



New Hampshire State Board of Education
Department of Education
25 Hall Street | Concord, NH 03301

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Special Meeting

Friday, February 18, 2022

AGENDA

- I. **CALL TO ORDER** ~ 1:00 PM
- II. **PLEDGE OF ALLEGIANCE**
- III. **LEGISLATIVE UPDATES**
 - A. Conditional Approval Response ~ Education Freedom Accounts Program (Ed 800)
 - B. Adopt ~ School Year and Distance Education (Ed 306.18 and Ed 306.22)
 - C. Adopt – Education Freedom Accounts Program (Ed 800)
- IV. **NONPUBLIC SESSION**
- V. **ADJOURNMENT** ~ 3:00 PM

The State Board of Education welcomes public commentary. Please submit written commentary to Angela.Adams@doe.nh.gov. All submitted commentary is provided to the board and when possible, included and posted with the monthly meeting materials located on the State Board of Education's meeting and minutes [webpage](#).



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EXECUTIVE SUMMARY
Conditional Approval Response: Ed 800 – Education Freedom Accounts Program

Interim Rules Expire: February 23, 2022

Submitted to the State Board of Education, February 18, 2022:

A. ACTION NEEDED

A vote is needed by the State Board of Education to approve the conditional approval response for Ed 800 regarding the Education Freedom Accounts Program.

B. RATIONALE FOR ACTION

These rules have been amended in response to the Office of Legislative Services (OLS) staff comments on the final proposal and subsequent conditional approval request, feedback from the Joint Legislative Committee on Administrative Rules (JLCAR), at its meeting on January 21, 2022, and public comment received to date. The rules are anticipated to receive conditional approval from JLCAR on February 18, 2022. The amendments are annotated in the rule text.

C. EFFECTS OF THIS ACTION

The final proposal will be submitted to OLS for confirmation and approval to adopt the rules.

D. POSSIBLE MOTION

I move that the State Board of Education approve the conditional approval response for Ed 800 regarding the Education Freedom Accounts Program.

Readopt with amendment and renumber Ed 324, effective 8-27-21 (Document #13824, Interim), as Ed 800 to read as follows:

PART Ed 324 EDUCATION FREEDOM ACCOUNTS PROGRAM

~~Ed 324.01 Purpose. The purpose of these rules is to ensure uniform application of RSA 194 F in the establishment and administration of the education freedom accounts (EFA) program.~~

~~Ed 324.02 Scope. Ed 324 shall apply to the scholarship organization, education service providers, and eligible participating students and parents to allow the scholarship organization to provide the option for a parent or guardian to better meet the individual educational needs of his or her eligible student by establishing an education freedom account, for the funding of qualifying education expenses provided by education service providers.~~

~~Ed 324.03 Definitions. The following definitions shall apply to Ed 324:~~

- ~~(a) “Board” shall mean the New Hampshire state board of education;~~
- ~~(b) “Commissioner” shall mean the commissioner of the department of education;~~
- ~~(c) “Curriculum” means “curriculum” as defined in RSA 194 F:1, II;~~
- ~~(d) “Days” shall mean calendar days;~~
- ~~(e) “Department” means “department” as defined in RSA 194 F:1, III;~~
- ~~(f) “Education freedom account (EFA)” means “education freedom account (EFA) as defined in RSA 194 F:1, IV;~~
- ~~(g) “Education service provider” means “education service provider” as defined in RSA 194 F:1, V;~~
- ~~(h) “EFA program” means “program” as defined in RSA 194 F:1, XI;~~
- ~~(i) “Eligible student” means “eligible student” as defined in RSA 194 F:1, VI;~~
- ~~(j) “EFA student” means “EFA student” as defined in RSA 194 F:1, VII;~~
- ~~(k) “Full time” means “full time” as defined in RSA 194 F:1, VIII;~~
- ~~(l) “Parent” means “parent” as defined in RSA 194 F:1, X;~~
- ~~(m) “Qualifying differentiated aid eligibility” means “qualifying differentiated aid eligibility” as defined in RSA 198:40 a. A pupil with a qualifying disability as defined under 34 CFR 300.8 as determined by a medical professional licensed to practice in any state in the United States shall be eligible for qualifying differentiated aid under RSA 198:40 a, II(d);~~
- ~~(n) “Remote or hybrid” means “remote or hybrid” as defined in RSA 194 F:1, IX;~~
- ~~(o) “Scholarship program” means “scholarship program” as defined in RSA 194 F:1, XI; and~~

(p) “State fiscal year” shall mean the period from July 1 to June 30 of every calendar year.

Ed 324.04 Applications:

(a) The scholarship organization shall develop an application for potential participants in the program, which, at a minimum, satisfies the requirements enumerated in RSA 194 F:3.

(b) The scholarship organization shall develop an application for signature by the parent or guardian, and the student, if the student is in a secondary education program, to include, at a minimum the required disclosures enumerated in RSA 194 F, including:

(1) A written explanation of allowable uses of EFA funds, the responsibilities of parents or guardians, the duties of the scholarship organization, and the role of any financial management firms that the scholarship organization contracts with to administer any aspect of the EFA program; and

(2) Notice that participation in the EFA program is a parental placement under 20 USC section 1412, Individuals with Disabilities Education Act (IDEA), along with an explanation of the rights that parentally placed students possess under IDEA and any applicable state laws;

Ed 324.05 Program Requirements:

(a) The scholarship organization shall accept rolling admissions into the program.

(b) Within 30 days of receipt of a completed student application, the scholarship organization shall confirm with the parent or guardian in writing that the application is complete in accordance with the approval criteria set forth in RSA 194 F:3.

Ed 324.06 EFA Disbursement

(a) For the first year of the program funding shall be disbursed 4 times during state fiscal year 2022, pursuant to the adjusted amounts determined using RSA 198:40 a, II based on an enrollment count of the verified student applications received by the department from the scholarship organization no later than the date indicated in Table 324 1, and in accordance with the state fiscal year 2022 EFA disbursement schedule in Table 324 1 below:

Table 324 1 State Fiscal Year 2022 EFA Disbursement Schedule

EFA Funds Available	Allocated funds to be disbursed per state fiscal year	Student Application Verified and Reported to the Department by:
September 1	20%	October 2
November 1	20%	October 2
January 1	30%	December 2
April 1	30%	March 2

(b) Beginning in state fiscal year 2023 and every year after, funding shall be disbursed 4 times per state fiscal year, in accordance with RSA 198:40 a in accordance with the EFA disbursement schedule in Table 324.2 below:

Table 324.2 EFA Disbursement Schedule

EFA Funds Available	Allocated funds to be disbursed per state fiscal year	Student Application Verified and Reported to the Department by:
September 1	20%	August 2
November 1	20%	October 2
January 1	30%	December 2
April 1	30%	March 2

(c) Applications in Ed 324.04(b) may be submitted to the scholarship organization throughout the year on a rolling basis, but shall be confirmed complete by the scholarship organization before a parent, guardian, or EFA student shall have access to EFA account funds.

Ed 324.07 Qualifying EFA Expenses. The following shall apply to EFA expenses enumerated in RSA 194 F:2, II:

(a) Internet connectivity shall not include any additional cost for media streaming or cable media options that are not part of an online learning program or online instructional materials;

(b) Internet and technology purchased with EFA funds shall be primarily used, meaning 51% of the time or more, to help meet the EFA student’s education needs;

(c) Computer hardware shall be limited to a single computer device per student every 3 years, unless otherwise approved by the scholarship organization, in accordance with the scholarship organization’s approval process, as a necessary educational resource including assistive devices and accessible educational hardware and materials; and

(d) The scholarship organization shall publish on its website a policy for pre-approval of qualifying educational expenses consistent with RSA 194 F:2, II(o) and this section.

Ed 324.08 Education Service Providers.

(a) The scholarship organization shall publish on its website:

a. A standard application form; and

b. Procedures for review and approval of education service providers including, but not limited to, any procedures used by education service providers to background check employees.

(b) Online and paper applications for education service providers shall be accepted by the scholarship organization for review on a rolling basis throughout the year.

~~(c) The scholarship organization shall determine only whether curricular materials selected by parents and guardians are qualifying materials pursuant to RSA 194 F:2, II(c) and whether the materials fall within the core knowledge domains described in RSA 194 F:3, III(d)(1).~~

~~(d) Education service providers shall not refund, rebate, or share EFA funds directly with parents or guardians. EFA funds shall only be returned to an eligible student's EFA account. Nothing in these rules shall prohibit education service providers from refunding, rebating, or sharing parent, guardian, and eligible student personal non-EFA funds to the parent or guardian.~~

~~(e) A list of all approved education service providers shall be posted on the scholarship organization's website, reported to the department, and made easily accessible to the public to include education service provider name, eligible services, fee amounts received for services, and number of EFA students served.~~

~~(f) A directory of all education service providers approved by the scholarship organization shall be available on the department's website.~~

~~(g) Approval by the scholarship organization of an education service provider shall serve as statewide approval of such provider for purposes of the program.~~

~~Ed 324.09 Scholarship Organizations:~~

~~(a) The scholarship organization shall have been approved pursuant to RSA 77 G:5, II(a) by the department of revenue administration as a scholarship organization.~~

~~(b) The scholarship organization shall provide all types of qualifying educational expenses enumerated in RSA 194 F:2, II(a) (e).~~

~~(d) The scholarship organization shall electronically file with the department completed student data at least 30 days prior to the funding date, as described in Table 324-1 and Table 324-2. Failure to meet the application deadline shall result in delayed or unavailable funding if such failure prevents the department from processing the payment.~~

~~(e) The scholarship organization shall verify, at a minimum, that completed applications meet the following:~~

~~(1) The eligible student meets all eligibility criteria as described in RSA 194 F:1, IV;~~

~~(2) The EFA application was verified complete only after signature by the parent or guardian, and the student, if the student is in a secondary education program; and~~

~~(3) The student, parent, guardian, or both have not been disqualified from participation in the program due to funds misuse or are otherwise not eligible pursuant to RSA 194 F:1, VI.~~

~~(f) The scholarship organization shall submit a roster of approved EFA students which shall include the student's:~~

~~(1) Information on the student's school of attendance, if applicable;~~

~~(2) Eligibility information;~~

~~(3) Qualifying differentiated aid eligibility;~~

~~(4) Whether the student is a current or new participant in program;~~

~~(5) The amount of EFA funds received for each student and the amount of EFA funds remaining in each student's account; and~~

~~(6) Total EFA funds requested.~~

~~(g) The scholarship organization shall make EFA student account balances readily accessible, through a technology interface with real time or near real time balance information, transaction history, including transaction date, amount deposited or withdrawn, and the name of the education service provider.~~

~~(h) The scholarship organization shall create a parent and education service provider advisory commission pursuant to RSA 194 F:5, responsible for appeals of education service provider denials and other educational expenses approved by the scholarship organization pursuant to RSA 194 F:2 (II)(e).~~

~~(i) The scholarship organization shall contract with an unaffiliated auditor to conduct a risk based audit of EFA accounts with the department on, at a minimum, an annual basis.~~

~~(j) The department shall receive copies of all subcontracts and assignment agreements and the department shall not be bound by any provisions contained in a subcontract or an assignment agreement to which the department is not a party.~~

~~(k) The scholarship organization shall withhold from deposits or deduct throughout the year from EFAs an amount to cover the cost of administering the EFA program, up to a maximum total of 10% annually. All remaining funds shall be available to eligible students for allowable uses.~~

~~(l) The scholarship organization shall develop a records retention policy.~~

~~Ed 324.10 Responsibilities of Public Schools and School Districts. The public school or public school district in which an eligible student was most recently enrolled shall provide to the parent their child's state assigned student identification (SASID) as required under RSA 193 E:5.~~

~~Ed 324.11 Termination of EFA.~~

~~(a) An EFA account shall only be dissolved with written consent of the parent or guardian, unless an EFA student graduates high school or there is a determination by the scholarship organization that there is an intentional and substantial misuse of funds.~~

~~(b) Unless otherwise noticed in writing by the parent that roll over EFA account funds are forfeited, written consent of dissolution shall document the parent's understanding that the rolled over EFA account funds may continue to be utilized pursuant to RSA 194 F:3, VI.(a), even if the student is attending a public school and no longer participating in the program, or until the former EFA student graduates high school.~~

~~(c) The scholarship organization shall develop and make publicly available on its website, the process for the determination of a parent, guardian, or EFA student's intentional and substantial misuse of EFA funds.~~

~~(d) The department shall be notified within 5 days any time an EFA account is suspended, or if a student is otherwise deemed ineligible.~~

~~(e) Within 5 days, suspected cases of intentional and substantial misuse of EFA funds shall be reported by the scholarship organization to the department, the board, the attorney general, and, for cases exceeding the amount of a class B felony, the local or state law enforcement agency.~~

~~(f) A parent, guardian, or EFA student may appeal decisions by the scholarship organization pursuant to Ed 200 relative to application completeness and termination of participation.~~

~~(g) The scholarship organization shall notify the department by August 1 of each calendar year of any existing EFA student that has not provided an annual record of educational attainment, pursuant to RSA 194 F:3, III.(d)(3).~~

~~(h) The scholarship organization shall develop a process for the determination of disqualification of an education service provider.~~

~~(i) The process shall include, at a minimum, how the following shall be determined when deciding disqualification:~~

~~(1) Intentional and substantial misrepresentation of information;~~

~~(2) Failure to refund any overpayments within 30 days or the failure to process a request for a refund; and~~

~~(3) Failure to provide students with promised educational goods or services.~~

~~(j) A list of all disqualified education service providers shall be available on the scholarship organization's websites or in paper format upon request.~~

~~(k) Within 5 days of disqualification, the scholarship organizations shall notify parents, guardians, EFA students, and the department in writing or electronically of an education service provider disqualification.~~

~~(l) Education service providers disqualified by the scholarship organization shall be disqualified from participation in the EFA program and a list of disqualified providers shall be posted on the Department's website.~~

~~(m) An education service provider may appeal the scholarship organization's decision to the department pursuant to Ed 200.~~

~~(n) When the scholarship organization is no longer approved under RSA 77-G, the commissioner shall:~~

~~(1) Issue a written notice of noncompliance that shall provide the scholarship organization with an opportunity to meet the requirements; and~~

~~(2) If the scholarship organization fails to meet the requirements specified in a notice of noncompliance pursuant to (1) above, remove the scholarship organization from eligibility.~~

~~(o) The commissioner shall immediately suspend the scholarship organization's eligibility where the health, safety, or welfare of students is at risk.~~

~~(p) The scholarship organization suspended or removed pursuant to (n)(2) or (n) above shall have 15 days from receipt of the notice of proposed action to file with the department's governance unit a request for a proceeding pursuant to Ed 200. All resulting proceedings shall be conducted in accordance with Ed 200.~~

~~Ed 324.12 Legislative Oversight Committee Established.~~

~~(a) The commissioner and the director of the scholarship organization or designee shall attend committee meetings and provide requested information.~~

~~(b) Pursuant to RSA 194-F:12, the first named senate member may convene the committee.~~

CHAPTER Ed 800 EDUCATION FREEDOM ACCOUNTS PROGRAM

PART Ed 801 PURPOSE AND SCOPE

Ed 801.01 Purpose. The purpose of these rules is to ensure uniform application of RSA 194-F in the establishment and administration of the education freedom accounts (EFA) program.

Ed 801.02 Scope. Ed 800 shall apply to the scholarship organization, education service providers, and eligible participating students and parents to allow the scholarship organization to provide the option for a parent or guardian to better meet the individual educational needs of his or her eligible student by establishing an EFA, for the funding of qualifying education expenses provided by education service providers.

PART Ed 802 DEFINITIONS

Ed 802.01 Definitions.

- (a) "Adequate education" means "adequate education" as defined in RSA 194-F:1, I.
- (b) "Board" means the New Hampshire state board of education.
- (c) "Commissioner" means the commissioner of the department of education.
- (d) "Confidential student information" means educational records, student medical information, and student personally identifiable information.
- (e) "Curriculum" means "curriculum" as defined in RSA 194-F:1, II.
- (f) "Days" means calendar days.
- (g) "Department" means "department" as defined in RSA 194-F:1, III.
- (h) "Differentiated aid" means the aid categories enumerated in RSA 198:40-a, II (b) - (e).
- (i) "Education freedom account (EFA)" means "education freedom account" as defined in RSA 194-F:1, IV.

(j) “Education service provider” means “education service provider” as defined in RSA 194-F:1, V.

~~(k) “EFA program” means “program” as defined in RSA 194-F:1, XI.~~

(~~h~~k) “Eligible student” means “eligible student” as defined in RSA 194-F:1, VI.

(~~m~~l) “EFA student” means “EFA student” as defined in RSA 194-F:1, VII.

(~~m~~n) “Full time” means “full time” as defined in RSA 194-F:1, VIII.

(~~e~~n) “Intentional and substantial” shall be defined as follows:

(a) Intentional shall mean knowingly and willfully; and

(b) Substantial shall mean \$250 or more.

(~~p~~o) “Parent” means “parent” as defined in RSA 194-F:1, X.

~~(p) “Program” means “program” as defined in RSA 194-F:1, XI.~~

(q) “Pupil with a disabling condition” means a child having autism, deaf-blindness, deafness, developmental delay, emotional disturbance, hearing impairment, intellectual disability, multiple disabilities, orthopedic impairment, other health impaired, specific learning disability, speech-language impairment, traumatic brain injury, acquired brain injury, or visual impairment or blindness.

(r) “Remote or hybrid” means “remote or hybrid” as defined in RSA 194-F:1, IX.

(s) “Scholarship organization” means “scholarship organization” as defined in RSA 194-F:1, XII.

(t) “State fiscal year” ~~shall mean the period from July 1 to June 30 of every calendar year~~ means a one-year period from July 1 to June 30.

PART Ed 803 PROGRAM ADMINISTRATION

Ed 803.01 Scholarship Organization. In addition to the requirements under RSA 194-F:4, the following shall apply to the authority and responsibilities of the scholarship organization under this program:

(a) The scholarship organization shall have been approved pursuant to RSA 77-G:5, II(a) by the department of revenue administration as a scholarship organization;

(b) The scholarship organization shall provide access to all types of qualifying educational expenses enumerated in RSA 194-F:2, II(a-o);

(c) Failure by a scholarship organization to provide access to every qualifying expense described in RSA 194-F:2, II(a-o) shall disqualify a scholarship organization from participation in the program;

(d) The scholarship organization shall electronically file with the department completed student data at least 30 days prior to the funding date, as described in Table 804-1. Failure to meet the application

deadline shall result in delayed or unavailable funding if such failure prevents the department from processing the payment;

(e) The scholarship organization shall verify, at a minimum, that completed applications meet the following:

- (1) The eligible student meets all eligibility criteria as described in RSA 194-F:1, IV;
- (2) The EFA application was verified complete only after signature by the parent or guardian, and the student, if the student is in a secondary education program; and
- (3) The student, parent, guardian, or both have not been disqualified from participation in the program due to funds misuse or are otherwise not eligible pursuant to RSA 194-F:1, VI;

(f) The scholarship organization shall submit to the department a roster of approved EFA students including each student's:

- (1) Information on school of attendance, if applicable;
- (2) Eligibility information;
- (3) Qualifying differentiated aid eligibility;
- (4) Status as a current or new participant in program;
- (5) Amount of EFA funds received and amount of EFA funds remaining; and
- (6) Total EFA funds requested;

(g) The scholarship organization shall have access to confidential student information under the following conditions:

- (1) Confidential student information shall be maintained in a manner consistent with the procedures LEAs follow to manage confidential student information; and
- (2) The scholarship organization shall verify a student SASID number for any student applying for an EFA prior to requesting a new SASID.

(h) The scholarship organization shall make EFA student account balances readily accessible, through a technology interface with real-time or near real time balance information, transaction history, including transaction date, amount deposited or withdrawn, and the name of the education service provider;

(i) The scholarship organization's director shall appoint members to the parent and education service provider advisory commission pursuant to RSA 194-F:5 and which shall be responsible for appeals of education service provider denials and other educational expenses approved by the scholarship organization pursuant to 194-F:2 (II)(o);

(j) The scholarship organization shall contract with an unaffiliated auditor to conduct a risk-based audit of EFA accounts on, at a minimum, an annual basis. The scholarship organization shall submit a copy of such plan and all associated audit reports to the department;

(k) The department shall receive copies of all subcontracts and assignment agreements and the department shall not be bound by any provisions contained in a subcontract or an assignment agreement to which the department is not a party;

(l) The scholarship organization shall withhold from deposits from EFAs an amount to cover the cost of administering the EFA program, up to a maximum total of 10% of each deposit. All remaining funds shall be available to eligible students for allowable uses; and

(m) The scholarship organization shall develop and implement a records retention policy.

Ed 803.02 Education Service Providers. In addition to the requirements under RSA 194-F:4 and RSA 194-F:6-7, the following shall apply to education service providers approved by the scholarship organization:

(a) The scholarship organization shall publish on its website a standard application form, and procedures for review and approval of education service providers including, but not limited to procedures, if any, used by education service providers to ensure background check of employees who have direct contact with students;

(b) Online and paper applications for education service providers shall be accepted by the scholarship organization for review on a rolling basis throughout the year;

(c) The EFA program shall utilize a wide variety of curricular materials to meet the educational needs of the students;

(d) The scholarship organization shall determine whether the materials selected fall within the core knowledge domains described in RSA 194-F:3, III(d)(1);

(e) Education service providers shall not refund, rebate, or share EFA funds directly with parents or guardians. EFA funds shall only be returned to an eligible student's EFA account;

(f) A list of all approved education service providers shall be posted on the scholarship organization's websites, reported to the department, and made easily accessible to the public to include education service provider name, eligible services, fee amounts received for services, and number of EFA students served;

(g) A directory of all education service providers approved by the scholarship organization shall be available on the department's website; and

(h) Approval by the scholarship organization of an education service provider shall serve as statewide approval of such provider for purposes of the program.

Ed 803.03 Responsibilities of Public Schools and School Districts.

(a) The public school or public school district in which an eligible student was most recently enrolled shall provide to the parent the child's state assigned student identification (SASID) upon request as required under RSA 193-E:5.

(b) Local education agencies (LEAs), where private elementary schools and secondary schools are located, shall ensure that children with disabilities, placed by their parents in private, non-profit schools

participating in state-funded EFA programs, shall be included in the group of parentally-placed private school children with disabilities who are eligible for equitable services, including special education and related services from the LEA where private schools are located.

PART Ed 804 EFA FUNDS AND DISBURSEMENT

Ed 804.01 Funds; Generally. In addition to the requirements under RSA 194-F:2, I and RSA 194-F:4, VIII the following shall apply to EFA funds:

(a) Pursuant to RSA 194-F:2, EFAs shall be equivalent to the per pupil adequate education grant amount under RSA 198:40-a, plus any differentiated aid that would have been provided to a public school for that eligible student;

(b) Fund transfers shall be made to the scholarship organization in accordance with the distribution of adequate education grants under RSA 198:42 and Ed 804.03; and

(c) A pupil shall be eligible for the differentiated aid amount set forth in RSA 198:40-a, II(d) for EFAs under RSA 194-F if there has been a determination of eligibility for special education by a qualified examiner for each assessment, as defined and enumerated in ED 1107.04 Table 1100.1, in accordance with 34 CFR 300.300-300.311, either:

(d) Such determination of eligibility for special education in (c) above may be completed:

(1) A determination of eligibility for special education, by an IEP team, in accordance with 34 CFR 300.300-300.311 At the expense of the parent or guardian, such expense representing a qualifying EFA expense; or

(2) At no expense to the parent or guardian by the student's resident district, pursuant to ED 1105.02A determination of a disabling condition by a medical professional listed under Ed 1107.04 Table 1100.1, as a qualified examiner for the particular condition, and who is licensed to practice in any state in the United States.

(e) The student's resident district shall notify the parent or guardian in writing of determinations made under (d)(2) above.

(ef) A pupil with a disabling condition, as determined by a medical professional licensed in any state in the United States in accordance with Ed 804.01(d)(2), shall not be considered a child with a disability, through an appropriate evaluation, in accordance with 34 CFR 300.304-300.311 and as such, does not qualify for the equitable services funds pursuant to 34 CFR 300.138.

Ed 804.02 Qualifying EFA Expenses. The following shall apply to qualifying EFA expenses enumerated in RSA 194-F:2, II:

(a) Internet connectivity shall not include any additional cost for media streaming or cable media options that are not part of an online learning program or online instructional materials;

(b) Internet and technology purchased with EFA funds shall be primarily used, meaning 51% of the time or more, to help meet the EFA student's education needs;

(c) Computer hardware shall be limited to a single computer device per student every 3 years, unless otherwise approved by the scholarship organization, in accordance with the scholarship

organization’s approval process, as a necessary educational resource including assistive devices and accessible educational hardware and materials; ~~and~~

(d) An evaluation for determination of eligibility for differentiated aid under Ed 804.01(d)(1); and

~~(de)~~ The scholarship organization shall publish on its website a policy for pre-approval of qualifying educational expenses consistent with RSA 194-F:2, II(o) and this section.

Ed 804.03 EFA Disbursement. In addition to the requirements under RSA 194-F:4, VIII, the following shall apply to EFA disbursement:

(a) Beginning in state fiscal year 2023 and every year after, funding shall be disbursed 4-times per state fiscal year, in accordance with RSA 198:40-a and the EFA disbursement schedule in Table 804-2 below:

Table 804-1 EFA Disbursement Schedule

EFA Funds Available	Allocated funds to be disbursed per state fiscal year	Student Application Verified and Reported to the Department by:
September 1	20%	August 2
November 1	20%	October 2
January 1	30%	December 2
April 1	30%	March 2

(b) Applications in Ed 804 may be submitted to the scholarship organization throughout the year on a rolling basis, but shall be confirmed complete by the scholarship organization before a parent, guardian, or EFA student shall have access to EFA account funds.

PART Ed 805 APPLICATION AND ENROLLMENT

Ed 805.01 Application Development, Agreement, and Notification Requirements.

(a) The scholarship organization shall develop an application for potential participants in the program, which, at a minimum, satisfies the requirements enumerated in RSA 194-F:3.

(b) The scholarship organization shall develop an application which it shall provide for signature to the parent or guardian, and the student, if the student is in a secondary education program.

(c) The application shall contain the following:

(1) An explanation of allowable uses of EFA funds, the responsibilities of parents or guardians, the duties of the scholarship organization, and the role of any financial management firms that the scholarship organization may contract with to administer any aspect of the EFA program;

(2) Notice as follows:

“Participation in the EFA program is a parental placement under 20 USC section 1412, Individuals with Disabilities Education Act (IDEA) if a child with a disability is enrolled in a

non-public school. A child with a disability participating in an EFA program and enrolled in a public school under RSA 194-F:2, II(d) is not a parental placement under IDEA and is entitled to FAPE. Parentally-placed private school children with disabilities shall not be entitled to a FAPE in connection with their enrollment by their parents in a private school, in accordance with 34 C.F.R. 300.148(a) and pursuant to 34 C.F.R. 300.137(a), while participating in the state-funded EFA program. The school district in which the child with a disability participating in the EFA program enrolled in a public school under RSA 194-F:2,II(d) resides is responsible for the provision of FAPE.”

(d) A signed application as described in (b) above, shall constitute an agreement by the signatory as described in RSA 194-F:3, III.(d), RSA 194-F:3, IV, and RSA 194-F:4, II and III.

Ed 805.02 Enrollment.

(a) The scholarship organization shall approve applications, as described in Ed 805.01, in accordance with RSA 194-F:3, III.

(b) The scholarship organization shall accept rolling admissions into the program.

(c) Within 30 days of receipt of a completed student application, the scholarship organization shall confirm with the parent or guardian in writing that the application is complete in accordance with the approval criteria set forth in RSA 194-F:3.

(d) If the scholarship organization receives an incomplete application, the applicant shall be notified in writing by the scholarship organization within 15 days of receipt which shall include instructions for completing the application.

PART Ed 806 TERMINATION OF EDUCATION FREEDOM ACCOUNTS

Ed 806.01 Termination of EFAs. In addition to the requirements under RSA 194-F:3, VI and RSA 194-F:4, IX through XIII, the following shall apply to the termination of EFAs:

(a) An EFA shall only be dissolved with written consent of the parent or guardian, unless an EFA student graduates high school or there is a determination by the scholarship organization that there is an intentional and substantial misuse of funds;

(b) Unless otherwise noticed in writing by the parent that roll-over EFA account funds are forfeited, written consent of dissolution shall document the parent’s understanding that the rolled-over EFA account funds may continue to be utilized pursuant to RSA 194-F:3, VI.(a), even if the student is attending a public school and no longer participating in the program, or until the former EFA student graduates high school;

(c) The scholarship organization shall develop and make publicly available on its website, the process for the determination of a parent, guardian, or EFA student’s intentional and substantial misuse of EFA funds;

(d) The department shall be notified within 5 days any time an EFA account is suspended, or if a student is otherwise deemed ineligible;

(e) Within 5 days, suspected cases of intentional and substantial misuse of EFA funds shall be reported by the scholarship organization to the department, the board, the attorney general, and, for cases exceeding the amount of a class B felony, the local or state law enforcement agency;

(f) A parent, guardian, or EFA student may appeal decisions by the scholarship organization pursuant to Ed 200 relative to:

~~(1) Application completeness and termination of participation;~~ or

(2) Denial of services.

(g) The scholarship organization shall notify the department by August 1 of each calendar year of any existing EFA student that has not provided an annual record of educational attainment, pursuant to RSA 194-F:3, III(d)(3);

(h) The scholarship organization shall develop a process for the determination of disqualification of an education service provider.

(i) The process shall include, at a minimum, how the following are determined when deciding disqualification:

(1) Knowing and willful misrepresentation of information;

(2) Failure to refund any overpayments within 30 days or the failure to process a request for a refund; and

(3) Routine failure, meaning 3 or more times, to provide students with promised educational goods or services;

(j) A list of all disqualified education service providers shall be available on the scholarship organization's websites or in paper format upon request;

(k) Within 5 days of disqualification, the scholarship organization shall notify parents, guardians, EFA students, and the department in writing or electronically of an education service provider disqualification;

(l) Education service providers disqualified by the scholarship organization shall be disqualified from participation in the EFA program and a list of disqualified providers shall be posted on the department's website;

(m) An education service provider may appeal the scholarship organization's decision to the department pursuant to Ed 200;

(n) When the scholarship organization does not meet the duties, obligations, and authorities in RSA 194-F:4, it is no longer eligible to participate in the EFA program, and the commissioner shall:

(1) Issue a written notice of ineligibility for participation in the EFA program that shall provide the scholarship organization with an opportunity to meet the requirements for eligibility as described in RSA 194-F:4; and

(2) If the scholarship organization fails to meet the requirements specified in a notice of ineligibility pursuant to (1) above, remove the scholarship organization from eligibility;

(o) When the scholarship organization is no longer approved under RSA 77:G, the commissioner shall notify the scholarship organization as described in (m)(1) and (2) above;

(p) The commissioner shall immediately suspend the scholarship organization’s eligibility where the health, safety, or welfare of students is at risk;

(q) The scholarship organization suspended or removed from the EFA program pursuant to (m)(2) above shall have 15 days from receipt of the notice of proposed action to file with the department’s governance unit a request for a proceeding pursuant to Ed 200. All resulting proceedings shall be conducted in accordance with Ed 200; and

(r) Within 10 days of suspension or removal of a scholarship organization pursuant to (n) above, the department shall commence an adjudicative proceeding in accordance with Ed 200.

PART Ed 807 LEGISLATIVE OVERSIGHT COMMITTEE

Ed 807. 01 Legislative Oversight Committee Established. In addition to the requirements under RSA 194-F:12, the following shall apply to the establishment, administration, and responsibilities of the education freedom savings account oversight committee:

(a) The commissioner and the director of the scholarship organization or designee shall attend committee meetings and provide requested information; and

(b) Pursuant to RSA 194-F:12, the first-named senate member may convene the committee.

Appendix

Rule	State or Federal Statute or Federal Regulation Implemented
Ed 801	RSA 194-F:2, I
Ed 802	RSA 194-F:1
Ed 803	RSA 194-F:2, IV & V; RSA 194-F:4, V, VI, VII, & XVI-XVII; RSA 194-F:5
Ed 804	RSA 194-F:4, IV & VIII
Ed 805	RSA 194-F:4, III
Ed 806	RSA 194-F:4, IX-XIV
Ed 807	RSA 194-F:5



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Littleton

Ann Lane
Dover

Phil Nazzaro
Newmarket

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EXECUTIVE SUMMARY

Adopt: 306.18 and Ed 306.22 – School Year and Distance Education

Submitted to the State Board of Education, February 18, 2022:

- A. **ACTION NEEDED**
A vote is needed by the State Board of Education to adopt 306.18 and Ed 306.22 regarding School Year and Distance Education.
- B. **RATIONALE FOR ACTION**
Receiving confirmation from the Office of Legislative Services (OLS) that these rules are okay to adopt, the Board may proceed with adoption of these rules.
- C. **EFFECTS OF THIS ACTION**
The adopted rule text will be submitted to OLS and will become effective on February 19, 2022.
- D. **POSSIBLE MOTION**
I move that the State Board of Education adopt 306.18 and Ed 306.22 regarding School Year and Distance Education.

Readopt with amendment, Ed 306.18, effective 3-27-14 (Document #10556), as amended effective 6-5-19 (Document #12814), as amended effective 3-12-20 (Document #13001, Emergency) and expired 9-8-20, as modified effective 8-13-20 by Exhibit P of Emergency Order #29 and expired 6-12-21, and as amended effective 7-29-21 (Document #13245), to read as follows:

Ed 306.18 School Year.

(a) Pursuant to RSA 189:1 and RSA 189:24, each school district shall maintain a school year as provided below:

(1) The school district shall maintain in each elementary school, a school year of at least 945 hours of instructional time and in each kindergarten at least 450 hours of instructional time;

(2) The school district shall maintain in each middle and high school, a school year of at least 990 hours of instructional time. Districts shall provide at least 990 hours of instructional time for grades 7 and 8 in elementary schools that include grades 7, or 8, or both;

(3) The instructional school day of an individual student shall not exceed 5.75 hours of instructional time in elementary schools and 6 hours of instructional time in middle and high schools;

(4) The school shall have in its school year an additional 60 hours in duration to provide for instructional time lost due to inclement weather or unexpected circumstances, staff development, and parent-teacher conferences. At least 30 of the 60 additional hours shall be available for rescheduling hours lost due to inclement weather or other emergencies. Schools shall use these additional hours to reschedule lost instructional time before requesting a waiver of the amount of instructional time under RSA 189:2, unless extraordinary circumstances exist that would place an unreasonable burden on the school or students such as, but not limited to, substantial building damage;

(5) A school may have a shortened day when an emergency condition exists which might adversely affect the health and safety of students, provided that the number of hours of instructional time originally planned for the day shall be credited to the number of hours of instructional time in the school year, if:

a. On that day, the school would normally have had at least 5.25 hours of instructional time; and

b. The school remained open for at least 3.5 hours of instructional time;

(6) There shall be no requirement to reschedule instructional time for kindergarten if morning or afternoon kindergarten sessions are cancelled due to delayed opening or early release for students in grade 1 or higher; and

(7) Distance education conducted in accordance with Ed 306.22(c) shall count toward the required amount of instructional time.

(b) Lunch time, home room periods, passing time, and breaks shall not be counted toward the required amount of instructional time. Elementary schools may count up to 30 minutes of recess per day as instructional time for pupils in kindergarten through grade 6. Advisory periods in middle and high schools shall be counted as instructional time.

(c) The high school graduation date shall be set no more than 5 school days or 30 instructional hours before the end of the scheduled school year without consideration of making up lost time pursuant to Ed 306.18 (a)(4).

Readopt with amendment Ed 306.22, effective 7-29-21 (Document #13245), to read as follows:

Ed 306.22 Distance Education.

(a) All students shall have access to full-year, full-day instruction, in-person ~~instruction~~ as required in RSA 189:1 and RSA 189:24. Distance education, as defined in Ed 306.22(b), shall not satisfy the requirement for in-person instruction except as conducted in accordance with 306.22(c).

(b) In this section, "distance education" means any instructional mode that is not in-person instruction including, but not limited to, correspondence, video-based, internet-based, online courses, remote instruction, or any combination thereof. The term distance education also includes hybrid instructional models that utilize elements of distance education and traditional instruction in any combination.

(c) Distance education may be offered only:

(1) When inclement weather makes it unsafe to safely transport students to or from in-person instruction; or

(2) As an option for a parent or guardian making a request for distance education.

(d) When the district offers distance education, the school board shall be responsible for the development of a policy for the governance and administration of distance education.

(e) If a student participating in distance education is not making educational progress, as determined by the district's educational assessments, the option to participate in distance education may be rescinded by the district.

(f) A parent or guardian may appeal a district determination that a student is not making educational progress pursuant to the district's educational assessments to the state board of education under Ed 200.

(g) A student shall remain in distance education until the conclusion of the appeal in (f) above. If the state board of education upholds the district's conclusion that the student is not making educational progress pursuant to the district's educational assessments, the student shall immediately be disqualified from continued participation in the district's distance education instruction.

(h) School districts may cooperate to share delivery of distance education.

Appendix I

Rule	State or Federal Statute or Federal Regulation Implemented
Ed 306.18	RSA 189:1; RSA 189:24
Ed 306.22	RSA 21-N:9, I; RSA 186:8, I and II



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EXECUTIVE SUMMARY
Adopt: Ed 800 – Education Freedom Accounts Program

Interim Rules Expire: February 23, 2022

Submitted to the State Board of Education, February 18, 2022:

- A. ACTION NEEDED**
A vote is needed by the State Board of Education to adopt Ed 800 regarding the Education Freedom Accounts Program.
- B. RATIONALE FOR ACTION**
Receiving confirmation from the Office of Legislative Services (OLS) that these rules are okay to adopt, the Board may proceed with adoption of these rules.
- C. EFFECTS OF THIS ACTION**
The adopted rule text will be submitted to OLS and will become effective on February 19, 2022.
- D. POSSIBLE MOTION**
I move that the State Board of Education adopt Ed 800 regarding the Education Freedom Accounts Program.

Readopt with amendment and renumber Ed 324, effective 8-27-21 (Document #13824, Interim), as Ed 800 to read as follows:

PART Ed 324 EDUCATION FREEDOM ACCOUNTS PROGRAM

~~Ed 324.01 Purpose.~~ The purpose of these rules is to ensure uniform application of RSA 194 F in the establishment and administration of the education freedom accounts (EFA) program.

~~Ed 324.02 Scope.~~ Ed 324 shall apply to the scholarship organization, education service providers, and eligible participating students and parents to allow the scholarship organization to provide the option for a parent or guardian to better meet the individual educational needs of his or her eligible student by establishing an education freedom account, for the funding of qualifying education expenses provided by education service providers.

~~Ed 324.03 Definitions.~~ The following definitions shall apply to Ed 324:

- (a) ~~“Board” shall mean the New Hampshire state board of education;~~
- (b) ~~“Commissioner” shall mean the commissioner of the department of education;~~
- (c) ~~“Curriculum” means “curriculum” as defined in RSA 194 F:1, II;~~
- (d) ~~“Days” shall mean calendar days;~~
- (e) ~~“Department” means “department” as defined in RSA 194 F:1, III;~~
- (f) ~~“Education freedom account (EFA)” means “education freedom account (EFA) as defined in RSA 194 F:1, IV;~~
- (g) ~~“Education service provider” means “education service provider” as defined in RSA 194 F:1, V;~~
- (h) ~~“EFA program” means “program” as defined in RSA 194 F:1, XI;~~
- (i) ~~“Eligible student” means “eligible student” as defined in RSA 194 F:1, VI;~~
- (j) ~~“EFA student” means “EFA student” as defined in RSA 194 F:1, VII;~~
- (k) ~~“Full time” means “full time” as defined in RSA 194 F:1, VIII;~~
- (l) ~~“Parent” means “parent” as defined in RSA 194 F:1, X;~~
- (m) ~~“Qualifying differentiated aid eligibility” means “qualifying differentiated aid eligibility” as defined in RSA 198:40 a. A pupil with a qualifying disability as defined under 34 CFR 300.8 as determined by a medical professional licensed to practice in any state in the United States shall be eligible for qualifying differentiated aid under RSA 198:40 a, II(d);~~
- (n) ~~“Remote or hybrid” means “remote or hybrid” as defined in RSA 194 F:1, IX;~~
- (o) ~~“Scholarship program” means “scholarship program” as defined in RSA 194 F:1, XI; and~~

(p) “State fiscal year” shall mean the period from July 1 to June 30 of every calendar year.

Ed 324.04 Applications.

(a) The scholarship organization shall develop an application for potential participants in the program, which, at a minimum, satisfies the requirements enumerated in RSA 194 F:3.

(b) The scholarship organization shall develop an application for signature by the parent or guardian, and the student, if the student is in a secondary education program, to include, at a minimum the required disclosures enumerated in RSA 194 F, including:

(1) A written explanation of allowable uses of EFA funds, the responsibilities of parents or guardians, the duties of the scholarship organization, and the role of any financial management firms that the scholarship organization contracts with to administer any aspect of the EFA program; and

(2) Notice that participation in the EFA program is a parental placement under 20 USC section 1412, Individuals with Disabilities Education Act (IDEA), along with an explanation of the rights that parentally placed students possess under IDEA and any applicable state laws;

Ed 324.05 Program Requirements.

(a) The scholarship organization shall accept rolling admissions into the program.

(b) Within 30 days of receipt of a completed student application, the scholarship organization shall confirm with the parent or guardian in writing that the application is complete in accordance with the approval criteria set forth in RSA 194 F:3.

Ed 324.06 EFA Disbursement

(a) For the first year of the program funding shall be disbursed 4 times during state fiscal year 2022, pursuant to the adjusted amounts determined using RSA 198:40 a, II based on an enrollment count of the verified student applications received by the department from the scholarship organization no later than the date indicated in Table 324 1, and in accordance with the state fiscal year 2022 EFA disbursement schedule in Table 324 1 below:

Table 324 1 State Fiscal Year 2022 EFA Disbursement Schedule

EFA Funds Available	Allocated funds to be disbursed per state fiscal year	Student Application Verified and Reported to the Department by:
September 1	20%	October 2
November 1	20%	October 2
January 1	30%	December 2
April 1	30%	March 2

(b) Beginning in state fiscal year 2023 and every year after, funding shall be disbursed 4 times per state fiscal year, in accordance with RSA 198:40 a in accordance with the EFA disbursement schedule in Table 324.2 below:

Table 324.2 EFA Disbursement Schedule

EFA Funds Available	Allocated funds to be disbursed per state fiscal year	Student Application Verified and Reported to the Department by:
September 1	20%	August 2
November 1	20%	October 2
January 1	30%	December 2
April 1	30%	March 2

(c) Applications in Ed 324.04(b) may be submitted to the scholarship organization throughout the year on a rolling basis, but shall be confirmed complete by the scholarship organization before a parent, guardian, or EFA student shall have access to EFA account funds.

Ed 324.07 Qualifying EFA Expenses. The following shall apply to EFA expenses enumerated in RSA 194 F:2, II:

(a) Internet connectivity shall not include any additional cost for media streaming or cable media options that are not part of an online learning program or online instructional materials;

(b) Internet and technology purchased with EFA funds shall be primarily used, meaning 51% of the time or more, to help meet the EFA student’s education needs;

(c) Computer hardware shall be limited to a single computer device per student every 3 years, unless otherwise approved by the scholarship organization, in accordance with the scholarship organization’s approval process, as a necessary educational resource including assistive devices and accessible educational hardware and materials; and

(d) The scholarship organization shall publish on its website a policy for pre-approval of qualifying educational expenses consistent with RSA 194 F:2, II(o) and this section.

Ed 324.08 Education Service Providers.

(a) The scholarship organization shall publish on its website:

a. A standard application form; and

b. Procedures for review and approval of education service providers including, but not limited to, any procedures used by education service providers to background check employees.

(b) Online and paper applications for education service providers shall be accepted by the scholarship organization for review on a rolling basis throughout the year.

~~(c) The scholarship organization shall determine only whether curricular materials selected by parents and guardians are qualifying materials pursuant to RSA 194 F:2, II(c) and whether the materials fall within the core knowledge domains described in RSA 194 F:3, III(d)(1).~~

~~(d) Education service providers shall not refund, rebate, or share EFA funds directly with parents or guardians. EFA funds shall only be returned to an eligible student's EFA account. Nothing in these rules shall prohibit education service providers from refunding, rebating, or sharing parent, guardian, and eligible student personal non-EFA funds to the parent or guardian.~~

~~(e) A list of all approved education service providers shall be posted on the scholarship organization's website, reported to the department, and made easily accessible to the public to include education service provider name, eligible services, fee amounts received for services, and number of EFA students served.~~

~~(f) A directory of all education service providers approved by the scholarship organization shall be available on the department's website.~~

~~(g) Approval by the scholarship organization of an education service provider shall serve as statewide approval of such provider for purposes of the program.~~

~~Ed 324.09 Scholarship Organizations:~~

~~(a) The scholarship organization shall have been approved pursuant to RSA 77 G:5, II(a) by the department of revenue administration as a scholarship organization.~~

~~(b) The scholarship organization shall provide all types of qualifying educational expenses enumerated in RSA 194 F:2, II(a) (e).~~

~~(d) The scholarship organization shall electronically file with the department completed student data at least 30 days prior to the funding date, as described in Table 324-1 and Table 324-2. Failure to meet the application deadline shall result in delayed or unavailable funding if such failure prevents the department from processing the payment.~~

~~(e) The scholarship organization shall verify, at a minimum, that completed applications meet the following:~~

~~(1) The eligible student meets all eligibility criteria as described in RSA 194 F:1, IV;~~

~~(2) The EFA application was verified complete only after signature by the parent or guardian, and the student, if the student is in a secondary education program; and~~

~~(3) The student, parent, guardian, or both have not been disqualified from participation in the program due to funds misuse or are otherwise not eligible pursuant to RSA 194 F:1, VI.~~

~~(f) The scholarship organization shall submit a roster of approved EFA students which shall include the student's:~~

~~(1) Information on the student's school of attendance, if applicable;~~

~~(2) Eligibility information;~~

~~(3) Qualifying differentiated aid eligibility;~~

~~(4) Whether the student is a current or new participant in program;~~

~~(5) The amount of EFA funds received for each student and the amount of EFA funds remaining in each student's account; and~~

~~(6) Total EFA funds requested.~~

~~(g) The scholarship organization shall make EFA student account balances readily accessible, through a technology interface with real time or near real time balance information, transaction history, including transaction date, amount deposited or withdrawn, and the name of the education service provider.~~

~~(h) The scholarship organization shall create a parent and education service provider advisory commission pursuant to RSA 194 F:5, responsible for appeals of education service provider denials and other educational expenses approved by the scholarship organization pursuant to RSA 194 F:2 (II)(e).~~

~~(i) The scholarship organization shall contract with an unaffiliated auditor to conduct a risk based audit of EFA accounts with the department on, at a minimum, an annual basis.~~

~~(j) The department shall receive copies of all subcontracts and assignment agreements and the department shall not be bound by any provisions contained in a subcontract or an assignment agreement to which the department is not a party.~~

~~(k) The scholarship organization shall withhold from deposits or deduct throughout the year from EFAs an amount to cover the cost of administering the EFA program, up to a maximum total of 10% annually. All remaining funds shall be available to eligible students for allowable uses.~~

~~(l) The scholarship organization shall develop a records retention policy.~~

~~Ed 324.10 Responsibilities of Public Schools and School Districts. The public school or public school district in which an eligible student was most recently enrolled shall provide to the parent their child's state assigned student identification (SASID) as required under RSA 193 E:5.~~

~~Ed 324.11 Termination of EFA.~~

~~(a) An EFA account shall only be dissolved with written consent of the parent or guardian, unless an EFA student graduates high school or there is a determination by the scholarship organization that there is an intentional and substantial misuse of funds.~~

~~(b) Unless otherwise noticed in writing by the parent that roll over EFA account funds are forfeited, written consent of dissolution shall document the parent's understanding that the rolled over EFA account funds may continue to be utilized pursuant to RSA 194 F:3, VI.(a), even if the student is attending a public school and no longer participating in the program, or until the former EFA student graduates high school.~~

~~(c) The scholarship organization shall develop and make publicly available on its website, the process for the determination of a parent, guardian, or EFA student's intentional and substantial misuse of EFA funds.~~

~~(d) The department shall be notified within 5 days any time an EFA account is suspended, or if a student is otherwise deemed ineligible.~~

~~(e) Within 5 days, suspected cases of intentional and substantial misuse of EFA funds shall be reported by the scholarship organization to the department, the board, the attorney general, and, for cases exceeding the amount of a class B felony, the local or state law enforcement agency.~~

~~(f) A parent, guardian, or EFA student may appeal decisions by the scholarship organization pursuant to Ed 200 relative to application completeness and termination of participation.~~

~~(g) The scholarship organization shall notify the department by August 1 of each calendar year of any existing EFA student that has not provided an annual record of educational attainment, pursuant to RSA 194 F:3, III.(d)(3).~~

~~(h) The scholarship organization shall develop a process for the determination of disqualification of an education service provider.~~

~~(i) The process shall include, at a minimum, how the following shall be determined when deciding disqualification:~~

~~(1) Intentional and substantial misrepresentation of information;~~

~~(2) Failure to refund any overpayments within 30 days or the failure to process a request for a refund; and~~

~~(3) Failure to provide students with promised educational goods or services.~~

~~(j) A list of all disqualified education service providers shall be available on the scholarship organization's websites or in paper format upon request.~~

~~(k) Within 5 days of disqualification, the scholarship organizations shall notify parents, guardians, EFA students, and the department in writing or electronically of an education service provider disqualification.~~

~~(l) Education service providers disqualified by the scholarship organization shall be disqualified from participation in the EFA program and a list of disqualified providers shall be posted on the Department's website.~~

~~(m) An education service provider may appeal the scholarship organization's decision to the department pursuant to Ed 200.~~

~~(n) When the scholarship organization is no longer approved under RSA 77-G, the commissioner shall:~~

~~(1) Issue a written notice of noncompliance that shall provide the scholarship organization with an opportunity to meet the requirements; and~~

~~(2) If the scholarship organization fails to meet the requirements specified in a notice of noncompliance pursuant to (1) above, remove the scholarship organization from eligibility.~~

~~(o) The commissioner shall immediately suspend the scholarship organization's eligibility where the health, safety, or welfare of students is at risk.~~

~~(p) The scholarship organization suspended or removed pursuant to (n)(2) or (n) above shall have 15 days from receipt of the notice of proposed action to file with the department's governance unit a request for a proceeding pursuant to Ed 200. All resulting proceedings shall be conducted in accordance with Ed 200.~~

~~Ed 324.12 Legislative Oversight Committee Established.~~

~~(a) The commissioner and the director of the scholarship organization or designee shall attend committee meetings and provide requested information.~~

~~(b) Pursuant to RSA 194-F:12, the first named senate member may convene the committee.~~

CHAPTER Ed 800 EDUCATION FREEDOM ACCOUNTS PROGRAM

PART Ed 801 PURPOSE AND SCOPE

Ed 801.01 Purpose. The purpose of these rules is to ensure uniform application of RSA 194-F in the establishment and administration of the education freedom accounts (EFA) program.

Ed 801.02 Scope. Ed 800 shall apply to the scholarship organization, education service providers, and eligible participating students and parents to allow the scholarship organization to provide the option for a parent or guardian to better meet the individual educational needs of his or her eligible student by establishing an EFA, for the funding of qualifying education expenses provided by education service providers.

PART Ed 802 DEFINITIONS

Ed 802.01 Definitions.

(a) "Adequate education" means "adequate education" as defined in RSA 194-F:1, I.

(b) "Board" means the New Hampshire state board of education.

(c) "Commissioner" means the commissioner of the department of education.

(d) "Confidential student information" means educational records, student medical information, and student personally identifiable information.

(e) "Curriculum" means "curriculum" as defined in RSA 194-F:1, II.

(f) "Days" means calendar days.

(g) "Department" means "department" as defined in RSA 194-F:1, III.

(h) "Differentiated aid" means the aid categories enumerated in RSA 198:40-a, II (b) - (e).

(i) "Education freedom account (EFA)" means "education freedom account" as defined in RSA 194-F:1, IV.

- (j) “Education service provider” means “education service provider” as defined in RSA 194-F:1, V.
- (k) “Eligible student” means “eligible student” as defined in RSA 194-F:1, VI.
- (l) “EFA student” means “EFA student” as defined in RSA 194-F:1, VII.
- (m) “Full time” means “full time” as defined in RSA 194-F:1, VIII.
- (n) “Intentional and substantial” ~~shall be defined as follows~~means that:
 - (a) Intentional ~~shall~~means knowingly and willfully; and
 - (b) Substantial ~~shall~~means \$250 or more.
- (o) “Parent” means “parent” as defined in RSA 194-F:1, X.
- (p) “Program” means “program” as defined in RSA 194-F:1, XI.
- (q) “Pupil with a disabling condition” means a child having autism, deaf-blindness, deafness, developmental delay, emotional disturbance, hearing impairment, intellectual disability, multiple disabilities, orthopedic impairment, other health impaired, specific learning disability, speech-language impairment, traumatic brain injury, acquired brain injury, or visual impairment or blindness.
- (r) “Remote or hybrid” means “remote or hybrid” as defined in RSA 194-F:1, IX.
- (s) “Scholarship organization” means “scholarship organization” as defined in RSA 194-F:1, XII.
- (t) “State fiscal year” means a one-year period from July 1 to June 30.

PART Ed 803 PROGRAM ADMINISTRATION

Ed 803.01 Scholarship Organization. In addition to the requirements under RSA 194-F:4, the following shall apply to the authority and responsibilities of the scholarship organization under ~~this~~the program:

- (a) The scholarship organization shall ~~have been~~be approved pursuant to RSA 77-G:5, II(a) by the department of revenue administration as a scholarship organization;
- (b) The scholarship organization shall provide access to all types of qualifying educational expenses enumerated in RSA 194-F:2, II(a-o);
- (c) Failure by a scholarship organization to provide access to every qualifying expense described in RSA 194-F:2, II(a-o) shall disqualify a scholarship organization from participation in the program;
- (d) The scholarship organization shall electronically file with the department completed student data at least 30 days prior to the funding date, as described in Table 804-1. Failure to meet the application deadline shall result in delayed or unavailable funding if such failure prevents the department from processing the payment;

(e) The scholarship organization shall verify, at a minimum, that completed applications meet the following:

- (1) The eligible student meets all eligibility criteria as described in RSA 194-F:1, IV;
- (2) The EFA application was verified complete only after signature by the parent or guardian, and the student, if the student is in a secondary education program; and
- (3) The student, parent, guardian, or both have not been disqualified from participation in the program due to funds misuse or are otherwise not eligible pursuant to RSA 194-F:1, VI;

(f) The scholarship organization shall submit to the department a roster of approved EFA students including each student's:

- (1) Information on school of attendance, if applicable;
- (2) Eligibility information;
- (3) Qualifying differentiated aid eligibility;
- (4) Status as a current or new participant in program;
- (5) Amount of EFA funds received and amount of EFA funds remaining; and
- (6) Total EFA funds requested;

(g) The scholarship organization shall have access to confidential student information under the following conditions:

- (1) Confidential student information shall be maintained in a manner consistent with the procedures LEAs follow to manage confidential student information; and
- (2) The scholarship organization shall verify a student SASID number for any student applying for an EFA prior to requesting a new SASID.

(h) The scholarship organization shall make EFA student account balances readily accessible, through a technology interface with real-time or near real time balance information, transaction history, including transaction date, amount deposited or withdrawn, and the name of the education service provider;

(i) The scholarship organization's director shall appoint members to the parent and education service provider advisory commission pursuant to RSA 194-F:5 and which shall be responsible for appeals of education service provider denials and other educational expenses approved by the scholarship organization pursuant to [RSA](#) 194-F:2 (II)(o);

(j) The scholarship organization shall contract with an unaffiliated auditor to conduct a risk-based audit of EFA accounts on, at a minimum, an annual basis. The scholarship organization shall submit a copy of such plan and all associated audit reports to the department;

(k) The department shall receive copies of all subcontracts and assignment agreements, and the department shall not be bound by any provisions contained in a subcontract or an assignment agreement to which the department is not a party;

(l) The scholarship organization shall withhold ~~from deposits~~ from EFA ~~deposits~~ an amount to cover the cost of administering the EFA program, up to a maximum total of 10% of each deposit annually pursuant to RSA 194-F:4, V. All remaining funds shall be available to eligible students for allowable uses; and

(m) The scholarship organization shall develop and implement a records retention policy.

Ed 803.02 Education Service Providers. In addition to the requirements under RSA 194-F:4 and RSA 194-F:6-7, the following shall apply to education service providers approved by the scholarship organization:

(a) The scholarship organization shall publish on its website a standard application form, and procedures for review and approval of education service providers including, but not limited to procedures, if any, used by education service providers to ensure background check of employees who have direct contact with students;

(b) Online and paper applications for education service providers shall be accepted by the scholarship organization for review on a rolling basis throughout the year;

(c) The EFA program shall utilize a wide variety of curricular materials to meet the educational needs of the students;

(d) The scholarship organization shall determine whether the materials selected fall within the core knowledge domains described in RSA 194-F:3, III(d)(1);

(e) Education service providers shall not refund, rebate, or share EFA funds directly with parents or guardians. EFA funds shall only be returned to an eligible student's EFA account;

(f) A list of all approved education service providers shall be posted on the scholarship organization's websites, reported to the department, and made easily accessible to the public to include education service provider name, eligible services, fee amounts received for services, and number of EFA students served;

(g) A directory of all education service providers approved by the scholarship organization shall be available on the department's website; and

(h) Approval by the scholarship organization of an education service provider shall serve as statewide approval of such provider for purposes of the program.

Ed 803.03 Responsibilities of Public Schools and School Districts.

(a) The public school or public school district in which an eligible student was most recently enrolled shall provide to the parent the child's state assigned student identification (SASID) upon request as required under RSA 193-E:5.

(b) Local education agencies (LEAs), where private elementary schools and secondary schools are located, shall ensure that children with disabilities, placed by their parents in private, non-profit schools

participating in state-funded EFA programs, shall be included in the group of parentally-placed private school children with disabilities who are eligible for equitable services, including special education and related services from the LEA where private schools are located.

PART Ed 804 EFA FUNDS AND DISBURSEMENT

Ed 804.01 Funds; Generally. In addition to the requirements under RSA 194-F:2, I and RSA 194-F:4, VIII, the following shall apply to EFA funds:

(a) Pursuant to RSA 194-F:2, EFAs shall be equivalent to the per pupil adequate education grant amount under RSA 198:40-a, plus any differentiated aid that would have been provided to a public school for that eligible student;

(b) Fund transfers shall be made to the scholarship organization in accordance with the distribution of adequate education grants under RSA 198:42 and Ed 804.03; and

(c) A pupil shall be eligible for the differentiated aid amount set forth in RSA 198:40-a, II(d) for EFAs under RSA 194-F if there has been a determination of eligibility for special education by a qualified examiner for each assessment, as defined and enumerated in ED 1107.04 Table 1100.1, in accordance with 34 CFR 300.300-300.311.:

(d) Such determination of eligibility for special education in (c) above may be completed:

(1) At the expense of the parent or guardian, such expense representing a qualifying EFA expense; or

(2) At no expense to the parent or guardian by the student's resident district, pursuant to ED 1105.02.

(e) The student's resident district shall notify the parent or guardian in writing of determinations made under (d)(2) above.

(f) A pupil with a disabling condition, as determined by a medical professional licensed in any state in the United States in accordance with Ed 804.01(~~dc~~)(2), shall not be considered a child with a disability, through an appropriate evaluation, in accordance with 34 CFR 300.304-300.311 and as such, does not qualify for the equitable services funds pursuant to 34 CFR 300.138.

Ed 804.02 Qualifying EFA Expenses. The following shall apply to qualifying EFA expenses enumerated in RSA 194-F:2, II:

(a) Internet connectivity shall not include any additional cost for media streaming or cable media options that are not part of an online learning program or online instructional materials;

(b) Internet and technology purchased with EFA funds shall be primarily used, meaning 51% of the time or more, to help meet the EFA student's education needs;

(c) Computer hardware shall be limited to a single computer device per student every 3 years, unless otherwise approved by the scholarship organization, in accordance with the scholarship organization's approval process, as a necessary educational resource including assistive devices and accessible educational hardware and materials;

(d) An evaluation for determination of eligibility for differentiated aid under Ed 804.01(d)(1); and

(e) The scholarship organization shall publish on its website a policy for pre-approval of qualifying educational expenses consistent with RSA 194-F:2, II(o) and this section.

Ed 804.03 EFA Disbursement. In addition to the requirements under RSA 194-F:4, VIII, the following shall apply to EFA disbursement:

(a) Beginning in state fiscal year 2023 and every year after, funding shall be disbursed 4-times per state fiscal year, in accordance with RSA 198:40-a and the EFA disbursement schedule in Table 804-2 below:

Table 804-1 EFA Disbursement Schedule

EFA Funds Available	Allocated funds to be disbursed per state fiscal year	Student Application Verified and Reported to the Department by:
September 1	20%	August 2
November 1	20%	October 2
January 1	30%	December 2
April 1	30%	March 2

(b) Applications in Ed 805.014 may be submitted to the scholarship organization throughout the year on a rolling basis, but shall be confirmed complete by the scholarship organization before a parent, guardian, or EFA student shall have access to EFA account funds.

PART Ed 805 APPLICATION AND ENROLLMENT

Ed 805.01 Application Development, Agreement, and Notification Requirements.

(a) The scholarship organization shall develop an application for potential participants in the program, which, at a minimum, satisfies the requirements enumerated in RSA 194-F:3.

(b) The scholarship organization shall develop an application which it shall provide for signature to the parent or guardian, and the student, if the student is in a secondary education program.

(c) The application shall contain the following:

(1) An explanation of allowable uses of EFA funds, the responsibilities of parents or guardians, the duties of the scholarship organization, and the role of any financial management firms that the scholarship organization may contract with to administer any aspect of the EFA program;

(2) Notice as follows:

“Participation in the EFA program is a parental placement under 20 USC section 1412, Individuals with Disabilities Education Act (IDEA) if a child with a disability is enrolled in a non-public school. A child with a disability participating in an EFA program and enrolled in a public school under RSA 194-F:2, II(d) is not a parental placement under IDEA and is-shall be entitled to FAPE. Parentally-placed private school children with disabilities shall not be

entitled to a FAPE in connection with their enrollment by their parents in a private school, in accordance with 34 C.F.R. 300.148(a) and pursuant to 34 C.F.R. 300.137(a), while participating in the state-funded EFA program. The school district in which the child with a disability participating in the EFA program enrolled in a public school under RSA 194-F:2,II(d) resides is responsible for the provision of FAPE.”

(d) A signed application as described in (b) above, shall constitute an agreement by the signatory as described in RSA 194-F:3, III.(d), RSA 194-F:3, IV, and RSA 194-F:4, II and III.

Ed 805.02 Enrollment.

(a) The scholarship organization shall approve applications, as described in Ed 805.01, in accordance with RSA 194-F:3, III.

(b) The scholarship organization shall accept rolling admissions into the program.

(c) Within 30 days of receipt of a completed student application, the scholarship organization shall confirm with the parent or guardian in writing that the application is complete in accordance with the approval criteria set forth in RSA 194-F:3.

(d) If the scholarship organization receives an incomplete application, the applicant shall be notified in writing by the scholarship organization within 15 days of receipt which shall include instructions for completing the application.

PART Ed 806 TERMINATION OF EDUCATION FREEDOM ACCOUNTS

Ed 806.01 Termination of EFAs. In addition to the requirements under RSA 194-F:3, VI and RSA 194-F:4, IX through XIII, the following shall apply to the termination of EFAs:

(a) An EFA shall only be dissolved with written consent of the parent or guardian, unless an EFA student graduates high school or there is a determination by the scholarship organization that there is an intentional and substantial misuse of funds;

(b) Unless otherwise noticed in writing by the parent that roll-over EFA account funds are forfeited, written consent of dissolution shall document the parent’s understanding that the rolled-over EFA account funds may continue to be utilized pursuant to RSA 194-F:3, VI.(a), even if the student is attending a public school and no longer participating in the program, or until the former EFA student graduates high school;

(c) The scholarship organization shall develop and make publicly available on its website, the process for the determination of a parent, guardian, or EFA student’s intentional and substantial misuse of EFA funds;

(d) The department shall be notified within 5 days any time an EFA account is suspended, or if a student is otherwise deemed ineligible;

(e) Within 5 days, suspected cases of intentional and substantial misuse of EFA funds shall be reported by the scholarship organization to the department, the board, the attorney general, and, for cases exceeding the amount of a class B felony, the local or state law enforcement agency;

(f) A parent, guardian, or EFA student may appeal decisions by the scholarship organization pursuant to Ed 200 relative to:

- (1) Application completeness and termination of participation; or
- (2) Denial of services;

(g) The scholarship organization shall notify the department by August 1 of each calendar year of any existing EFA student that has not provided an annual record of educational attainment, pursuant to RSA 194-F:3, III(d)(3);

(h) The scholarship organization shall develop a process for the determination of disqualification of an education service provider;

(i) The process shall include, at a minimum, how the following are determined when deciding disqualification:

- (1) Knowing and willful misrepresentation of information;
- (2) Failure to refund any overpayments within 30 days or the failure to process a request for a refund; and
- (3) Routine failure, meaning 3 or more times, to provide students with promised educational goods or services;

(j) A list of all disqualified education service providers shall be available on the scholarship organization's websites or in paper format upon request;

(k) Within 5 days of disqualification, the scholarship organization shall notify parents, guardians, EFA students, and the department in writing or electronically of an education service provider disqualification;

(l) Education service providers disqualified by the scholarship organization shall be disqualified from participation in the EFA program and a list of disqualified providers shall be posted on the department's website;

(m) An education service provider may appeal the scholarship organization's decision to the department pursuant to Ed 200;

(n) When the scholarship organization does not meet the duties, obligations, and authorities in RSA 194-F:4, it ~~is shall~~ no longer ~~be~~ eligible to participate in the EFA program, and the commissioner shall:

- (1) Issue a written notice of ineligibility for participation in the EFA program that shall provide the scholarship organization with an opportunity to meet the requirements for eligibility as described in RSA 194-F:4; and
- (2) If the scholarship organization fails to meet the requirements specified in a notice of ineligibility pursuant to (1) above, remove the scholarship organization from eligibility;

(o) When the scholarship organization is no longer approved under RSA 77:G, the commissioner shall notify the scholarship organization as described in ~~(m)~~(1) and (2) above;

(p) The commissioner shall immediately suspend the scholarship organization’s eligibility where the health, safety, or welfare of students is at risk;

(q) The scholarship organization suspended or removed from the EFA program pursuant to (m)(2) above shall have 15 days from receipt of the notice of proposed action to file with the department’s governance unit a request for a proceeding pursuant to Ed 200. All resulting proceedings shall be conducted in accordance with Ed 200; and

(r) Within 10 days of suspension or removal of a scholarship organization pursuant to (n) above, the department shall commence an adjudicative proceeding in accordance with Ed 200.

PART Ed 807 LEGISLATIVE OVERSIGHT COMMITTEE

Ed 807. 01 Legislative Oversight Committee Established. In addition to the requirements under RSA 194-F:12, the following shall apply to the establishment, administration, and responsibilities of the education freedom savings account oversight committee:

(a) The commissioner and the director of the scholarship organization or designee shall attend committee meetings and provide requested information; and

(b) Pursuant to RSA 194-F:12, the first-named senate member may convene the committee.

Appendix

Rule	State or Federal Statute or Federal Regulation Implemented
Ed 801	RSA 194-F:2, I
Ed 802	RSA 194-F:1
Ed 803	RSA 194-F:2, IV & V; RSA 194-F:4, V, VI, VII, & XVI-XVII; RSA 194-F:5
Ed 804	RSA 194-F:4, IV & VIII
Ed 805	RSA 194-F:4, III
Ed 806	RSA 194-F:4, IX-XIV
Ed 807	RSA 194-F:5

Readopt with amendment and renumber Ed 324, effective 8-27-21 (Document #13824, Interim), as Ed 800 to read as follows:

PART Ed 324 EDUCATION FREEDOM ACCOUNTS PROGRAM

~~Ed 324.01 Purpose.~~ The purpose of these rules is to ensure uniform application of RSA 194 F in the establishment and administration of the education freedom accounts (EFA) program.

~~Ed 324.02 Scope.~~ Ed 324 shall apply to the scholarship organization, education service providers, and eligible participating students and parents to allow the scholarship organization to provide the option for a parent or guardian to better meet the individual educational needs of his or her eligible student by establishing an education freedom account, for the funding of qualifying education expenses provided by education service providers.

~~Ed 324.03 Definitions.~~ The following definitions shall apply to Ed 324:

- (a) ~~“Board” shall mean the New Hampshire state board of education;~~
- (b) ~~“Commissioner” shall mean the commissioner of the department of education;~~
- (c) ~~“Curriculum” means “curriculum” as defined in RSA 194 F:1, II;~~
- (d) ~~“Days” shall mean calendar days;~~
- (e) ~~“Department” means “department” as defined in RSA 194 F:1, III;~~
- (f) ~~“Education freedom account (EFA)” means “education freedom account (EFA) as defined in RSA 194 F:1, IV;~~
- (g) ~~“Education service provider” means “education service provider” as defined in RSA 194 F:1, V;~~
- (h) ~~“EFA program” means “program” as defined in RSA 194 F:1, XI;~~
- (i) ~~“Eligible student” means “eligible student” as defined in RSA 194 F:1, VI;~~
- (j) ~~“EFA student” means “EFA student” as defined in RSA 194 F:1, VII;~~
- (k) ~~“Full time” means “full time” as defined in RSA 194 F:1, VIII;~~
- (l) ~~“Parent” means “parent” as defined in RSA 194 F:1, X;~~
- (m) ~~“Qualifying differentiated aid eligibility” means “qualifying differentiated aid eligibility” as defined in RSA 198:40 a. A pupil with a qualifying disability as defined under 34 CFR 300.8 as determined by a medical professional licensed to practice in any state in the United States shall be eligible for qualifying differentiated aid under RSA 198:40 a, II(d);~~
- (n) ~~“Remote or hybrid” means “remote or hybrid” as defined in RSA 194 F:1, IX;~~
- (o) ~~“Scholarship program” means “scholarship program” as defined in RSA 194 F:1, XI; and~~

(p) “State fiscal year” shall mean the period from July 1 to June 30 of every calendar year.

Ed 324.04 Applications:

(a) The scholarship organization shall develop an application for potential participants in the program, which, at a minimum, satisfies the requirements enumerated in RSA 194 F:3.

(b) The scholarship organization shall develop an application for signature by the parent or guardian, and the student, if the student is in a secondary education program, to include, at a minimum the required disclosures enumerated in RSA 194 F, including:

(1) A written explanation of allowable uses of EFA funds, the responsibilities of parents or guardians, the duties of the scholarship organization, and the role of any financial management firms that the scholarship organization contracts with to administer any aspect of the EFA program; and

(2) Notice that participation in the EFA program is a parental placement under 20 USC section 1412, Individuals with Disabilities Education Act (IDEA), along with an explanation of the rights that parentally placed students possess under IDEA and any applicable state laws;

Ed 324.05 Program Requirements:

(a) The scholarship organization shall accept rolling admissions into the program.

(b) Within 30 days of receipt of a completed student application, the scholarship organization shall confirm with the parent or guardian in writing that the application is complete in accordance with the approval criteria set forth in RSA 194 F:3.

Ed 324.06 EFA Disbursement

(a) For the first year of the program funding shall be disbursed 4 times during state fiscal year 2022, pursuant to the adjusted amounts determined using RSA 198:40 a, II based on an enrollment count of the verified student applications received by the department from the scholarship organization no later than the date indicated in Table 324 1, and in accordance with the state fiscal year 2022 EFA disbursement schedule in Table 324 1 below:

Table 324 1 State Fiscal Year 2022 EFA Disbursement Schedule

EFA Funds Available	Allocated funds to be disbursed per state fiscal year	Student Application Verified and Reported to the Department by:
September 1	20%	October 2
November 1	20%	October 2
January 1	30%	December 2
April 1	30%	March 2

(b) Beginning in state fiscal year 2023 and every year after, funding shall be disbursed 4 times per state fiscal year, in accordance with RSA 198:40 a in accordance with the EFA disbursement schedule in Table 324.2 below:

Table 324.2 EFA Disbursement Schedule

EFA Funds Available	Allocated funds to be disbursed per state fiscal year	Student Application Verified and Reported to the Department by:
September 1	20%	August 2
November 1	20%	October 2
January 1	30%	December 2
April 1	30%	March 2

(c) Applications in Ed 324.04(b) may be submitted to the scholarship organization throughout the year on a rolling basis, but shall be confirmed complete by the scholarship organization before a parent, guardian, or EFA student shall have access to EFA account funds.

Ed 324.07 Qualifying EFA Expenses. The following shall apply to EFA expenses enumerated in RSA 194 F:2, II:

(a) Internet connectivity shall not include any additional cost for media streaming or cable media options that are not part of an online learning program or online instructional materials;

(b) Internet and technology purchased with EFA funds shall be primarily used, meaning 51% of the time or more, to help meet the EFA student’s education needs;

(c) Computer hardware shall be limited to a single computer device per student every 3 years, unless otherwise approved by the scholarship organization, in accordance with the scholarship organization’s approval process, as a necessary educational resource including assistive devices and accessible educational hardware and materials; and

(d) The scholarship organization shall publish on its website a policy for pre-approval of qualifying educational expenses consistent with RSA 194 F:2, II(o) and this section.

Ed 324.08 Education Service Providers.

(a) The scholarship organization shall publish on its website:

a. A standard application form; and

b. Procedures for review and approval of education service providers including, but not limited to, any procedures used by education service providers to background check employees.

(b) Online and paper applications for education service providers shall be accepted by the scholarship organization for review on a rolling basis throughout the year.

~~(c) The scholarship organization shall determine only whether curricular materials selected by parents and guardians are qualifying materials pursuant to RSA 194 F:2, II(c) and whether the materials fall within the core knowledge domains described in RSA 194 F:3, III(d)(1).~~

~~(d) Education service providers shall not refund, rebate, or share EFA funds directly with parents or guardians. EFA funds shall only be returned to an eligible student's EFA account. Nothing in these rules shall prohibit education service providers from refunding, rebating, or sharing parent, guardian, and eligible student personal non-EFA funds to the parent or guardian.~~

~~(e) A list of all approved education service providers shall be posted on the scholarship organization's website, reported to the department, and made easily accessible to the public to include education service provider name, eligible services, fee amounts received for services, and number of EFA students served.~~

~~(f) A directory of all education service providers approved by the scholarship organization shall be available on the department's website.~~

~~(g) Approval by the scholarship organization of an education service provider shall serve as statewide approval of such provider for purposes of the program.~~

~~Ed 324.09 Scholarship Organizations:~~

~~(a) The scholarship organization shall have been approved pursuant to RSA 77 G:5, II(a) by the department of revenue administration as a scholarship organization.~~

~~(b) The scholarship organization shall provide all types of qualifying educational expenses enumerated in RSA 194 F:2, II(a) (e).~~

~~(d) The scholarship organization shall electronically file with the department completed student data at least 30 days prior to the funding date, as described in Table 324-1 and Table 324-2. Failure to meet the application deadline shall result in delayed or unavailable funding if such failure prevents the department from processing the payment.~~

~~(e) The scholarship organization shall verify, at a minimum, that completed applications meet the following:~~

~~(1) The eligible student meets all eligibility criteria as described in RSA 194 F:1, IV;~~

~~(2) The EFA application was verified complete only after signature by the parent or guardian, and the student, if the student is in a secondary education program; and~~

~~(3) The student, parent, guardian, or both have not been disqualified from participation in the program due to funds misuse or are otherwise not eligible pursuant to RSA 194 F:1, VI.~~

~~(f) The scholarship organization shall submit a roster of approved EFA students which shall include the student's:~~

~~(1) Information on the student's school of attendance, if applicable;~~

~~(2) Eligibility information;~~

~~(3) Qualifying differentiated aid eligibility;~~

~~(4) Whether the student is a current or new participant in program;~~

~~(5) The amount of EFA funds received for each student and the amount of EFA funds remaining in each student's account; and~~

~~(6) Total EFA funds requested.~~

~~(g) The scholarship organization shall make EFA student account balances readily accessible, through a technology interface with real time or near real time balance information, transaction history, including transaction date, amount deposited or withdrawn, and the name of the education service provider.~~

~~(h) The scholarship organization shall create a parent and education service provider advisory commission pursuant to RSA 194 F:5, responsible for appeals of education service provider denials and other educational expenses approved by the scholarship organization pursuant to RSA 194 F:2 (II)(e).~~

~~(i) The scholarship organization shall contract with an unaffiliated auditor to conduct a risk based audit of EFA accounts with the department on, at a minimum, an annual basis.~~

~~(j) The department shall receive copies of all subcontracts and assignment agreements and the department shall not be bound by any provisions contained in a subcontract or an assignment agreement to which the department is not a party.~~

~~(k) The scholarship organization shall withhold from deposits or deduct throughout the year from EFAs an amount to cover the cost of administering the EFA program, up to a maximum total of 10% annually. All remaining funds shall be available to eligible students for allowable uses.~~

~~(l) The scholarship organization shall develop a records retention policy.~~

~~Ed 324.10 Responsibilities of Public Schools and School Districts. The public school or public school district in which an eligible student was most recently enrolled shall provide to the parent their child's state assigned student identification (SASID) as required under RSA 193 E:5.~~

~~Ed 324.11 Termination of EFA.~~

~~(a) An EFA account shall only be dissolved with written consent of the parent or guardian, unless an EFA student graduates high school or there is a determination by the scholarship organization that there is an intentional and substantial misuse of funds.~~

~~(b) Unless otherwise noticed in writing by the parent that roll over EFA account funds are forfeited, written consent of dissolution shall document the parent's understanding that the rolled over EFA account funds may continue to be utilized pursuant to RSA 194 F:3, VI.(a), even if the student is attending a public school and no longer participating in the program, or until the former EFA student graduates high school.~~

~~(c) The scholarship organization shall develop and make publicly available on its website, the process for the determination of a parent, guardian, or EFA student's intentional and substantial misuse of EFA funds.~~

~~(d) The department shall be notified within 5 days any time an EFA account is suspended, or if a student is otherwise deemed ineligible.~~

~~(e) Within 5 days, suspected cases of intentional and substantial misuse of EFA funds shall be reported by the scholarship organization to the department, the board, the attorney general, and, for cases exceeding the amount of a class B felony, the local or state law enforcement agency.~~

~~(f) A parent, guardian, or EFA student may appeal decisions by the scholarship organization pursuant to Ed 200 relative to application completeness and termination of participation.~~

~~(g) The scholarship organization shall notify the department by August 1 of each calendar year of any existing EFA student that has not provided an annual record of educational attainment, pursuant to RSA 194 F:3, III.(d)(3).~~

~~(h) The scholarship organization shall develop a process for the determination of disqualification of an education service provider.~~

~~(i) The process shall include, at a minimum, how the following shall be determined when deciding disqualification:~~

~~(1) Intentional and substantial misrepresentation of information;~~

~~(2) Failure to refund any overpayments within 30 days or the failure to process a request for a refund; and~~

~~(3) Failure to provide students with promised educational goods or services.~~

~~(j) A list of all disqualified education service providers shall be available on the scholarship organization's websites or in paper format upon request.~~

~~(k) Within 5 days of disqualification, the scholarship organizations shall notify parents, guardians, EFA students, and the department in writing or electronically of an education service provider disqualification.~~

~~(l) Education service providers disqualified by the scholarship organization shall be disqualified from participation in the EFA program and a list of disqualified providers shall be posted on the Department's website.~~

~~(m) An education service provider may appeal the scholarship organization's decision to the department pursuant to Ed 200.~~

~~(n) When the scholarship organization is no longer approved under RSA 77-G, the commissioner shall:~~

~~(1) Issue a written notice of noncompliance that shall provide the scholarship organization with an opportunity to meet the requirements; and~~

~~(2) If the scholarship organization fails to meet the requirements specified in a notice of noncompliance pursuant to (1) above, remove the scholarship organization from eligibility.~~

~~(o) The commissioner shall immediately suspend the scholarship organization's eligibility where the health, safety, or welfare of students is at risk.~~

~~(p) The scholarship organization suspended or removed pursuant to (n)(2) or (n) above shall have 15 days from receipt of the notice of proposed action to file with the department's governance unit a request for a proceeding pursuant to Ed 200. All resulting proceedings shall be conducted in accordance with Ed 200.~~

~~Ed 324.12 Legislative Oversight Committee Established.~~

~~(a) The commissioner and the director of the scholarship organization or designee shall attend committee meetings and provide requested information.~~

~~(b) Pursuant to RSA 194-F:12, the first named senate member may convene the committee.~~

CHAPTER Ed 800 EDUCATION FREEDOM ACCOUNTS PROGRAM

PART Ed 801 PURPOSE AND SCOPE

Ed 801.01 Purpose. The purpose of these rules is to ensure uniform application of RSA 194-F in the establishment and administration of the education freedom accounts (EFA) program.

Ed 801.02 Scope. Ed 800 shall apply to the scholarship organization, education service providers, and eligible participating students and parents to allow the scholarship organization to provide the option for a parent or guardian to better meet the individual educational needs of his or her eligible student by establishing an EFA, for the funding of qualifying education expenses provided by education service providers.

PART Ed 802 DEFINITIONS

Ed 802.01 Definitions.

(a) "Adequate education" means "adequate education" as defined in RSA 194-F:1, I.

(b) "Board" means the New Hampshire state board of education.

(c) "Commissioner" means the commissioner of the department of education.

(d) "Confidential student information" means educational records, student medical information, and student personally identifiable information.

(e) "Curriculum" means "curriculum" as defined in RSA 194-F:1, II.

(f) "Days" means calendar days.

(g) "Department" means "department" as defined in RSA 194-F:1, III.

(h) "Differentiated aid" means the aid categories enumerated in RSA 198:40-a, II (b) - (e).

(i) "Education freedom account (EFA)" means "education freedom account" as defined in RSA 194-F:1, IV.

- (j) “Education service provider” means “education service provider” as defined in RSA 194-F:1, V.
- (k) “Eligible student” means “eligible student” as defined in RSA 194-F:1, VI.
- (l) “EFA student” means “EFA student” as defined in RSA 194-F:1, VII.
- (m) “Full time” means “full time” as defined in RSA 194-F:1, VIII.
- (n) “Intentional and substantial” means that:
 - (a) Intentional means knowingly and willfully; and
 - (b) Substantial means \$250 or more.
- (o) “Parent” means “parent” as defined in RSA 194-F:1, X.
- (p) “Program” means “program” as defined in RSA 194-F:1, XI.
- (q) “Pupil with a disabling condition” means a child having autism, deaf-blindness, deafness, developmental delay, emotional disturbance, hearing impairment, intellectual disability, multiple disabilities, orthopedic impairment, other health impaired, specific learning disability, speech-language impairment, traumatic brain injury, acquired brain injury, or visual impairment or blindness.
- (r) “Remote or hybrid” means “remote or hybrid” as defined in RSA 194-F:1, IX.
- (s) “Scholarship organization” means “scholarship organization” as defined in RSA 194-F:1, XII.
- (t) “State fiscal year” means a one-year period from July 1 to June 30.

PART Ed 803 PROGRAM ADMINISTRATION

Ed 803.01 Scholarship Organization. In addition to the requirements under RSA 194-F:4, the following shall apply to the authority and responsibilities of the scholarship organization under the program:

- (a) The scholarship organization shall be approved pursuant to RSA 77-G:5, II(a) by the department of revenue administration as a scholarship organization;
- (b) The scholarship organization shall provide access to all types of qualifying educational expenses enumerated in RSA 194-F:2, II(a-o);
- (c) Failure by a scholarship organization to provide access to every qualifying expense described in RSA 194-F:2, II(a-o) shall disqualify a scholarship organization from participation in the program;
- (d) The scholarship organization shall electronically file with the department completed student data at least 30 days prior to the funding date, as described in Table 804-1. Failure to meet the application deadline shall result in delayed or unavailable funding if such failure prevents the department from processing the payment;

(e) The scholarship organization shall verify, at a minimum, that completed applications meet the following:

- (1) The eligible student meets all eligibility criteria as described in RSA 194-F:1, IV;
- (2) The EFA application was verified complete only after signature by the parent or guardian, and the student, if the student is in a secondary education program; and
- (3) The student, parent, guardian, or both have not been disqualified from participation in the program due to funds misuse or are otherwise not eligible pursuant to RSA 194-F:1, VI;

(f) The scholarship organization shall submit to the department a roster of approved EFA students including each student's:

- (1) Information on school of attendance, if applicable;
- (2) Eligibility information;
- (3) Qualifying differentiated aid eligibility;
- (4) Status as a current or new participant in program;
- (5) Amount of EFA funds received and amount of EFA funds remaining; and
- (6) Total EFA funds requested;

(g) The scholarship organization shall have access to confidential student information under the following conditions:

- (1) Confidential student information shall be maintained in a manner consistent with the procedures LEAs follow to manage confidential student information; and
- (2) The scholarship organization shall verify a student SASID number for any student applying for an EFA prior to requesting a new SASID.

(h) The scholarship organization shall make EFA student account balances readily accessible, through a technology interface with real-time or near real time balance information, transaction history, including transaction date, amount deposited or withdrawn, and the name of the education service provider;

(i) The scholarship organization's director shall appoint members to the parent and education service provider advisory commission pursuant to RSA 194-F:5 and which shall be responsible for appeals of education service provider denials and other educational expenses approved by the scholarship organization pursuant to RSA 194-F:2 (II)(o);

(j) The scholarship organization shall contract with an unaffiliated auditor to conduct a risk-based audit of EFA accounts on, at a minimum, an annual basis. The scholarship organization shall submit a copy of such plan and all associated audit reports to the department;

(k) The department shall receive copies of all subcontracts and assignment agreements, and the department shall not be bound by any provisions contained in a subcontract or an assignment agreement to which the department is not a party;

(l) The scholarship organization shall withhold from EFA deposits an amount to cover the cost of administering the EFA program, up to a maximum total of 10% of each deposit annually pursuant to RSA 194-F:4, V. All remaining funds shall be available to eligible students for allowable uses; and

(m) The scholarship organization shall develop and implement a records retention policy.

Ed 803.02 Education Service Providers. In addition to the requirements under RSA 194-F:4 and RSA 194-F:6-7, the following shall apply to education service providers approved by the scholarship organization:

(a) The scholarship organization shall publish on its website a standard application form, and procedures for review and approval of education service providers including, but not limited to procedures, if any, used by education service providers to ensure background check of employees who have direct contact with students;

(b) Online and paper applications for education service providers shall be accepted by the scholarship organization for review on a rolling basis throughout the year;

(c) The EFA program shall utilize a wide variety of curricular materials to meet the educational needs of the students;

(d) The scholarship organization shall determine whether the materials selected fall within the core knowledge domains described in RSA 194-F:3, III(d)(1);

(e) Education service providers shall not refund, rebate, or share EFA funds directly with parents or guardians. EFA funds shall only be returned to an eligible student's EFA account;

(f) A list of all approved education service providers shall be posted on the scholarship organization's websites, reported to the department, and made easily accessible to the public to include education service provider name, eligible services, fee amounts received for services, and number of EFA students served;

(g) A directory of all education service providers approved by the scholarship organization shall be available on the department's website; and

(h) Approval by the scholarship organization of an education service provider shall serve as statewide approval of such provider for purposes of the program.

Ed 803.03 Responsibilities of Public Schools and School Districts.

(a) The public school or public school district in which an eligible student was most recently enrolled shall provide to the parent the child's state assigned student identification (SASID) upon request as required under RSA 193-E:5.

(b) Local education agencies (LEAs), where private elementary schools and secondary schools are located, shall ensure that children with disabilities, placed by their parents in private, non-profit schools participating in state-funded EFA programs, shall be included in the group of parentally-placed private

school children with disabilities who are eligible for equitable services, including special education and related services from the LEA where private schools are located.

PART Ed 804 EFA FUNDS AND DISBURSEMENT

Ed 804.01 Funds; Generally. In addition to the requirements under RSA 194-F:2, I and RSA 194-F:4, VIII, the following shall apply to EFA funds:

(a) Pursuant to RSA 194-F:2, EFAs shall be equivalent to the per pupil adequate education grant amount under RSA 198:40-a, plus any differentiated aid that would have been provided to a public school for that eligible student;

(b) Fund transfers shall be made to the scholarship organization in accordance with the distribution of adequate education grants under RSA 198:42 and Ed 804.03; and

(c) A pupil shall be eligible for the differentiated aid amount set forth in RSA 198:40-a, II(d) for EFAs under RSA 194-F if there has been a determination of eligibility for special education by a qualified examiner for each assessment, as defined and enumerated in ED 1107.04 Table 1100.1, in accordance with 34 CFR 300.300-300.311.:

(d) Such determination of eligibility for special education in (c) above may be completed:

(1) At the expense of the parent or guardian, such expense representing a qualifying EFA expense; or

(2) At no expense to the parent or guardian by the student's resident district, pursuant to ED 1105.02.

(e) The student's resident district shall notify the parent or guardian in writing of determinations made under (d)(2) above.

(f) A pupil with a disabling condition, as determined by a medical professional licensed in any state in the United States in accordance with Ed 804.01(c), shall not be considered a child with a disability, through an appropriate evaluation, in accordance with 34 CFR 300.304-300.311 and as such, does not qualify for the equitable services funds pursuant to 34 CFR 300.138.

Ed 804.02 Qualifying EFA Expenses. The following shall apply to qualifying EFA expenses enumerated in RSA 194-F:2, II:

(a) Internet connectivity shall not include any additional cost for media streaming or cable media options that are not part of an online learning program or online instructional materials;

(b) Internet and technology purchased with EFA funds shall be primarily used, meaning 51% of the time or more, to help meet the EFA student's education needs;

(c) Computer hardware shall be limited to a single computer device per student every 3 years, unless otherwise approved by the scholarship organization, in accordance with the scholarship organization's approval process, as a necessary educational resource including assistive devices and accessible educational hardware and materials;

(d) An evaluation for determination of eligibility for differentiated aid under Ed 804.01(d)(1); and

(e) The scholarship organization shall publish on its website a policy for pre-approval of qualifying educational expenses consistent with RSA 194-F:2, II(o) and this section.

Ed 804.03 EFA Disbursement. In addition to the requirements under RSA 194-F:4, VIII, the following shall apply to EFA disbursement:

(a) Beginning in state fiscal year 2023 and every year after, funding shall be disbursed 4-times per state fiscal year, in accordance with RSA 198:40-a and the EFA disbursement schedule in Table 804-2 below:

Table 804-1 EFA Disbursement Schedule

EFA Funds Available	Allocated funds to be disbursed per state fiscal year	Student Application Verified and Reported to the Department by:
September 1	20%	August 2
November 1	20%	October 2
January 1	30%	December 2
April 1	30%	March 2

(b) Applications in Ed 805.01 may be submitted to the scholarship organization throughout the year on a rolling basis, but shall be confirmed complete by the scholarship organization before a parent, guardian, or EFA student shall have access to EFA account funds.

PART Ed 805 APPLICATION AND ENROLLMENT

Ed 805.01 Application Development, Agreement, and Notification Requirements.

(a) The scholarship organization shall develop an application for potential participants in the program, which, at a minimum, satisfies the requirements enumerated in RSA 194-F:3.

(b) The scholarship organization shall develop an application which it shall provide for signature to the parent or guardian, and the student, if the student is in a secondary education program.

(c) The application shall contain the following:

(1) An explanation of allowable uses of EFA funds, the responsibilities of parents or guardians, the duties of the scholarship organization, and the role of any financial management firms that the scholarship organization may contract with to administer any aspect of the EFA program;

(2) Notice as follows:

“Participation in the EFA program is a parental placement under 20 USC section 1412, Individuals with Disabilities Education Act (IDEA) if a child with a disability is enrolled in a non-public school. A child with a disability participating in an EFA program and enrolled in a public school under RSA 194-F:2, II(d) is not a parental placement under IDEA and shall be entitled to FAPE. Parentally-placed private school children with disabilities shall not be entitled to a FAPE in connection with their enrollment by their parents in a private school, in

accordance with 34 C.F.R. 300.148(a) and pursuant to 34 C.F.R. 300.137(a), while participating in the state-funded EFA program. The school district in which the child with a disability participating in the EFA program enrolled in a public school under RSA 194-F:2,II(d) resides is responsible for the provision of FAPE.”

(d) A signed application as described in (b) above, shall constitute an agreement by the signatory as described in RSA 194-F:3, III.(d), RSA 194-F:3, IV, and RSA 194-F:4, II and III.

Ed 805.02 Enrollment.

(a) The scholarship organization shall approve applications, as described in Ed 805.01, in accordance with RSA 194-F:3, III.

(b) The scholarship organization shall accept rolling admissions into the program.

(c) Within 30 days of receipt of a completed student application, the scholarship organization shall confirm with the parent or guardian in writing that the application is complete in accordance with the approval criteria set forth in RSA 194-F:3.

(d) If the scholarship organization receives an incomplete application, the applicant shall be notified in writing by the scholarship organization within 15 days of receipt which shall include instructions for completing the application.

PART Ed 806 TERMINATION OF EDUCATION FREEDOM ACCOUNTS

Ed 806.01 Termination of EFAs. In addition to the requirements under RSA 194-F:3, VI and RSA 194-F:4, IX through XIII, the following shall apply to the termination of EFAs:

(a) An EFA shall only be dissolved with written consent of the parent or guardian, unless an EFA student graduates high school or there is a determination by the scholarship organization that there is an intentional and substantial misuse of funds;

(b) Unless otherwise noticed in writing by the parent that roll-over EFA account funds are forfeited, written consent of dissolution shall document the parent’s understanding that the rolled-over EFA account funds may continue to be utilized pursuant to RSA 194-F:3, VI.(a), even if the student is attending a public school and no longer participating in the program, or until the former EFA student graduates high school;

(c) The scholarship organization shall develop and make publicly available on its website, the process for the determination of a parent, guardian, or EFA student’s intentional and substantial misuse of EFA funds;

(d) The department shall be notified within 5 days any time an EFA account is suspended, or if a student is otherwise deemed ineligible;

(e) Within 5 days, suspected cases of intentional and substantial misuse of EFA funds shall be reported by the scholarship organization to the department, the board, the attorney general, and, for cases exceeding the amount of a class B felony, the local or state law enforcement agency;

(f) A parent, guardian, or EFA student may appeal decisions by the scholarship organization pursuant to Ed 200 relative to:

(1) Application completeness and termination of participation; or

(2) Denial of services;

(g) The scholarship organization shall notify the department by August 1 of each calendar year of any existing EFA student that has not provided an annual record of educational attainment, pursuant to RSA 194-F:3, III(d)(3);

(h) The scholarship organization shall develop a process for the determination of disqualification of an education service provider;

(i) The process shall include, at a minimum, how the following are determined when deciding disqualification:

(1) Knowing and willful misrepresentation of information;

(2) Failure to refund any overpayments within 30 days or the failure to process a request for a refund; and

(3) Routine failure, meaning 3 or more times, to provide students with promised educational goods or services;

(j) A list of all disqualified education service providers shall be available on the scholarship organization's websites or in paper format upon request;

(k) Within 5 days of disqualification, the scholarship organization shall notify parents, guardians, EFA students, and the department in writing or electronically of an education service provider disqualification;

(l) Education service providers disqualified by the scholarship organization shall be disqualified from participation in the EFA program and a list of disqualified providers shall be posted on the department's website;

(m) An education service provider may appeal the scholarship organization's decision to the department pursuant to Ed 200;

(n) When the scholarship organization does not meet the duties, obligations, and authorities in RSA 194-F:4, it shall no longer be eligible to participate in the EFA program, and the commissioner shall:

(1) Issue a written notice of ineligibility for participation in the EFA program that shall provide the scholarship organization with an opportunity to meet the requirements for eligibility as described in RSA 194-F:4; and

(2) If the scholarship organization fails to meet the requirements specified in a notice of ineligibility pursuant to (1) above, remove the scholarship organization from eligibility;

(o) When the scholarship organization is no longer approved under RSA 77:G, the commissioner shall notify the scholarship organization as described in (n)(1) and (2) above;

(p) The commissioner shall immediately suspend the scholarship organization’s eligibility where the health, safety, or welfare of students is at risk;

(q) The scholarship organization suspended or removed from the EFA program pursuant to (n)(2) above shall have 15 days from receipt of the notice of proposed action to file with the department’s governance unit a request for a proceeding pursuant to Ed 200. All resulting proceedings shall be conducted in accordance with Ed 200; and

(r) Within 10 days of suspension or removal of a scholarship organization pursuant to (n) above, the department shall commence an adjudicative proceeding in accordance with Ed 200.

PART Ed 807 LEGISLATIVE OVERSIGHT COMMITTEE

Ed 807. 01 Legislative Oversight Committee Established. In addition to the requirements under RSA 194-F:12, the following shall apply to the establishment, administration, and responsibilities of the education freedom savings account oversight committee:

(a) The commissioner and the director of the scholarship organization or designee shall attend committee meetings and provide requested information; and

(b) Pursuant to RSA 194-F:12, the first-named senate member may convene the committee.

Appendix

Rule	State or Federal Statute or Federal Regulation Implemented
Ed 801	RSA 194-F:2, I
Ed 802	RSA 194-F:1
Ed 803	RSA 194-F:2, IV & V; RSA 194-F:4, V, VI, VII, & XVI-XVII; RSA 194-F:5
Ed 804	RSA 194-F:4, IV & VIII
Ed 805	RSA 194-F:4, III
Ed 806	RSA 194-F:4, IX-XIV
Ed 807	RSA 194-F:5