. Federal regulation does not require this level.

Ed 1102.05(h)	Specialist in the assessment of intellectual functioning	Yes, there is no comparable language in RSA 186-C	Yes, there is no comparable federal language	Means a person certified to administer certain individualized tests by the Bureau of Credentialing of the department in accordance with Ed 500	This is a NH credential which makes it excessive.
Ed 1103.01(b)	Defining paraprofessional as "other individual"	Yes, there is no comparable language in RSA 186-C	Yes 34 CFR 300.321 does not list those who would be considered "other individuals"	Paraprofessionals shall be considered under the category "other individuals"	State Board adopted this language since federal regulation does not identify what roles are considered "other individuals" in the special education process.
Ed 1103.01(c)	IEP team members	Yes, there is no comparable language in RSA 186-C	Yes 34 CFR 300.321 does not include representative from a state agency or GAL	A representative of DCYF and Guardian ad Litem are considered 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	Yes, there is no comparable language in RSA 186-C	Yes 34 CFR 300.321 does not include an individual knowledgeable in vocational education	The language allows for an individual knowledgeable about vocational education to be added to the IEP team where vocational or career and technical education programs are being considered.	NH includes vocational or career technical education members as part of the IEP team which is not required by federal law.

Ed 1103.01(e)	IEP Team 72-hour notice for excusal	Yes, there is no comparable language in RSA 186-C	Yes, there is no comparable federal language for amount of time	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. Language added as result of public comment.
Ed 1103.02(a)	Written notice received by parent no fewer than 10 days before IEP meeting	Yes, there is no comparable language in RSA 186-C	Yes, there is no comparable federal language	(a)LEA shall ensure that the parent or parents of the child with a disability receive a written notice no fewer than 10 days before an IEP meeting, 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 standard clarifying “early enough” language in 300.322(a)(1) based on comment in Federal Register. The timeline of 12 days was added to allow for the district to have a timeline which is in excess.
Ed 1103.02(b)	Written notice of manifestation determination meeting	Yes, there is no comparable language in RSA 186-C	Yes  34 CFR300.530(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 1103.02(d)	Waive of notice requirements	Yes, there is no comparable language in RSA 186-C	Yes, there is no comparable federal language	This allows parents to waive being provided the 10-day meeting notice.	State Board felt that there should be a standard that in certain circumstances, the team should have the option to a meet in less than 10 days.

Ed 1106.01(c)	Referral of a child for special education	Yes, there is no comparable language in RSA 186-C	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	Yes, there is no comparable language in RSA 186-C	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	Yes, there is no comparable language in RSA 186C	No comparable federal language. Federal IDEA only imposes timeline of 60 days for the completion initial evaluations	(c) 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	Yes, there is no comparable language in RSA 186-C	Yes  34 CFR 300.303(b)(2) reevaluation must occur at least once every 3 years, unless the parent and the public agency agree that a reevaluation is unnecessary.	For reevaluations, evaluation process completed within 60 days after receipt of parental consent or at the conclusion of any extension.	The State Board felt that the timeline for reevaluations should be quantified and have the opportunity for an extension.

Ed 1107.01(e)	Reevaluation timeline extension	Yes, there is no comparable language in RSA 186-C	Yes, there is no comparable federal language	60 day time limit for reevaluations may be extended not to exceed 30 days.	State Board felt that a timeline was necessary for a reevaluation extension
Ed 1107.01(f)	Written Summary Report	Yes, there is no comparable language in RSA 186-C	Yes, there is no comparable federal language regarding provision of a written summary	Requirement to provide a written summary report by child's third birthday.	State Board felt that the parents would be fully informed of assessments if supplied a written summary of what the assessments were and results
Ed 1107.01(g)	Referral y court	No RSA 169-D:18	Yes, there is no comparable federal language	Referral to special education evaluation process by court.	Clarifying the process of referral as it pertains to a court recommendation for special education. Required by state law.
Ed 1107.01(h)	Requirements for diagnostic information for vocational assessments	Yes, there is no comparable language in RSA 186-C	Yes, there is no comparable federal language	Requiring diagnostic information for vocational assessments.	State Board felt that a standard for how vocational information would be assessed was important.
Ed 1107.04(b)	Required assessments for suspected disabilities	Yes, there is no comparable language in RSA 186-C	Yes 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 by listing the personnel trained and knowledgeable in administering evaluations.



Ed 1107.05(a)	Evaluation Report	Yes, there is no comparable language in RSA 186-C	Yes 34 CFR 300.306 only requires a copy of the evaluation report and documentation of determination of eligibility be sent to the parent at no cost.	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	Yes, there is no comparable language in RSA 186-C	Yes, there is 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 1109.01(a) (2) (3) (5) (6) (9) (10)	Elements of the IEP	Yes  RSA 186-C:16(VI)	Yes  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 IEP or names of those providers be listed in the IEP (5) Language requires signature of the parent or, where appropriate, student, and representative of the LEA stating approval of the provisions in the IEP	RSA-C: 16 (VI) rule-making gives authority to the State board of education to adopt standards regarding length of school year for children with disabilities.  State Board believes parents should have consent abilities for elements of and changes to their child's IEP.  RSA 186-C: 7, III requires

				<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 measured 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>objectives and benchmarks.</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. The State Board believes this is in the best interest of the child.</p>
Ed 1109.02 (a) (b) (d)	Transportation	Yes  Saf-C 1307 NH Department of Safety law	Yes, there is 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 standard)</p> <p>(b) Requires that the drivers of such vehicles be licensed under NHDOS's standards</p> <p>(d) Requires contracted drivers to follow (a)-(b).</p>	State Board adopted this language in response to Department of Safety standards Saf-C 1307.
Ed 1109.03(e)	When an IEP Is in Effect; IEP Meetings; Development, Review, and Revision of an IEP; Transition Services	Yes, there is no comparable language in RSA 186-C	Yes  34 CFR 300.324 does not specify length of IEP but rather a review periodically, but not less than annually	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	Yes, there is no comparable language in RSA 186-C	Yes, there is 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 regarding the educational history of a child.
Ed 1109.03(j)	Monitoring transition services	Yes, there is no comparable language in RSA 186-C	Yes, there is no comparable federal language	Requires that school district personnel monitor transition services other than those provided by a NH Department of Education approved special education program which the child attends on no less than a weekly basis.	State Board adopted this language since there is no comparable federal regulation regarding personnel monitoring.
Ed 1109.04(a)	Copies of the IEP	Yes, there is no comparable language in RSA 186-C	Yes, there is no comparable federal language Federal requirements only require that the IEP be accessible to each employee responsible for implementing the IEP and that the school district must inform the personnel of their specific responsibilities related to implementing the IEP.	Requires that each teacher and services provider be given a copy of the complete IEP.	The NH Standard 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	Yes, there is no comparable language in RSA 186-C	Yes, there is 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.

<p>Ed 1109.06 (a) (b) (1) (2) (3) (c)</p>	<p>Review of IEP</p>	<p>Yes, there is no comparable language in RSA 186-C</p>	<p>Yes, there is no comparable federal language</p>	<p>(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.</p>	<p>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.</p>
<p>Ed 1110.01(c)</p>	<p>Monitoring ESY</p>	<p>Yes, there is no comparable language in RSA 186-C</p>	<p>Yes, there is no comparable federal language regarding supervision of personnel during ESY.</p>	<p>Requires ESY services other than those provided by a NH Department of Education approved special education program which the child attends shall be monitored by LEA personnel no less than a weekly basis.</p>	<p>State Board adopted this language which adds flexibility but appropriate oversight of ESY services.</p>
<p>Ed 1111.03(a)</p>	<p>Placement Decisions</p>	<p>Yes, there is no comparable language in RSA 186-C</p>	<p>Yes  34 CFR 300.116(a)(1)- placement decisions are 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.</p>	<p>The IEP team shall make placement decisions in accordance with 34 CFR 300.116.</p>	<p>State Board adopted this language to clarify the group of persons etc. to be the IEP teams as these persons are required to make placement decisions.</p>

Ed 1111.03(f)	Home Instruction	Yes, there is no comparable language in RSA 186-C	Yes  34 CFR 300.116 does not provide for specific hours of instruction or services.	Language requires 10 hours of specially designed instruction and related services for home instruction	Through the public hearing process, this was a comment and subsequently added to NH Standards.
Ed 1113.03	Establishment of Educational Programs for Children with Disabilities	No  RSA 186-C:5 RSA 186-C:10	Yes  IDEA requires state monitoring and enforcement not program approval.	Federal requires provision of FAPE for children with disabilities which includes provision of services and appropriate activities-no regulation about programs for preschool children or program approval.	State Board felt there should be some standards in NH for the establishment of education programs for children including preschool children. RSA 186-C: 5 mandates rules for program approval of special education programs. RSA 186-C: 10 requires school district to establish approved programs for children with disabilities including children aged 3.
Ed 1113.04	Behavioral Interventions	Yes, there is no comparable language in RSA 186-C	Yes, there is 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	Yes, there is no comparable language in RSA 186-C	Yes, there is 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(a) & (b)	Facilities and Location	Yes, there is no comparable language in RSA 186-C	Yes, there is no comparable federal language	Ed 321. Minimum Standards for School Sites better addresses educational space. Ed 321.11 Special Education Space	This Standard is in excess because it determines where students can be located.
Ed 1114	Standards for Approval of Private Providers of Special Education and Non-LEA Programs	No RSA 186-C:5	Yes, there is no comparable federal language regarding Standards for Approval of Private Providers of Special Education and Non-LEA Programs	Program approval of special education programs by the NHDOE for private providers of special education and non-LEA programs	State Board Adopted June 30, 2008. Standard adopted prior to effective date of RSA 186-C:16-c
Ed 1115.05(d)	Removal of surrogate parent and appeal process	No RSA 186-C:14, VII grants authority for the state board to adopt standards necessary for the administration of the provisions of C:14	Yes, there is no comparable federal language for removal of surrogate parent	Procedures for removal of surrogate parent by commissioner within 30 days of receipt of written complaint to remove surrogate.	State Board adopted this standard to give a procedure to RSA 186-C:14 (VII) Rules for Admin Supports portions of NH State law.
Ed 1119.01(b)(1) & (2)	LEA Record Retention of Special Education Records	Yes, there is no comparable language in RSA 186-C	Yes, there is no comparable federal language regarding special education record retention	Language requires that LEA's retain special education records for certain period of time.	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.

<p>Ed 1120.04</p> <p>(c)</p> <p>(e)</p> <p>(f)</p> <p>(g)</p>	<p>Parent Consent</p>	<p>Yes, there is no comparable language</p>	<p>Yes, there is no comparable federal</p>	<p>(c) Language regarding “partial consent” to the provisions of the IEP.</p> <p>(e)Refuses consent to one or more of proposed activities</p> <p>(f) Upon receipt of parent partial consent—process districts may follow</p> <p>(g)due process procedure for refusal of consent</p>	<p>Previous language was also in excess with no follow up provision to “consent with conditions.”</p> <p>The adoption of the NH Standards on 3/23/17 aligned the language of this section to IDEA requirements. Stakeholders did not approve and created language that makes the standard in excess again and adds more process for LEAs for parent consent.</p>
<p>Ed 1121.04(a), (b) and (c)</p>	<p>Reconsideration of Commissioner’s decision</p>	<p>Yes, there is no comparable language in RSA 186-C</p>	<p>Yes, there is no comparable federal language</p>	<p>Language provides that any party to the complaint may within 20 days of the commissioner’s decision make a written request to the commissioner for reconsideration of the decision and that any corrective action ordered be implemented during the reconsideration process.</p> <p>(b) 20 days to 15 days for commissioner to issue a final decision.</p> <p>(c) appeals would be through NH Superior Court.</p>	<p>This allows for complainants to disagree with the decision and have the commissioner 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.</p>

Ed 1123.02(e)	Prehearing conference	No RSA 186-C:23 Alternative Dispute Resolution and RSA 186-C:23-b Neutral Conference-no timeline in these laws	Yes, there is 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 but is in excess of federal regulation.
Ed 1123.24(b)	Hearing officers	Yes, there is no comparable language in RSA 186-C	Yes, there is no comparable federal language	Requires that hearing officers also be attorneys	State Board felt that hearing officers needed to be attorneys.
Ed 1124.02	Services for children with disabilities removed from current placement	Yes, there is no comparable language in RSA 186-C	Yes, there is no comparable federal language	Services for children with disabilities removed from current placement for more than 10 days in a school year and services provided	The State Board felt that a quantifiable amount of instruction and services should be in the NH Standards for students.
Ed 1126	Education Monitoring of Educational Services and Programs for Children with Disabilities	No  RSA 186-C:5	Yes, there is no comparable federal language regarding special education program approval	Process which each education program is approved and monitored by the NHDOE	RSA 186-C:5 requires that the state board adopt standards establishing a process and standards for the approval and monitoring of programs of education. The required standards are found in Ed 1126.
Ed 1127	Children with Disabilities in Placements for which DCYF Has Financial Responsibility	No  RSA 169-B, RSA 169-C, RSA 169-D	Yes, there is no comparable federal language	Financial responsibility and process for children in placement for which DCYF has financial responsibility	Standard clarifies the process for this particular situation. Interagency agreement between agencies.
Ed 1128	Special Education Aid	No  RSA 186-C:18	Yes, there is no comparable federal language	NH State process for distributing aid available to provide special education for pupils whose costs are high	Standard is in excess of federal requirements. RSA 186-C:18, V requires that the State Board adopt rules to show this aid is distributed.



Ed 1129	Rate Setting	No RSA 186-C:7-c	Yes, there is no comparable federal language	NHDOE must set a rate each year for private providers for special education programs	NH fiscal process for rate setting for private providers
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