New Hampshire Rules for the Education of Children with Disabilities

June 30, 2008

Amended as of December 1, 2010

GOVERNOR OF NEW HAMPSHIRE

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Editorial Note:
The New Hampshire Rules for the Education of Children amended:

Ed 1128.08 State Aid for In-District Programs, effective April 13, 2010
P.L. 111-256, Rosa's Law, Mental Retardation to Intellectual Disability, effective October 5, 2010
Ed 1102.01 Definitions A-C, effective November 10, 2010
Ed 1120.05 Parental Refusal of Consent, effective June 10, 2009 and November 10, 2010
Ed 1120.06 Parental Failure to Respond, effective November 10, 2010

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The Age Discrimination in Employment Act of 1967
The Age Discrimination Act of 1975
Title IX of the Education Amendments of 1972 (Title IX) - sex
Section 504 of the Rehabilitation Act of 1973 (Section 504) - disability
The Americans with Disabilities Act of 1990 (ADA) - disability
NH Law against discrimination (RSA 354-A)

The following individual has been designated to handle inquiries regarding the nondiscrimination policies and laws above except Section 504:

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NOTE TO THE READER

This edition of the *New Hampshire Rules for the Education of Children with Disabilities* has been prepared as a reference for parents and educators. As such, it has been formatted to make it easy to use. IT IS NOT, NOR IS IT INTENDED TO BE, AN EXACT COPY OF THE OFFICIAL LEGISLATIVE DOCUMENT CONTAINING THESE RULES.

Persons who have a specific need for any of this material in its original or alternate format, may call the Department of Education at (603) 271-3189 to make arrangements to obtain it.

The Department will be entering into rulemaking in the near future to revise the rules to comply with recent changes in state law.

TABLE OF CONTENTS

CHAPTER Ed 1100
RULES FOR THE EDUCATION OF CHILDREN WITH DISABILTIIES

Part Ed 1101	**Rules for the Education of Children with Disabilities**	**Page 1**
Part Ed 1101.01	Purpose	Page 1
Part Ed 1101.03	Scope	Page 1
Part Ed 1102	**Definitions**	**Page 2**
Part Ed 1102.01	Definitions A-C	Page 2
Part Ed 1102.02	Definitions D-G	Page 9
Part Ed 1102.03	Definitions H-M	Page 12
Part Ed 1102.04	Definitions N-R	Page 22
Part Ed 1102.05	Definitions S-Z	Page 26
Part Ed 1103	**Participants in the Special Education Process**	**Page 32**
Part Ed 1103.01	IEP Team	Page 32
Part Ed 1103.02	Parent Participation	Page 33
Part Ed 1104	**Special Education Process Sequence**	**Page 36**
Part Ed 1104.01	Sequence of Special Education Process	Page 36
Part Ed 1105	**Child Find**	**Page 37**
Part Ed 1105.01	Responsibilities of the Local Education Agency	Page 37
Part Ed 1105.02	LEA Child Find Program	Page 37
Part Ed 1105.03	Child Find For Children Placed in Homes For Children, Health Care Facilities, or State Institutions	Page 38
Part Ed 1105.04	Child Find for Children Currently Receiving Family Centered Early Supports & Services	Page 39
Part Ed 1106	**Referral And Disposition of Referral**	**Page 41**
Part Ed 1106.01	Process; Provision of FAPE	Page 41
Part Ed 1107	**Evaluation**	**Page 43**
Part Ed 1107.01	Evaluation	Page 44
Part Ed 1107.02	Evaluation Requirement for Children With Specific Learning Disabilities	Page 48
Part Ed 1107.03	Independent Educational Evaluations	Page 49
Part Ed 1107.04	Qualified Examiners	Page 49
Part Ed 1107.05	Evaluation Report	Page 55
Part Ed 1108	**Determination of Eligibility for Special Education**	**Page 56**
Part Ed 1108.01	Determination of Eligibility for Special Education	Page 56
Part Ed 1109	**The Individualized Education Program**	**Page 57**
Part Ed 1109.01	Elements of the Individualized Education Program	Page 57
Part Ed 1109.02	Transportation	Page 62
Part Ed 1109.03	When an IEP is in Effect; IEP Meetings; Development, Review, and Revision of an IEP; Transition Services	Page 62
Part Ed 1109.04	Copies of the IEP and Evidence of Implementation	Page 66
Part Ed 1109.05	IEPs for Children Placed in Private Providers of Special Education or other non-LEA Programs by Public Agencies	Page 67
Part Ed 1109.06	Monitoring and Annual Review of IEPs	Page 67

Table of Contents (Cont'd)

Part Ed 1110	**Extended School Year Services**	**Page 68**
Part Ed 1110.01	Extended School Year Services	Page 68
Part Ed 1111	**Placement Of Children with Disabilities**	**Page 69**
Part Ed 1111.01	Placement in the Least Restrictive Environment	Page 69
Part Ed 1111.02	Placement Decisions	Page 69
Part Ed 1111.03	Continuum of Alternative Placements	Page 70
Part Ed 1111.04	Children with Disabilities in Private Providers of Special Education and other non-LEA Programs Placed or Referred by Public Agencies	Page 72
Part Ed 1111.05	Home Instruction for School-Aged Children	Page 72
Part Ed 1112	**Parentally-Placed Children with Disabilities**	**Page 76**
Part Ed 1112.01	Parentally-Placed Children with Disabilities when FAPE Is Not an Issue	Page 76
Part Ed 1112.02	Children with Disabilities Enrolled by their Parents in Private Schools when FAPE is at issue	Page 81
Part Ed 1112.03	Children with Disabilities Receiving Home Education	Page 82
Part Ed 1113	**Requirements for the Development and Operation of Programs for Children with Disabilities Administered By Local Education Agencies**	**Page 83**
Part Ed 1113.01	Applicability	Page 83
Part Ed 1113.02	Required IEP Compliance; Programming in Appropriate Learning Environments	Page 83
Part Ed 1113.03	Establishment of Education Programs for Children with Disabilities	Page 84
Part Ed 1113.04	Behavioral Interventions	Page 85
Part Ed 1113.05	Emergency Intervention Procedures	Page 85
Part Ed 1113.06	Use of Aversive Behavioral Interventions	Page 86
Part Ed 1113.07	Prohibition on Mandatory Medication	Page 86
Part Ed 1113.08	Curricula	Page 86
Part Ed 1113.09	Equipment, Materials and Assistive Technology	Page 87
Part Ed 1113.10	Class Size and Age Range	Page 88
Part Ed 1113.11	Facilities and Location	Page 89
Part Ed 1113.12	Personnel Standards	Page 91
Part Ed 1113.13	Diplomas	Page 92
Part Ed 1113.14	The Length of the School Year	Page 93
Part Ed 1113.15	The Length of the School Day	Page 95
Part Ed 1114	**Standards For Approval of Private Providers of Special Education and Non-Lea Programs**	**Page 97**
Part Ed 1114.01	Applicability	Page 97
Part Ed 1114.02	Definition	Page 97
Part Ed 1114.03	Governance	Page 97
Part Ed 1114.04	Administration	Page 97
Part Ed 1114.05	Program Requirements	Page 98
Part Ed 1114.06	Responsibilities of Private Providers of Special Education or Other Non-LEA Programs in the Implementation of IEPs	Page 100
Part Ed 1114.07	Behavioral Interventions	Page 101
Part Ed 1114.08	Emergency Intervention Procedures	Page 101
Part Ed 1114.09	Use of Aversive Behavioral Interventions	Page 102

Table of Contents (Cont'd)

Part Ed 1114.10	Qualifications and Requirements for Instructional, Administrative, and Support Personnel	Page 102
Part Ed 1114.11	Employee and Volunteer Background Investigations	Page 103
Part Ed 1114.12	Change in Placement or Termination of the Enrollment of a Child with a Disability	Page 103
Part Ed 1114.13	Parent Access to Education Records	Page 104
Part Ed 1114.14	Class Size	Page 104
Part Ed 1114.15	Calendar Requirements	Page 104
Part Ed 1114.16	Physical Facilities	Page 104
Part Ed 1114.17	Child Care	Page 106
Part Ed 1114.18	Health and Medical Care	Page 106
Part Ed 1114.19	Insurance Coverage	Page 107
Part Ed 1114.20	Photography and Audio or Audio-Visual Recording	Page 107
Part Ed 1114.21	Emergency Planning and Preparedness	Page 107
Part Ed 1114.22	Protections Afforded to Children with Disabilities	Page 108
Part Ed 1115	**Surrogate Parents**	**Page 109**
Part Ed 1115.01	Commissioner's Responsibility; Basis for Appointment of Surrogate by Commissioner	Page 109
Part Ed 1115.02	Initiating a Request for Appointment of a Surrogate Parent	Page 109
Part Ed 1115.03	Investigation and Determination of the Need for a Surrogate Parent	Page 109
Part Ed 1115.04	Requesting Appointment of a Surrogate Parent	Page 111
Part Ed 1115.05	Appointment	Page 112
Part Ed 1115.06	Selection of Surrogate Parents	Page 113
Part Ed 1115.07	Training of Surrogate Parents	Page 115
Part Ed 1115.08	Responsibilities of Surrogate Parents	Page 115
Part Ed 1115.09	Surrogate Parents for Children Placed in Homes For Children, Health Care Facilities, or State Institutions	Page 116
Part Ed 1116	**Alternative Methods For The Appointment of Surrogate Parents**	**Page 117**
Part Ed 1116.01	Applicability	Page 117
Part Ed 1116.02	Assignment of a Surrogate Parent for an Unaccompanied Child who is or may be a Child With a Disability	Page 117
Part Ed 1116.03	Appointment of a Surrogate Parent by Court Order for a Child who is or may be a Child with a Disability	Page 117
Part Ed 1116.04	Appointment of Foster Parents as Surrogate Parents Pursuant to RSA 186-C:14-a	Page 117
Part Ed 1117	**Education Of Children Placed In Homes for Children, Health Care Facilities, or State Institutions**	**Page 118**
Part Ed 1117.01	Purpose and Scope	Page 120
Part Ed 1117.02	Definitions	Page 120
Part Ed 1117.03	Records Excluded from the Definition of Educational Records	Page 123
Part Ed 1117.04	Preplacement and Placement Review Procedures for Children Previously Determined to have Disabilities	Page 123
Part Ed 1117.05	Emergency Placement Review Procedures for Children Previously Determined to have Disabilities	Page 126

Table of Contents (Cont'd)

Part Ed 1117.06	Preplacement and Placement Review Procedures for Children Not Previously Determined to have Disabilities	Page 126
Part Ed 117.07	Placement Review Procedures for Emergency DCYF or DJJS Placements of Children Not Previously Determined to have Disabilities	Page 126
Part Ed 1117.08	Determination of Liable School District	Page 127
Part Ed 1117.09	Dispute Resolution Procedures	Page 127
Part Ed 1117.10	Student Files Maintained	Page 128
Part Ed 1118	**Incarcerated Children with Disabilities**	**Page 129**
Part Ed 1118.01	Definitions	Page 129
Part Ed 1118.02	Eligible Offenders with Disabilities Incarcerated In State Correctional Facilities	Page 129
Part Ed 118.03	Incarcerated Children Under the Age of 18	Page 129
Part Ed 1118.04	Children with Disabilities Incarcerated in County Correctional Facilities	Page 129
Part Ed 1119	**Confidentiality of Information**	**Page 130**
Part Ed 1119.01	Definitions	Page 130
Part Ed 1119.02	Confidentiality Requirements	Page 130
Part Ed 1119.03	Children's Rights	Page 133
Part Ed 1119.04	Disciplinary Information	Page 133
Part Ed 1119.05	Prior Consent for Disclosure Required	Page 134
Part Ed 1119.06	Prior Consent for Disclosure Not Required In Certain Situations	Page 134
Part Ed 1120	**Procedural Safeguards**	**Page 135**
Part Ed 1120.01	Applicability; Transfer of Rights	Page 135
Part Ed 1120.02	Rights and Responsibilities	Page 135
Part Ed 1120.03	Written Prior Notice	Page 135
Part Ed 1120.04	Parental Consent	Page 137
Part Ed 1120.05	Parent Refusal of Consent; Initiation of Due Process Hearing by LEA	Page 139
Part Ed 1120.06	Parental Failure to Respond; Implementation of Changes by LEA	Page 140
Part Ed 1120.07	Independent Educational Evaluations	Page 141
Part Ed 1120.08	Public and Private Insurance	Page 142
Part Ed 1121	**Complaint Procedures**	**Page 146**
Part Ed 1121.01	Filing a Complaint	Page 146
Part Ed 1121.02	Investigation of Complaints and Complaint Procedures	Page 147
Part Ed 1121.03	Resolution of Complaints	Page 149
Part Ed 1121.04	Reconsideration and Appeals	Page 149
Part Ed 1122	**Alternative Dispute Resolution**	**Page 150**
Part Ed 1122.01	Availability of Alternative Dispute Resolution	Page 150
Part Ed 1122.02	Forms of Alternative Dispute Resolution	Page 151
Part Ed 1122.03	Alternative Dispute Resolution Results	Page 154
Part Ed 1122.04	Appointment of a Hearing Officer	Page 154
Part Ed 1123	**Administrative Due Process Hearing Procedure**	**Page 155**
Part Ed 1123.01	Conducting Administrative Due Process Hearings	Page 155
Part Ed 1123.02	Sequence of an Administrative Due Process Hearing	Page 162
Part Ed 1123.03	Filing a Due Process Hearing Complaint	Page 162
Part Ed 1123.04	Initiation of Administrative Due Process Hearing by Parents or by LEA	Page 163

Table of Contents (Cont'd)

Part Ed 1123.05	Required Notice for Filing Administrative Due Process Hearing Complaint	Page 163
Part Ed 1123.06	Commencement of Hearing Process	Page 163
Part Ed 1123.07	Scheduling of Alternative Dispute Resolution, Prehearing Conference, and Due Process Hearing	Page 163
Part Ed 1123.08	Resolution Process	Page 164
Part Ed 1123.09	Time of Hearing	Page 164
Part Ed 1123.10	Parental Withdrawal of Due Process Hearing Complaint	Page 164
Part Ed 1123.11	Local Education Agency Responsibilities When An Administrative Due Process Hearing Complaint is Filed	Page 164
Part Ed 1123.12	Department Administrative Due Process Hearing Responsibilities	Page 164
Part Ed 1123.13	Voluntary Production of Information	Page 165
Part Ed 1123.14	Motion to Compel Production of Information	Page 165
Part Ed 1123.15	Prehearing Procedures	Page 165
Part Ed 1123.16	Notification Concerning Agreement	Page 166
Part Ed 1123.17	Hearing Procedures	Page 166
Part Ed 1123.18	Hearing Officer Decision	Page 168
Part Ed 1123.19	Extension of 45-Day Period	Page 168
Part Ed 1123.20	Appeal of Decision of Hearing Officer	Page 168
Part Ed 1123.21	Copies of Decision to be Available	Page 169
Part Ed 1123.22	Posthearing Matters	Page 169
Part Ed 1123.23	Child's Status During Proceedings	Page 169
Part Ed 1123.24	Hearing Officers	Page 170
Part Ed 1123.25	Expedited Due Process Hearings	Page 171

Part Ed 1124	**Disciplinary Procedures for Children with Disabilities**	**Page 174**
Part Ed 1124.01	Disciplinary Procedures	Page 174
Part Ed 1124.02	Services for Children with Disabilities Removed From Current Placement	Page 178

Part Ed 1125	**State Department of Education Enforcement**	**Page 179**
Part Ed 1125.01	Department Enforcement of these Regulations	Page 179
Part Ed 1125.02	Enforcement Procedures	Page 179
Part Ed 1125.03	Opportunity for a Hearing	Page 181
Part Ed 1125.04	Financial Audits	Page 181

Part Ed 1126	**State Department of Education Monitoring of Educational Services and Programs for Children With Disabilities**	**Page 182**
Part Ed 1126.01	Local Education Agency Request for Special Education Funds	Page 182
Part Ed 1126.02	Criteria for Approval of Public and Non-Public Programs	Page 188
Part Ed 1126.03	Program Approval of Public and Non-Public Programs	Page 188
Part Ed 1126.04	Waiver Process for Placements in Approved In-State Programs	Page 190

Table of Contents (Cont'd)

Part Ed 1126.05	Placements in In-State Programs Not Currently Approved to Provide Special Education and Related Services	Page 191
Part Ed 1126.06	Out-of-State Placements	Page 193
Part Ed 1126.07	New Hampshire Special Education Information System (NHSEIS)	Page 193
Part Ed 1127	**Children With Disabilities In Placements for which DCYF Has Financial Responsibility**	**Page 195**
Part Ed 1127.01	Definitions	Page 195
Part Ed 1127.02	Application and Criteria for Financial Assistance	Page 196
Part Ed 1127.03	Limitations and Financial Liability	Page 196
Part Ed 1127.04	Criteria for State Payments	Page 197
Part Ed 1128	**Special Education Catastrophic Aid**	**Page 198**
Part Ed 1128.01	Definitions	Page 198
Part Ed 1128.02	Reimbursement	Page 199
Part Ed 1128.03	Limitations on Reimbursement	Page 200
Part Ed 1128.04	Application for Catastrophic Aid	Page 200
Part Ed 1128.05	Calculation of Cost of Special Education	Page 201
Part Ed 1128.06	Emergency Assistance	Page 201
Part Ed 1128.07	Proration	Page 201
Part Ed 1128.08	State-Aid for In-District Programs	Page 202
Part Ed 1129	**Rate Setting**	**Page 204**
Part Ed 1129.01	Definitions	Page 204
Part Ed 1129.02	Rate Setting Budget Proposal	Page 205
Part Ed 1129.03	Form 1129A: Cover Sheet	Page 205
Part Ed 1129.04	Form 1129B: Personnel	Page 205
Part Ed 1129.05	Form 1129C: Assets and Depreciation	Page 206
Part Ed 1129.06	Form 1129D: Program Data	Page 207
Part Ed 1129.07	Form 1129E: Revenues	Page 208
Part Ed 1129.08	Form 1129F: Expenses by Line Item	Page 209
Part Ed 1129.09	General Rate Setting Information	Page 219
Part Ed 1129.10	Allowable Costs	Page 221
Part Ed 1129.11	Non-Allowable Costs	Page 221
Part Ed 1129.12	Reasonable Costs	Page 222
Part Ed 1129.13	Direct Costs	Page 223
Part Ed 1129.14	Indirect Costs	Page 223
Part Ed 1129.15	Basis of Accounting	Page 223
Part Ed 1129.16	Method of Allocation	Page 223
Part Ed 1129.17	Form 1129.11: Rate of Computations for Instruction, Room and Board, Occupational Therapy, Physical Therapy, Speech Therapy and Counseling	Page 224
Part Ed 1129.18	Audit Requirements	Page 224
Part Ed 1129.19	Rate Notification	Page 225
Part Ed 1129.20	Hearing Mechanism for Special Education Rates	Page 226
Part Ed 1129.21	The Joint Rate Setting Process	Page 229
Part Ed 1129.22	Joint Rate Notification	Page 230
Part Ed 1129.23	Hearing Mechanism for Jointly Set Special Education Rates	Page 230

CHAPTER ED 1100

RULES FOR THE EDUCATION OF CHILDREN WITH DISABILITIES

Ed 1101.01 Purpose

The purpose of Ed 1100, adopted by the State Board of Education, is to insure that all children with disabilities have available to them a free, appropriate, public education pursuant to the Individuals with Disabilities Education Improvement Act of 2004, 20 U.S.C. 1400 et seq., and the final regulations of the U.S. Department of Education issued by the Secretary of Education on August 14, 2006; 34 CFR 300 et seq. The further purpose of Ed 1100 is to adopt rules that are consistent with 20 U.S.C. 1400 et seq.

PART 300—Assistance to States for the Education of Children with Disabilities

Ed 1101.02 Scope

These rules shall apply only to programs that receive public funds.

PART Ed 1102
DEFINITIONS

Ed 1102.01 Definitions A-C

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

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

(c) "Act" means the Individuals with Disabilities Education Improvement Act (IDEA), as amended.

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

(1) Scheduling IEP meetings;

(2) Coordinating evaluations, and IEP drafting;

(3) Visiting potential student placement environments;

(4) Communicating with a parent; and

(5) Updating progress reports for meeting IEP goals.

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

See Ed 1123.01
Conducting Administrative Due Process Hearings. **Page #153**

(f) "Adult student" means a child with a disability who is:

(1) 18 years of age or older but less than 21 years of age and not adjudicated incompetent; or

(2) An emancipated minor pursuant to state law.

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

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

34 CFR 300.704(b)(4)(x) To support the development and provision of appropriate accommodations for children with disabilities, or the development and provision of alternate assessments that are valid and reliable for assessing the performance of children with disabilities, in accordance with sections 1111(b) and 6111 of the ESEA.
Sections 1111(b) and 6111 of ESEA relate to the statewide assessments and alternate assessments required under No Child Left Behind. Appendix A

(i) "Alternative dispute resolution" means the following processes that can be used to resolve an issue or issues in dispute:

(1) A facilitated IEP meeting;

(2) LEA mediation;

(3) State mediation; and

(4) A neutral conference.

(j) "Approved program" means a program of special education as defined in RSA 186-C:2,II.

RSA 186-C:2,II. (including revisions proposed by HB 766). "Approved program" means a program of special education that has been approved by the State Board of Education and that is maintained by a school district, regional special education center, private organization or state institution for the benefit of ***children with disabilities,*** and may include ***home instruction provided by the school district.***

(k) "Assistive technology device" means "assistive technology device" as defined in 34 CFR 300.5.

§300.5 Assistive technology device means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of a child with a disability. The term does not include a medical device that is surgically implanted, or the replacement of such device.

(l) "Assistive technology service" means "assistive technology service" as defined in 34 CFR 300.6.

§300.6 Assistive technology service. means any service that directly assists a child with a disability in the selection, acquisition, or use of an assistive technology device. The term includes--

(a) The evaluation of the needs of a child with a disability, including a functional evaluation of the child in the child's customary environment;
(b) Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by children with disabilities;
(c) Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices;
(d) Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;
(e) Training or technical assistance for a child with a disability or, if appropriate, that child's family; and
(f) Training or technical assistance for professionals (including individuals providing education or rehabilitation services), employers, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of that child.

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

(n) "Behavior intervention plan" means the positive behavior interventions and supports incorporated in the student's IEP.

(o) "Business day" means "business day" as defined in 34 CFR 300.11(b).

§300.11(b) Business day means Monday through Friday, except for Federal and State holidays (unless holidays are specifically included in the designation of business day, as in §300.148(d)(1)(ii)).

(p) "Charter school" means "charter school" as defined in RSA 194-B:1, III.

§300.7 Charter school has the meaning given the term in section 5210(1) of the Elementary and Secondary Education Act of 1965, as amended, 20 U.S.C. 6301 et seq. (ESEA).

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

*** **(r) "Child with acquired brain injury" (ABI) means brain injury that occurs after birth. It includes injury sustained by infection, disease, or lack of oxygen resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects a child's educational performance and requiring special education and or related services.**

(s) "Child with a developmental delay" means a child with a developmental delay as defined in RSA-186-C:2 I-a who:

(1) Is experiencing developmental delays in one or more of the following areas:

a. Physical development;
b. Cognitive development;
c. Communication development;
d. Social or emotional development; or
e. Adaptive development; and

(2) By reason thereof, needs special education and related services, as measured by appropriate diagnostic instruments and procedures consistent with Ed 1107 and identified in compliance with 34 CFR 300.111(b). However, pursuant to 34 CFR 300.111(b)(2), these rules:

a. Shall not require that an LEA adopt and use the term "developmental delay" for any children; and
b. Shall not relieve the LEA of any duty to provide a free appropriate public education to children who qualify for special education based on another eligibility category.

See Ed 1105 Page #35

(t) "Child with a disability" means:

(1) "Child with a disability" as defined in 34 CFR 300.8 who is 3 years of age or older but less than 21 years of age and who has not yet received a regular high school diploma as provided in 34 CFR 300.102;

(2) A child with acquired brain injury as defined in Ed 1102.01(r) above; and,

(3) A child with a developmental delay as defined in Ed 1102.01(s) above.

*** **Effective November 10, 2010**

§300.8 Child with a disability.

(a) General.

(1) Child with a disability means a child evaluated in accordance with §§300.304 through 300.311 as having *Intellectual disability*, a hearing impairment (including deafness), a speech or language impairment, a visual impairment (including blindness), a serious emotional disturbance (referred to in this part as "emotional disturbance"), an orthopedic impairment, autism, traumatic brain injury, an other health impairment, a specific learning disability, deaf-blindness, or multiple disabilities, and who, by reason thereof, needs special education and related services.

(2) (i) Subject to paragraph (a)(2)(ii) of this section, if it is determined, through an appropriate evaluation under §§300.304 through 300.311, that a child has one of the disabilities identified in paragraph (a)(1) of this section, but only needs a related service and not special education, the child is not a child with a disability under this part.

(ii) If, consistent with §300.39(a)(2), the related service required by the child is considered special education rather than a related service under State standards, the child would be determined to be a child with a disability under paragraph (a)(1) of this section.

(b) Children aged three through nine experiencing developmental delays. Child with a disability for children aged three through nine (or any subset of that age range, including ages three through five), may, subject to the conditions described in §300.111(b), include a child—

(1) Who is experiencing developmental delays, as defined by the State and as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas: physical development, cognitive development, communication development, social or emotional development, or adaptive development; and

(2) Who, by reason thereof, needs special education and related services.

(c) Definitions of disability terms. The terms used in this definition of a child with a disability are defined as follows:

(1) (i) **Autism** means a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three, that adversely affects a child's educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences.

(ii) Autism does not apply if a child's educational performance is adversely affected primarily because the child has an emotional disturbance, as defined in paragraph (c)(4) of this section.

(iii) A child who manifests the characteristics of autism after age three could be identified as having autism if the criteria in paragraph (c)(1)(i) of this section are satisfied.

(2) **Deaf-blindness** means concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational needs that they cannot be accommodated in special education programs solely for children with deafness or children with blindness.

(3) **Deafness** means a hearing impairment that is so severe that the child is impaired in processing linguistic information through hearing, with or without amplification that adversely affects a child's educational performance.

P.L. 111-256, Rosa's Law

(4) (i) **Emotional disturbance** means a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a child's educational performance:

(A) An inability to learn that cannot be explained by intellectual, sensory, or health factors.

(B) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers.

(C) Inappropriate types of behavior or feelings under normal circumstances.

(D) A general pervasive mood of unhappiness or depression.

(E) A tendency to develop physical symptoms or fears associated with personal or school problems.

(ii) Emotional disturbance includes schizophrenia. The term does not apply to children who are socially maladjusted, unless it is determined that they have an emotional disturbance under paragraph (c)(4)(i) of this section.

(5) **Hearing impairment** means an impairment in hearing, whether permanent or fluctuating, that adversely affects a child's educational performance but that is not included under the definition of deafness in this section.

(6) ***Intellectual disability*** means significantly subaverage general intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period, that adversely affects a child's educational performance.

(7) **Multiple disabilities** means concomitant impairments (such as *intellectual disability* -blindness or *intellectual disability* -orthopedic impairment), the combination of which causes such severe educational needs that they cannot be accommodated in special education programs solely for one of the impairments. Multiple disabilities does not include deaf-blindness.

(8) **Orthopedic impairment** means a severe orthopedic impairment that adversely affects a child's educational performance. The term includes impairments caused by a congenital anomaly, impairments caused by disease (e.g., poliomyelitis, bone tuberculosis), and impairments from other causes (e.g., cerebral palsy, amputations, and fractures or burns that cause contractures).

(9) **Other health impairment** means having limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that-

(i) Is due to chronic or acute health problems such as asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, and Tourette syndrome; and

(ii) Adversely affects a child's educational performance.

(10) **Specific learning disability.**

(i) General. Specific learning disability means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia.

(ii) Disorders not included. Specific learning disability does not include learning problems that are primarily the result of visual, hearing, or motor disabilities, of *intellectual disability*, of emotional disturbance, or of environmental, cultural, or economic disadvantage.

(11) Speech or language impairment means a communication disorder, such as stuttering, impaired articulation, a language impairment, or a voice impairment, that adversely affects a child's educational performance.

P.L. 111-256, Rosa's Law

(12) **Traumatic brain injury** means an acquired injury to the brain caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects a child's educational performance. Traumatic brain injury applies to open or closed head injuries resulting in impairments in one or more areas, such as cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem-solving; sensory, perceptual, and motor abilities; psychosocial behavior; physical functions; information processing; and speech. Traumatic brain injury does not apply to brain injuries that are congenital or degenerative, or to brain injuries induced by birth trauma.

(13) **Visual impairment** including blindness means an impairment in vision that, even with correction, adversely affects a child's educational performance. The term includes both partial sight and blindness.

RSA-186-C:2 I-a.
"Developmentally delayed child" means a child ***at least 3 years of age or older, but less than 10 years of age***, who, because of impairments in development, needs special education or special education and related services, **and** may be identified as having a developmental delay provided that such a child ***meets the criteria established by the State Board of Education.***

§300.102 Limitation--exception to FAPE for certain ages.

(a) General. The obligation to make FAPE available to all children with disabilities does not apply with respect to the following:

(1) Children aged 3, 4, 5, 18, 19, 20, or 21 in a State to the extent that its application to those children would be inconsistent with State law or practice, or the order of any court, respecting the provision of public education to children of those ages.

(2) (i) Children aged 18 through 21 to the extent that State law does not require that special education and related services under Part B of the Act be provided to students with disabilities who, in the last educational placement prior to their incarceration in an adult correctional facility--

(A) Were not actually identified as being a child with a disability under §300.8; and

(B) Did not have an IEP under Part B of the Act.

(ii) The exception in paragraph (a)(2)(i) of this section does not apply to children with disabilities, aged 18 through 21, who--

(A) Had been identified as a child with a disability under §300.8 and had received services in accordance with an IEP, but who left school prior to their incarceration; or

(B) Did not have an IEP in their last educational setting, but who had actually been identified as a child with a disability under §300.8.

(3) (i) Children with disabilities who have graduated from high school with a regular high school diploma.

(ii) The exception in paragraph (a)(3)(i) of this section does not apply to children who have graduated from high school but have not been awarded a regular high school diploma.

(iii) Graduation from high school with a regular high school diploma constitutes a change in placement, requiring written prior notice in accordance with §300.503.

(iv) As used in paragraphs (a)(3)(i) through (a)(3) (iii) of this section, the term regular high school diploma does not include an alternative degree that is not fully aligned with the State's academic standards, such as a certificate or a general educational development credential (GED).

(4) Children with disabilities who are eligible under subpart H of this part, but who receive early intervention services under Part C of the Act.

(b) Documents relating to exceptions. The State must assure that the information it has provided to the Secretary regarding the exceptions in paragraph (a) of this section, as required by §300.700 (for purposes of making grants to States under this part), is current and accurate.

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

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

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

RSA 186-C:8. *Collaborative Programs.* -

I. School districts or school administrative units, or both, may enter into cooperative agreements in order to provide approved programs for educating ***children with disabilities***. The State Board of Education, when appropriate because of a low incidence of a disabling condition, high cost of services, or scarcity of trained personnel, shall encourage such cooperative agreements and shall serve as a source of information, advice and guidance to school districts, school administrative units, or both.

II. The State Board of Education, together with representatives of neighboring states, shall study the feasibility of interstate agreements or interstate compacts for the provision of services to ***children with disabilities***.

(w) "Committed juvenile student" means an individual who is committed to the youth development center pursuant to court order and who has been or is determined to be a child with a disability.

(x) "Consent" means "consent" as defined in 34 CFR 300.9.

§300.9 Consent.- means that--

(a) The parent has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language, or other mode of communication;

(b) The parent understands and agrees in writing to the carrying out of the activity for which his or her consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom; and

(c) (1) The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at anytime.

(2) If a parent revokes consent, that revocation is not retroactive (i.e., it does not negate an action that has occurred after the consent was given and before the consent was revoked).

(y) "Core academic subjects" means "core academic subjects" as defined in 34 CFR 300.10, and includes:

(1) English;
(2) Reading or language arts;
(3) Mathematics;
(4) Science;
(5) Foreign languages;
(6) Civics and government;
(7) Economics;
(8) Arts;
(9) History; and
(10) Geography.

§300.10 Core academic subjects -
means English, reading or language arts, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography.

(z) "Court" means a court of competent jurisdiction.

(aa) "Curriculum" means all of the courses and other educational opportunities offered by the responsible local education agency.

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

Ed 1102.02 Definitions D-G

(a) "Day" means "day" as defined in 34 CFR 300.11(a).

§300.11(a) Day -
means calendar day unless otherwise indicated as business day or school day.

(b) "Department" means the New Hampshire Department of Education.

(c) "Department of youth development services (DYDS)" means the department of youth development services of the State of New Hampshire.

(d) "Destruction," in reference to information in education records, means "destruction" as defined in 34 CFR 300.611(a).

§300.611 (a) Destruction -
means physical destruction or removal of personal identifiers from information so that the information is no longer personally identifiable.

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

PART Ed 306 Minimum Standards for Public School Approval **Appendix A**

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

See 1102.01(r) A-C **Page #2**

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

(h) "Division for Children, Youth and Families" (DCYF) means the Division for Children, Youth and Families of the New Hampshire Department of Health and Human Services.

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

§300.226 Early intervening services.

(a) General. An LEA may not use more than 15 percent of the amount the LEA receives under Part B of the Act for any fiscal year, less any amount reduced by the LEA pursuant to §300.205, if any, in combination with other amounts (which may include amounts other than education funds), to develop and implement coordinated, early intervening services, which may include interagency financing structures, for students in kindergarten through grade 12 (with a particular emphasis on students in kindergarten through grade three) who are not currently identified as needing special education or related services, but who need additional academic and behavioral support to succeed in a general education environment. (See Appendix D for examples of how §300.205(d), regarding local maintenance of effort, and §300.226(a) affect one another.)

(b) Activities. In implementing coordinated, early intervening services under this section, an LEA may carry out activities that include--

(1) Professional development (which may be provided by entities other than LEAs) for teachers and other school staff to enable such personnel to deliver scientifically based academic and behavioral interventions, including scientifically based literacy instruction, and, where appropriate, instruction on the use of adaptive and instructional software; and

(2) Providing educational and behavioral evaluations, services, and supports, including scientifically based literacy instruction.

(c) Construction. Nothing in this section shall be construed to either limit or create a right to FAPE under Part B of the Act or to delay appropriate evaluation of a child suspected of having a disability.

(d) Reporting. Each LEA that develops and maintains coordinated, early intervening services under this section must annually report to the SEA on—

(1) The number of children served under this section who received early intervening services; and

(2) The number of children served under this section who received early intervening services and subsequently receive special education and related services under Part B of the Act during the preceding two year period.

(e) Coordination with ESEA. Funds made available to carry out this section may be used to carry out coordinated, early intervening services aligned with activities funded by, and carried out under the ESEA if those funds are used to supplement, and not supplant, funds made available under the ESEA for the activities and services assisted under this section.

(j) "Education records" means "education records" as defined in 34 CFR 300.611(b).

§300.611 (b) Education records -
means the type of records covered under the definition of "education records" in 34 CFR part 99 (the regulations implementing the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. 1232g (FERPA)).

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

(l) "Equipment" means "equipment" as defined in 34 CFR 300.14.

***§300.14 Equipment**. means--*

(a) Machinery, utilities, and built-in equipment, and any necessary enclosures or structures to house the machinery, utilities, or equipment; and

(b) All other items necessary for the functioning of a particular facility as a facility for the provision of educational services, including items such as instructional equipment and necessary furniture; printed, published and audio-visual instructional materials; telecommunications, sensory, and other technological aids and devices; and books, periodicals, documents, and other related materials.

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

(n) "Evaluation" means "evaluation" as defined in 34 CFR 300.15.

§300.15 Evaluation -
means procedures used in accordance with §§300.304 through 300.311 to determine whether a child has a disability and the nature and extent of the special education and related services that the child needs.

o) "Extracurricular and nonacademic activities" means those activities and services detailed in 34 CFR 300.107.

§300.107 Nonacademic services.- The State must ensure the following:
(a) Each public agency must take steps, including the provision of supplementary aids and services determined appropriate and necessary by the child's IEP Team, to provide nonacademic and extracurricular services and activities in the manner necessary to afford children with disabilities an equal opportunity for participation in those services and activities.
(b) Nonacademic and extracurricular services and activities may include counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the public agency, referrals to agencies that provide assistance to individuals with disabilities, and employment of students, including both employment by the public agency and assistance in making outside employment available.

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

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

(r) "File" means to deliver paper copies to the department in the format required by these rules, or to transfer information electronically.

(s) "Free appropriate public education" (FAPE) means "free appropriate public education" as defined in 34 CFR 300.17 that meets the least restrictive environment requirements detailed in 34 CFR 300.114.

§300.17 Free appropriate public education
or FAPE means special education and related services that-
(a) Are provided at public expense, under public supervision and direction, and without charge;
(b) Meet the standards of the SEA, including the requirements of this part;
(c) Include an appropriate preschool, elementary school, or secondary school education in the State involved; and
(d) Are provided in conformity with an individualized education program (IEP) that meets the requirements of §§300.320 through 300.324.
§300.114 LRE requirements.
(a) General.
(1) Except as provided in §300.324(d)(2) (regarding children with disabilities in adult prisons), the State must have in effect policies and procedures to ensure that public agencies in the State meet the LRE requirements of this section and §§300.115 through 300.120.
(2) Each public agency must ensure that--
(i) To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are nondisabled; and

(ii) Special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

(b) Additional requirement--State funding mechanism.

(1) General.

(i) A State funding mechanism must not result in placements that violate the requirements of paragraph (a) of this section; and

(ii) A State must not use a funding mechanism by which the State distributes funds on the basis of the type of setting in which a child is served that will result in the failure to provide a child with a disability FAPE according to the unique needs of the child, as described in the child's IEP.

(2) Assurance. If the State does not have policies and procedures to ensure compliance with paragraph (b)(1) of this section, the State must provide the Secretary an assurance that the State will revise the funding mechanism as soon as feasible to ensure that the mechanism does not result in placements that violate that paragraph.

(t) "Functional behavioral assessment" means an assessment of a student's behavior.

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

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

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

RSA 186-C:2-VI. "Functionally blind" means a pupil who has:

(a) Visual acuity of 20/200 or less in the better eye with the use of the best correction for any refractive error, or a limited field of vision in which the widest diameter of the visual field subtends an angle no greater than 20 degrees.

(b) A medically indicated expectation of visual deterioration.

(c) A functional limitation resulting from a medically diagnosed visual impairment which restricts the child's ability to read and write standard print at levels expected of other children of comparable ability and grade level.

Ed 1102.03 Definitions H-M

(a) "Health care facility" means any hospital, nursing home, sheltered home or other facility licensed under RSA 151.

CHAPTER 151:
RESIDENTIAL CARE AND HEALTH FACILITY LICENSING

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

§300.18 Highly qualified special education teachers.

(a) Requirements for special education teachers teaching core academic subjects. For any public elementary or secondary school special education teacher teaching core academic subjects, the term highly qualified has the meaning given the term in section 9101 of the ESEA and 34 CFR 200.56, except that the requirements for highly qualified also--

(1) Include the requirements described in paragraph (b) of this section; and

(2) Include the option for teachers to meet the requirements of section 9101 of the ESEA by meeting the requirements of paragraphs (c) and (d) of this section.

(b) Requirements for special education teachers in general.

(1) When used with respect to any public elementary school or secondary school special education teacher teaching in a State, highly qualified requires that--

(i) The teacher has obtained full State certification as a special education teacher (including certification obtained through alternative routes to certification), or passed the State special education teacher licensing examination, and holds a license to teach in the State as a special education teacher, except that when used with respect to any teacher teaching in a public charter school, highly qualified means that the teacher meets the certification or licensing requirements, if any, set forth in the State's public charter school law;

(ii) The teacher has not had special education certification or licensure requirements waived on an emergency, temporary, or provisional basis; and

(iii) The teacher holds at least a bachelor's degree.

(2) A teacher will be considered to meet the standard in paragraph (b)(1)(i) of this section if that teacher is participating in an alternative route to special education certification program under which--

(i) The teacher--

(A) Receives high-quality professional development that is sustained, intensive, and classroom-focused in order to have a positive and lasting impact on classroom instruction, before and while teaching;

(B) Participates in a program of intensive supervision that consists of structured guidance and regular ongoing support for teachers or a teacher mentoring program;

(C) Assumes functions as a teacher only for a specified period of time not to exceed three years; and,

(D) Demonstrates satisfactory progress toward full certification as prescribed by the State; and

(ii) The State ensures, through its certification and licensure process, that the provisions in paragraph (b)(2)(i) of this section are met.

(3) Any public elementary school or secondary school special education teacher teaching in a State, who is not teaching a core academic subject, is highly qualified if the teacher meets the requirements in paragraph (b)(1) or the requirements in (b)(1)(iii) and (b)(2) of this section.

(c) Requirements for special education teachers teaching to alternate achievement standards.

When used with respect to a special education teacher who teaches core academic subjects exclusively to children who are assessed against alternate achievement standards established under 34 CFR 200.1(d), highly qualified means the teacher, whether new or not new to the profession, may either--

(1) Meet the applicable requirements of section 9101 of the ESEA and 34 CFR 200.56 for an elementary, middle, or secondary school teacher who is new or not new to the profession; or

(2) Meet the requirements of paragraph (B) or (C) of section 9101(23) of the ESEA as applied to an elementary school teacher, or, in the case of instruction above the elementary level, meet the requirements of paragraph (B) or (C) of section 9101(23) of the ESEA as applied to an elementary school teacher and have subject matter knowledge appropriate to the level of instruction being provided and needed to effectively teach to those standards, as determined by the State.

d) Requirements for special education teachers teaching multiple subjects.

Subject to paragraph (e) of this section, when used with respect to a special education teacher who teaches two or more core academic subjects exclusively to children with disabilities, highly qualified means that the teacher may either--

(1) Meet the applicable requirements of section 9101 of the ESEA and 34 CFR 200.56(b) or (c);

(2) In the case of a teacher who is not new to the profession, demonstrate competence in all the core academic subjects in which the teacher teaches in the same manner as is required for an elementary, middle, or secondary school teacher who is not new to the profession under 34 CFR 200.56(c) which may include a single, high objective uniform State standard of evaluation (HOUSSE) covering multiple subjects; or

(3) In the case of a new special education teacher who teaches multiple subjects and who is highly qualified in mathematics, language arts, or science, demonstrate, not later than two years after the date of employment, competence in the other core academic subjects in which the teacher teaches in the same manner as is required for an elementary, middle, or secondary school teacher under 34 CFR 200.56(c), which may include a single HOUSSE covering multiple subjects.

(e) Separate HOUSSE standards for special education teachers.

Provided that any adaptations of the State's HOUSSE would not establish a lower standard for the content knowledge requirements for special education teachers and meets all the requirements for a HOUSSE for regular education teachers-–

(1) A State may develop a separate HOUSSE for special education teachers; and

(2) The standards described in paragraph (e)(1) of this section may include single HOUSSE evaluations that cover multiple subjects.

(f) Rule of construction.

Notwithstanding any other individual right of action that a parent or student may maintain under this part, nothing in this part shall be construed to create a right of action on behalf of an individual student or class of students for the failure of a particular SEA or LEA employee to be highly qualified, or to prevent a parent from filing a complaint under §§300.151 through 300.153 about staff qualifications with the SEA as provided for under this part.

(g) Applicability of definition to ESEA; and clarification of new special education teacher.

(1) A teacher who is highly qualified under this section is considered highly qualified for purposes of the ESEA.

(2) For purposes of §300.18(d)(3), a fully certified regular education teacher who subsequently becomes fully certified or licensed as a special education teacher is a new special education teacher when first hired as a special education teacher.

(h) Private school teachers not covered.

The requirements in this section do not apply to teachers hired by private elementary schools and secondary schools including private school teachers hired or contracted by LEAs to provide equitable services to parentally-placed private school children with disabilities under §300.138.

§300.156 (c) Qualifications for special education teachers. The qualifications described in paragraph (a) of this section must ensure that each person employed as a public school special education teacher in the State who teaches in an elementary school, middle school, or secondary school is highly qualified as a special education teacher by the deadline established in section 1119(a)(2) of the ESEA.

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

193-A:4 Home Education; Defined. –

I. Instruction shall be deemed home education if it consists of instruction in science, mathematics, language, government, history, health, reading, writing, spelling, the history of the constitutions of New Hampshire and the United States, and an exposure to and appreciation of art and music. Home education shall be provided by a parent for his own child, unless the provider is as otherwise agreed upon by the appropriate parties named in paragraph II.

II. The Department of Education, resident district superintendent, or a nonpublic school shall work with parents upon request in meeting the requirements of this section.

(d) "Home for children" means:

(1) Any orphanage, institution for the care, treatment, or custody of children;

(2) As defined by RSA 170-E: 25 any child care agency, child care institution, experiential wilderness facility, and independent living home; or

(3) Any residential school approved under RSA 186:11, XXIX.

RSA 186:11, XXIX. Adopt rules, pursuant to RSA 541-A, relative to reasonable criteria for approving non-public schools for the purpose of compulsory attendance requirements. The State Board of Education may, upon request, designate which schools meet those criteria, and may, upon the request of a non-public school, approve or disapprove its education program and curriculum.

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

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

§300.19 Homeless children. -
Has the meaning given the term homeless children and youths in section 725 (42 U.S.C. 11434a) of the McKinney-Vento Homeless Assistance Act, as amended, 42 U.S.C. 11431 et seq.

Section 725 (42 U.S.C. 11434a) of the McKinney-Vento Homeless Assistance Act -
The term homeless children and youths--

(A) means individuals who lack a fixed, regular, and adequate nighttime residence (within the meaning of section 103(a)(1)); and

(B) includes--

(i) children and youths who are sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason; are living in motels, hotels, trailer parks, or camping grounds due to the lack of alternative adequate accommodations; are living in emergency or transitional shelters; are abandoned in hospitals; or are awaiting foster care placement;

(ii) children and youths who have a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings (within the meaning of section 103(a)(2)(C));

(iii) children and youths who are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; and

(iv) migratory children (as such term is defined in section 1309 of the Elementary and Secondary Education Act of 1965) who qualify as homeless for the purposes of this subtitle because the children are living in circumstances described in clauses (i) through (iii).

(g) "Independent educational evaluation" means "independent educational evaluation" as defined in 34 CFR 300.502(a)(3)(i).

§300.502 (a)(3)(i) Independent educational evaluation -
means an evaluation conducted by a qualified examiner who is not employed by the public agency responsible for the education of the child in question

(h) "Individualized education program" (IEP) means "individualized education program" as defined in 34 CFR 300.22.

§300.22 Individualized education program or IEP means a written statement for a child with a disability that is developed, reviewed, and revised in accordance with §§300.320 through 300.324.

(i) "Individualized education program team" (IEP team) means "individualized education program team" as defined in 34 CFR 300.23.

§300.23 Individualized education program team or IEP Team means a group of individuals described in §300.321 that is responsible for developing, reviewing, or revising an IEP for a child with a disability.

(j) "Individualized family service plan" or (IFSP) means "individualized family service plan" as detailed in 34 CFR 300.323. The term includes individualized family support plans.

§300.323(b) IEP or IFSP for children aged three through five.

(1) In the case of a child with a disability aged three through five (or, at the discretion of the SEA, a two-year-old child with a disability who will turn age three during the school year), the IEP Team must consider an IFSP that contains the IFSP content (including the natural environments statement) described in section 636(d) of the Act and its implementing regulations (including an educational component that promotes school readiness and incorporates pre-literacy, language, and numeracy skills for children with IFSPs under this section who are at least three years of age), and that is developed in accordance with the IEP procedures under this part. The IFSP may serve as the IEP of the child, if using the IFSP as the IEP is--
  (i) Consistent with State policy; and
  (ii) Agreed to by the agency and the child's parents.

(2) In implementing the requirements of paragraph (b)(1) of this section, the public agency must--
  (i) Provide to the child's parents a detailed explanation of the differences between an IFSP and an IEP; and
  (ii) If the parents choose an IFSP, obtain written informed consent from the parents.

(k) "Individuals with Disabilities Education Improvement Act" IDEA means U.S.C. 1400 et seq.

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

§300.530(g) Special circumstances.

School personnel may remove a student to an interim alternative educational setting for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the child's disability, if the child--
  (1) Carries a weapon to or possesses a weapon at school, on school premises, or to or at a school function under the jurisdiction of an SEA or an LEA;
  (2) Knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises, or at a school function under the jurisdiction of an SEA or an LEA; or
  (3) Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of an SEA or an LEA.

(h) Notification. On the date on which the decision is made to make a removal that constitutes a change of placement of a child with a disability because of a violation of a code of student conduct, the LEA must notify the parents of that decision, and provide the parents the procedural safeguards notice described in §300.504

(i) Definitions. For purposes of this section, the following definitions apply:
  (1) Controlled substance means a drug or other substance identified under schedules I, II, III, IV, or V in section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)).
  (2) Illegal drug means a controlled substance; but does not include a controlled substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under that Act or under any other provision of Federal law.
  (3) Serious bodily injury has the meaning given the term "serious bodily injury" under paragraph (3) of subsection (h) of section 1365 of title 18, United States Code.
  (4) Weapon has the meaning given the term "dangerous weapon" under paragraph (2) of the first subsection (g) of section 930 of title 18, United States Code.

§300.531 Determination of setting.
The child's IEP Team determines the interim alternative educational setting for services under §300.530(c), (d)(5), and (g).

§300.532 Appeal.
(a) General. The parent of a child with a disability who disagrees with any decision regarding placement under §§300.530 and 300.531, or the manifestation determination under §300.530(e), or an LEA that believes that maintaining the current placement of the child is substantially likely to result in injury to the child or others, may appeal the decision by requesting a hearing. The hearing is requested by filing a complaint pursuant to §§300.507 and 300.508(a) and (b).
(b) Authority of hearing officer.
(1) A hearing officer under §300.511 hears, and makes a determination regarding an appeal under paragraph (a) of this section.
(2) In making the determination under paragraph (b)(1) of this section, the hearing officer may--
(i) Return the child with a disability to the placement from which the child was removed if the hearing officer determines that the removal was a violation of §300.530 or that the child's behavior was a manifestation of the child's disability; or
(ii) Order a change of placement of the child with a disability to an appropriate interim alternative educational setting for not more than 45 school days if the hearing officer determines that maintaining the current placement of the child is substantially likely to result in injury to the child or to others.
(3) The procedures under paragraphs (a) and (b)(1) and (2) of this section may be repeated, if the LEA believes that returning the child to the original placement is substantially likely to result in injury to the child or to others.
(c) Expedited due process hearing.
(1) Whenever a hearing is requested under paragraph (a) of this section, the parents of the LEA involved in the dispute must have an opportunity for an impartial due process hearing consistent with the requirements of §§300.507 and 300.508(a) through (c) and §§300.510 through 300.514, except as provided in paragraph (c)(2) through (4) of this section.
(2) The SEA or LEA is responsible for arranging the expedited due process hearing, which must occur within 20 school days of the date the complaint requesting the hearing is filed. The hearing officer must make a determination within 10 school days after the hearing.
(3) Unless the parents and LEA agree in writing to waive the resolution meeting described in paragraph (c)(3)(i) of this section, or agree to use the mediation process described in §300.506–-
(i) A resolution meeting must occur within seven days of receiving notice of the due process complaint; and
(ii) The due process hearing may proceed unless the matter has been resolved to the satisfaction of both parties within 15 days of the receipt of the due process complaint.
(4) A State may establish different State-imposed procedural rules for expedited due process hearings conducted under this section than it has established for other due process hearings, but, except for the timelines as modified in paragraph (c)(3) of this section, the State must ensure that the requirements in §§300.510 through 300.514 are met.
(5) The decisions on expedited due process hearings are appealable consistent with §300.514.

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

CHAPTER Int 300 APPLICATIONS FOR LICENSURE [Table of Contents for this Chapter]

PART Int 301 LICENSURE Section Int 301.01 Licensure Required; Exemptions; Waiver

Section Int 301.02 Application For Section Int 301.03 Application Process
Section Int 301.04 Denial of Application

PART Int 302 INTERPRETERS LICENSED OR APPROVED IN OTHER JURISDICTIONS
Section Int 302.01 Application Process
Section Int 302.02 Denial of Application and Licensure

PART Int 303 FEES
Section Int 303.01 Fee Schedule

RSA 326-I:2 Definitions. – In this chapter:
IV. "Interpreting" means the process of providing accessible communication between and among persons who are deaf, oral deaf, hard-of-hearing, and who can hear, who do not share a common means of communication. This process includes, without limitation, interpreting and transliterating and visual, gestural, auditory, and tactile communication.

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

§300.34(c)(4) Interpreting services includes--
(i) The following, when used with respect to children who are deaf or hard of hearing: Oral transliteration services, cued language transliteration services, sign language transliteration and interpreting services, and transcription services, such as communication access real-time translation (CART), C-Print, and TypeWell; and,
(ii) Special interpreting services for children who are deaf-blind.

(o) "Local education agency" (LEA) means "local education agency" as defined in 34 CFR 300.28, and includes "school district" as defined in Ed 1102.03(r).

§300.28 Local educational agency.
(a) General. Local educational agency or LEA means a public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary or secondary schools in a city, county, township, school district, or other political subdivision of a State, or for a combination of school districts or counties as are recognized in a State as an administrative agency for its public elementary schools or secondary schools.
(b) Educational service agencies and other public institutions or agencies. The term includes--
(1) An educational service agency, as defined in §300.12; and
(2) Any other public institution or agency having administrative control and direction of a public elementary school or secondary school, including a public nonprofit charter school that is established as an LEA under State law.
(c) BIA funded schools. The term includes an elementary school or secondary school funded by the Bureau of Indian Affairs, and not subject to the jurisdiction of any SEA other than the Bureau of Indian Affairs, but only to the extent that the inclusion makes the school eligible for programs for which specific eligibility is not provided to the school in another provision of law and the school does not have a student population that is smaller than the student population of the LEA receiving assistance under the Act with the smallest student population.

(p) “Local school board” means the elected governing body of the LEA which is responsible for providing elementary and secondary education to all children who reside in the district.

(q) “Local school district” means the political subdivisions of the state as defined in RSA 194:1, RSA 195:1, and RSA 195-A:1,I.

RSA 194:1 What Constitutes a District. – Each town shall constitute a single district for school purposes; provided that districts organized under special acts of the legislature may retain their present organization, and the word "town," wherever used in the statutes in connection with the government, administration, support, or improvement of the public schools, shall mean district. The special state prison school district, as established by RSA 194:60, shall constitute a single district for school purposes, and shall be subject to the provisions of RSA 194:60. Notwithstanding any other provision of law to the contrary, in the case of unincorporated towns or unorganized places in a county, the county shall constitute the district.

RSA 195:1 Definitions. – The terms used in this chapter shall be construed as follows, unless a different meaning is clearly apparent from the language or context:

I. "Cooperative school district" means a district composed of 2 or more school districts of the state associated together under the provisions of this chapter and may include either the elementary schools, the secondary schools, or both.
II. "Elementary school" shall mean all grades from the kindergarten or grade one through grade 6, or kindergarten or grade one through grade 8.
III. "Secondary school" shall mean all grades from grade 7 through grade 12, or grade 9 through grade 12.
IV. "Cooperative school board" shall mean a school board serving a cooperative school district.
V. "Pre-existing district" shall mean a district or portion of a district which is included within the boundaries of a proposed or established cooperative school district.
VI. [Repealed.]
VII. "Commissioner" shall mean Commissioner of Education.
VIII. "Date of operating responsibility" shall mean the date or dates set in the resolution adopted at the organization meeting or in the articles of agreement adopted by the several school districts on which the cooperative school district shall take over operating control of those schools within such district which it was organized to operate. Wherever the words "establishment" or "date of establishment" appear in this chapter, they shall be given a meaning synonymous with "date of operating control".
IX. "Valuation" shall mean the valuation as determined by the commissioner of revenue administration for debt limits, under the provisions of RSA 33.

RSA 195-A:1 Definitions. – The terms used in this chapter shall be construed as follows, unless a different meaning is clearly apparent from the language or context:

I. "School district" shall mean a town school district, a special school district, a cooperative school district, an incorporated school district operating within a city, and a city operating a dependent school department.
II. "Elementary school" shall mean a program comprising all grades from the kindergarten or grade one through grade 6, or kindergarten or grade one through grade 8.
III. "Secondary school" shall mean a program comprising all grades from grade 7 through grade 2, or grade 9 through grade 12 and may include a junior high school program comprising grades 7 and 8 or 7, 8 and 9 as well as a high school program.
IV. "Area school" shall mean an authorized regional enrollment area school, which may be elementary or secondary, and which when approved as hereinafter provided, shall be the assigned school for all the resident elementary or secondary pupils of the school districts or portions thereof within the region which it is established to serve.

V. "Sending district" shall mean any school district or portion thereof which sends its resident pupils to an area school located in a receiving district, paying tuition therefor to the receiving district.
VI. "Receiving district" shall mean a school district in which an area school is located.
VII. "School board" shall mean the school board, board of education or school committee of each school district.
VIII. [Repealed.]
IX. "Tuition" shall mean the sum of money which each sending district is obligated to pay to the receiving district to defray the cost of education of each of its resident pupils, for a school year, at the area school in the receiving district to which such pupils are assigned and it may be subdivided into elementary school tuition, junior high school tuition, high school tuition, or any other reasonable combination of grades, and shall be fixed as provided in RSA 195-A:3. Tuition may include an annual rental charge per pupil. The obligation of a sending district to pay tuition to a receiving school shall not be deemed indebtedness of such district for the purpose of determining its borrowing capacity under RSA 33.
X. "Annual rental charge per pupil" shall mean that additional payment included in tuition as defined in paragraph IX which represents a fair charge for building occupancy. It may also include a fair charge for any debt service and reduction of principal, which may become due between date of bond issue and date of building occupancy.
XI. "Date of operating responsibility" shall mean the date on which the area school shall officially open and shall relieve the schools of the sending districts, serving the corresponding grades, of their obligation to operate.
XII. "Meeting of a receiving district" may include any regular or special session of its legislative body in the case of a city with a dependent school department, or of its school board in the case of any separately incorporated school district within a city in which district meetings have been abolished.

(r) “Local school board officials” means the administrators of the local school district.

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

§300.530(e) Manifestation determination.
(1) Within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the LEA, the parent, and relevant members of the child’s IEP Team (as determined by the parent and the LEA) must review all relevant information in the student’s file, including the child’s IEP, any teacher observations, and any relevant information provided by the parents to determine--
(i) If the conduct in question was caused by, or had a direct and substantial relationship to, the child’s disability; or
(ii) If the conduct in question was the direct result of the LEA’s failure to implement the IEP.
(2) The conduct must be determined to be a manifestation of the child’s disability if the LEA, the parent, and relevant members of the child’s IEP Team determine that a condition in either paragraph (e)(1)(i) or (1)(ii) of this section was met.
(3) If the LEA, the parent, and relevant members of the child’s IEP Team determine the condition described in paragraph (e)(1)(ii) of this section was met, the LEA must take immediate steps to remedy those deficiencies.

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

RSA 186-C:24 (including changes proposed by HB 766) Mediation; Procedure. –

I. When disputes arise under this chapter, mediation shall be available through the office of the commissioner, Department of Education. Mediation shall be provided in accordance with the following:

(a) Attempts to resolve conflicts between the parent or parents and a school district are encouraged.

(b) Either party may be accompanied and advised at mediation by individuals with special knowledge or training with respect to- children with disabilities needs. At least 5 days prior to the mediation conference, the mediator shall contact the parties to determine whether either party will be accompanied by an individual with special knowledge or training and shall notify the other party if such an individual will be in attendance.

II. Mediation shall be provided as follows:

(a) A request for mediation shall be made in writing by either party to the commissioner of education. The mediation request shall specify the issue or issues in dispute and the relief sought;

(b) A mediation conference shall be conducted within 30 calendar days after receipt of a written request at which time:

(1) Issues shall be determined;
(2) Options explored; and
(3) Mediation attempts made within New Hampshire law.

(c) The role of the mediator shall be:

(1) To facilitate communication.
(2) To define the issues and explore alternatives.
(3) To remain neutral.

(d) The mediation conference shall be:

(1) Informal; and
(2) Held at a time and place reasonably convenient and mutually agreeable to the parties in the dispute.

(e) If the mediation results in agreement, the conclusions shall be incorporated into a written binding agreement signed by each party. If the mediation does not result in agreement, the mediator shall document the date and the participants at the meeting. No other record of the mediation shall be made. The mediator shall not be called as a witness in any additional proceedings in the specific case that the mediator mediates.

(f) The mediator may terminate the mediation after at least one meeting if in the mediator's judgment the parties are not making progress toward resolving the issue or issues in dispute.

(g) Pending the outcome of mediation, no change shall be made to a pupil's classification, program or placement, unless both parties agree to the change.

III. The commissioner shall:

(a) Appoint impartial mediators.
(b) Assure that mediators receive appropriate training.
(c) Assign mediators on a regional basis.

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

20 U.S.C. 6399(2) Migratory child The term "migratory child" means a child who is, or whose parent or spouse is, a migratory agricultural worker, including a migratory dairy worker, or a migratory fisher, and who, in the preceding 36 months, in order to obtain, or accompany such parent or spouse, in order to obtain, temporary or seasonal employment in agricultural or fishing work –

(A) has moved from one school district to another;
(B) in a State that is comprised of a single school district, has moved from one administrative area to another within such district; or
(C) resides in a school district of more than 15,000 square miles, and migrates a distance of 20 miles or more to a temporary residence to engage in a fishing activity.

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

Ed 1102.04 Definitions N-R

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

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

§300.172 Access to instructional materials.

(a) General. The State must--

(1) Adopt the National Instructional Materials Accessibility Standard (NIMAS), published as appendix C to part 300, for the purposes of providing instructional materials to blind persons or other persons with print disabilities, in a timely manner after publication of the NIMAS in the Federal Register on July 19,2006 (71 FR 41084); and

(2) Establish a State definition of "timely manner" for purposes of paragraphs (b)(2) and (b)(3) of this section if the State is not coordinating with the National Instructional Materials Access Center (NIMAC) or (b)(3) and (c)(2) of this section if the State is coordinating with the NIMAC.

(b) Rights and responsibilities of SEA.

(1) Nothing in this section shall be construed to require any SEA to coordinate with the NIMAC.

(2) If an SEA chooses not to coordinate with the NIMAC, the SEA must provide an assurance to the Secretary that it will provide instructional materials to blind persons or other persons with print disabilities in a timely manner.

(3) Nothing in this section relieves an SEA of its responsibility to ensure that children with disabilities who need instructional materials in accessible formats, but are not included under the definition of blind or other persons with print disabilities in §300.172(e)(1)(i) or who need materials that cannot be produced from NIMAS files, receive those instructional materials in a timely manner.

(4) In order to meet its responsibility under paragraphs (b)(2), (b)(3), and (c) of this section to ensure that children with disabilities who need instructional materials in accessible formats are provided those materials in a timely manner, the SEA must ensure that all public agencies take all reasonable steps to provide instructional materials in accessible formats to children with disabilities who need those instructional materials at the same time as other children receive instructional materials.

(c) Preparation and delivery of files. If an SEA chooses to coordinate with the NIMAC, as of December 3, 2006, the SEA must--

(1) As part of any print instructional materials adoption process, procurement contract, or other practice or instrument used for purchase of print instructional materials, must enter into a written contract with the publisher of the print instructional materials to--

(i) Require the publisher to prepare and, on or before delivery of the print instructional materials, provide to NIMAC electronic files containing the contents of the print instructional materials using the NIMAS; or

(ii) Purchase instructional materials from the publisher that are produced in, or may be rendered in, specialized formats.

(2) Provide instructional materials to blind persons or other persons with print disabilities in a timely manner.

(d) Assistive technology. In carrying out this section, the SEA, to the maximum extent possible, must work collaboratively with the State agency responsible for assistive technology program

(e) Definitions.

(1) In this section and §300.210--

(i) Blind persons or other persons with print disabilities means children served under this part who may qualify to receive books and other publications produced in specialized formats in accordance with the Act entitled "An Act to provide books for adult blind," approved March 3, 1931, 2 U.S.C 135a;

(ii) National Instructional Materials Access Center or NIMAC means the center established pursuant to section 674(e) of the Act;

(iii) National Instructional Materials Accessibility Standard or NIMAS has the meaning given the term in section 674(e)(3)(B) of the Act;

(iv) Specialized formats has the meaning given the term in section 674(e)(3)(D) of the Act.

(2) The definitions in paragraph (e)(1) of this section apply to each State and LEA, whether or not the State or LEA chooses to coordinate with the NIMAC.

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

20 U.S.C. 7011(11).NATIVE LANGUAGE.—The term ‘native language’, when used with reference to an individual of limited English proficiency, means—
‘‘(A) the language normally used by such individual; or
‘‘(B) in the case of a child or youth, the language normally used by the parents of the child or youth.”

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

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

RSA 186-C:23-b Neutral Conference. –
I. Neutral conference shall consist of an informal, abbreviated presentation of case facts and issues by the parties to a neutral who is responsible for reviewing the strengths and weaknesses of the case and issuing a recommendation. If the neutral conference is selected, the Department of Education shall provide the parties with resumes of 5 neutrals. The parties shall agree to the selection of one neutral to preside at the conference. Following such selection, the department shall schedule the neutral conference and shall provide the parties with the neutral's name and address, the time, date, and place of the neutral conference, and the date by which the parties shall furnish the neutral with required information and documentation.
II. (a) Not less than 5 days prior to the neutral conference, the parties shall submit to the neutral and exchange a summary of the significant aspects of their case. The parties shall attach to the summary copies of all documents on which they rely. Such summaries shall be not more than 4 pages.
(b) Parties shall not communicate with the neutral concerning their case.
(c) At the neutral conference, the parties shall be present and shall have authority to authorize settlement.
(d) If the neutral deems it necessary, such neutral may request additional written information prior to the conference from either party. At the neutral conference, the neutral may address questions to the parties and shall allow each party no more than 30 minutes to complement their written summaries with a brief oral statement. The conference shall be limited to not more than 2 hours.
(e) (1) At the conclusion of the oral statements, the neutral shall issue an oral opinion to the parties. The opinion shall contain a suggested settlement or disposition and the reasons therefor.
(2) If the neutral conference results in agreement, the conclusions shall be incorporated into a written binding agreement signed by each party.
(3) If the neutral conference does not result in agreement, the neutral shall document only the date and the participants at the meeting. No other record of the neutral conference shall be made. The neutral shall not be called as a witness at any additional proceedings in the specific case in which such neutral participated.
(4) The neutral shall advise the Department of Education that the neutral conference has taken place.
III. (a) (1) The neutral who presides at a conference shall have experience with students with educational disabilities and shall have knowledge of special education law, rules, and regulations.
(2) The neutral shall not have personal knowledge of the student or involvement with the school district.
(3) [Repealed.]

(b) Upon receipt of notice of appointment in a case, the neutral shall disclose any circumstances likely to create a conflict of interest, the appearance of a conflict of interest, a reasonable inference of bias, or to prevent the process from proceeding as scheduled. If the neutral withdraws, has a conflict of interest, or is otherwise unavailable, another shall be appointed by the Commissioner of Education.

(c) The participants and counsel shall recognize that the neutrals shall not be acting as legal advisors or legal representatives.

IV. The Department of Education shall evaluate the effectiveness of the alternative dispute resolution procedures annually and shall report its findings to the State Advisory Council required by the Individuals with Disabilities Education Act.

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

§300.117 Nonacademic settings. In providing or arranging for the provision of nonacademic and extracurricular services and activities, including meals, recess periods, and the services and activities set forth in §300.107, each public agency must ensure that each child with a disability participates with nondisabled children in the extracurricular services and activities to the maximum extent appropriate to the needs of that child. The public agency must ensure that each child with a disability has the supplementary aids and services determined by the child's IEP Team to be appropriate and necessary for the child to participate in nonacademic settings.

(g) "Paraprofessional personnel" means personnel who do not meet the requirements of 34 CFR 300.156, and who work only under the direct supervision of qualified personnel.

§300.156 Personnel qualifications.

(a) General. The SEA must establish and maintain qualifications to ensure that personnel necessary to carry out the purposes of this part are appropriately and adequately prepared and trained, including that those personnel have the content knowledge and skills to serve children with disabilities.

(b) Related services personnel and paraprofessionals. The qualifications under paragraph (a) of this section must include qualifications for related services personnel and paraprofessionals that-

(1) Are consistent with any State-approved or State-recognized certification, licensing, registration, or other comparable requirements that apply to the professional discipline in which those personnel are providing special education or related services; and

(2) Ensure that related services personnel who deliver services in their discipline or profession--

(i) Meet the requirements of paragraph (b)(1) of this section; and

(ii) Have not had certification or licensure requirements waived on an emergency, temporary, or provisional basis; and

(iii) Allow paraprofessionals and assistants who are appropriately trained and supervised, in accordance with State law, regulation, or written policy, in meeting the requirements of this part to be used to assist in the provision of special education and related services under this part to children with disabilities.

(c) Qualifications for special education teachers. The qualifications described in paragraph (a) of this section must ensure that each person employed as a public school special education teacher in the State who teaches in an elementary school, middle school, or secondary school is highly qualified as a special education teacher by the deadline established in section 1119(a)(2) of the ESEA.

(d) Policy. In implementing this section, a State must adopt a policy that includes a requirement that LEAs in the State take measurable steps to recruit, hire, train, and retain highly qualified personnel to provide special education and related services under this part to children with disabilities.

(e) Rule of construction. Notwithstanding any other individual right of action that a parent or student may maintain under this part, nothing in this part shall be construed to create a right of action on behalf of an individual student or a class of students for the failure of a particular SEA or LEA employee to be highly qualified, or to prevent a parent from filing a complaint about staff qualifications with the SEA as provided for under this part.

(h) “Parent” means a biological or adoptive parent, surrogate parent, or a guardian. Parent does not mean the state when the state has legal guardianship.

(i) “Personally identifiable” means “personally identifiable” as defined in 34 CFR 300.32.

§300.32 Personally identifiable means information that contains--
(a) The name of the child, the child’s parent, or other family member;
(b) The address of the child;
(c) A personal identifier, such as the child’s social security number or student number; or
(d) A list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty.

(j) “Preschoolers” means children 3 years of age or older but less than 6 years of age who have not been enrolled in public kindergarten.

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

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

Ed 401.01(c) "Nonpublic school" means a school established by an individual or group other than the state, subdivision of the state or federal government and whose operation, or any portion thereof, rests with those officials who have not been publicly elected or appointed.

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

RSA 194:23, II. In this section, "public academy" means an independent school which contracts with one or more school districts to provide education services to such districts in compliance with RSA 194:23. All contracts between a public academy and a school district shall be subject to approval by the State Board of Education. In this section, "independent school" means a school which is governed by a board of trustees or other officials who are not publicly elected. An independent school shall not include a charter school established under RSA 194-B.

(n) “Public agency” means “public agency” as defined in 34 CFR 300.33.

§300.33 Public agency includes the SEA, LEAs, ESAs, nonprofit public charter schools that are not otherwise included as LEAs or ESAs and are not a school of an LEA or ESA, and any other political subdivisions of the State that are responsible for providing education to children with disabilities.

(o) “Qualified examiner” means a person licensed or certified in the state in which the evaluation is performed, who performs a formal diagnostic assessment in the area of disability in which the person is qualified to perform the assessment as set forth Ed 1107.04, Qualified Examiners.

(p) “Receiving district” means “receiving district” as defined in RSA 193:27,V.

RSA 193:27,V. "Receiving district" means the school district in which a home for children or health care facility is located if a child who is placed therein attends a public school in that district or receives educational services from that district.

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

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

Ed 1102.05 Definitions S-Z

(a) "School day" means "school day" as defined in 34 CFR 300.11(c).

***§*300.11(c)(1) School day** means any day, including a partial day that children are in attendance at school for instructional purposes.
(2) School day has the same meaning for all children in school, including children with and without disabilities.

(b) "Sending district" means" sending district" as defined in RSA 193:27, IV.

RSA 193:27, IV. "Sending district" means the school district in which a child most recently resided other than in a home for children, the home of a relative or friend in which a child is placed by the Department of Health and Human Services or a court of competent jurisdiction pursuant to RSA 169-B, RSA 169-C, RSA 169-D, or RSA 463, health care facility, or state institution, if such child is not in the legal custody of a parent or if the parent resides outside the state; if the child is retained in the legal custody of a parent residing within the state, "sending district" means the school district in which the parent resides. For the purposes of this paragraph a parent shall not have legal custody if legal custody has been awarded to some other individual or agency, even if that parent retains residual parental rights. An award of legal custody by a court of competent jurisdiction, in this state or in any other state, shall determine legal custody under this paragraph.

(b) "Special education" means "special education" as defined in 34 CFR 300.38

§300.39 Secretary means the Secretary of Education.

§300.39 Special education.
(a) General.
(1) Special education means specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability, including--
(i) Instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and
(ii) Instruction in physical education.
(2) Special education includes each of the following, if the services otherwise meet the requirements of paragraph (a)(1) of this section--
(i) Speech-language pathology services, or any other related service, if the service is considered special education rather than a related service under State standards;
(ii) Travel training; and
(iii) Vocational education.

(b) Individual special education terms defined. The terms in this definition are defined as follows:
(1) At no cost means that all specially-designed instruction is provided without charge, but does not preclude incidental fees that are normally charged to nondisabled students or their parents as a part of the regular education program.
(2) Physical education means--
(i) The development of--
(A) Physical and motor fitness;
(B) Fundamental motor skills and patterns; and
(C) Skills in aquatics, dance, and individual and group games and sports (including intramural and lifetime sports); and
(ii) Includes special physical education, adapted physical education, movement education, and motor development.

(3) Specially designed instruction means adapting, as appropriate to the needs of an eligible child under this part, the content, methodology, or delivery of instruction--
(i) To address the unique needs of the child that result from the child's disability; and
(ii) To ensure access of the child to the general curriculum, so that the child can meet the educational standards within the jurisdiction of the public agency that apply to all children.

(4) Travel training means providing instruction, as appropriate, to children with significant cognitive disabilities, and any other children with disabilities who require this instruction, to enable them to--
(i) Develop an awareness of the environment in which they live; and
(ii) Learn the skills necessary to move effectively and safely from place to place within that environment (e.g., in school, in the home, at work, and in the community).

(5) Vocational education means organized educational programs that are directly related to the preparation of individuals for paid or unpaid employment, or for additional preparation for a career not requiring a baccalaureate or advanced degree.

(d) "State education agency" (SEA) means the New Hampshire Department of Education.

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

§300.137 Equitable services determined.

(a) No individual right to special education and related services. No parentally-placed private school child with a disability has an individual right to receive some or all of the special education and related services that the child would receive if enrolled in a public school.

(b) Decisions.
(1) Decisions about the services that will be provided to parentally-placed private school children with disabilities under §§300.130 through 300.144 must be made in accordance with paragraph (c) of this section and §300.134(c).
(2) The LEA must make the final decisions with respect to the services to be provided to eligible parentally-placed private school children with disabilities.

(c) Services plan for each child served under §§300.130 through 300.144. If a child with a disability is enrolled in a religious or other private school by the child's parents and will receive special education or related services from an LEA, the LEA must--
(1) Initiate and conduct meetings to develop, review, and revise a services plan for the child, in accordance with §300.138(b); and
(2) Ensure that a representative of the religious or other private school attends each meeting. If the representative cannot attend, the LEA shall use other methods to ensure participation by the religious or other private school, including individual or conference telephone calls.

***§300.*138 Equitable services provided.**

(a) General
(1) The services provided to parentally-placed private school children with disabilities must be provided by personnel meeting the same standards as personnel providing services in the public schools, except that private elementary school and secondary school teachers who are providing equitable services to parentally-placed private school children with disabilities do not have to meet the highly qualified special education teacher requirements of §300.18.
(2) Parentally-placed private school children with disabilities may receive a different amount of services than children with disabilities in public schools.

(b) Services provided in accordance with a services plan.
(1) Each parentally-placed private school child with a disability who has been designated to receive services under §300.132 must have a services plan that describes the specific special education and related services that the LEA will provide to the child in light of the services that the LEA has determined, through the process described in §§300.134 and 300.137, it will make available to parentally-placed private school children with disabilities.

(2) The services plan must, to the extent appropriate--
(i) Meet the requirements of §300.320, or for a child ages three through five, meet the requirements of §300.323(b) with respect to the services provided; and
(ii) Be developed, reviewed, and revised consistent with §§300.321 through 300.324.

(c) Provision of equitable services.
(1) The provision of services pursuant to this section and §§300.139 through 300.143 must be provided:
(i) By employees of a public agency; or
(ii) Through contract by the public agency with an individual, association, agency, organization, or other entity.
(2) Special education and related services provided to parentally-placed private school children with disabilities, including materials and equipment, must be secular, neutral, and nonideological.

§300.139 Location of services and transportation.

(a) Services on private school premises. Services to parentally-placed private school children with disabilities may be provided on the premises of private, including religious, schools, to the extent consistent with law.

(b) Transportation.
(1) General.
(i) If necessary for the child to benefit from or participate in the services provided under this part, a parentally-placed private school child with a disability must be provided transportation--
(A) From the child's school or the child's home to a site other than the private school; and
(B) From the service site to the private school, or to the child's home, depending on the timing of the services.
(ii) LEAs are not required to provide transportation from the child's home to the private school.
(2) Cost of transportation. The cost of the transportation described in paragraph (b)(1)(i) of this section may be included in calculating whether the LEA has met the requirement of §300.133.

§300.132 Provision of services for parentally-placed private school children with disabilities--basic requirement.

(a) General. To the extent consistent with the number and location of children with disabilities who are enrolled by their parents in private, including religious, elementary schools and secondary schools located in the school district served by the LEA, provision is made for the participation of those children in the program assisted or carried out under Part B of the Act by providing them with special education and related services, including direct services determined in accordance with §300.137, unless the Secretary has arranged for services to those children under the by-pass provisions in §§300.190 through 300.198.

(b) Services plan for parentally-placed private school children with disabilities. In accordance with paragraph (a) of this section and §§300.137 through 300.139, a services plan must be developed and implemented for each private school child with a disability who has been designated by the LEA in which the private school is located to receive special education and related services under this part.

(c) Record keeping. Each LEA must maintain in its records, and provide to the SEA, the following information related to parentally-placed private school children covered under §§300.130 through 300.144:
(1) The number of children evaluated;
(2) The number of children determined to be children with disabilities; and
(3) The number of children served.

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

§300.324(a)(2) Consideration of special factors. The IEP Team must--
(i) In the case of a child whose behavior impedes the child's learning or that of others, consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior;
(ii) In the case of a child with limited English proficiency, consider the language needs of the child as those needs relate to the child's IEP;
(iii) In the case of a child who is blind or visually impaired, provide for instruction in Braille and the use of Braille unless the IEP Team determines, after an evaluation of the child's reading and writing skills, needs, and appropriate reading and writing media (including an evaluation of the child's future needs for instruction in Braille or the use of Braille), that instruction in Braille or the use of Braille is not appropriate for the child;
(iv) Consider the communication needs of the child, and in the case of a child who is deaf or hard of hearing, consider the child's language and communication needs, opportunities for direct communications with peers and professional personnel in the child's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the child's language and communication mode; and
(v) Consider whether the child needs assistive technology devices and services.

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

CHAPTER Ed 500
CERTIFICATION STANDARDS FOR EDUCATIONAL PERSONNEL
Appendix A

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

RSA 186-C:3-b 186-C:3-b Advisory Committee; Purpose; Membership; Terms; Duties; Meetings.
I. In accordance with the provisions of 20 U.S.C. section 1413(a)(12) and 34 C.F.R. sections 300.650-300.653, there is established an advisory committee on the education of children/students with disabilities to advise the Commissioner of Education on issues relating to special education, and to promote communication and cooperation among individuals involved with students with disabilities. In addition, the committee shall review the federal financial participation and the level of state funding to determine their impact on the programs and delivery of services to children/students with disabilities.
II. The committee shall *be composed of individuals involved in, or concerned with, the education of children with disabilities, including –*
SPECIAL RULE – A majority of the members of the committee shall be individuals with disabilities or parents of children with disabilities, ages birth through 26.
(a) Parents of children with disabilities, appointed by the governor.
(b) Two members of the house education committee, appointed by the speaker of the house.
(c) Two members of the senate education committee, appointed by the president of the senate.
(d) One representative of a vocational, community, or business organization concerned with the provision of transition services to children/students with disabilities, appointed by the governor.
(e) One state education official, appointed by the governor.
(f) One local educational official, who shall be an administrator, appointed by the governor.
(g) One special education teacher and one regular education teacher, appointed by the governor.
(h) One representative of the Department of Health and Human Services involved in the financing or delivery of special education or related services to children with disabilities, recommended by the commissioner of the Department of Health and Human Services, and appointed by the governor.
(i) One representative of the Disabilities Rights Center, recommended by the Disabilities Rights Center and appointed by the governor.
(j) One representative of the Parent Information Center, recommended by the Parent Information Center and appointed by the governor.

(k) Two individuals with disabilities, appointed by the governor, who may have received [who have benefited from] special education services, one of whom may be a high school student, [appointed by the governor].
(l) One administrator of a public special education program, appointed by the governor.
(m) One representative of an institution of higher education that prepares special education and related services personnel, appointed by the governor.
(n) One representative of a private school approved for special education, appointed by the governor.
(o) One representative of a public charter school, appointed by the governor.
(p) One individual representing children with disabilities who are home-schooled.
[(o) One representative from the Department of Health and Human Services, appointed by the governor].
*(*q) One representative from the department of corrections and one representative from a county correctional system, both of whom are responsible for providing or overseeing the provision of special education or special education and related services, appointed by the governor.
(r) State and local education officials including officials who carry out activities under subtitle B of title VII of the McKinney-Vento Homeless Assistance Act
(s) a representative from the State child welfare agency responsible for foster care.
(q) Parents of children/students with disabilities, appointed by the governor. A simple majority of the members of the committee shall be individuals with disabilities or parents of children/students with disabilities.

III. (a) Committee members shall be appointed to *staggered 2-year* [3-year] terms [, and members may succeed themselves for one additional term].
(b) A chairperson shall be selected by a majority of the committee members on an annual basis.

IV. The committee shall:
(a) Advise the Department of Education regarding unmet needs within the state in the education of children/students with disabilities.
(b) Provide an annual report to the governor and the state legislature on the status of education of students with disabilities in New Hampshire.
(c) Comment publicly on the state plan and rules or regulations proposed for issuance by the state regarding the education of children/students with disabilities.
(d) Assist the state in developing and reporting such information and evaluations as may assist the U.S. Secretary of Education in the performance of responsibilities under [section 618 of] the Individuals with Disabilities Education Act, 20 U.S.C. 1412(a)(21).
(e) Advise the Department of Education in developing corrective action plans to address findings identified in federal monitoring reports.
(f) Advise the Department of Education in developing and implementing policies relating to the coordination of services for children/students with disabilities.

V. The committee shall meet at least quarterly or as often as necessary to conduct its business.

VI. The Department of Education shall provide administrative support for the committee.

(i) “State institution” means the New Hampshire hospital and the youth development center.

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

(k) “Supplementary aids and services” means “supplementary aids and services” as defined in 34 CFR 300.42.

§300.42 Supplementary aids and services means aids, services, and other supports that are provided in regular education classes, other education-related settings, and in extracurricular and nonacademic settings, to enable children with disabilities to be educated with nondisabled children to the maximum extent appropriate in accordance with §§300.114 through 300.116.

(l) "Surrogate parent" means "surrogate parent" as defined in RSA 186-C:14,II(a), namely, "a person appointed to act as a child's advocate in place of the child's natural parents or guardian in the educational decision-making process" who is appointed pursuant to Ed 1115.05.

RSA 186-C:14,II(a) "Surrogate parent" shall mean a person appointed to act as a child's advocate in place of the child's birth parents or guardian in the educational decision-making process.

(m) "Transition services" means "transition services" as defined in 34 CFR 300.43.

§300.43 Transition services.
(a) Transition services means a coordinated set of activities for a child with a disability that--
(1) Is designed to be within a results-oriented process, that is focused on improving the academic and functional achievement of the child with a disability to facilitate the child's movement from school to post-school activities, including postsecondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation;
(2) Is based on the individual child's needs, taking into account the child's strengths, preferences, and interests; and includes--
(i) Instruction;
(ii) Related services;
(iii) Community experiences;
(iv) The development of employment and other post-school adult living objectives; and
(v) If appropriate, acquisition of daily living skills and provision of a functional vocational evaluation.
(b) Transition services for children with disabilities may be special education, if provided as specially designed instruction, or a related service, if required to assist a child with a disability to benefit from special education.

n) "Universal design" means "universal design" as defined in 34 CFR 300.44.

§300.44 Universal design has the meaning given the term in section 3 of the Assistive Technology Act of 1998, as amended, 29 U.S.C. 3002.

29 U.S.C. 3002 – The term universal design means a concept or philosophy for designing and delivering products and services that are usable by people with the widest possible range of functional capabilities, which include products and services that are directly accessible (without requiring assistive technologies) and products and services that are interoperable with assistive technologies.

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

§300.135 Written affirmation.
(a) When timely and meaningful consultation, as required by §300.134, has occurred, the LEA must obtain a written affirmation signed by the representatives of participating private schools.
(b) If the representatives do not provide the affirmation within a reasonable period of time, the LEA must forward the documentation of the consultation process to the SEA.

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

§300.503 – see Ed 1120.03 Written Prior Notice.

(q) "Youth Development Center" means a residential treatment center operated by the department of youth development services for adjudicated children.

PART Ed 1103
PARTICIPANTS IN THE SPECIAL EDUCATION PROCESS

Ed 1103.01 IEP Team.

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

§300.321 IEP Team.

(a) General. The public agency must ensure that the IEP Team for each child with a disability includes--
  (1) The parents of the child;
  (2) Not less than one regular education teacher of the child (if the child is, or may be, participating in the regular education environment);
  (3) Not less than one special education teacher of the child, or where appropriate, not less then one special education provider of the child;
  (4) A representative of the public agency who--
    (i) Is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities;
    (ii) Is knowledgeable about the general education curriculum; and
    (iii) Is knowledgeable about the availability of resources of the public agency.
  (5) An individual who can interpret the instructional implications of evaluation results, who may be a member of the team described in paragraphs (a)(2) through (a)(6) of this section;
  (6) At the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel as *appropriate;* and
  (7) Whenever appropriate, the child with a disability.

(b) Transition services participants.
  (1) In accordance with paragraph (a)(7) of this section, the public agency must invite a child with a disability to attend the child's IEP Team meeting if a purpose of the meeting will be the consideration of the postsecondary goals for the child and the transition services needed to assist the child in reaching those goals under §300.320(b).
  (2) If the child does not attend the IEP Team meeting, the public agency must take other steps to ensure that the child's preferences and interests are considered.
  (3) To the extent appropriate, with the consent of the parents or a child who has reached the age of majority, in implementing the requirements of paragraph (b)(1) of this section, the public agency must invite a representative of any participating agency that is likely to be responsible for providing or paying for transition services.

(c) Determination of knowledge and special expertise. The determination of the knowledge or special expertise of any individual described in paragraph (a)(6) of this section must be made by the party (parents or public agency) who invited the individual to be a member of the IEP Team.

(d) Designating a public agency representative. A public agency may designate a public agency member of the IEP Team to also serve as the agency representative, if the criteria in paragraph (a)(4) of this section are satisfied.

(e) IEP Team attendance.
  (1) A member of the IEP Team described in paragraphs (a)(2) through (a)(5) of this section is not required to attend an IEP Team meeting, in whole or in part, if the parent of a child with a disability and the public agency agree, in writing, that the attendance of the member is not necessary because the member's area of the curriculum or related services is not being modified or discussed in the meeting.
  (2) A member of the IEP Team described in paragraph (e)(1) of this section may be excused from attending an IEP Team meeting, in whole or in part, when the meeting involves a modification to or discussion of the member's area of the curriculum or related services, if--
    (i) The parent, in writing, and the public agency consent to the excusal; and
    (ii) The member submits, in writing to the parent and the IEP Team, input into the development of the IEP prior to the meeting.

(f) Initial IEP Team meeting for child under Part C. In the case of a child who was previously served under Part C of the Act, an invitation to the initial IEP Team meeting must, at the request of the parent, be sent to the Part C service coordinator or other representatives of the Part C system to assist with the smooth transition of services.

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

§300.321 – see Ed 1103.01 IEP Team. Page #31

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

(d) The LEA or parent shall notify the other party 72 hours before a scheduled meeting or upon learning of the expected absence of a team member, whichever is earlier.

Ed 1103.02 Parent Participation.

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

§300.532(c) Expedited due process hearing.

(1) Whenever a hearing is requested under paragraph (a) of this section, the parents or the LEA involved in the dispute must have an opportunity for an impartial due process hearing consistent with the requirements of §§300.507 and 300.508(a) through (c) and §§300.510 through 300.514, except as provided in paragraph (c)(2) through (4) of this section.

(2) The SEA or LEA is responsible for arranging the expedited due process hearing, which must occur within 20 school days of the date the complaint requesting the hearing is filed. The hearing officer must make a determination within 10 school days after the hearing.

(3) Unless the parents and LEA agree in writing to waive the resolution meeting described in paragraph (c)(3)(i) of this section, or agree to use the mediation process described in §300.506–
  (i) A resolution meeting must occur within seven days of receiving notice of the due process complaint; and
  (ii) The due process hearing may proceed unless the matter has been resolved to the satisfaction of both parties within 15 days of the receipt of the due process complaint.

(4) A State may establish different State-imposed procedural rules for expedited due process hearings conducted under this section than it has established for other due process hearings, but, except for the timelines as modified in paragraph (c)(3) of this section, the State must ensure that the requirements in §§300.510 through 300.514 are met.

(5) The decisions on expedited due process hearings are appealable consistent with §300.514.

Note: Instead of §300.532(c), this section may intend to reference §300.530(e) (below):

§300.530(e) Manifestation determination.

(1) Within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the LEA, the parent, and relevant members of the child's IEP Team (as determined by the parent and the LEA) must review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents to determine--
  (i) If the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or
  (ii) If the conduct in question was the direct result of the LEA's failure to implement the IEP.

(2) The conduct must be determined to be a manifestation of the child's disability if the LEA, the parent, and relevant members of the child's IEP Team determine that a condition in either paragraph (e)(1)(i) or (1)(ii) of this section was met.

(3) If the LEA, the parent, and relevant members of the child's IEP Team determine the condition described in paragraph (e)(1)(ii) of this section was met, the LEA must take immediate steps to remedy those deficiencies.

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

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

§300.322 Parent participation.

(a) Public agency responsibility—general. Each public agency must take steps to ensure that one or both of the parents of a child with a disability are present at each IEP Team meeting or are afforded the opportunity to participate, including--

(1) Notifying parents of the meeting early enough to ensure that they will have an opportunity to attend; and

(2) Scheduling the meeting at a mutually agreed on time and place.

(b) Information provided to parents. (1) The notice required under paragraph (a)(1) of this section must--

(i) Indicate the purpose, time, and location of the meeting and who will be in attendance; and

(ii) Inform the parents of the provisions in §300.321(a)(6) and (c) (relating to the participation of other individuals on the IEP Team who have knowledge or special expertise about the child), and §300.321(f) (relating to the participation of the Part C service coordinator or other representatives of the Part C system at the initial IEP Team meeting for a child previously served under Part C of the Act).

(2) For a child with a disability beginning not later than the first IEP to be in effect when the child turns 16, or younger if determined appropriate by the IEP Team, the notice also must--

(i) Indicate--

(A) That a purpose of the meeting will be the consideration of the postsecondary goals and transition services for the child, in accordance with §300.320(b); and

(B) That the agency will invite the student; and

(ii) Identify any other agency that will be invited to send a representative.

(c) Other methods to ensure parent participation. If neither parent can attend an IEP Team meeting, the public agency must use other methods to ensure parent participation, including individual or conference telephone calls, consistent with §300.328 (related to alternative means of meeting participation).

(d) Conducting an IEP Team meeting without a parent in attendance. A meeting may be conducted without a parent in attendance if the public agency is unable to convince the parents that they should attend. In this case, the public agency must keep a record of its attempts to arrange a mutually agreed on time and place, such as--

(1) Detailed records of telephone calls made or attempted and the results of those calls;

(2) Copies of correspondence sent to the parents and any responses received; and

(3) Detailed records of visits made to the parent's home or place of employment and the results of those visits.

(e) Use of interpreters or other action, as appropriate. The public agency must take whatever action is necessary to ensure that the parent understands the proceedings of the IEP Team meeting, including arranging for an interpreter for parents with deafness or whose native language is other than English.

(f) Parent copy of child's IEP. The public agency must give the parent a copy of the child's IEP at no cost to the parent.

§300.501Opportunity to examine records: parent participation in meetings.

(b) Parent participation in meetings. (1) The parents of a child with a disability must be afforded an opportunity to participate in

meetings with respect to--

(i) The identification, evaluation, and educational placement of the child; and

(ii) The provision of FAPE to the child.

(2) Each public agency must provide notice consistent with §300.322(a)(1) and (b)(1) to ensure that parents of children with disabilities have the opportunity to participate in meetings described in paragraph (b)(1) of this section.

(3) A meeting does not include informal or unscheduled conversations involving public agency personnel and conversations on issues such as teaching methodology, lesson plans, or coordination of service provision. A meeting also does not include preparatory activities that public agency personnel engage in to develop a proposal or response to a parent proposal that will be discussed at a later meeting.

(c) Parent involvement in placement decisions.
(1) Each public agency must ensure that a parent of each child with a disability is a member of any group that makes decisions on the educational placement of the parent's child.
(2) In implementing the requirements of paragraph (c)(1) of this section, the public agency must use procedures consistent with the procedures described in §300.322(a) through (b)(1).
(3) If neither parent can participate in a meeting in which a decision is to be made relating to the educational placement of their child, the public agency must use other methods to ensure their participation, including individual or conference telephone calls, or video conferencing.
(4) A placement decision may be made by a group without the involvement of a parent, if the public agency is unable to obtain the parent's participation in the decision. In this case, the public agency must have a record of its attempt to ensure their involvement.

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

§300.322 (e) Use of interpreters or other action, as appropriate. The public agency must take whatever action is necessary to ensure that the parent understand the proceedings of the IEP Team meeting, including arranging for an interpreter for parents with deafness or whose native language is other than English.

PART Ed 1104
SPECIAL EDUCATION PROCESS SEQUENCE

Ed 1104.01 Sequence of Special Education Process. The sequence of the special education process shall be:

(a) Referral;

(b) Evaluation;

(c) Determination of eligibility;

(d) Development and approval of the IEP;

(e) Placement;

(f) Ongoing monitoring of the IEP; and

(g) Annual review of the IEP.

PART Ed 1105
CHILD FIND

Ed 1105.01 Responsibilities of the Local Education Agency.

(a) The LEA shall comply with 34 CFR 300.111(c), relative to child find procedures.

§300.111(c) Other children in child find. Child find also must include--
(1) Children who are suspected of being a child with a disability under §300.8 and in need of special education, even though they are advancing from grade to grade; and
(2) Highly mobile children, including migrant children.
(d) Construction. Nothing in the Act requires that children be classified by their disability so long as each child who has a disability that is listed in §300.8 and who, by reason of that disability, needs special education and related services is regarded as a child with a disability under Part B of the Act.

(b) The LEA shall have policies and procedures to ensure that any child who is potentially a child with a disability attending school and for any child 2.5 years of age up to 21 years of age residing within its jurisdiction is referred to the IEP team.

(c) The child find system shall contain specific provisions to meet the particular circumstances pertinent to the following groups of persons:
(1) For children from 2.5 years of age, the LEA shall use the special education process, to find, Identify and evaluate all children who are potentially children with disabilities and who are suspected by the LEA of being in need of special education or special education and related services thereby ensuring that an IEP will be developed and implemented for any child who is eligible for special education by age 3; and
(2) The LEA, using the special education process, shall find, identify, and evaluate all children suspected to be children with disabilities who are 2.5 years of age or older but less than 21 years of age.

(d) The child find system shall include children who are placed unilaterally in private schools within the geographic boundaries of the local school district by their parents without involving the LEA.

(e) The LEA shall provide the SEA, using NHSEIS, the following information:
(1) Data concerning children suspected, evaluated, and determined eligible for special education; and
(2) Data concerning children suspected, evaluated, and determined not eligible for special education

Ed 1105.02 LEA Child Find Program.

(a) The LEA shall establish referral procedures which ensure that every child who is suspected or known to be a child with a disability shall be referred to the IEP team for further evaluation.
(b) Any person may refer a child under the age of 21 years to the IEP team for reasons including but not limited to the following:

(1) Failing to pass a hearing or vision screening;
(2) Unsatisfactory performance on group achievement tests or accountability measures;
(3) Receiving multiple academic and behavioral warnings or academic or behavior warnings or suspension or expulsion from a child care or after school program;
(4) Repeatedly failing one or more subjects;

(5) Inability to progress or participate in developmentally appropriate preschool activities; and
(6) Receiving service from family centered early support and services.

(c) The LEA shall coordinate with area agencies and family centered early supports and services to establish a process of LEA notification of children served by family centered early supports and services consistent with the interagency agreement between the LEA and area agencies providing family centered early supports and services.

(d) The LEA annually shall consult with representatives of private schools within its jurisdiction and representatives of parents of parentally-placed children with disabilities attending private schools within its jurisdiction to advise them of the LEA's responsibility to identify and evaluate all children who are suspected of or known to be children with a disability and who are enrolled in such schools, and referrals from schools shall be forwarded to the IEP team for further evaluation.

(e) The LEA shall annually contact all community agencies and programs within its jurisdiction which provide medical, mental health, early intervention, early care and education, welfare, and other human services to advise them of the LEA's responsibility to find, identify and evaluate all children who might be children with disabilities, and referrals from these agencies shall be forwarded to the IEP team for further evaluation.

(f) The LEA annually shall disseminate information which describes its child find program. It shall include a description of the LEA's special education program, including a contact person in the school system for further information or referral.

(g) The LEA annually shall provide all parents of children with disabilities with information regarding the parents' rights and responsibilities under federal and state law as provided in 34 CFR 300.504 regarding special education.

§300.504 – see Ed 1120.03 Written Prior Notice. Page #133

(h) The LEA shall ensure that all referrals from parents and others who suspect or know a child to be a child with a disability shall be referred to the IEP team. The LEA shall provide the parents with a written notice of any referral other than one initiated by the parent, in accordance with Ed 1107.01(b).

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

Ed 1105.03 Child Find For Children Placed in Homes for Children, Health Care Facilities, or State Institutions.

In order to insure that all relevant agencies and groups within the boundaries of each local school district are aware of the LEA's child find efforts and of the process for referring a child who is or might be involved with the court and for whom a special education program might be appropriate, the LEA shall:

(a) Appoint an LEA employee to direct the child find effort.

(b) Publicize the name of the employee's functions, and the manner by which the employee might be contacted within the LEA.

(c) Correspond with or contact at least once a year, agencies or groups within the area served by the LEA which might have knowledge of children with disabilities who are not being served, explaining the referral process and requesting that they refer to the LEA children under the age of 21 who might have educational disabilities.

(d) Contact the following agencies:
(1) Local DCYF offices;
(2) DYDS offices;
(3) Local public defenders;
(4) Local district courts;
(5) Local residential educational and treatment programs; and
(6) Social service agencies which provide medical, mental health, welfare, and other human services.

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

(a) The LEA shall develop a written early transition process for children exiting family centered early supports and services which assures that any child who is potentially a child with a disability is evaluated and eligibility for special education is determined prior to the child's third birthday. If the child is determined to be a child with a disability eligible for special education and related services, the LEA shall ensure that an IEP is developed and implemented on or before the child's third birthday.

(b) The transition process in Ed 1105.04(a) shall include a written interagency agreement between the LEA and the local area agencies, as defined by RSA 171-A:2,I-b responsible for the provision of family centered early supports and services in that community.

RSA 171-A:2,I-b "Area agency" means an entity established as a nonprofit corporation in the state of New Hampshire which is established by rules adopted by the commissioner to provide services to developmentally disabled persons in the area.

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

(d) The LEA shall participate in transition planning conferences arranged by the local area agency responsible for family centered early supports and services in that community.

(e) At the request of the parent, an invitation to the initial IEP meeting shall be sent to the child's family centered early supports and services service coordinator or other representatives of the family centered early supports and services system to assist with the smooth transition of services.

(f) The LEA shall report in NHSEIS whether a child referred by FCESS is a child determined to be a child with a disability or if the child is found not eligible as a child with a disability.

PART Ed 1106
REFERRAL AND DISPOSITION OF REFERRAL

Ed 1106.01 Process; Provision of FAPE. In order to provide a FAPE for children 2.5 years of age to 21 years of age there shall be a referral process in which:

(a) The LEA shall comply with 34 CFR 300.124 when accepting referrals and transitioning children from Part C of the IDEA to preschool programs.

§300.124 Transition of children from the Part C program to preschool programs.
The State must have in effect policies and procedures to ensure that--
(a) Children participating in early intervention programs assisted under Part C of the Act, and who will participate in preschool programs assisted under Part B of the Act, experience a smooth and effective transition to those preschool programs in a manner consistent with section 637(a)(9) of the Act;
(b) By the third birthday of a child described in paragraph (a) of this section, an IEP or, if consistent with §300.323(b) and section 636(d) of the Act, an IFSP, has been developed and is being implemented for the child consistent with §300.101(b); and
(c) Each affected LEA will participate in transition planning conferences arranged by the designated lead agency under section 635(a)(10) of the Act.

(b) The LEA shall establish a process for referral and evaluation which includes individual participants responsible for decision-making and implementation.

(c) The LEA shall, upon receipt of a referral from any source, immediately notify the parent, in writing, of the referral.

(d) The IEP team shall within 15 days of the referral, determine whether the concerns raised by the referral can be addressed utilizing existing pupil support services available to all children, whether additional information is required, and what testing, if any, is needed to address any remaining concerns raised by the referral about how the referral is determined.

(e) The IEP team shall within 15 days of the referral, give the parent written notice of its disposition of the referral. This notice to parents shall conform to the requirements of Ed 1120.03(b) and include a description of the LEA's special education procedures. When additional testing has been determined to be necessary, the notice shall also include a request for written consent to conduct any individual evaluations needed to determine the child's disabilities.

(f) The parent may, if the child's parent disagrees with the IEP team's disposition of the referral, request alternative dispute resolution as described in Ed 1122 or a due process hearing as described in Ed 1123.

(g) The LEA may take action consistent with 34 CFR 300.300 if parental consent for evaluation is not granted or if a parent fails to respond to a request for evaluation.

§300.300 – See Ed 1120.04 Parental Consent. **Page #135**

(h) Written parental consent shall be required for individual evaluations to further diagnose the needs of a child already determined to be a child with a disability.

(i) The provision of FAPE by the LEA shall comply with 34 CFR 300.101(a), (b), and (c), and 34 CFR 300.530(d).

§300.101(a) General. A free appropriate public education must be available to all children residing in the State between the ages of 3 and 21, inclusive, including children with disabilities who have been suspended or expelled from school, as provided for in §300.530(d).

(b) FAPE for children beginning at age 3.

(1) Each State must ensure that--

(i) The obligation to make FAPE available to each eligible child residing in the State begins no later than the child's third birthday; and

(ii) An IEP or an IFSP is in effect for the child by that date, in accordance with §300.323(b).

(2) If a child's third birthday occurs during the summer, the child's IEP Team shall determine the date when services under the IEP or IFSP will begin.

(c) Children advancing from grade to grade.

(1) Each State must ensure that FAPE is available to any individual child with a disability who needs special education and related services, even though the child has not failed or been retained in a course or grade, and is advancing from grade to grade.

(2) The determination that a child described in paragraph (a) of this section is eligible under this part, must be made on an individual basis by the group responsible within the child's LEA for making eligibility determinations.

§300.530 (d) Services.

(1) A child with a disability who is removed from the child's current placement pursuant to paragraphs (c), or (g) of this section must--

(i) Continue to receive educational services, as provided in §300.101(a), so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP; and

(ii) Receive, as appropriate, a functional behavioral assessment, and behavioral intervention services and modifications, that are designed to address the behavior violation so that it does not recur.

(2) The services required by paragraph (d)(1), (d)(3), (d)(4), and (d)(5) of this section may be provided in an interim alternative educational setting.

(3) A public agency is only required to provide services during periods of removal to a child with a disability who has been removed from his or her current placement for 10 school days or less in that school year, if it provides services to a child without disabilities who is similarly removed.

(4) After a child with a disability has been removed from his or her current placement for 10 school days in the same school year, if the current removal is for not more than 10 consecutive school days and is not a change of placement under §300.536, school personnel, in consultation with at least one of the child's teachers, determine the extent to which services are needed, as provided in §300.101(a), so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP.

(5) If the removal is a change of placement under §300.536, the child's IEP Team determines appropriate services under paragraph (d)(1) of this section.

PART Ed 1107
EVALUATION

Ed 1107.01 Evaluation.

(a) The LEA shall comply with 34 CFR 300.301 - 34 CFR 300.311 relative to evaluations.

§300.301 Initial evaluations.

(a) General. Each public agency must conduct a full and individual initial evaluation, in accordance with §§300.305 and 300.306, before the initial provision of special education and related services to a child with a disability under this part.

(b) Request for initial evaluation. Consistent with the consent requirements in §300.300, either a parent of a child or a public agency may initiate a request for an initial evaluation to determine if the child is a child with a disability.

(c) Procedures for initial evaluation. The initial evaluation--

(1)(i) Must be conducted within 60 days of receiving parental consent for the evaluation; or

(ii) If the State establishes a timeframe within which the evaluation must be conducted, within that timeframe; and

(2) Must consist of procedures--

(i) To determine if the child is a child with a disability under §300.8; and

(ii) To determine the educational needs of the child.

(d) Exception. The timeframe described in paragraph (c)(1) of this section does not apply to a public agency if--

(1) The parent of a child repeatedly fails or refuses to produce the child for the evaluation; or

(2) A child enrolls in a school of another public agency after the relevant timeframe in paragraph (c)(1) of this section has begun, and prior to a determination by the child's previous public agency as to whether the child is a child with a disability under §300.8.

(e) The exception in paragraph (d)(2) of this section applies only if the subsequent public agency is making sufficient progress to ensure a prompt completion of the evaluation, and the parent and subsequent public agency agree to a specific time when the evaluation will be completed.

§300.302 Screening for instructional purposes is not evaluation.

The screening of a student by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation shall not be considered to be an evaluation for eligibility for special education and related services.

§300.303 Reevaluations.

(a) General. A public agency must ensure that a reevaluation of each child with a disability is conducted in accordance with §§300.304 through 300.311--

(1) If the public agency determines that the educational or related services needs, including improved academic achievement and functional performance, of the child warrant a reevaluation; or

(2) If the child's parent or teacher requests a reevaluation.

(b) Limitation. A reevaluation conducted under paragraph (a) of this section--

(1) May occur not more than once a year, unless the parent and the public agency agree otherwise; and

(2) Must occur at least once every 3 years, unless the parent and the public agency agree that a reevaluation is unnecessary.

§300.304 Evaluation procedures.

(a) Notice. The public agency must provide notice to the parents of a child with a disability, in accordance with §300.503, that describes any evaluation procedures the agency proposes to conduct.

(b) Conduct of evaluation. In conducting the evaluation, the public agency must--

(1) Use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including information provided by the parent, that may assist in determining--

(i) Whether the child is a child with a disability under §300.8; and

(ii) The content of the child's IEP, including information related to enabling the child to be involved in and progress in the general education curriculum (or for a preschool child, to participate in appropriate activities);

(2) Not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability and for determining an appropriate educational program for the child; and

(3) Use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.

(c) Other evaluation procedures. Each public agency must ensure that--

(1) Assessments and other evaluation materials used to assess a child under this part--

(i) Are selected and administered so as not to be discriminatory on a racial or cultural basis;

(ii) Are provided and administered in the child's native language or other mode of communication and in the form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to so provide or administer;

(iii) Are used for the purposes for which the assessments or measures are valid and reliable;

(iv) Are administered by trained and knowledgeable personnel; and

(v) Are administered in accordance with any instructions provided by the producer of the assessments.

(2) Assessments and other evaluation materials include those tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient.

(3) Assessments are selected and administered so as best to ensure that if an assessment is administered to a child with impaired sensory, manual, or speaking skills, the assessment results accurately reflect the child's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the child's impaired sensory, manual, or speaking skills (unless those skills are the factors that the test purports to measure).

(4) The child is assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities;

(5) Assessments of children with disabilities who transfer from one public agency to another public agency in the same school year are coordinated with those children's prior and subsequent schools, as necessary and as expeditiously as possible, consistent with §300.301(d)(2) and (e), to ensure prompt completion of full evaluations.

(6) In evaluating each child with a disability under §§300.304 through 300.306, the evaluation is sufficiently comprehensive to identify all of the child's special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified.

(7) Assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child are provided.

§300.305 Additional requirements for evaluations and reevaluations.

(a) Review of existing evaluation data. As part of an initial evaluation (if appropriate) and as part of any reevaluation under this part, the IEP Team and other qualified professionals, as appropriate, must--

(1) Review existing evaluation data on the child, including—

(i) Evaluations and information provided by the parents of the child;

(ii) Current classroom-based, local, or State assessments, and classroom-based observations; and

(iii) Observations by teachers and related services providers; and

(2) On the basis of that review, and input from the child's parents, identify what additional data, if any, are needed to determine--

(i) (A) Whether the child is a child with a disability, as defined in §300.8, and the educational needs of the child; or

(B) In case of a reevaluation of a child, whether the child continues to have such a disability, and the educational needs of the child;

(ii) The present levels of academic achievement and related developmental needs of the child;

(iii) (A) Whether the child needs special education and related services; or

(B) In the case of a reevaluation of a child, whether the child continues to need special education and related services; and

(iv) Whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the IEP of the child and to participate, as appropriate, in the general education curriculum.

(b) Conduct of review. The group described in paragraph (a) of this section may conduct its review without a meeting.

(c) Source of data. The public agency must administer such assessments and other evaluation measures as may be needed to produce the data identified under paragraph (a) of this section.

(d) Requirements if additional data are not needed.

(1) If the IEP Team and other qualified professionals, as appropriate, determine that no additional data are needed to determine whether the child continues to be a child with a disability, and to determine the child's educational needs, the public agency must notify the child's parents of—-

(i) That determination and the reasons for the determination; and

(ii) The right of the parents to request an assessment to determine whether the child continues to be a child with a disability, and to determine the child's educational needs.

(2) The public agency is not required to conduct the assessment described in paragraph (d)(1)(ii) of this section unless requested to do so by the child's parents.

(e) Evaluations before change in eligibility.

(1) Except as provided in paragraph (e)(2) of this section, a public agency must evaluate a child with a disability in accordance with §§300.304 through 300.311 before determining that the child is no longer a child with a disability.

(2) The evaluation described in paragraph (e)(1) of this section is not required before the termination of a child's eligibility under this part due to graduation from secondary school with a regular diploma, or due to exceeding the age eligibility for FAPE under State law.

(3) For a child whose eligibility terminates under circumstances described in paragraph (e)(2) of this section, a public agency must provide the child with a summary of the child's academic achievement and functional performance, which shall include recommendations on how to assist the child in meeting the child's postsecondary goals.

§300.306 Determination of eligibility.

(a) General. Upon completion of the administration of assessments and other evaluation measures--

(1) A group of qualified professionals and the parent of the child determines whether the child is a child with a disability, as defined in §300.8, in accordance with paragraph (b) of this section and the educational needs of the child; and

(2) The public agency provides a copy of the evaluation report and the documentation of determination of eligibility at no cost to the parent.

(b) Special rule for eligibility determination. A child must not be determined to be a child with a disability under this part--

(1) If the determinant factor for that determination is--

(i) Lack of appropriate instruction in reading, including the essential components of reading instruction (as defined in section 1208(3) of the ESEA);

(ii) Lack of appropriate instruction in math; or

(iii) Limited English proficiency; and

(2) If the child does not otherwise meet the eligibility criteria under §300.8(a).

(c) Procedures for determining eligibility and educational need.

(1) In interpreting evaluation data for the purpose of determining if a child is a child with a disability under §300.8, and the educational needs of the child, each public agency must--

(i) Draw upon information from a variety of sources, including aptitude and achievement tests, parent input, and teacher recommendations, as well as information about the child's physical condition, social or cultural background, and adaptive behavior; and

(ii) Ensure that information obtained from all of these sources is documented and carefully considered.

(2) If a determination is made that a child has a disability and needs special education and related services, an IEP must be developed for the child in accordance with §§300.320 through 300.324.

Additional Procedures for Identifying Children With Specific Learning Disabilities
§300.307 Specific learning disabilities.

(a) General. A State must adopt, consistent with §300.309, criteria for determining whether a child has a specific learning disability as defined in §300.8(c)(10). In addition, the criteria adopted by the State--
  (1) Must not require the use of a severe discrepancy between intellectual ability and achievement for determining whether a child has a specific learning disability, as defined in §300.8(c)(10);
  (2) Must permit the use of a process based on the child's response to scientific, research-based intervention; and
  (3) May permit the use of other alternative research-based procedures for determining whether a child has a specific learning disability, as defined in §300.8(c)(10).

(b) Consistency with State criteria. A public agency must use the State criteria adopted pursuant to paragraph (a) of this section in determining whether a child has a specific learning disability.

§300.308 Additional group members.

The determination of whether a child suspected of having a specific learning disability is a child with a disability as defined in §300.8, must be made by the child's parents and a team of qualified professionals, which must include—

(a) (1) The child's regular teacher; or
  (2) If the child does not have a regular teacher, a regular classroom teacher qualified to teach a child of his or her age; or
  (3) For a child of less than school age, an individual qualified by the SEA to teach a child of his or her age; and

(b) At least one person qualified to conduct individual diagnostic examinations of children, such as a school psychologist, speech-language pathologist, or remedial reading teacher.

§300.309 Determining the existence of a specific learning disability.

(a) The group described in §300.306 may determine that a child has a specific learning disability, as defined in §300.8(c)(10), if--
  (1) The child does not achieve adequately for the child's age or to meet State-approved grade-level standards in one or more of the following areas, when provided with learning experiences and instruction appropriate for the child's age or State-approved grade–level standards:
    (i) Oral expression.
    (ii) Listening comprehension.
    (iii) Written expression.
    (iv) Basic reading skill.
    (v) Reading fluency skills.
    (vi) Reading comprehension.
    (vii) Mathematics calculation.
    (viii) Mathematics problem solving.
  (2) (i) The child does not make sufficient progress to meet age or State-approved grade-level standards in one or more of the areas identified in paragraph (a)(1) of this section when using a process based on the child's response to scientific, research-based intervention; or
  (ii) The child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, State-approved grade-level standards, or intellectual development, that is determined by the group to be relevant to the identification of a specific learning disability, using appropriate assessments, consistent with §§300.304 and 300.305; and
  (3) The group determines that its findings under paragraphs (a)(1) and (2) of this section are not primarily the result of--
    (i) A visual, hearing, or motor disability;
    (ii) *Intellectual disability;*
    (iii) Emotional disturbance;
    (iv) Cultural factors;
    (v) Environmental or economic disadvantage; or
    (vi) Limited English proficiency.

P.L. 111-256, Rosa's Law

(b) To ensure that underachievement in a child suspected of having a specific learning disability is not due to lack of appropriate instruction in reading or math, the group must consider, as part of the evaluation described in §§300.304 through 300.306--
  (1) Data that demonstrate that prior to, or as a part of, the referral process, the child was provided appropriate instruction in regular education settings, delivered by qualified personnel; and
  (2) Data-based documentation of repeated assessments of achievement at reasonable intervals, reflecting formal assessment of student progress during instruction, which was provided to the child's parents.

(c) The public agency must promptly request parental consent to evaluate the child to determine if the child needs special education and related services, and must adhere to the timeframes described in §§300.301 and 300.303, unless extended by mutual written agreement of the child's parents and a group of qualified professionals, as described in §300.306(a)(1)--
  (1) If, prior to a referral, a child has not made adequate progress after an appropriate period of time when provided instruction, as described in paragraphs (b)(1) and (b)(2) of this section; and
  (2) Whenever a child is referred for an evaluation.

§300.310 Observation.

(a) The public agency must ensure that the child is observed in the child's learning environment (including the regular classroom setting) to document the child's academic performance and behavior in the areas of difficulty.

(b) The group described in §300.306(a)(1), in determining whether a child has a specific learning disability, must decide to--
  (1) Use information from an observation in routine classroom instruction and monitoring of the child's performance that was done before the child was referred for an evaluation; or
  (2) Have at least one member of the group described in §300.306(a)(1) conduct an observation of the child's academic performance in the regular classroom after the child has been referred for an evaluation and parental consent, consistent with §300.300(a), is obtained.

(c) In the case of a child of less than school age or out of school, a group member must observe the child in an environment appropriate for a child of that age.

§300.311 Specific documentation for the eligibility determination.

(a) For a child suspected of having a specific learning disability, the documentation of the determination of eligibility, as required in §300.306(a)(2), must contain a statement of--
  (1) Whether the child has a specific learning disability;
  (2) The basis for making the determination, including an assurance that the determination has been made in accordance with §300.306(c)(1);
  (3) The relevant behavior, if any, noted during the observation of the child and the relationship of that behavior to the child's academic functioning;
  (4) The educationally relevant medical findings, if any;
  (5) Whether--
    (i) The child does not achieve adequately for the child's age or to meet State-approved grade- level standards consistent with §300.309(a)(1); and
    (ii)(A) The child does not make sufficient progress to meet age or State-approved grade-level standards consistent with §300.309(a)(2)(i); or
    (B) The child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, State-approved grade level standards or intellectual development consistent with §300.309(a)(2)(ii);
  (6) The determination of the group concerning the effects of a visual, hearing, or motor disability; *intellectual disability*; emotional disturbance; cultural factors; environmental or economic disadvantage; or limited English proficiency on the child's achievement level; and

P.L. 111-256, Rosa's Law

(7) If the child has participated in a process that assesses the child's response to scientific, research-based intervention-–
(i) The instructional strategies used and the student-centered data collected; and
(ii) The documentation that the child's parents were notified about--
(A) The State's policies regarding the amount and nature of student performance data that would be collected and the general education services that would be provided;
(B) Strategies for increasing the child's rate of learning; and
(C) The parents' right to request an evaluation.

(b) Each group member must certify in writing whether the report reflects the member's conclusion. If it does not reflect the member's conclusion, the group member must submit a separate statement presenting the member's conclusions.

(b) The LEA shall comply with 34 CFR 300.302-305 relative to evaluation procedures and reevaluation. The child's educational history shall be reviewed, including identification of the child's past opportunities to have acquired important skills and information.

For §300.301 – 300.311, See Ed 1107.01(a) Page #41

(c) The evaluation process, including a written summary report, shall be completed within 45 days after receipt of parental consent for testing or at the conclusion of any extension provided in Ed 1107.01(c).

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

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

(f) If testing is ordered by a court, the evaluation process shall be completed within the time limit set by the court. If the court fails to provide a time limit, the evaluation process, including a written summary report, shall be completed within 60 days after receipt of the court's directive.

(g) All of the requirements for diagnostic information specified in Ed 1107 shall apply to the selection, administration, and interpretation of vocational assessments.

(h) The LEA shall comply with 34 CFR 300.301 - 311 relative to determining the existence of a disability.

For §300.301 – 300.311, See Ed 1107.01(a) Page #41

Ed 1107.02 Evaluation Requirements for Children with Specific Learning Disabilities

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

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

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

For §300.301 – 300.311, See Ed 1107.01(a) Page #41

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

For §300.301 – 300.311, See Ed 1107.01(a) Page #41

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

Ed 1107.03 Independent Educational Evaluations.

(a) The expense incurred in any LEA evaluation procedure recommended by the IEP team shall not be the financial obligation of the parent but shall be the responsibility of the LEA or other financial resources such as, but not limited to, another public agency or Medicaid.

(b) The LEA shall comply with 34 CFR 300.502, relative to independent educational evaluation

§300.502 – see Ed 1120.07 Independent Educational Evaluations. Page #138

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

Ed 1107.04 Qualified Examiners.

(a) Formal diagnostic assessments shall be administered by qualified examiners.

(b) Qualified examiners for specific disabilities shall be as set forth in Table 1100.1, "Required Assessments and Qualified Examiners by Type of Disability" as follows:

Table 1100.1

Required Assessments and Qualified Examiners by Type of Disability

Disability	Assessments Required	Qualified Examiners
AUTISM	Academic Performance	Associate School Psychologist Certified Educator Guidance Counselor Psychologist S.A.I.F.** School Psychologist
	Adaptive Behavior	Associate School Psychologist Certified Educator Guidance Counselor Psychiatrist Psychologist S.A.I.F.** School Psychologist Licensed Social Worker
	Communicative Skills	Speech-Language Pathologist Speech-Language Specialist
	Health	Professional Licensed to provide a Health Evaluation

Disability	Assessments Required	Qualified Examiners
DEAF-BLINDNESS	Academic Performance	Associate School Psychologist Certified Educator Guidance Counselor Psychologist S.A.I.F.** School Psychologist
	Hearing	Audiologist Otolaryngologist Otologist
	Vision	Ophthalmologist Optometrist
DEAFNESS	Academic Performance	Associate School Psychologist Certified Educator Guidance Counselor Psychologist S.A.I.F.** School Psychologist
	Hearing	Audiologist Otolaryngologist Otologist
DEVELOPMENTAL DELAY In order to identify a child as educationally disabled as the result of a developmental delay the IEP Team must determine that the child is experiencing developmental delays in one or more of the following areas: physical development; cognitive development; communication development; social or emotional development; or adaptive development.	Varies based on the suspected delay	Varies based on the suspected delay

Disability	Assessments Required	Qualified Examiners
EMOTIONAL DISTURBANCE	Academic Performance	Associate School Psychologist Certified Educator Guidance Counselor Psychologist S.A.I.F.** School Psychologist
	Social/Emotional Status	Associate School Psychologist Psychiatrist Psychologist School Psychologist
HEARING IMPAIRMENT	Academic Performance	Associate School Psychologist Certified Educator Guidance Counselor Psychologist S.A.I.F.** School Psychologist
	Hearing	Audiologist Otolaryngologist Otologist
INTELLUCTUAL DISABILITY *P.L. 111-256, Rosa's Law*	Academic Performance	Associate School Psychologist Certified Educator Guidance Counselor Psychologist S.A.I.F.** School Psychologist
	Adaptive Behavior	Associate School Psychologist Certified Educator Guidance Counselor Psychiatrist Psychologist S.A.I.F.** School Psychologist Licensed Social Worker
	Intelligence	Associate School Psychologist Psychologist S.A.I.F.** School Psychologist

Disability	Assessments Required	Qualified Examiners
MULTIPLE DISABILITIES – Requires at least two concomitant disabilities which are evaluated and documented in the student's evaluation record. This primary disability refers to concomitant impairments which cause severe educational problems	Varies based on the two or more disabilities suspected	Varies based on the assessment administered
ORTHOPEDIC IMPAIRMENT	Academic Performance	Associate School Psychologist Certified Educator Guidance Counselor Psychologist S.A.I.F.** School Psychologist
	Health	Professional Licensed to provide a Health Evaluation
Motor Ability	Motor Ability	Licensed Physician Neurologist Occupational Therapist Physical Therapist
OTHER HEALTH IMPAIRED	Academic Performance	Associate School Psychologist Certified Educator Guidance Counselor Psychologist S.A.I.F.** School Psychologist
	Health	Professional Licensed to provide a Health Evaluation

Disability	Assessments Required	Qualified Examiners
SPECIFIC LEARNING DISABILITY	Academic Performance	Associate School Psychologist Certified Educator Guidance Counselor Psychologist S.A.I.F.** School Psychologist
	Intelligence	Associate School Psychologist Psychologist S.A.I.F.** School Psychologist
	Observation	Associate School Psychologist Certified Educator Guidance Counselor Psychologist S.A.I.F.** School Psychologist
	Hearing Or Hearing Screening	Audiologist Otolaryngologist Otologist School Nurse
	Vision Or Vision Screening	Ophthalmologist Optometrist School Nurse
SPEECH-LANGUAGE IMPAIRMENT	Academic Performance	Associate School Psychologist Certified Educator Guidance Counselor Psychologist S.A.I.F.** School Psychologist
	Communication Skills	School Psychologist Speech-Language Pathologist Speech-Language Specialist

Disability	Assessments Required	Qualified Examiners
TRAUMATIC BRAIN INJURY/**AQUIRED BRAIN INJURY ****	Academic Performance	Associate School Psychologist Certified Educator Guidance Counselor Psychologist S.A.I.F.** School Psychologist
	Health	Professional Licensed to provide a Health Evaluation
**** effective November 10, 2010** A minimum of 2 of the following assessments must also be completed: ▪ Adaptive Behavior ▪ Communicative Skills ▪ Intelligence ▪ Social/Emotional Status	Adaptive Behavior	Associate School Psychologist Certified Educator Guidance Counselor Psychiatrist Psychologist S.A.I.F.** School Psychologist Licensed Social Worker
	Communicative Skills	Speech-Language Pathologist Speech-Language Specialist
	Intelligence	Associate School Psychologist Psychologist S.A.I.F.** School Psychologist
	Social/Emotional Status	Associate School Psychologist Psychiatrist Psychologist School Psychologist
VISUAL IMPAIRMENT/ BLINDNESS	Academic Performance	Associate School Psychologist Certified Educator Guidance Counselor Psychologist S.A.I.F.** School Psychologist
	Vision	Ophthalmologist Optometrist

Disability	Assessments Required	Qualified Examiners
VOCATIONAL ASSESSMENTS	Vocational	Certified Educator Guidance Counselor Vocational Educator Rehabilitation Counselor
**S.A.I.F., Specialist in the Assessment of Intellectual Functioning		

(c) Qualified examiners shall administer and interpret test results and provide written reports to the LEA.

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

Ed 1107.05 Evaluation Report.

(a) The IEP team determining the child's disabilities shall develop a written summary containing the results of the various diagnostic findings and forward a copy of the report to the parent and a copy to the LEA for the child's records. The report shall be written after the child's initial evaluation and thereafter if the public agency and the parent, consistent with 34 CFR 300.303, determine that reevaluation will be conducted.

§300.303 Reevaluations.
(a) General. A public agency must ensure that a reevaluation of each child with a disability is conducted in accordance with §§300.304 through 300.311--
(1) If the public agency determines that the educational or related services needs, including improved academic achievement and functional performance, of the child warrant a reevaluation; or
(2) If the child's parent or teacher requests a reevaluation.
(b) Limitation. A reevaluation conducted under paragraph (a) of this section--
(1) May occur not more than once a year, unless the parent and the public agency agree otherwise; and
(2) Must occur at least once every 3 years, unless the parent and the public agency agree that a reevaluation is unnecessary.

(b) The report shall include but not be limited to:
(1) The results of each evaluation procedure, test, record, or report;
(2) A written summary of the findings of the procedure, test, record, and/or report; and
(3) Information regarding the parent's rights of appeal in accordance with Ed 1123 and a description of the parent's right to an independent evaluation in accordance with Ed 1107.03.

PART Ed 1108
DETERMINATION OF ELIGIBILITY FOR SPECIAL EDUCATION

Ed 1108.01 Determination of Eligibility for Special Education

(a) The LEA shall comply with 34 CFR 300.301-311 relative to determination of eligibility.

For §300.301 – 300.311, See Ed 1107.01(a)	**Page #41**

(b) For determination of eligibility, the composition of the IEP team described in 34 CFR 300.306 shall also include:

§300.306 Determination of eligibility.

(a) General. Upon completion of the administration of assessments and other evaluation measures--

(1) A group of qualified professionals and the parent of the child determines whether the child s a child with a disability, as defined in §300.8, in accordance with paragraph (b) of this section and the educational needs of the child; and

(2) The public agency provides a copy of the evaluation report and the documentation of determination of eligibility at no cost to the parent.

(b) Special rule for eligibility determination. A child must not be determined to be a child with a disability under this part--

(1) If the determinant factor for that determination is--

(i) Lack of appropriate instruction in reading, including the essential components of reading instruction (as defined in section 1208(3) of the ESEA);

(ii) Lack of appropriate instruction in math; or

(iii) Limited English proficiency; and

(2) If the child does not otherwise meet the eligibility criteria under §300.8(a).

(c) Procedures for determining eligibility and educational need.

(1) In interpreting evaluation data for the purpose of determining if a child is a child with a disability under §300.8, and the educational needs of the child, each public agency must--

(i) Draw upon information from a variety of sources, including aptitude and achievement tests, parent input, and teacher recommendations, as well as information about the child's physical condition, social or cultural background, and adaptive behavior; and

(ii) Ensure that information obtained from all of these sources is documented and carefully considered.

(2) If a determination is made that a child has a disability and needs special education and related services, an IEP must be developed for the child in accordance with §§300.320 through 300.324

(1) A teacher certified in each area of suspected disability; and

(2) An individual knowledgeable about the child as a result of having had personal contact with the child in the school or, if the child is below school age, at another setting.

PART Ed 1109
THE INDIVIDUALIZED EDUCATION PROGRAM

Ed 1109.01 Elements of an Individualized Education Program.

(a) Each IEP shall include:
(1) The elements listed in CFR 300.320;

§300.320 Definition of individualized education program.

(a) General. As used in this part, the term individualized education program or IEP means a written statement for each child with a disability that is developed, reviewed, and revised in a meeting in accordance with §§300.320 through 300.324, and that must include--

(1) A statement of the child's present levels of academic achievement and functional performance, including--
(i) How the child's disability affects the child's involvement and progress in the general education curriculum (i.e., the same curriculum as for nondisabled children); or
(ii) For preschool children, as appropriate, how the disability affects the child's participation in appropriate activities;

(2) (i) A statement of measurable annual goals, including academic and functional goals designed to--
(A) Meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum; and
(B) Meet each of the child's other educational needs that result from the child's disability;
(ii) For children with disabilities who take alternate assessments aligned to alternate achievement standards, a description of benchmarks or short-term objectives;

(3) A description of--
(i) How the child's progress toward meeting the annual goals described in paragraph (2) of this section will be measured; and
(ii) When periodic reports on the progress the child is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards) will be provided;

(4) A statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided to enable the child--
(i) To advance appropriately toward attaining the annual goals;
(ii) To be involved in and make progress in the general education curriculum in accordance with paragraph (a)(1) of this section, and to participate in extracurricular and other nonacademic activities; and
(iii) To be educated and participate with other children with disabilities and nondisabled children in the activities described in this section;

(5) An explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class and in the activities described in paragraph (a)(4) of this section;

(6) (i) A statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child on State and districtwide assessments consistent with section 612(a)(16) of the Act; and
(ii) If the IEP Team determines that the child must take an alternate assessment instead of a particular regular State or districtwide assessment of student achievement, a statement of why--
(A) The child cannot participate in the regular assessment; and
(B) The particular alternate assessment selected is appropriate for the child; and

(7) The projected date for the beginning of the services and modifications described in paragraph (a)(4) of this section, and the anticipated frequency, location, and duration of those services and modifications.

(b) Transition services. Beginning not later than the first IEP to be in effect when the child turns 16, or younger if determined appropriate by the IEP Team, and updated annually, Thereafter, the IEP must include--

(1) Appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills; and

(2) The transition services (including courses of study) needed to assist the child in reaching those goals.

(c) Transfer of rights at age of majority. Beginning not later than one year before the child reaches the age of majority under State law, the IEP must include a statement that the child has been informed of the child's rights under Part B of the Act, if any, that will transfer to the child on reaching the age of majority under §300.520.

(d) Construction. Nothing in this section shall be construed to require-

(1) That additional information be included in a child's IEP beyond what is explicitly required in section 614 of the Act; or

(2) The IEP Team to include information under one component of a child's IEP that is already contained under another component of the child's IEP.

(2) The length of the school year and the school day required to implement the IEP;

(3) The types of service providers who would be responsible for implementing the IEP or the names of those providers;

(4) A statement identifying the party or parties assuming the financial responsibility for the implementation of the IEP;

(5) The signature of the parent or, where appropriate, student, and representative of the LEA stating approval of the provisions in the IEP;

(6) Short-term objectives or benchmarks for all children unless the parent determines them unnecessary for all or some of the child's annual goals;

(7) Short-term objectives or benchmarks for all children who take alternate assessment based on alternate achievement standards;

(8) A statement of how the child's progress toward meeting the annual goals shall be provided to the parents;

(9) A statement of how the child's progress toward meeting the annual goals will be measured and whether progress is sufficient to achieve the annual goals by the end of the school year;

(10) A statement of transition services that meets the requirements of 34 CFR 300.43 and 34 CFR 300.320(b), with the exception that a plan for each student with a disability beginning at age 14 or younger, if determined appropriate by the IEP team, shall include a statement of the transition service needs of the student under the applicable components of the student's IEP that focuses on the student's courses of study such as participation in advanced-placement courses or a vocational education; and

§300.43 Transition services.

(a) Transition services means a coordinated set of activities for a child with a disability that--

(1) Is designed to be within a results-oriented process, that is focused on improving the academic and functional achievement of the child with a disability to facilitate the child's movement from school to post-school activities, including postsecondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation;

(2) Is based on the individual child's needs, taking into account the child's strengths, preferences, and interests; and includes--

(i) Instruction;

(ii) Related services;

(iii) Community experiences;

(iv) The development of employment and other post-school adult living objectives; and

(v) If appropriate, acquisition of daily living skills and provision of a functional vocational evaluation.

(b) Transition services for children with disabilities may be special education, if provided as specially designed instruction, or a related service, if required to assist a child with a disability to benefit from special education.

§300.34 Related services.

(a) General. Related services means transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education, and includes speech-language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, early identification and assessment of disabilities in children, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services for diagnostic or evaluation purposes. Related services also include school health services and school nurse services, social work services in schools, and parent counseling and training.

(b) Exception; services that apply to children with surgically implanted devices, including cochlear implants.

(1) Related services do not include a medical device that is surgically implanted, the optimization of that device's functioning (e.g., mapping), maintenance of that device, or the replacement of that device.

(2) Nothing in paragraph (b)(1) of this section—

(i) Limits the right of a child with a surgically implanted device (e.g., cochlear implant) to receive related services (as listed in paragraph (a) of this section) that are determined by the IEP Team to be necessary for the child to receive FAPE.

(ii) Limits the responsibility of a public agency to appropriately monitor and maintain medical devices that are needed to maintain the health and safety of the child, including breathing, nutrition, or operation of other bodily functions, while the child is transported to and from school or is at school; or

(iii) Prevents the routine checking of an external component of a surgically-implanted device to make sure it is functioning properly, as required in §300.113(b)

(c) Individual related services terms defined. The terms used in this definition are defined as follows:

(1) **Audiology** includes--

(i) Identification of children with hearing loss;

(ii) Determination of the range, nature, and degree of hearing loss, including referral for medical or other professional attention for the habilitation of hearing;

(iii) Provision of habilitative activities, such as language habilitation, auditory training, speech reading (lip-reading), hearing evaluation, and speech conservation;

(iv) Creation and administration of programs for prevention of hearing loss;

(v) Counseling and guidance of children, parents, and teachers regarding hearing loss; and

(vi) Determination of children's needs for group and individual amplification, selecting and fitting an appropriate aid, and evaluating the effectiveness of amplification.

(2) **Counseling services** means services provided by qualified social workers, psychologists, guidance counselors, or other qualified personnel.

(3) **Early identification and assessment of disabilities in children** means the implementation of a formal plan for identifying a disability as early as possible in a child's life.

(4) **Interpreting services** includes--

(i) The following, when used with respect to children who are deaf or hard of hearing: Oral transliteration services, cued language transliteration services, sign language transliteration and interpreting services, and transcription services, such as communication access real-time translation (CART), C-Print, and TypeWell; and

(ii) Special interpreting services for children who are deaf-blind.

(5) **Medical services** means services provided by a licensed physician to determine a child's medically related disability that results in the child's need for special education and related services.

(6) **Occupational therapy**--

(i) Means services provided by a qualified occupational therapist; and

(ii) Includes--

(A) Improving, developing, or restoring functions impaired or lost through illness, injury, or deprivation;

(B) Improving ability to perform tasks for independent functioning if functions are impaired or lost; and

(C) Preventing, through early intervention, initial or further impairment or loss of function.

(7) **Orientation and mobility services**--

(i) Means services provided to blind or visually impaired children by qualified personnel to enable those students to attain systematic orientation to and safe movement within their environments in school, home, and community; and

(ii) Includes teaching children the following, as appropriate:

(A) Spatial and environmental concepts and use of information received by the senses (such as sound, temperature and vibrations) to establish, maintain, or regain orientation and line of travel (e.g., using sound at a traffic light to cross the street);

(B) To use the long cane or a service animal to supplement visual travel skills or as a tool for safely negotiating the environment for children with no available travel vision;

(C) To understand and use remaining vision and distance low vision aids; and

(D) Other concepts, techniques, and tools.

(8)(i) **Parent counseling and training** means assisting parents in understanding the special needs of their child;

(ii) Providing parents with information about child development; and

(iii) Helping parents to acquire the necessary skills that will allow them to support the implementation of their child's IEP or IFSP.

(9) **Physical therapy** means services provided by a qualified physical therapist.

(10) **Psychological services** includes--

(i) Administering psychological and educational tests, and other assessment procedures;

(ii) Interpreting assessment results;

(iii) Obtaining, integrating, and interpreting information about child behavior and conditions relating to learning;

(iv) Consulting with other staff members in planning school programs to meet the special educational needs of children as indicated by psychological tests, interviews, direct observation, and behavioral evaluations;

(v) Planning and managing a program of psychological services, including psychological counseling for children and parents; and

(vi) Assisting in developing positive behavioral intervention strategies.

(11) **Recreation** includes--
- (i) Assessment of leisure function;
- (ii) Therapeutic recreation services;
- (iii) Recreation programs in schools and community agencies; and
- (iv) Leisure education.

(12) **Rehabilitation counseling services** means services provided by qualified personnel in individual or group sessions that focus specifically on career development, employment preparation, achieving independence, and integration in the workplace and community of a student with a disability. The term also includes vocational rehabilitation services provided to a student with a disability by vocational rehabilitation programs funded under the Rehabilitation Act of 1973, as amended, 29 U.S.C. 701 et seq.

(13) **School health services and school nurse services** means health services that are designed to enable a child with a disability to receive FAPE as described in the child's IEP. School nurse services are services provided by a qualified school nurse. School health services are services that may be provided by either a qualified school nurse or other qualified person.

(14) **Social work services in schools** includes--
- (i) Preparing a social or developmental history on a child with a disability;
- (ii) Group and individual counseling with the child and family;
- (iii) Working in partnership with parents and others on those problems in a child's living situation (home, school, and community) that affect the child's adjustment in school;
- (iv) Mobilizing school and community resources to enable the child to learn as effectively as possible in his or her educational program; and
- (v) Assisting in developing positive behavioral intervention strategies.

(15) **Speech-language pathology services** includes--
- (i) Identification of children with speech or language impairments;
- (ii) Diagnosis and appraisal of specific speech or language impairments;
- (iii) Referral for medical or other professional attention necessary for the habilitation of speech or language impairments;
- (iv) Provision of speech and language services for the habilitation or prevention of communicative impairments; and
- (v) Counseling and guidance of parents, children, and teachers regarding speech and language impairments.

(16) **Transportation** includes--
- (i) Travel to and from school and between schools;
- (ii) Travel in and around school buildings; and
- (iii) Specialized equipment (such as special or adapted buses, lifts, and ramps), if required to provide special transportation for a child with a disability.

§300.320(b) Transition services. Beginning not later than the first IEP to be in effect when the child turns 16, or younger if determined appropriate by the IEP Team, and updated annually, thereafter, the IEP must include--

(1) Appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills; and

(2) The transition services (including courses of study) needed to assist the child in reaching those goals.

(10) A vocational education component for each child with a disability for whom vocational education is to be provided.

(b) All of the requirements for the IEP specified in Ed 1109.01(a) shall apply to the development, approval, and implementation of the vocational education component.

Ed 1109.02 Transportation.

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

PART Saf-C 1307 VEHICLE MAINTENANCE AND INSPECTION
RSA 266:7. Inspection of School Buses. – The director shall have authority, through his duly authorized agents, to inspect any motor vehicle used for the purpose of transporting school children to any school to determine its fitness for such purpose, and if he finds that such vehicle is unfit, he may refuse to permit it to be designated as a school bus. Said inspection shall be made before any motor vehicle transporting school children to any school is used for said transportation. The director shall cause to be issued some identification if such vehicle is approved as a school bus.

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

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

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

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

RSA 263:29 School Bus Driver's Certificate. – The owner of any school bus transporting children to and from any private or public school, or the owner of any bus owned or used by a religious organization or a nonprofit organization used exclusively as a bus for the transportation of its members in connection with functions of the organization, shall submit to the authorities in the town or city or to the organization which pays for said transportation a list of names of the persons who are to drive the buses used in such transportation. Such authority shall submit the list of names to the department requesting an investigation of each driver's criminal and motor vehicle record. If such driver is found to be qualified to bear the responsibility of such transportation, the division shall cause said driver to be examined under the rules adopted pursuant to RSA 265:58. No person shall drive a school bus unless he has satisfactorily passed the special examination for said driving and received from the division a special school bus driver's certificate. The director may revoke such special school bus driver's certificate for good cause shown.

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

(a) IEPs shall be in effect in accordance with 34 CFR 300.323.

§300.323 When IEPs must be in effect.
(a) General. At the beginning of each school year, each public agency must have in effect, for each child with a disability within its jurisdiction, an IEP, as defined in §300.320.
(b) IEP or IFSP for children aged three through five.
(1) In the case of a child with a disability aged three through five (or, at the discretion of the SEA, a two-year-old child with a disability who will turn age three during the school year), the IEP Team must consider an IFSP that contains the IFSP content (including the natural environments statement) described in section 636(d) of the Act and its implementing regulations (including an educational component that promotes school readiness and incorporates pre-literacy, language, and numeracy skills for children with IFSPs under this section who are at least three years of age), and that is developed in accordance with the IEP procedures under this part. The IFSP may serve as the IEP of the child, if using the IFSP as the IEP is--
(i) Consistent with State policy; and
(ii) Agreed to by the agency and the child's parents

(2) In implementing the requirements of paragraph (b)(1) of this section, the public agency must--
(i) Provide to the child's parents a detailed explanation of the differences between an IFSP and an IEP; and
(ii) If the parents choose an IFSP, obtain written informed consent from the parents.

(c) Initial IEPs; provision of services. Each public agency must ensure that--
(1) A meeting to develop an IEP for a child is conducted within 30 days of a determination that the child needs special education and related services; and
(2) As soon as possible following development of the IEP, special education and related services are made available to the child in accordance with the child's IEP

(d) Accessibility of child's IEP to teachers and others. Each public agency must ensure that--
(1) The child's IEP is accessible to each regular education teacher, special education teacher, related services provider, and any other service provider who is responsible for its implementation; and
(2) Each teacher and provider described in paragraph (d)(1) of this section is informed of--
(i) His or her specific responsibilities related to implementing the child's IEP; and
(ii) The specific accommodations, modifications, and supports that must be provided for the child in accordance with the IEP.

(e) IEPs for children who transfer public agencies in the same State. If a child with a disability (who had an IEP that was in effect in a previous public agency in the same State) transfers to a new public agency in the same State, and enrolls in a new school within the same school year, the new public agency (in consultation with the parents) must provide FAPE to the child (including services comparable to those described in the child's IEP from the previous public agency), until the new public agency either--
(1) Adopts the child's IEP from the previous public agency; or
(2) Develops, adopts, and implements a new IEP that meets the applicable requirements in §§300.320 through 300.324.

(f) IEPs for children who transfer from another State. If a child with a disability (who had an IEP that was in effect in a previous public agency in another State) transfers to a public agency in a new State, and enrolls in a new school within the same school year, the new public agency (in consultation with the parents) must provide the child with FAPE (including services comparable to those described in the child's IEP from the previous public agency), until the new public agency--
(1) Conducts an evaluation pursuant to §§300.304 through 300.306 (if determined to be necessary by the new public agency); and
(2) Develops, adopts, and implements a new IEP, if appropriate, that meets the applicable requirements in §§300.320 through 300.324.

(g) Transmittal of records. To facilitate the transition for a child described in paragraphs (e) and (f) of this section--
(1) The new public agency in which the child enrolls must take reasonable steps to promptly obtain the child's records, including the IEP and supporting documents and any other records relating to the provision of special education or related services to the child, from the previous public agency in which the child was enrolled, pursuant to 34 CFR 99.31(a)(2); and
(2) The previous public agency in which the child was enrolled must take reasonable steps to promptly respond to the request from the new public agency.

(b) In the case of a child with a disability aged 3 through 5 or a two-year-old child with a disability who will turn age 3 during the school year when the LEA offers special education services to children with disabilities prior to age 3, the IEP team shall consider the contents of an IFSP in accordance with 34 CFR 300.323(b)

§300.323 – see Ed 1109.03 When an IEP Is in Effect; IEP Meetings; Development, Review, and Revision of an IEP; Transition Services. Page #60

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

(d) The IEP shall be reviewed at least annually and, if necessary, revised. The IEP shall comply with 34 CFR 300.323, specifying when IEPs shall be in effect, including an IEP or IFSP for children with disabilities ages 3 through 5 or for a 2- year-old child with a disability who will turn 3 years of age during the school year.

§300.323 – see Ed 1109.03 When an IEP Is in Effect; IEP Meetings; Development, Review, and Revision of an IEP; Transition Services. Page #60

(e) The IEP team shall determine the appropriate length of an IEP, which shall not exceed 12 months without review and approval by the IEP team.

(f) The child's educational history shall be reviewed, including identification of the child's past opportunities to have acquired important skills and information.

(g) IEP meetings shall be conducted in accordance with 34 CFR 300.324(b).

§300.324 – see Ed 1109.03(h) below

(h) Development, review, and revision of an IEP shall be in accordance with 34 CFR 300.324 and, when appropriate, for children with disabilities who are functionally blind, in accordance with RSA 186-C:7-b.

§300.324 Development, review, and revision of IEP.

(a) Development of IEP.

(1) General. In developing each child's IEP, the IEP Team must consider--

(i) The strengths of the child;

(ii) The concerns of the parents for enhancing the education of their child;

(iii) The results of the initial or most recent evaluation of the child; and

(iv) The academic, developmental, and functional needs of the child.

(2) Consideration of special factors. The IEP Team must--

(i) In the case of a child whose behavior impedes the child's learning or that of others, consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior;

(ii) In the case of a child with limited English proficiency, consider the language needs of the child as those needs relate to the child's IEP;

(iii) In the case of a child who is blind or visually impaired, provide for instruction in Braille and the use of Braille unless the IEP Team determines, after an evaluation of the child's reading and writing skills, needs, and appropriate reading and writing media (including an evaluation of the child's future needs for instruction in Braille or the use of Braille), that instruction in Braille or the use of Braille is not appropriate for the child;

(iv) Consider the communication needs of the child, and in the case of a child who is deaf or hard of hearing, consider the child's language and communication needs, opportunities for direct communications with peers and professional personnel in the child's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the child's language and communication mode; and

(v) Consider whether the child needs assistive technology devices and services.

(3) Requirement with respect to regular education teacher. A regular education teacher of a child with a disability, as a member of the IEP Team, must, to the extent appropriate, participate in the development of the IEP of the child, including the determination of--

(i) Appropriate positive behavioral interventions and supports and other strategies for the child; and

(ii) Supplementary aids and services, program modifications, and support for school personnel consistent with §300.320(a)(4).

(4) Agreement.

(i) In making changes to a child's IEP after the annual IEP Team meeting for a school year, the parent of a child with a disability and the public agency may agree not to convene an IEP Team meeting for the purposes of making those changes, and instead may develop a written document to amend or modify the child's current IEP.

(ii) If changes are made to the child's IEP in accordance with paragraph (a)(4)(i) of this section, the public agency must ensure that the child's IEP Team is informed of those changes.

(5) Consolidation of IEP Team meetings. To the extent possible, the public agency must encourage the consolidation of reevaluation meetings for the child and other IEP Team meetings for the child.

(6) Amendments. Changes to the IEP may be made either by the entire IEP Team at an IEP Team meeting, or as provided in paragraph (a)(4) of this section, by amending the IEP rather than by redrafting the entire IEP. Upon request, a parent must be provided with a revised copy of the IEP with the amendments incorporated.

(b) Review and revision of IEPs.

(1) General. Each public agency must ensure that, subject to paragraphs (b)(2) and (b)(3) of this section, the IEP Team--

(i) Reviews the child's IEP periodically, but not less than annually, to determine whether the annual goals for the child are being achieved; and

(ii) Revises the IEP, as appropriate, to address--

(A) Any lack of expected progress toward the annual goals described in §300.320(a)(2), and in the general education curriculum, if appropriate;

(B) The results of any reevaluation conducted under §300.303;

(C) Information about the child provided to, or by, the parents, as described under §300.305(a)(2);

(D) The child's anticipated needs; or

(E) Other matters.

(2) Consideration of special factors. In conducting a review of the child's IEP, the IEP Team must consider the special factors described in paragraph (a)(2) of this section.

(3) Requirement with respect to regular education teacher. A regular education teacher of the child, as a member of the IEP Team, must, consistent with paragraph (a)(3) of this section, participate in the review and revision of the IEP of the child.

(c) Failure to meet transition objectives.

(1) Participating agency failure. If a participating agency, other than the public agency, fails to provide the transition services described in the IEP in accordance with §300.320(b), the public agency must reconvene the IEP Team to identify alternative strategies to meet the transition objectives for the child set out in the IEP.

(2) Construction. Nothing in this part relieves any participating agency, including a State vocational rehabilitation agency, of the responsibility to provide or pay for any transition service that the agency would otherwise provide to children with disabilities who meet the eligibility criteria of that agency.

(d) Children with disabilities in adult prisons.

(1) Requirements that do not apply. The following requirements do not apply to children with disabilities who are convicted as adults under State law and incarcerated in adult prisons:

(i) The requirements contained in section 612(a)(16) of the Act and §300.320(a)(6) (relating to participation of children with disabilities in general assessments).

(ii) The requirements in §300.320(b) (relating to transition planning and transition services) do not apply with respect to the children whose eligibility under Part B of the Act will end, because of their age, before they will be eligible to be released from prison based on consideration of their sentence and eligibility for early release.

(2) Modifications of IEP or placement.

(i) Subject to paragraph (d)(2)(ii) of this section, the IEP Team of a child with a disability who is convicted as an adult under State law and incarcerated in an adult prison may modify the child's IEP or placement if the State has demonstrated a bona fide security or compelling penological interest that cannot otherwise be accommodated.

(ii) The requirements of §§300.320 (relating to IEPs), and 300.112 (relating to LRE), do not apply with respect to the modifications described in paragraph (d)(2)(i) of this section.

RSA 186-C:7-b Braille Instruction for Functionally Blind Pupils. – In developing the individualized education program for a functionally blind pupil, there shall be:

I. A presumption that proficiency in Braille reading and writing is essential for the pupil's satisfactory educational progress. Every functionally blind pupil shall be entitled to Braille reading and writing instruction unless all members of the pupil's special education team concur that instruction in Braille or the use of Braille is not appropriate for the pupil.

II. Instruction in Braille shall be provided by a teacher certified by the state department of education to teach pupils with visual impairment.

III. An initial learning media assessment by a teacher certified in the education of pupils with visual impairment shall be conducted. This assessment shall be conducted every 3 years and reviewed annually.

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

§300.324 – see Ed 1109.03(h) above

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

(k) LEAs shall comply with RSA 186-C:9 relative to required special education.

RSA 186-C:9 (including changes proposed by HB 766) Education Required. – Each child determined by the local school district, or special school district established under RSA 194:60, as being [educationally disabled] ***a child with disabilities*** in accordance with RSA 186-C:2 and in need of special education or special education and educationally related services shall be entitled to attend an approved program which can implement the child's individualized education [plan] ***program***. Such child shall be entitled to continue in an approved program until such time as the child has acquired a ***regular*** high school diploma or has attained the age of 21, whichever occurs first, or until the ***child's IEP team*** determines that the child no longer requires special education in accordance with the provisions of this chapter.

Ed 1109.04 Copies of the IEP and Evidence of Implementation.

(a) The LEA shall provide each teacher and service provider listed as having responsibilities for implementing the IEP with a copy of the complete IEP for working and monitoring purposes. In addition, the LEA shall provide a private school or non-LEA provider responsible for implementing the IEP with a copy of the IEP on or before the first day of the placement.

(b) The LEA shall maintain written evidence documenting implementation of the IEP, including, but not limited to, the following:
(1) All special education and related services provided;
(2) Any supplementary aids and services provided;
(3) Programs modifications made; and
(4) Supports provided for school personnel implementing the IEP.

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

§300.305(e) Evaluations before change in eligibility.
(1) Except as provided in paragraph (e)(2) of this section, a public agency must evaluate a child with a disability in accordance with §§300.304 through 300.311 before determining that the child is no longer a child with a disability.
(2) The evaluation described in paragraph (e)(1) of this section is not required before the termination of a child's eligibility under this part due to graduation from secondary school with a regular diploma, or due to exceeding the age eligibility for FAPE under State law.

Ed 1109.05 IEPs for Children Placed in Private Providers of Special Education or other non-LEA Programs by Public Agencies. The LEA, as the responsible public agency, shall comply with 34 CFR 300.325 relating to private providers of special education placements by public agencies.

§300.325 Private school placements by public agencies.
(a) Developing IEPs.
(1) Before a public agency places a child with a disability in, or refers a child to, a private school or facility, the agency must initiate and conduct a meeting to develop an IEP for the child in accordance with §§300.320 and 300.324.
(2) The agency must ensure that a representative of the private school or facility attends the meeting. If the representative cannot attend, the agency must use other methods to ensure participation by the private school or facility, including individual or conference telephone calls.
(b) Reviewing and revising IEPs.
(1) After a child with a disability enters a private school or facility, any meetings to review and revise the child's IEP may be initiated and conducted by the private school or facility at the discretion of the public agency.
(2) If the private school or facility initiates and conducts these meetings, the public agency must ensure that the parents and an agency representative--
(i) Are involved in any decision about the child's IEP; and
(ii) Agree to any proposed changes in the IEP before those changes are implemented.
(c) Responsibility. Even if a private school or facility implements a child's IEP, responsibility for compliance with this part remains with the public agency and the SEA.

Ed 1109.06 Monitoring and Annual Review of IEPs.

(a) The LEA shall develop and implement procedures designed to monitor that all IEPs are implemented. The IEP team may be reconvened at any time to review the provisions of the IEP.

(b) The LEA, upon a written request for an IEP team meeting by the parent, guardian, or adult student shall:
(1) Schedule a mutually agreeable time and date for an IEP team meeting;
(2) Convene the IEP team on the mutually agreeable time and date; or
(3) Provide the parent, guardian, or adult student with written prior notice detailing why the LEA refuses to convene the IEP team that the parent, guardian, or adult student has requested..

(c) All activities detailed in Ed 1109.06(b) shall be completed within 21 days following the receipt of the written request for the IEP team meeting.

(d) The LEA annually shall conduct at, or near, the end of the term of each IEP a meeting for the purpose of assessing the effectiveness of the present plan and to design an IEP, including extended school year services when appropriate.

PART Ed 1110
EXTENDED SCHOOL YEAR SERVICES

Ed 1110.01 Extended School Year Services.

(a) In the provision of extended school year services, the LEA shall comply with 34 CFR 300.106.

§300.106 Extended school year services.
(a) General.
(1) Each public agency must ensure that extended school year services are available as necessary to provide FAPE, consistent with paragraph (a)(2) of this section.
(2) Extended school year services must be provided only if a child's IEP Team determines, on an individual basis, in accordance with §§300.320 through 300.324, that the services are necessary for the provision of FAPE to the child.
(3) In implementing the requirements of this section, a public agency may not--
(i) Limit extended school year services to particular categories of disability; or
(ii) Unilaterally limit the type, amount, or duration of those services.
(b) Definition. As used in this section, the term extended school year services means special education and related services that--
(1) Are provided to a child with a disability--
(i) Beyond the normal school year of the public agency;
(ii) In accordance with the child's IEP; and
(iii) At no cost to the parents of the child; and
(2) Meet the standards of the SEA.

(b) The LEA shall provide extended school year services at times during the year when school is not in session, if determined by the IEP team to be necessary for the provision of FAPE. Extended school year services shall not be limited to the summer months or to predetermined program design.

(c) ESY services, provided in non-special education or district programs, shall be supervised, on site, by appropriately certified LEA personnel no less than once per week.

PART Ed 1111
PLACEMENT OF CHILDREN WITH DISABILITIES

Ed 1111.01(a) Placement in the Least Restrictive Environment.

(a) Each LEA shall ensure that, to the maximum extent appropriate, children with disabilities, including children in public or private providers of special education, are educated with children who do not have disabilities and that, consistent with 34 CFR 300.114, special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

§300.114 LRE requirements.
(a) General.
(1) Except as provided in §300.324(d)(2) (regarding children with disabilities in adult prisons), the State must have in effect policies and procedures to ensure that public agencies in the State meet the LRE requirements of this section and §§300.115 through 300.120.
(2) Each public agency must ensure that--
(i) To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are nondisabled; and
(ii) Special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.
(b) Additional requirement--State funding mechanism.
(1) General.
(i) A State funding mechanism must not result in placements that violate the requirements of paragraph (a) of this section; and
(ii) A State must not use a funding mechanism by which the State distributes funds on the basis of the type of setting in which a child is served that will result in the failure to provide a child with a disability FAPE according to the unique needs of the child, as described in the child's IEP.
(2) Assurance. If the State does not have policies and procedures to ensure compliance with paragraph (b)(1) of this section, the State must provide the Secretary an assurance that the State will revise the funding mechanism as soon as feasible to ensure that the mechanism does not result in placements that violate that paragraph.

(b) A child with a disability shall be admitted to regional vocational education center programs on the basis of vocational needs as outlined in the child's IEP and availability of space. However, the LEA shall ensure that any child who requires vocational education as part of FAPE shall receive such services as determined by the IEP team in the least restrictive environment.

Ed 1111.02 Placement Decisions.

(a) The IEP team shall make placement decisions in accordance with 34 CFR 300.116.

§300.116 Placements. In determining the educational placement of a child with a disability, including a preschool child with a disability, each public agency must ensure that--
(a) The placement decision--
(1) Is made by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options; and
(2) Is made in conformity with the LRE provisions of this subpart, including §§300.114 through 300.118;

(b) The child's placement--
  (1) Is determined at least annually;
  (2) Is based on the child's IEP; and
  (3) Is as close as possible to the child's home;
(c) Unless the IEP of a child with a disability requires some other arrangement, the child is educated in the school that he or she would attend if nondisabled;
(d) In selecting the LRE, consideration is given to any potential harmful effect on the child or on the quality of services that he or she needs; and
(e) A child with a disability is not removed from education in age-appropriate regular classrooms solely because of needed modifications in the general education curriculum.

(b) Preschool children with disabilities shall be educated in a setting that is appropriate to implement the IEP or IFSP.

(c) Preschool children with disabilities may receive their special education program at any of the settings listed in Table 1100.02 as follows:

Table 1100.02 Continuum of Learning Settings for Preschool

- Community Early Childhood Setting
- Home Setting
- Early Childhood Special Education – Partially Integrated Setting
- Early Childhood Special Education – Specialized/Therapeutic Setting
- Early Childhood Special Education – General Self-Contained Setting
- Early Childhood Special Education – Specialized Self-Contained Setting
- Separate School Setting
- Residential Setting

Ed 1111.03 Continuum of Alternative Placements.

(a) The LEA shall comply with the requirements of 34 CFR 300.115, relative to continuum of alternative placements.

§300.115 Continuum of alternative placements.
(a) Each public agency must ensure that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services.
(b) The continuum required in paragraph (a) of this section must--
  (1) Include the alternative placements listed in the definition of special education under §300.38 (instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions); and
  (2) Make provision for supplementary services (such as resource room or itinerant instruction) to be provided in conjunction with regular class placement.

(b) School districts shall, at a minimum, give evidence that the continuum of alternative learning settings from least restrictive to most restrictive set forth in Table 1100.2, "Continuum of Alternative Learning Settings for Preschool" and as set forth in Table 1100.3, "Continuum of Alternative Learning Environment" is available or would be made available as placements for children with disabilities, including children of preschool age.

(c) An LEA may board a child with a disability near the location where services are to be provided, as provided in RSA 186-C:11.

RSA 186-C:11 (Note: HB 766 will move this paragraph to another section in RSA 186-C) Transportation. – Each school district shall furnish suitable transportation to all ***children with disabilities*** whose individualized education ***program*** requires such transportation. The school district may board a child near the place where instruction is to be furnished and shall provide transportation if required by the child's individualized education ***program*** from the place where the child is boarded to the place of instruction.

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

Table 1100.3 Continuum of Alternative Learning Environments – Preschool

Preschool Educational Environments	Description
Early childhood program	A preschool child with a disability attends an early childhood program.
Home	A preschool child with a disability receives some or all of his/her supports and services in the child's home.
Special education program	A preschool child with a disability attends a special education program.
Service Provider Location	A preschool child with a disability receives supports and services from a service provider.
Separate school	A preschool child with a disability attends a publicly or privately operated separate day school facility designed specifically for children with disabilities.
Residential facility	A preschool child with a disability attends a publicly or privately operated residential school or residential medical facility on an inpatient basis.

(e) Children age 6-21 may receive their special education program at any of the environments listed in Table 1100.4 as follow:

Table 1100.4 Continuum of Alternative Learning Environments – Ages 6-21

Educational Environments	Description
Regular classroom	A child with a disability attends regular class with supports and services required in the IEP.
Regular classroom with consultative assistance	A child with a disability attends a regular class with assistance being provided to the classroom teacher by consulting specialists.
Regular classroom with assistance by specialists	A child with a disability attends a regular class with services, provided to the child by specialists.
Regular classroom plus resource room help	A child with a disability attends a regular class and receives assistance at or through the resource room program.

Educational Environments	Description
Regular classroom plus part-time special class	A child with a disability attends a regular class and a self-contained special education classroom.
Full-time special class	A child with a disability attends a self-contained special class full-time.
Full-time or part-time special day school	A child with a disability attends a publicly or privately operated special day program full-time or part-time.
Full-time residential placement	A child with a disability attends a publicly or privately operated residential program full-time.
Home Instruction	A child with a disability receives all or a portion of her/his special education program at home in accordance with Ed 1111.05.
Hospital or institution	A child with a disability receives special education while in a hospital or institution.

Ed 1111.04 Children with Disabilities in Private Providers of Special Education and other non-LEA Programs Placed or Referred by Public Agencies. The placement of a child with a disability in an approved private school, facility, or program by the IEP team shall provide special education and related services:

(a) At no cost to the parent.

(b) In the least restrictive environment.

(c) In accordance with the child's IEP.

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

Ed 1111.05 Home Instruction for School-Aged Children.

(a) Home instruction for children at least 6 years of age but less than 21 years of age shall not include parent-designed home education programs as authorized in Ed 315.

PART Ed 315 Procedures For The Operation Of Home Education Programs
Appendix A

(b) Home instruction for children at least 6 years of age but less than 21 years of age shall:

(1) Provide the child with access to the general curriculum, as required in 34 CFR 300.320;

§300.320 – See Part Ed 1109(a)(1) Page #55

(2) Be in compliance with RSA 186-C:15, relative to number of days per year of instruction;

RSA 186-C:15 (including changes proposed by HB 766) Length of School year.

I. The length of the school year ***and school day*** for **each** child ***with a disability,*** shall be the same as that provided by the local school district for a child ***without a disability who is of the same age or grade***, except that the local school district shall provide an approved program for an extended period when ***the child's IEP team determines that such services are necessary to provide the child with a free appropriate public education.***

II. ***The length of the school year and school day for a preschool*** child with a disability shall be determined by the child's IEP team ***and is not governed by the school district's school calendar. Services will be provided to a preschool child with a disability, beginning on the child's third birthday, if the child's IEP team determines, on an individual basis, that services are necessary for the provision of a free appropriate public education to the child.***

(3) Minimally include 10 hours per week of specially designed instruction as specified in the child's IEP so that the child will progress in the general curriculum as required in 34 CFR 300.320 and meet all IEP goals;

§300.320 – See Part Ed 1109(a)(1) Page #55

(4) Include related services as specified in the child's IEP, provided any related services so provided shall be in addition to the 10 hours of specially designed instruction required under (3);

(5) Be implemented by personnel qualified in accordance with 34 CFR 300.156 and section 2122 of the ESEA; and

§300.156 – See Ed 1102.04(g)
Section 2122 of the ESEA [excerpt]: Local application and needs assessment - An LEA application for a sub-grant from the state must include an explanation of how the LEA will provide training to enable teachers to address the needs of students with different learning styles, particularly students with disabilities, with special learning needs (including students with gifts and talents).... (Section 2122(b)(9)(A))

(6) Allow for the child to participate with nondisabled children to the maximum extent appropriate to the needs of the child, as required by 34 CFR 300.117.

§300.117 Nonacademic settings.
In providing or arranging for the provision of nonacademic and extracurricular services and activities, including meals, recess periods, and the services and activities set forth in §300.107, each public agency must ensure that each child with a disability participates with nondisabled children in the extracurricular services and activities to the maximum extent appropriate to the needs of that child. The public agency must ensure that each child with a disability has the supplementary aids and services determined by the child's IEP Team to be appropriate and necessary for the child to participate in nonacademic settings.

(c) When a child is physically or mentally unable to attend school and the IEP team recommends that a school week of less than the required hours detailed in Ed 1111.05 (b)(3) be provided:

(1) The superintendent shall provide written consent prior to implementation of the shortened school week;

(2) The parent shall provide written consent prior to implementation of the shortened school week;

(3) The LEA shall send a copy of the written consent to the state director of special education;

(4) The LEA shall send a copy of the written consent to the child's parent;

(5) The LEA shall place a copy of the consent in the child's school records;

(d) Consent shall not be granted by the superintendent if it would cause a serious adverse effect upon the child's educational progress pursuant to RSA 193:1, I(c); and

RSA 193:1, I(c) I. A parent of any child at least 6 years of age and under 18 years of age shall cause such child to attend the public school to which the child is assigned in the child's resident district. Such child shall attend full time when such school is in session unless: (c) The relevant school district superintendent has excused a child from attendance because the child is physically or mentally unable to attend school, or has been temporarily excused upon the request of the parent for purposes agreed upon by the school authorities and the parent. Such excused absences shall not be permitted if they cause a serious adverse effect upon the student's educational progress. Students excused for such temporary absences may be claimed as full-time pupils for purposes of calculating state aid under RSA 186-C:18 and equitable education grants under RSA 198:41

(e) The LEA's obligation to provide a FAPE to the child shall still be in effect even if the child is provided services for less than the number of hours detailed in Ed 1111.05 (b)(3).

(f) Except as provided in (g) below, temporary home-based programs shall not exceed 45 days in a school year.

(g) When the IEP team determines that an IEP for a child with a disability should be implemented at home for more than 45 days the LEA shall:
(1) Describe, in writing, the specific circumstances resulting in the need for the home instruction;
(2) Develop an IEP which includes all the elements in 34 CFR 300.320; and

§300.320 – See Part Ed 1109(a)(1) Page #55

(3) Develop a written plan for the transition of the child into a less restrictive environment which shall include the following:
a. Objective criteria for determining when the student will no longer require a home-based program and will receive special education services in a school-based program;
b. Specific activities for each phase of the transition; and
c. The specific time frame for each phase of the transition process.

(h) For an IEP to be implemented at home for more than 45 days, at least 10 days prior to the 46th day of the home instruction the LEA shall submit the following to the state director of special education of the department:
(1) The agreed upon IEP developed pursuant to Ed 1111.05(g)(2);
(2) The name, title, employer, and a copy of the certification, license, or other appropriate statement of qualifications for each of the individuals implementing the home instruction, including all teachers, therapists, aides, consultants and supervisors;
(3) Minutes of the IEP team meeting at which the decision to implement the home instruction was made, including:
a. The basis for the decision as set forth in Ed 1111.05(g)(1); and
b. A list of the specific documentation reviewed by the team such as physician's reports, test results, reports of professionals knowledgeable about the child's disability, pertinent information from any other relevant source; and
(4) The written plan for the transition of the child as described in Ed 1111.05(g)(3).

(i) The State Director of Special Education of the Department or designee shall review all the documentation and, if the proposal complies with Ed 1111.05(h), inform the LEA in writing that the proposal complies with Ed 1111.05(h) and is approved.

(j) If the director does not approve the proposal under (i) above, the director shall:
(1) Require additional information in writing to determine whether or not the proposal complies with Ed 1111.05(h); request additional information in writing;
(2) Inform the LEA in writing if there are alternatives to the proposed home instruction that are less restrictive; or
(3) Inform the LEA in writing that, based on the submitted documentation, because the proposed home instruction in excess of 45 days is not the least restrictive environment for the child as required by Ed 1111.01, the proposal is not approved.

PART Ed 1112
PARENTALLY PLACED CHILDREN WITH DISABILITIES

Ed 1112.01 Parentally Placed Children With Disabilities When FAPE Is Not At Issue. The provisions of 34 CFR 300.130 through 34 CFR 300.144 shall govern the provision of special education and related services to children with disabilities who are not covered by Ed 1112.02 or Ed 1112.03.

§300.130 Definition of parentally-placed private school children with disabilities. Parentally-placed private school children with disabilities means children with disabilities enrolled by their parents in private, including religious, schools or facilities that meet the definition of elementary school in §300.13 or secondary school in §300.36, other than children with disabilities covered under §§300.145 through 300.147.

§300.131 Child find for parentally-placed private school children with disabilities.

(a) General. Each LEA must locate, identify, and evaluate all children with disabilities who are enrolled by their parents in private, including religious, elementary schools and secondary schools located in the school district served by the LEA, in accordance with paragraphs (b) through (e) of this section, and §§300.111 and 300.201.

(b) Child find design. The child find process must be designed to ensure--

(1) The equitable participation of parentally-placed private school children; and

(2) An accurate count of those children.

(c) Activities. In carrying out the requirements of this section, the LEA, or, if applicable, the SEA, must undertake activities similar to the activities undertaken for the agency's public school children.

(d) Cost. The cost of carrying out the child find requirements in this section, including individual evaluations, may not be considered in determining if an LEA has met its obligation under §300.133.

(e) Completion period. The child find process must be completed in a time period comparable to that for students attending public schools in the LEA consistent with §300.301.

(f) Out-of-State children. Each LEA in which private, including religious, elementary schools and secondary schools are located must, in carrying out the child find requirements in this section, include parentally-placed private school children who reside in a State other than the State in which the private schools that they attend are located.

§300.132 Provision of services for parentally-placed private school children with disabilities--basic requirement.

(a) General. To the extent consistent with the number and location of children with disabilities who are enrolled by their parents in private, including religious, elementary schools and secondary schools located in the school district served by the LEA, provision is made for the participation of those children in the program assisted or carried out under Part B of the Act by providing them with special education and related services, including direct services determined in *accordance* with §300.137, unless the Secretary has arranged for services to those children under the by-pass provisions in §§300.190 through 300.198.

(b) Services plan for parentally-placed private school children with disabilities. In accordance with paragraph (a) of this section and §§300.137 through 300.139, a services plan must be developed and implemented for each private school child with a disability who has been designated by the LEA in which the private school is located to receive special education and related services under this part.

(c) Record keeping. Each LEA must maintain in its records, and provide to the SEA, the following information related to parentally-placed private school children covered under §§300.130 through 300.144:

(1) The number of children evaluated;

(2) The number of children determined to be children with disabilities; and

(3) The number of children served.

§300.133 Expenditures.

(a) Formula. To meet the requirement of §300.132(a), each LEA must spend the following on providing special education and related services (including direct services) to parentally-placed private school children with disabilities:

(1) For children aged 3 through 21, an amount that is the same proportion of the LEA's total subgrant under section 611(f) of the Act as the number of private school children with disabilities aged 3 through 21 who are enrolled by their parents in private, including religious, elementary schools and secondary schools located in the school district served by the LEA, is to the total number of children with disabilities in its jurisdiction aged 3 through 21.

(2) (i) For children aged three through five, an amount that is the same proportion of the LEA's total subgrant under section 619(g) of the Act as the number of parentally-placed private school children with disabilities aged three through five who are enrolled by their parents in a private, including religious, elementary school located in the school district served by the LEA, is to the total number of children with disabilities in its jurisdiction aged three through five.

(ii) As described in paragraph (a)(2)(i) of this section, children aged three through five are considered to be parentally-placed private school children with disabilities enrolled by their parents in private, including religious, elementary schools, if they are enrolled in a private school that meets the definition of elementary school in §300.13.

(3) If an LEA has not expended for equitable services all of the funds described in paragraphs (a)(1) and (a)(2) of this section by the end of the fiscal year for which Congress appropriated the funds, the LEA must obligate the remaining funds for special education and related services (including direct services) to parentally-placed private school children with disabilities during a carry-over period of one additional year.

(b) Calculating proportionate amount. In calculating the proportionate amount of Federal funds to be provided for parentally-placed private school children with disabilities, the LEA, after timely and meaningful consultation with representatives of private schools under §300.134, must conduct a thorough and complete child find process to determine the number of parentally-placed children with disabilities attending private schools located in the LEA. (See Appendix B for an example of how proportionate share is calculated).

(c) Annual count of the number of parentally-placed private school children with disabilities.

(1) Each LEA must--

(i) After timely and meaningful consultation with representatives of parentally-placed private school children with disabilities (consistent with §300.134), determine the number of parentally-placed private school children with disabilities attending private schools located in the LEA; and

(ii) Ensure that the count is conducted on any date between October 1 and December 1, inclusive, of each year.

(2) The count must be used to determine the amount that the LEA must spend on providing special education and related services to parentally-placed private school children with disabilities in the next subsequent fiscal year.

(d) Supplement, not supplant. State and local funds may supplement and in no case supplant the proportionate amount of Federal funds required to be expended for parentally-placed private school children with disabilities under this part.

§300.134 Consultation.
To ensure timely and meaningful consultation, an LEA, or, if appropriate, an SEA, must consult with private school representatives and representatives of parents of parentally-placed private school children with disabilities during the design and development of special education and related services for the children regarding the following:
(a) Child find. The child find process, including--
(1) How parentally-placed private school children suspected of having a disability can participate equitably; and
(2) How parents, teachers, and private school officials will be informed of the process.
(b) Proportionate share of funds. The determination of the proportionate share of Federal funds available to serve parentally-placed private school children with disabilities under §300.133(b), including the determination of how the proportionate share of those funds was calculated.
(c) Consultation process. The consultation process among the LEA, private school officials, and representatives of parents of parentally-placed private school children with disabilities, including how the process will operate throughout the school year to ensure that parentally-placed children with disabilities identified through the child find process can meaningfully participate in special education and related services.
(d) Provision of special education and related services. How, where, and by whom special education and related services will be provided for parentally-placed private school children with disabilities, including a discussion of--
(1) The types of services, including direct services and alternate service delivery mechanisms; and
(2) How special education and related services will be apportioned if funds are insufficient to serve all parentally-placed private school children; and
(3) How and when those decisions will be made;
(e) Written explanation by LEA regarding services. How, if the LEA disagrees with the views of the private school officials on the provision of services or the types of services (whether provided directly or through a contract), the LEA will provide to the private school officials a written explanation of the reasons why the LEA chose not to provide services directly or through a contract.

§300.135 Written affirmation.
(a) When timely and meaningful consultation, as required by §300.134, has occurred, the LEA must obtain a written affirmation signed by the representatives of participating private schools.
(b) If the representatives do not provide the affirmation within a reasonable period of time, the LEA must forward the documentation of the consultation process to the SEA.

§300.136 Compliance.
(a) General. A private school official has the right to submit a complaint to the SEA that the LEA--
(1) Did not engage in consultation that was meaningful and timely; or
(2) Did not give due consideration to the views of the private school official.
(b) Procedure.
(1) If the private school official wishes to submit a complaint, the official must provide to the SEA the basis of the noncompliance by the LEA with the applicable private school provisions in this part; and
(2) The LEA must forward the appropriate documentation to the SEA.
(3) (i) If the private school official is dissatisfied with the decision of the SEA, the official may submit a complaint to the Secretary by providing the information on noncompliance described in paragraph (b)(1) of this section; and
(ii) The SEA must forward the appropriate documentation to the Secretary.

§300.137 Equitable services determined.
(a) No individual right to special education and related services. No parentally-placed private school child with a disability has an individual right to receive some or all of the special education and related services that the child would receive if enrolled in a public school.

(b) Decisions.
(1) Decisions about the services that will be provided to parentally-placed private school children with disabilities under §§300.130 through 300.144 must be made in accordance with paragraph (c) of this section and §300.134(c).
(2) The LEA must make the final decisions with respect to the services to be provided to eligible parentally-placed private school children with disabilities.

(c) Services plan for each child served under §§300.130 through 300.144. If a child with a disability is enrolled in a religious or other private school by the child's parents and will receive special education or related services from an LEA, the LEA must--
(1) Initiate and conduct meetings to develop, review, and revise a services plan for the child, in accordance with §300.138(b); and
(2) Ensure that a representative of the religious or other private school attends each meeting. If the representative cannot attend, the LEA shall use other methods to ensure participation by the religious or other private school, including individual or conference telephone calls.

§300.*138* *Equitable services provided.*

(a) General.
(1) The services provided to parentally-placed private school children with disabilities must be provided by personnel meeting the same standards as personnel providing services in the public schools, except that private elementary school and secondary school teachers who are providing equitable services to parentally-placed private school children with disabilities do not have to meet the highly qualified special education teacher requirements of §300.18.
(2) Parentally-placed private school children with disabilities may receive a different amount of services than children with disabilities in public schools.

(b) Services provided in accordance with a services plan.
(1) Each parentally-placed private school child with a disability who has been designated to receive services under §300.132 must have a services plan that describes the specific special education and related services that the LEA will provide to the child in light of the services that the LEA has determined, through the process described in §§300.134 and 300.137, it will make available to parentally-placed private school children with disabilities.
(2) The services plan must, to the extent appropriate--
(i) Meet the requirements of §300.320, or for a child ages three through five, meet the requirements of §300.323(b) with respect to the services provided; and
(ii) Be developed, reviewed, and revised consistent with §§300.321 through 300.324.

(c) Provision of equitable services.
(1) The provision of services pursuant to this section and §§300.139 through 300.143 must be provided:
(i) By employees of a public agency; or
(ii) Through contract by the public agency with an individual, association, agency, organization, or other entity.
(2) Special education and related services provided to parentally-placed private school children with disabilities, including materials and equipment, must be secular, neutral, and nonideological.

§300.139 Location of services and transportation.

(a) Services on private school premises. Services to parentally-placed private school children with disabilities may be provided on the premises of private, including religious, schools, to the extent consistent with law.

(b) Transportation.
(1) General.
(i) If necessary for the child to benefit from or participate in the services provided under this part, a parentally-placed private school child with a disability must be provided transportation--
(A) From the child's school or the child's home to a site other than the private school; and
(B) From the service site to the private school, or to the child's home, depending on the timing of the services.
(ii) LEAs are not required to provide transportation from the child's home to the private school.

(2) Cost of transportation. The cost of the transportation described in paragraph (b)(1)(i) of this section may be included in calculating whether the LEA has met the requirement of §300.133.

§300.140 Due process complaints and State complaints.

(a) Due process not applicable, except for child find.

(1) Except as provided in paragraph (b) of this section, the procedures in §§300.504 through 300.519 do not apply to complaints that an LEA has failed to meet the requirements of §§300.132 through 300.139, including the provision of services indicated on the child's services plan.

(b) Child find complaints--to be filed with the LEA in which the private school is located.

(1) The procedures in §§300.504 through 300.519 apply to complaints that an LEA has failed to meet the child find requirements in §300.131, including the requirements in §§300.300 through 300.311.

(2) Any due process complaint regarding the child find requirements (as described in paragraph (b)(1) of this section) must be filed with the LEA in which the private school is located and a copy must be forwarded to the SEA.

(c) State complaints.

(1) Any complaint that an SEA or LEA has failed to meet the requirements in §§300.132 through 300.135 and 300.137 through 300.144 must be filed in accordance with the procedures described in §§300.151 through 300.153.

(2) A complaint filed by a private school official under §300.136(a) must be filed with the SEA in accordance with the procedures in §300.136(b).

§300.141 Requirement that funds not benefit a private school.

(a) An LEA may not use funds provided under section 611 or 619 of the Act to finance the existing level of instruction in a private school or to otherwise benefit the private school.

(b) The LEA must use funds provided under Part B of the Act to meet the special education and related services needs of parentally-placed private school children with disabilities, but not for meeting--

(1) The needs of a private school; or

(2) The general needs of the students enrolled in the private school.

§300.142 Use of personnel.

(a) Use of public school personnel. An LEA may use funds available under sections 611 and 619 of the Act to make public school personnel available in other than public facilities--

(1) To the extent necessary to provide services under §§300.130 through 300.144 for parentally-placed private school children with disabilities; and

(2) If those services are not normally provided by the private school.

(b) Use of private school personnel. An LEA may use funds available under sections 611 and 619 of the Act to pay for the services of an employee of a private school to provide services under §§300.130 through 300.144 if--

(1) The employee performs the services outside of his or her regular hours of duty; and

(2) The employee performs the services under public supervision and control.

§300.143 Separate classes prohibited.

An LEA may not use funds available under section 611 or 619 of the Act for classes that are organized separately on the basis of school enrollment or religion of the children if—

(a) The classes are at the same site; and

(b) The classes include children enrolled in public schools and children enrolled in private schools.

§300.144 Property, equipment, and supplies.

(a) A public agency must control and administer the funds used to provide special education and related services under §§300.137 through 300.139, and hold title to and administer materials, equipment, and property purchased with those funds for the uses and purposes provided in the Act.

(b) The public agency may place equipment and supplies in a private school for the period of time needed for the Part B program.

(c) The public agency must ensure that the equipment and supplies placed in a private school--

(1) Are used only for Part B purposes; and

(2) Can be removed from the private school without remodeling the private school facility.

(d) The public agency must remove equipment and supplies from a private school if--

(1) The equipment and supplies are no longer needed for Part B purposes; or

(2) Removal is necessary to avoid unauthorized use of the equipment and supplies for other than Part B purposes.

(e) No funds under Part B of the Act may be used for repairs, minor remodeling, or construction of private school facilities.

Ed 1112.02 Children With Disabilities Enrolled by Their Parents in Private Schools When FAPE is at Issue. When a child with a disability is placed by his or her parents in a private school because the parents believe the LEA has not provided FAPE, the provision of and reimbursement for education, including special education and related services, for children with disabilities enrolled by their parents in a private school shall be governed by 34 CFR 300.148.

§300.148 Placement of children by parents when FAPE is at issue.

(a) General. This part does not require an LEA to pay for the cost of education, including special education and related services, of a child with a disability at a private school or facility if that agency made FAPE available to the child and the parents elected to place the child in a private school or facility. However, the public agency must include that child in the population whose needs are addressed consistent with §§300.131 through 300.144.

(b) Disagreements about FAPE. Disagreements between the parents and a public agency regarding the availability of a program appropriate for the child, and the question of financial reimbursement, are subject to the due process procedures in §§300.504 through 300.520.

(c) Reimbursement for private school placement. If the parents of a child with a disability, who previously received special education and related services under the authority of a public agency, enroll the child in a private preschool, elementary school, or secondary school without the consent of or referral by the public agency, a court or a hearing officer may require the agency to reimburse the parents for the cost of that enrollment if the court or hearing officer finds that the agency had not made FAPE available to the child in a timely manner prior to that enrollment and that the private placement is appropriate. A parental placement may be found to be appropriate by a hearing officer or a court even if it does not meet the State standards *that apply to education provided by the SEA and LEAs.*

(d) Limitation on reimbursement. The cost of reimbursement described in paragraph (c) of this section may be reduced or denied--

(1) If--

(i) At the most recent IEP Team meeting that the parents attended prior to removal of the child from the public school, the parents did not inform the IEP Team that they were rejecting the placement proposed by the public agency to provide FAPE to their child, including stating their concerns and their intent to enroll their child in a private school at public expense; or

(ii) At least ten (10) business days (including any holidays that occur on a business day) prior to the removal of the child from the public school, the parents did not give written notice to the public agency of the information described in paragraph (d)(1)(i) of this section;

(2) If, prior to the parents' removal of the child from the public school, the public agency informed the parents, through the notice requirements described in §300.503(a)(1), of its intent to evaluate the child (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parents did not make the child available for the evaluation; or

(3) Upon a judicial finding of unreasonableness with respect to actions taken by the parents.

(e) Exception. Notwithstanding the notice requirement in paragraph (d)(1) of this section, the cost of reimbursement--

(1) Must not be reduced or denied for failure to provide the notice if--

(i) The school prevented the parents from providing the notice;

(ii) The parents had not received notice, pursuant to §300.504, of the notice requirement in paragraph (d)(1) of this section; or

(iii) Compliance with paragraph (d)(1) of this section would likely result in physical harm to the child; and

(2) May, in the discretion of the court or a hearing officer, not be reduced or denied for failure to provide this notice if--

(i) The parents are not literate or cannot write in English; or

(ii) Compliance with paragraph (d)(1) of this section would likely result in serious emotional harm to the child.

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

RSA 193-A HOME EDUCATION **Appendix A**

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

Ed 1113.01 Applicability. Ed 1113 shall apply to all public schools and public academies.

Ed 1113.02 Required IEP Compliance; Programming in Appropriate Learning Environments.

(a) An IEP shall comply with 34 CFR 300.320, 324(c), and 325.

§300.320 – see Ed 1109(a)(1)	**Page #55**
§300.324 – see Ed 1109.03(h)	**Page #60**
§300.325 – see Ed 1109.05	**Page #65**

(b) When children with disabilities participate in regular education classes or programs, the integrity and appropriateness of the curricula of the classes or programs shall be maintained for both the children with disabilities and the children who do not have disabilities.

(c) Each LEA shall provide for a continuum of alternative placements for each child with a disability as required in 34 CFR 300.115. In addition, each IEP shall describe the extent to which each child with a disability shall be involved in and progress in the general curriculum and regular class placement as required in 34 CFR 300.320.

§300.115 – See Ed 1103(a)	**Page #31**
§300.320 – See Ed 1109(a)(1)	**Page #55**

(d) If required by the child's IEP, each LEA shall provide related services as defined in Ed 1102.04(q) to the child or the child's teacher, or to both the child and the child's teacher.

(e) If required by the child's IEP, each LEA shall provide for supplementary aids and services as defined in 34 CFR 300.42.

§300.42 Supplementary aids and services means aids, services, and other supports that are provided in regular education classes, other education-related settings, and in extracurricular and nonacademic settings, to enable children with disabilities to be educated with nondisabled children to the maximum extent appropriate in accordance with §§300.114 through 300.116.

(f) Each public agency shall comply with 34 CFR 300.107-300.108, 34 CFR 300.110, and 34 CFR 300.320(a)(4), and 34 CFR 300.117 relative to making program options, nonacademic services, and physical education available to children with disabilities.

§300.107 Nonacademic services.- The State must ensure the following:

(a) Each public agency must take steps, including the provision of supplementary aids and services determined appropriate and necessary by the child's IEP Team, to provide nonacademic and extracurricular services and activities in the manner necessary to afford children with disabilities an equal opportunity for participation in those services and activities.

(b) Nonacademic and extracurricular services and activities may include counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the public agency, referrals to agencies that provide assistance to individuals with disabilities, and employment of students, including both employment by the public agency and assistance in making outside employment available.

§300.108 Physical education.
The State must ensure that public agencies in the State comply with the following:
(a) General. Physical education services, specially designed if necessary, must be made available to every child with a disability receiving FAPE, unless the public agency enrolls children without disabilities and does not provide physical education to children without disabilities in the same grades.
(b) Regular physical education. Each child with a disability must be afforded the opportunity to participate in the regular physical education program available to nondisabled children unless--
(1) The child is enrolled full time in a separate facility; or
(2) The child needs specially designed physical education, as prescribed in the child's IEP.
(c) Special physical education. If specially designed physical education is prescribed in a child's IEP, the public agency responsible for the education of that child must provide the services directly or make arrangements for those services to be provided through other public or private programs.
(d) Education in separate facilities. The public agency responsible for the education of a child with a disability who is enrolled in a separate facility must ensure that the child receives appropriate physical education services in compliance with this section.

§300.110 Program options.
The State must ensure that each public agency takes steps to ensure that its children with disabilities have available to them the variety of educational programs and services available to nondisabled children in the area served by the agency, including art, music, industrial arts, consumer and homemaking education, and vocational education.

§300.320(a)(4) A statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided to enable the child--
(i) To advance appropriately toward attaining the annual goals;
(ii) To be involved in and make progress in the general education curriculum in accordance with paragraph (a)(1) of this section, and to participate in extracurricular and other nonacademic activities; and
(iii) To be educated and participate with other children with disabilities and nondisabled children in the activities described in this section;

§300.117 Nonacademic settings. In providing or arranging for the provision of nonacademic and extracurricular services and activities, including meals, recess periods, and the services and activities set forth in §300.107, each public agency must ensure that each child with a disability participates with nondisabled children in the extracurricular services and activities to the maximum extent appropriate to the needs of that child. The public agency must ensure that each child with a disability has the supplementary aids and services determined by the child's IEP Team to be appropriate and necessary for the child to participate in nonacademic settings.

(g) If required by the child's IEP, each LEA shall provide the supports for school personnel as required by 34 CFR 300.320(a)(4).

§300.320 (a)(4) – see Ed 1113.02(f) above

Ed 1113.03 Establishment of Education Programs for Children with Disabilities.

(a) A program for preschool children with disabilities may be home-based, school-based, or a combination of both. The preschool program shall consist of special education or special education and related services, the specific manner and duration of which shall be provided according to the preschool child's IEP.

(b) An LEA shall:
(1) Establish an approved program or programs for children with disabilities; or
(2) Enter into cooperative agreements with other LEAs to provide approved programs for children with disabilities; or
(3) Pay tuition to such an approved program maintained by another LEA or by a private organization, as required by RSA 186-C:10.

RSA 186-C:10 (HB 766 will change this section) Responsibility of School District. – A school district shall establish an approved program or programs for educationally disabled children, or shall enter into cooperative agreements with other districts to provide approved programs for educationally disabled children, or shall pay tuition to such an approved program maintained by another school district or by a private organization. Eligibility for participation in an approved program of special education shall be determined by the school board of the school district under rules adopted by the State Board of Education.

(c) Each program maintained by or contracted through a public agency shall provide that children with disabilities are educated with nondisabled children in accordance with the requirements of 34 CFR 300.114.

§300.114 – see Ed 1111.01(a) **Page #67**

(d) A program for children with disabilities shall provide those components of the child's approved IEP as required in 34 CFR 300.320.

§300.320 – See Part Ed 1109(a)(1) **Page #55**

(e) Instruction shall be provided to implement the IEP of a child with a disability who is in a hospital or institution for medical treatment. In such cases, the LEA shall not be required to pay for medical services except to the extent that medical services are included in the definition of related services in Ed 1102.04(q).

(f) Home instruction for elementary and secondary students shall be provided in accordance with Ed 1111.05.

(g) The LEA shall designate the individuals responsible for supervision of children with disabilities. Personnel responsible for these activities shall include the superintendent of schools or the superintendent's representative, the building principal, and special supervisors.

Ed 1113.04 Behavioral Interventions.

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

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

(c) Aversive and deprivation behavioral interventions shall include:

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

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

Ed 1113.06 Use of Aversive Behavioral Interventions.

(a) If authorized in writing by a physician and an IEP team, the following interventions may be used:
  (1) A non-medical mechanical restraint that physically restricts a student's movement; and
  (2) Physical restraint, not in response to a threat of imminent, serious, physical harm.

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

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

§300.174 Prohibition on mandatory medication.

(a) General. The SEA must prohibit State and LEA personnel from requiring parents to obtain a prescription for substances identified under schedules I, II, III, IV, or V in section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)) for a child as a condition of attending school, receiving an evaluation under §§300.300 through 300.311, or receiving services under this part.

(b) Rule of construction. Nothing in paragraph (a) of this section shall be construed to create a Federal prohibition against teachers and other school personnel consulting or sharing classroom-based observations with parents or guardians regarding a student's academic and functional performance, or behavior in the classroom or school, or regarding the need for evaluation for special education or related services under §300.111 (related to child find).

Ed 1113.08 Curricula.

(a) The LEA shall ensure that every preschool child with a disability has full access to a preschool curriculum and appropriate preschool activities, in compliance with 34 CFR 300.320(a)(4).

§300.320(a)(4) A statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided to enable the child--

(i) To advance appropriately toward attaining the annual goals;

(ii) To be involved in and make progress in the general education curriculum in accordance with paragraph (a)(1) of this section, and to participate in extracurricular and other nonacademic activities; and

(iii) To be educated and participate with other children with disabilities and nondisabled children in the activities described in this section;

(b) The LEA shall ensure that every child with a disability has full access to the LEA's general curriculum, in compliance with 34 CFR 300.320(a)(4).

§300.320(a)(4) – see Ed 1113.08(a) above

(c) To the extent that the LEA's curricula require accommodations and modifications to meet the unique needs of a child with a disability, the LEA shall provide those necessary related services and program accommodations and modifications.

(d) A child's IEP shall not be considered as a complete or total curriculum for that child.

Ed 1113.09 Equipment, Materials and Assistive Technology.

(a) Each LEA shall provide appropriate instructional equipment and materials adequate to implement the IEP for each child with a disability, as required by 34 CFR 300.105.

§300.105 Assistive technology.

(a) Each public agency must ensure that assistive technology devices or assistive technology services, or both, as those terms are defined in §§300.5 and 300.6, respectively, are made available to a child with a disability if required as a part of the child's--

(1) Special education under §300.36;

(2) Related services under §300.34; or

(3) Supplementary aids and services under §§300.38 and 300.114(a)(2)(ii).

(b) On a case-by-case basis, the use of school-purchased assistive technology devices in a child's home or in other settings is required if the child's IEP Team determines that the child needs access to those devices in order to receive FAPE.

(b) Each LEA shall monitor the proper functioning of hearing aids, as required by 34 CFR 300.105, low vision aids, and other orthotic and prosthetic devices and assistive technology services and devices defined in 34 CFR 300.5 – 300.6 used by children with disabilities in school. Each LEA shall also provide for the necessary repairs for hearing aids, low vision aids, and other orthotic and prosthetic devices and adaptive equipment.

§300.5 – 300.6 – see Ed 1102.01 (k) & (l) **Page #2**
§300.105 – see Ed 1113.09(a) above

(c) Each LEA shall ensure that assistive technology devices or assistive technology services, or both, are made available to a child with a disability if required as part of the child's special education, related services or supplementary aids and services stated in the child's IEP and as required in 34 CFR 300.105.

§300.105 – see Ed 1113.09(a) above

Ed 1113.10 Class Size and Age Range.

(a) Children with disabilities in preschool programs shall be 3 and 5 years of age or a 2 year old who turns 3 during the school year or a 5 year old who turns 6 after September 30 of the school year grouped by developmental and achievement levels with an age and developmental level of not more than 3 years.

(b) The preschool community outreach program shall:

(1) Be coordinated, supervised and monitored by qualified district personnel;

(2) Ensure access to a curriculum for preschoolers;

(3) Provide services as identified in the child's IEP/IFSP by qualified personnel; and

(4) Utilize early childhood settings set forth in Table 1100.03 for placements that meet the RSA 170-E.

RSA 170-E
CHILD DAY CARE, RESIDENTIAL CARE, AND CHILD-PLACING AGENCIES
Appendix A

(c) The following shall apply to the home program for children with disabilities ages 3 through 5:

(1) A preschool child may receive some or all special education and related services in the child's home, as determined by the IEP team; and

(2) Qualified personnel, as identified in the IEP or IFSP, shall provide services in the home.

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

(1) An early childhood special education program shall be considered a special education program when it includes less than 50% children without disabilities;

(2) The minimum teacher to student ratio in all early childhood special education programs shall be:

a. One qualified teacher for one to 8 preschool students;

b. One qualified teacher and one qualified paraprofessional for 8-12 preschool students unless the needs presented by the severity of the disabilities warrants the assignment of additional staff; or

c. Two qualified teachers for 8-12 preschool students;

(3) The maximum number of preschool children in an early childhood special education programs shall be 12;

(4) Preschool children in an early childhood special education programs shall be between the ages of 3 and 5 years of age or a 2 year old who turns 3 during the school year or a 5 year old who turns 6 after September 30 of the school year;

(5) Early childhood special education programs shall, to the greatest extent possible, include students of comparable developmental and/or functional levels; and

(6) Regardless of the specific teacher-student ratio, each program shall provide personnel who are endorsed in the area of disability consistent with the student population of the program.

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

(1) A special education class shall be considered self-contained when children with disabilities spend more than 60 percent of their day in that setting;

(2) A minimum teacher to student ratio in all self-contained programs shall be:
a. One qualified teacher for one to 8 students;
b. One qualified teacher and one qualified paraprofessional for 8 to 12 students unless the needs presented by the severity of disabilities warrants the assignment of additional staff; or
c. Two qualified teachers for 8 to 12 students;
(3) The maximum number of children in a self-contained classroom shall be 12;
(4) Children ages 6 – 16 in self-contained special education classes shall have an age range of not more than 4 years;
(5) Self-contained programs shall, to the greatest extent possible, include students of comparable developmental and/or functional levels;
(6) Regardless of the specific teacher-student ratio, each program shall provide personnel who are endorsed in the area of disability consistent with the student population of the program;
(7) Children in self-contained special education classes on the elementary level shall have an age range of not more than 4 years; and
(8) On the junior and senior high school levels, children in self-contained classes shall have an age range of not more than 4 years and an academic range of not more than 5 years.

(f) The following shall apply to resource rooms:
(1) Resource rooms shall serve children with disabilities for no more than 60 percent of the child's school day as an adjunct to assignment to regular educational programs;
(2) Children with disabilities shall not receive all of their academic instruction in resource rooms;
(3) The total number of children with disabilities being served in the resource room at any given time shall not exceed 12 children without the assistance of support personnel;
(4) The maximum number of children with disabilities served in a resource room at any given time shall be 20; and
(5) The LEA shall ensure that the abilities of the resource room teacher match the needs of the children with disabilities and that the resource room teacher is capable of implementing the IEPs of all the children with disabilities assigned to the resource room.

Ed 1113.11 Facilities and Location.

(a) Classrooms and other instructional areas for children with disabilities shall be located in a building with children of similar chronological age.

(b) Physical space for classrooms and other instructional program areas for children with disabilities shall meet the state requirements in Ed 321.10 and Ed 321.11 for physical space for classrooms and other instructional programs for other children enrolled at the school.

Ed 321.10 Standards for Educational Space.
(a) Educational space shall include, but not be limited to, classrooms, gymnasiums, and libraries.
(b) School facilities shall provide educational space sufficient to meet the requirements identified in the educational specifications in Ed 321 and the New Hampshire minimum standards for public school approval as specified in Ed 306.

(c) Approval of the size of classrooms or instructional spaces shall be determined by the acceptable number of square feet per student established in Ed 321.10(g)-(k), multiplied by the total projected number of the class or group or the minimum size specified in Ed 321.10 whichever is larger.

(d) The Commissioner of the Department or the Commissioner's designee shall waive the requirements of Ed 321.10 when sufficient justification has been provided by the requesting school district under Ed 321.30. A finding of sufficient justification shall be based upon a determination by the Commissioner of the Department or the Commissioner's designee that approval of the request for a waiver will not compromise the quality of education required in Ed 306 or is the best use of available resources.

(e) Every educational space shall contain a seat and work surface for each student, teacher, and teacher's aide, appropriate for the normal activity conducted in that space.

(f) Every general purpose classroom shall:

(1) Contain an erasable surface of at least 32 square feet and a surface suitable for projection purposes; and

(2) Be furnished with:

a. Desks for students and teachers;

b. Bookshelves; and

c. Other common furniture and equipment.

(g) A kindergarten classroom shall provide at least 1,000 square feet, including storage, or 50 square feet per child, whichever is greater.

(h) For the elementary, middle and junior high schools, a general purpose classroom shall provide a minimum of 900 square feet, including storage, or 36 square feet per child, whichever is greater.

(i) For high schools, a general purpose classroom shall contain a minimum of 800 square feet, including storage, or 32 square feet per student, whichever is greater.

(j) Library-media centers shall be sized at 40 square feet per student for 10 percent of the core space design capacity or a minimum of 1800 square feet.

(k) Science laboratories and combination lab-classrooms shall be sized according to the joint recommendation of the National Association of Science Teachers and the Laboratory Safety Institute at 45 square feet per pupil for separate labs and 60 square feet per pupil for combination lab-classrooms or a minimum of 900 square feet for separate labs and 1200 square feet for combination lab-classrooms. There shall be a maximum of 24 laboratory work stations, at least one of which shall be suitable for students with disabilities and in compliance with RSA 275-C.

(l) When an area in a school building is used as multi-purpose space, standards for educational space shall take precedence over standards for support space. Multi-purpose space includes, but is not limited to, an area used for physical education that becomes the dining area at meal time.

(m) Required educational space shall not be reduced or eliminated in order to provide additional support space or space for extracurricular activities.

Ed 321.11 Special Education Space.

(a) In addition to the requirements of Ed 321.10, space shall be provided in every school to meet the unique requirements of special education students, and to meet the requirements of Ed 1119.06.

(b) Exclusive use space shall be provided for speech therapy, physical therapy, occupational therapy, and private counseling. Physical and occupational therapy may be co-located.

(c) The minimum total amount of exclusive use space for special education shall be 600 square feet. An area for private meetings with parents and staff shall be available, although it need not be used exclusively for special education use.

(d) Locked, fire proof containers shall be provided for record storage.

(e) A private office shall be provided for the special education coordinator if there is a position on the school staff.

(c) Classrooms and other instructional areas for children with disabilities shall be located in educational facilities that, in the judgment of the IEP team, are in the least restrictive environment.

(d) The physical space used for classrooms and other instructional programs and school activities for children with disabilities shall be of sufficient size to accommodate program modifications and accommodations necessary to implement the children's IEPs and to provide for all other learning activities.

(e) Any building or facility in which a child's IEP is implemented, other than a child's own home, shall meet:

(1) The licensing requirements of RSA 170-E, if a child day care agency;

RSA 170-E
CHILD DAY CARE, RESIDENTIAL CARE, AND CHILD-PLACING AGENCIES
Appendix A

(2) The requirements for physical facilities under Ed 1114.14(c) relating to New Hampshire health and fire rules; and

(3) The standards for educational space and special education space in Ed 321.10 and Ed 321.11.

Ed 321.10 and Ed 3210.11 – see Ed 1113.11(b) **Page #87**

(f) An LEA shall comply with Ed 306.06 regarding school facilities in which the IEPs of children with disabilities are implemented.

Ed 306.06 Culture and Climate.

(a) The school policies adopted by the local school board shall reflect:
  (1) The acknowledgement of diversity and respect for differences;
  (2) Shared ownership and responsibility for the success of the school among students, their families, and the community;
  (3) Student leadership through involvement in decision-making; and
  (4) Respectful use of language and behavior by all school members that is void of ethnic, racial, and sexual stereotypes and biases.

(b) The school administration and staff shall:
  (1) Review ways in which equity gaps in achievement can be reduced and barriers to learning can be eliminated; and
  (2) Work together to establish a fair and equitable code of discipline that is fairly and consistently implemented which supports students' understanding of the importance of norms, rules, and expectations for behavior.

(c) The school administration shall provide professional development opportunities directed at understanding the policies and reporting requirements that support a safe and healthy school environment.

Ed 1113.12 Personnel Standards.

(a) Personnel providing services to children with disabilities in public elementary and secondary schools shall be highly qualified special education teachers as required under 34 CFR 300.18 and 34 CFR 300.156, except as provided in Ed 1113.12 (b) and (c) for paraprofessional personnel.

§300.18 and 300.156 – see Ed 1102.03(b) Page #11

(b) Paraprofessional personnel providing services to children with disabilities shall:
(1) Work under the supervision of a certified special education teacher;
(2) Be supervised and observed by a certified special education teacher under whom they work as often as deemed necessary by the LEA, but no less than once each week;
(3) Implement a plan designed by the certified educator; and
(4) Monitor the behavior of children with whom they are working.

(c) Paraprofessional personnel providing services to children with disabilities shall not:
(1) Design programs;
(2) Evaluate the effectiveness of programs; or
(3) Assume responsibilities of a teacher or a substitute teacher.

Ed 1113.13 Diplomas.

(a) LEAs shall provide all children with disabilities an equal opportunity to complete a course of studies leading to a regular high school diploma. In accordance with 34 CFR 300.102(a)(3), the awarding of a document other than a regular high school diploma shall not terminate the child's eligibility for FAPE.

§300.102 – see Ed 1113.03(c) below

(b) Children with disabilities shall be entitled to continue in an approved program until such time as the child has acquired a regular high school diploma or has attained the age of 21, whichever occurs first, or until the IEP team responsible for evaluating the child and determining whether the child has a disability determines that the child no longer has a disability in accordance with Ed 1107.

(c) LEAs shall provide all children with disabilities an equal opportunity to complete a course of studies leading to a regular high school diploma. Awarding of any document other than a regular high school diploma shall not end a child with a disability's eligibility for FAPE pursuant to 34 CFR 300.102.

§300.102 Limitation--exception to FAPE for certain ages.
(a) General. The obligation to make FAPE available to all children with disabilities does not apply with respect to the following:
(1) Children aged 3, 4, 5, 18, 19, 20, or 21 in a State to the extent that its application to those children would be inconsistent with State law or practice, or the order of any court, respecting the provision of public education to children of those ages.
(2) (i) Children aged 18 through 21 to the extent that State law does not require that special education and related services under Part B of the Act be provided to students with disabilities who, in the last educational placement prior to their incarceration in an adult correctional facility--
(A) Were not actually identified as being a child with a disability under §300.8; and
(B) Did not have an IEP under Part B of the Act.
(ii) The exception in paragraph (a)(2)(i) of this section does not apply to children with disabilities, aged 18 through 21, who--
(A) Had been identified as a child with a disability under §300.8 and had received | services in accordance with an IEP, but who left school prior to their incarceration; or
(B) Did not have an IEP in their last educational setting, but who had actually been identified as a child with a disability under §300.8.

(3) (i) Children with disabilities who have graduated from high school with a regular high school diploma.
(ii) The exception in paragraph (a)(3)(i) of this section does not apply to children who have graduated from high school but have not been awarded a regular high school diploma.
(iii) Graduation from high school with a regular high school diploma constitutes a change in placement, requiring written prior notice in accordance with §300.503.
(iv) As used in paragraphs (a)(3)(i) through (a)(3) (iii) of this section, the term regular high school diploma does not include an alternative degree that is not fully aligned with the State's academic standards, such as a certificate or a general educational development credential (GED).
(4) Children with disabilities who are eligible under subpart H of this part, but who receive early intervention services under Part C of the Act.
(b) Documents relating to exceptions. The State must assure that the information it has provided to the Secretary regarding the exceptions in paragraph (a) of this section, as required by §300.700 (for purposes of making grants to States under this part), is current and accurate.

Ed 1113.14 The Length of the School Year.

(a) The length of the school year for preschool children with disabilities shall be determined by the IEP team and included in the IEP or IFSP as required by Ed 1109.01(a).

(b) The LEA shall provide a standard school year for children ages 6 – 21 as required by RSA 189:1 and RSA 189:24 and Ed 306.18-Ed 306.21.

RSA 189:1 Days of School. – The school board of every district shall provide standard schools for at least 180 days in each year, or the equivalent number of hours if approved by the commissioner of the Department of Education, at such places in the district as will best serve the interests of education and give to all the pupils within the district as nearly equal advantages as are practicable.
RSA 189:24 Standard School. – A standard school is one approved by the State Board of Education, and maintained for at least 180 days in each year, or the equivalent number of hours if approved by the commissioner of the Department of Education, in a suitable and sanitary building, equipped with approved furniture, books, maps and other necessary appliances, taught by teachers, directed and supervised by a principal and a superintendent, each of whom shall hold valid educational credentials issued by the State Board of Education, with suitable provision for the care of the health and physical welfare of all pupils. A standard school shall provide instruction in all subjects prescribed by statute or by the State Board of Education for the grade level of pupils in attendance.

Ed 306.18 School Year.
(a) Pursuant to RSA 189:1 and 189:24each school shall maintain a school year option as provided in either (b) or (c) below.
(b) Each school with a school year option based on hours shall be subject to the following requirements:
(1) The school shall maintain in each elementary school, a school year of at least 945 hours of instructional time;
(2) The school shall maintain in each middle and senior high school, a school year of at least 990 hours of instructional time;
(3) The school day of an individual student shall not exceed 8 hours of instructional time; and
(4) The school shall have in its school year an additional 10 days of at least 6 hours in duration to provide for instructional time lost due to inclement weather or unexpected circumstances, staff development, and parent-teacher conferences;
(5) A school may close before its scheduled closing time 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.

(c) Each school with a school year option based on days shall be subject to the following requirements:
(1) The school shall maintain a standard school year of at least 180 days of instructional time;
(2) The school shall have in its school year an additional 10 days of at least 6 hours in duration to provide for instructional time lost due to inclement weather or unexpected circumstances, staff development, and parent-teacher conferences;
(3) For each elementary school:
a. The regular school day shall be 6 hours in duration with at least 5.25 hours devoted to instructional time;
b. No more than 30 minutes of recess or break time, or both, shall be counted toward the 5.25 hour requirement in a. above;
c. Lunch time and homeroom periods shall not be counted in meeting the 5.25 hour requirement in a. above; and
d. Kindergarten sessions shall be at least 2.5 hours in duration;
(4) For each middle school:
a. The regular school day shall be 6 hours in duration with at least 5.5 hours devoted to instructional time; and
b. Lunch, passing time, recess, breaks, and homeroom periods shall not be counted as instructional time;
(5) A regular school day may be shortened when an emergency condition exists which might adversely affect the health and safety of students, subject to the following:
a. For each elementary school, a shortened day shall consist of at least 3.5 hours of instructional time in order to be counted as a regular school day; and
b. For each middle school and high school, a shortened day shall consist of at least 4 hours of instructional time in order to be counted as a regular school day; and
(6) A school half-day shall consist of at least 3 hours of instructional time, and 2 school half-days can be counted as a regular school day.

Ed 306.19 School Calendar. Each school shall maintain a school calendar. Page #91

Ed 306.20 Alternative School-Year Scheduling Pattern.

(a) In order to adopt a school-year scheduling pattern which is not in compliance with Ed 306.18, the local school board shall submit a written request to the Commissioner of Education at least 60 working days prior to the proposed effective date of the first date of the alternative school year.
(b) A request, pursuant to (a) above, shall include:
(1) The name of school/district;
(2) The SAU #;
(3) The local school board chairperson's signature;
(4) Reason for the request in accordance with RSA 189:2; and
(5) A plan which consists of a detailed description of the scheduling alternative, including the method and timetable for implementation and procedures for evaluation.
(c) Upon review of the request, the commissioner shall grant approval for a period of one year if the request meets the following criteria:
(1) The information provided is thorough, complete, and does not result in a plan that would detract from student learning;
(2) The local school board has demonstrated that the school/district is able to implement the plan; and
(3) The plan is consistent with the education laws, published by the department, which contain all of the laws enforced by the department, and with the published rules of the State Board as adopted under RSA 541-A.
(d) The Commissioner shall notify the local school board chairperson and the superintendent in writing of the decision.

(e) If the Commissioner denies the request, the chairperson of the local school board may appeal the decision and request a state board hearing. Said appeal shall be filed in writing with the office of legislation and hearings within 20 days of the receipt of the decision and shall specify the basis for the appeal. The office of legislation and hearings shall schedule a hearing on the appeal in accordance with timelines and procedures established in Ed 200.
(f) Pursuant to RSA 21-N:11, III, any person directly affected by said decision may request a state board hearing. A request for a hearing shall be filed in writing with the office of legislation and hearings within 20 days of the decision and shall specify the basis for such hearing. The office of legislation and hearings shall schedule the hearing in accordance with timelines and procedures established in Ed 200.

Ed 306.21 Off-Site Programs.
(a) "Off-site program" means the regular delivery of the majority of a student's instruction at a facility not located in the school building(s).
(b) An off-site program shall be:
(1) Designed to address the personalized needs to students, including, but not limited to, dropout prevention; and
(2) Approved by the local school board in a plan that:
a. States the goals of the program;
b. Specifies the procedures for assessing and implementing its program plan consistent with RSA 193-C:3, III; and
c. Specifies when the program would be offered, which may be at a time other than during the regular school day.
(c) Off-site programs for students with disabilities shall meet the requirements of Ed 1119.
(d) Prior to implementing an off-site program, a school administrative unit shall submit to the department the following
(1) A copy of the local school board's approval, including the plan submitted; and
(2) The location of the off-site program.
(e) Each student participating in an off-site program shall participate in the state assessment exam, when applicable.

(c) Children with disabilities ages 3 to 21 in need of extended school year services shall receive extended school year services in accordance with Ed 1110.

Ed 1113.15 The Length of the School Day.

(a) The length of the school day for preschool children with disabilities shall be determined by the IEP team and shall be included in the IEP or IFSP as required by Ed 1109.01(a).

(b) For a child with a disability in elementary school or high school the school day shall be a minimum of at least 180 days in each year, or the equivalent number of hours if approved by the Commissioner of the Department of Education consistent with the provisions of RSA 189:1, RSA 189:2, RSA 189:24, and RSA 189:25 and Ed 306.18-Ed 306.21.

RSA 189:1, RSA 189:24, and Ed 306.18-Ed 306.21. [See Ed 1113.14 Length of the School Year.]
RSA 189:2 Reduction of Time. – If the school board of any district shall decide that, by reason of special conditions or circumstances, the maintenance of standard schools for 180 days, or the equivalent number of hours if approved by the Commissioner of the Department of Education, in said district is undesirable, said school board may so represent in writing to the state board. If, upon hearing, the state board, or the commissioner when authorized by the state board, shall be of the opinion that the representation is true, it may reduce the time of maintaining such schools in said district to such limits as it may deem wise. Provided, however, that the State Board, or the Commissioner if authorized, shall not reduce the days during which schools shall be in session, as provided in RSA 189:1, on account of workshops, conventions or teachers' institutes.

RSA 189:25 Elementary School. – An elementary school is any school approved by the State Board of Education in which the subjects taught are those prescribed by the state board for the grades kindergarten through 8 of the public schools. However, a separate organization consisting of grades 7 through 9, or any grouping of these grades, may be recognized as a junior high school and so approved by the board. Also a separate organization consisting of grades 4 through 8 or any grouping of these grades may be recognized as a middle school and so approved by the state board. Any elementary school may include a kindergarten program which, if it is provided, shall precede the other elementary grades.

(c) When, due to a child's limited physical and emotional stamina or physical or emotional stamina, the IEP team recommends a school day of less than the required minimum under Ed 1113.15(b), written consent shall be obtained from the superintendent of schools and the parent prior to implementing a shortened school day. A copy of the written consent shall be sent to the
Director Of The Bureau Of Special Education of the department. A copy of the written consent shall be given to the parent, and another copy of the written consent shall be placed in the child's school records. If it would cause a serious adverse effect upon a child's educational progress pursuant to RSA 193:1, I(c), a superintendent shall not excuse a child from the required minimum school day. The LEA's obligation to provide FAPE to a child shall still be in effect even
if the child attends school for a shortened school day.

RSA 193:1, I(c) I. A parent of any child at least 6 years of age and under 18 years of age shall cause such child to attend the public school to which the child is assigned in the child's resident district. Such child shall attend full time when such school is in session unless: (c) The relevant school district superintendent has excused a child from attendance because the child is physically or mentally unable to attend school, or has been temporarily excused upon the request of the parent for purposes agreed upon by the school authorities and the parent. Such excused absences shall not be permitted if they cause a serious adverse effect upon the student's educational progress. Students excused for such temporary absences may be claimed as full-time pupils for purposes of calculating state aid under RSA 186-C:18 and equitable education grants under RSA 198:41

PART Ed 1114
STANDARDS FOR APPROVAL OF PRIVATE PROVIDERS OF SPECIAL EDUCATION AND NON-LEA PROGRAMS

Ed 1114.01 Applicability. Ed 1114 shall apply to private providers of special education and other non-LEA operated programs, including state-operated programs.

Ed 1114.02 Definition. As used in Ed 1114, "governing body" means the individual or group of individuals legally responsible for the policies, operations, and activities of a private provider of special education or other non-LEA program.

Ed 1114.03 Governance.

(a) A private provider of special education or other non-LEA program shall be responsible for providing students with disabilities all services detailed in their IEPs unless the provision of those services has been agreed upon by contract with the sending LEA.

(b) A private provider of special education or other non-LEA program shall have a clearly identifiable governing body which shall be responsible for ensuring the program's compliance with the program charter, constitution, or other organization document or agreement and with the terms of all leases, contracts, or legal agreements to which the program is a party.

(c) The governing body shall ensure that the program is in compliance with all federal, state, and local laws concerning the education of children with disabilities including the IDEA and RSA 186-C.

(d) The governing body shall appoint a person to act as chief administrator with authority to manage the affairs of the program.

(e) The governing body shall ensure that there are sufficient funds to operate the program and that the school finances are handled according to generally accepted accounting principles. The governing body shall review and approve the annual budget and budget audit of the program.

(f) A private provider of special education or other non-LEA program shall keep on permanent file documents clearly identifying the program's ownership and the legal basis for the program's operation.

(g) A private provider of special education or other non-LEA program shall keep on permanent file a current list of the names and addresses of all members of the program's board of directors. The list shall identify the officers of the board and the terms of office of such officers.

(h) A private provider of special education or other non-LEA program shall have written minutes of all meetings of the governing body.

(i) A private provider of special education or other non-LEA program shall file with the department documents which fully identify its ownership. A corporation, partnership, or association shall file its charter, partnership agreement, constitution, articles of association, and/or by-laws.

Ed 1114.04 Administration.

a) Each private provider of special education or other non-LEA program shall demonstrate fiscal accountability through regular recording of its finances and an annual external audit consistent with the requirements detailed in Ed 1129. The audit shall be available to the department upon request. The audit standards detailed in Ed 1129 shall apply to both non-profit and for profit programs.

(b) Each private provider of special education or other non-LEA program shall have written policies which comply with the provisions of the IDEA and RSA 186-C.

(c) Each private provider of special education or other non-LEA program shall have written policies and procedures for the protection of confidential information, in accordance with Ed 1119 including:
(1) The release of information to other persons and/or agencies; and
(2) Written procedures and schedules for destruction of outdated files and records.

(d) Each private provider of special education or other non-LEA program shall maintain the confidentiality of records in compliance with 34 CFR 300.623.

§300.623 Safeguards.
(a) Each participating agency must protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages.
(b) One official at each participating agency must assume responsibility for ensuring the confidentiality of any personally identifiable information.
(c) All persons collecting or using personally identifiable information must receive training or instruction regarding the State's policies and procedures under §300.123 and 34 CFR part 99.
(d) Each participating agency must maintain, for public inspection, a current listing of the names and positions of those employees within the agency who may have access to personally identifiable information.

(e) Each private provider of special education or other non-LEA program shall have a written statement specifying its philosophy, purposes, and program orientation and describing both short and long term aims. The statement shall identify the types of services provided and the characteristics of the children to be served by the program. The statement of purpose shall be available to the public on request.

(f) A private provider of special education or other non-LEA program shall maintain on permanent file a written description of the admission process, including a description of all admissions criteria and identification of the disabilities of the children served by the program.

(g) A private provider of special education or other non-LEA program shall maintain on permanent file a written plan for professional development of all staff involved in providing direct services to students, in accordance with Ed 500 certification standards for educational personnel in New Hampshire.

CHAPTER Ed 500
CERTIFICATION STANDARDS FOR EDUCATIONAL PERSONNEL
Appendix A

Ed 1114.05 Program Requirements.

(a) Each private provider of special education or other non-LEA program shall have a written description of admissions policies and criteria which it shall provide to all placing agencies and shall make available to the parent of any child referred for placement.

(b) The written admission policies and criteria required in Ed 1114.05(a) shall include:
(1) Policies and procedures related to intake;
(2) The age and sex of children in care;
(3) The needs, problems, situations, or patterns best addressed by the program;
(4) Any other criteria for admission;
(5) Criteria for discharge; and
(6) Any preplacement requirements for the child, the parent, and/or the placing agency.

(c) Prior to enrollment, the sending LEA shall send a copy of the child's IEP that meets all the requirements of Ed 1109 to each private provider of special education or other non-LEA program.

(d) A private provider of special education shall cooperate with the LEA by making staff available to participate in IEP meetings at mutually agreeable times and places.

(e) The private provider of special education or other non-LEA program shall not unilaterally modify a child's IEP.

(f) The private provider of special education or other non-LEA program shall not accept any students with disabilities for which the program is not approved.

(g) In each private provider of special education or other non-LEA program, all children with disabilities shall have access to equal educational opportunities within their programs and access to and ability to progress in the general curriculum as required under 34 CFR 300.320.

§300.320 – See Ed 1109(a)(1) **Page #55**

(h) A private provider of special education or other non-LEA program shall have an established system of routine communication among all staff members of the program who provide direct services to a child, including both instructional and residential services. All staff members involved in providing direct services to a child with a disability shall participate in the process of planning for that child and shall know the contents of that child's IEP and all other reports and evaluations, as appropriate to their role and responsibilities.

(i) A private provider of special education or other non-LEA program shall identify and utilize available resources, both on campus and in the community, which provide opportunities for experiences in the least restrictive environment.

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

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

RSA 193-C – STATEWIDE EDUCATION IMPROVEMENT AND ASSESSMENT PROGRAM

§300.157 Performance goals and indicators.
The State must--
(a) Have in effect established goals for the performance of children with disabilities in the State that--
(1) Promote the purposes of this part, as stated in §300.1;
(2) Are the same as the State's objectives for progress by children in its definition of adequate yearly progress, including the State's objectives for progress by children with disabilities, under section 1111(b)(2)(C) of the ESEA, 20 U.S.C. 6311;
(3) Address graduation rates and dropout rates, as well as such other factors as the State may determine; and
(4) Are consistent, to the extent appropriate, with any other goals and academic standards for children established by the State;
(b) Have in effect established performance indicators the State will use to assess progress toward achieving the goals described in paragraph (a) of this section, including measurable annual objectives for progress by children with disabilities under section 1111(b)(2)(C)(v)(II)(cc) of the ESEA, 20 U.S.C. 6311; and
(c) Annually report to the Secretary and the public on the progress of the State, and of children with disabilities in the State, toward meeting the goals established under paragraph (a) of this section, which may include elements of the reports required under section 1111(h) of the ESEA.
§300.320 – See Part Ed 1109(a)(1)

PART Ed 1114 STANDARDS FOR APPROVAL OF PRIVATE PROVIDERS OF SPECIAL EDUCATION AND NON-LEA PROGRAMS

Ed 1114.06 Responsibilities of Private Providers of Special Education or Other Non-LEA Programs in the Implementation of IEPs.

(a) Each private provider of special education or other non-LEA program shall, in all matters concerning possible changes and/or modifications in the identification, evaluation, development and/or revision of an IEP, or changes in placement of a child with a disability, contact the sending school district for the purpose of initiating the process for changing any of the above in compliance with Ed 1109.05.

(b) The private provider of special education or other non-LEA program shall provide all facilities, equipment, and materials necessary for the implementation of any IEP or portion thereof which the program has agreed to implement. The private provider of special education or other non-LEA program shall implement all components of each child's IEP in the amount and for the duration so specified.

(c) Each private facility or other non-district program shall provide all transportation required for the implementation of any IEP, or portion of any IEP, which the program has agreed to implement.

(d) The private facility or other non-district program shall provide transportation in accordance with Ed. 1109.02.

(e) All vehicles providing transportation for students shall be insured as provided in Ed 1114.19(c)(2) and 1129.08 (ak).

(f) Daily lesson plans shall be clear, concise, and reflective of the IEP goals for each child. They shall reflect any staff input and related reports and evaluations provided by the agencies responsible for the student's education and welfare.

(g) Each private provider of special education or other non-LEA program shall maintain progress information for each child with a disability on an ongoing basis in accordance with 34 CFR 300.600(b)(1).

§300.600(b) The primary focus of the State's monitoring activities must be on--
(1) Improving educational results and functional outcomes for all children with disabilities;

(h) A mid-year review and annual evaluation of each child's progress relative to the written IEP shall be conducted by the sending LEA and the private provider of special education or other non-LEA program.

(i) If a private provider of special education or other non-LEA program determines that any child with a disability placed at the facility or program is not making progress toward meeting his or her IEP goals at the rate anticipated, the facility or program shall immediately contact the LEA for the purpose of reviewing the IEP and considering modifications.

(j) Each private provider of special education or other non-LEA program shall complete a minimum of 3 comprehensive reports per year on each child with a disability enrolled in the program.

(k) The reports required in Ed 1114.06 (g) shall:

(1) Describe the child's progress toward meeting the IEP goals;
(2) Include a record of attendance;
(3) Be written in terminology understandable to the parent; and
(4) Be provided to the sending LEA and the parent of the child.

(l) Reports provided to parents shall be in the native language or other mode of communication used by the parent.

Ed 1114.07 Behavioral Interventions.

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

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

(c) A private facility or other non-district program shall not employ any measure which is aversive or depriving in nature or which subjects a child with a disability enrolled in that program to humiliation or unsupervised confinement or to abuse or neglect as defined in RSA 169-C, the Child Protection Act, or which deprives the child of basic necessities such as nutrition, clothing, communication, or contact with parents, so as to endanger the child's mental, emotional, or physical health consistent with Ed1114.07.

RSA 169-C – CHILD PROTECTION ACT **Appendix A**

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

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

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

(g) Aversive and deprivation behavioral interventions shall include:

(1) Any procedure intended to cause physical pain;

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

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

(4) Contingent food/drink programs;

(5) Electrical stimulation;

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

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

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

Ed 1114.09 Use of Aversive Behavioral Interventions.

(a) If authorized in writing by a physician and an IEP team, the following interventions may be used:

(1) A non-medical mechanical restraint that physically restricts a student's movement; or

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

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

(1) At least 2 written positive behavioral interventions were previously implemented without success;

(2) The individual implementing the restrictive intervention has been trained and is knowledgeable in the use of positive interventions, restrictive treatment procedures, and alternatives for de-escalation of problem behavior;

(3) A behavioral intervention plan detailing the use of the restrictive procedure has been developed and incorporated as a part of the IEP;

(4) A description of the target behavior that will be addressed using the restrictive intervention is included in the IEP;

(5) A description of the measurable criteria stating the expected change in the target behavior or behaviors is included in the IEP;

(6) A specific time limit for the use of the restrictive behavioral intervention procedure is detailed in the IEP;

(7) A system is developed to record the frequency, duration, and results of the intervention;

(8) A system is developed to regularly inform the parents of the progress in changing the target behavior using the restrictive intervention procedures; and

(9) The parent or parents have given informed consent to the use of the restrictive intervention procedures separate from the consent for the IEP.

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

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

(b) Each private provider of special education or other non-LEA program shall maintain records demonstrating that each of the employees of that program meets the health requirements for public school employees in the state of New Hampshire in accordance with RSA 200:36.

RSA 200:36. Medical Examination of School Personnel. – All school personnel, to include but not limited to administrative, secretarial, maintenance, cafeteria and transportation personnel in each school district shall be required to have a pre-employment medical examination by a licensed physician qualified to practice medicine in at least one of the states of the United States of America. Any person who objects to all or part of any medical examination because of religious beliefs shall be exempt from said examination, except that no such exemption shall be granted if state or local authorities determine that such exemption would constitute a hazard to the health of persons exposed to the unexamined individual. The local school board shall further require additional medical examinations at specific intervals or upon the request of the local superintendent of schools during the period of employment. A written recommendation from the examining physician shall indicate that the employee is medically capable of performing his designated assignment.

(c) Each private provider of special education or other non-LEA program shall have written procedures for supervising and evaluating the performance of all staff members.

(d) Each private provider of special education or other non-LEA program shall have a written plan for in-service and pre-service training of staff, in accordance with Ed 500 certification standards for educational personnel in New Hampshire.

CHAPTER Ed 500
CERTIFICATION STANDARDS FOR EDUCATIONAL PERSONNEL
Appendix A

(e) Each private provider of special education or other non-LEA program shall have written job descriptions covering all staff positions which shall be made available to the department.

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

(g) Each private provider of special education or other non-LEA program which offers swimming or other water activities in its program shall provide a qualified water safety instructor or senior lifesaver to be on duty whenever children with disabilities are in the swimming program or other water activity.

Ed 1114.11 Employee and Volunteer Background Investigations.

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

RSA 189:13-a
SCHOOL EMPLOYEE AND VOLUNTEER BACKGROUND INVESTIGATIONS
Appendix A

Ed 1114.12 Change in Placement or Termination of the Enrollment of a Child With a Disability.

(a) A private provider of special education or other non-LEA program which believes it can no longer implement a child's IEP or provide FAPE shall immediately convene or request the convening of the IEP team to review the facility's or program's concerns and to amend the IEP and placement, if necessary.

(b) An IEP meeting convened under Ed 1114.12 shall:
(1) Review the child's needs;
(2) Determine whether the current IEP meets the needs of the child and, if appropriate, propose changes to the IEP;
(3) Review the child's current placement; and
(4) Determine whether the placement can fully implement the child's IEP and provide FAPE.

(c) If the IEP team determines that the current placement cannot implement the IEP and provide FAPE, the LEA shall immediately place the child in an approved facility or program which can implement the IEP and provide FAPE.

(d) If a private provider of special education or other non-LEA program wishes to suspend or expel a child, it shall immediately inform the LEA. The LEA shall comply with the disciplinary procedures in 34 CFR 300.530- 34 CFR 300.536.

§300.530 – 300.536 – see Ed 1124.01 Disciplinary Procedures. Page #172

Ed 1114.13 Parent Access to Education Records. Each private provider of special education or other non-LEA program shall ensure that all parents of children with disabilities have an opportunity to inspect and review all education records relating to the child, in accordance 34 CFR 300.501.

§300.501 Opportunity to examine records; parent participation in meetings.

(a) Opportunity to examine records. The parents of a child with a disability must be afforded, in accordance with the procedures of §§300.613 through 300.621, an opportunity to inspect and review all education records with respect to--
  (1) The identification, evaluation, and educational placement of the child; and
  (2) The provision of FAPE to the child.

(b) Parent participation in meetings.
  (1) The parents of a child with a disability must be afforded an opportunity to participate in meetings with respect to--
    (i) The identification, evaluation, and educational placement of the child; and
    (ii) The provision of FAPE to the child.
  (2) Each public agency must provide notice consistent with §300.322(a)(1) and (b)(1) to ensure that parents of children with disabilities have the opportunity to participate in meetings described in paragraph (b)(1) of this section.
  (3) A meeting does not include informal or unscheduled conversations involving public agency personnel and conversations on issues such as teaching methodology, lesson plans, or coordination of service provision. A meeting also does not include preparatory activities that public agency personnel engage in to develop a proposal or response to a parent proposal that will be discussed at a later meeting.

(c) Parent involvement in placement decisions.
  (1) Each public agency must ensure that a parent of each child with a disability is a member of any group that makes decisions on the educational placement of the parent's child.
  (2) In implementing the requirements of paragraph (c)(1) of this section, the public agency must use procedures consistent with the procedures described in §300.322(a) through (b)(1).
  (3) If neither parent can participate in a meeting in which a decision is to be made relating to the educational placement of their child, the public agency must use other methods to ensure their participation, including individual or conference telephone calls, or video z conferencing.
  (4) A placement decision may be made by a group without the involvement of a parent, if the public agency is unable to obtain the parent's participation in the decision. In this case, the public agency must have a record of its attempt to ensure their involvement.

Ed 1114.14 Class Size. Each private provider of special education or other non-LEA program shall conform to the requirements of Ed 1113.10 with respect to special education class sizes, teacher-student ratios, and the age range within each class.

Ed 1114.15 Calendar Requirements. Each private provider of special education or other non-LEA program shall provide a written annual school calendar identifying the instructional days per year and the instructional hours per day, in accordance with Ed 1113.14 and Ed 1113.15.

Ed 1114.16 Physical Facilities.

(a) Each private provider of special education or other non-LEA program shall ensure that the grounds and all structures on the grounds of the program are maintained in good repair and are free from any danger to health or safety.

(b) Each private provider of special education or other non-LEA program shall develop a written schedule of maintenance and housekeeping activities to ensure that the grounds and facilities are safe and promote the health of children enrolled in the program.

(c) All physical facilities in each private provider of special education or other non-LEA program used for any purpose for the education of children with disabilities shall be in compliance with New Hampshire health and fire regulations for non-public schools as established by public health statute RSA 200:11, Ed 306.07(a) - (b), Saf-C 6000, and New Hampshire school building standards as required under Ed 403.01(c) to ensure the comfort and health of children enrolled in the facility or program.

RSA 200:11 Investigation of Sanitary Conditions. – The Department of Health and Human Services shall, upon complaint of any responsible person, investigate the sanitary conditions of any schoolhouse or building used for school purposes.

Ed 306.07 School Facilities.
The local school board shall:
(a) Require that the facilities for each school provide the following:
(1) Consistent with RSA 189:24, a clean, healthy, and safe learning environment for all areas of the school building, grounds, and school-related activities
(2) Lighting in compliance with the state building code as provided in RSA 155-A; and
(3) Exhaust and outdoor air ventilation, proper temperature and humidity conditions in compliance with the state building code as provided in RSA 155-A.
(b) With regard to school facilities:
(1) Customize classrooms and other school-related environments to the needs of different content areas;
(2) Provide for accessibility of students with disabilities;
(3) Demonstrate compliance with Saf-C 6000 relating to NFPA 101, "Life Safety Code, 2000 edition;" and
(4) Document compliance with regulations relating to school building, sanitation, sewage disposal, water supply, and other matter affecting public health.

Saf-C 6000 – STATE FIRE CODE
Ed 403.01(c) The applicant shall comply with applicable state, local and federal fire and health requirements and shall provide documentation from federal, state and/or local officials for such compliance.
Appendix A

(d) Each private provider of special education or other non-LEA program shall have written procedures to protect children from hazards such as:
(1) The presence of asbestos;
(2) The presence of lead paint;
(3) Storage of hazardous materials;
(4) Garbage disposal;
(5) Vermin infestation;
(6) Storage of food;
(7) Storage of medicines; and
(8) Any unsafe access to electrical, plumbing, and heating systems.

(e) A private facility or other non-LEA program shall have a policy that ensures that bathrooms, classrooms, and other areas where children spend time at the facility, are regularly cleaned to maintain health and sanitation.

(f) A private provider of special education or other non-LEA program shall have securely locked storage spaces for all harmful, poisonous, or toxic materials that shall not be used for any other purpose. Keys to locked storage spaces shall be available only to authorized staff members.

(g) Fences at a private provider of special education or other non-LEA program shall be in good repair.

(h) Hazardous areas at a private provider of special education or other non-LEA program, such as steep grades, cliffs, open pits, swimming pools, high voltage boosters, or high speed roads, shall be fenced off or have natural barriers to protect children.

(i) Playground equipment at a private provider of special education or other non-LEA program shall be so located, installed, and maintained as to ensure the safety of children.

Ed 1114.17 Child Care.

(a) The day care and residential components of all private providers of special education or other non-LEA programs shall meet all applicable federal, state, and local rules governing the day and residential care of children with disabilities.

(b) Each private provider of special education or other non-LEA program shall be responsible for the total care of any child with a disability who resides at the program. The program shall attend to the physical and emotional health of resident children. The program shall provide resident children with regular nutritious meals, opportunities for proper exercise, age-appropriate recreational activities, and opportunities for positive social encounters.

(c) Each private provider of special education or other non-LEA program shall provide properly qualified, trained, and supervised child care workers to staff day and residential programs.

(d) Each private provider of special education or other non-LEA program shall identify children with emergent emotional or physical problems and consult with the appropriate representatives of the sending LEA and the child's parent.

Ed 1114.18 Health and Medical Care.

(a) Each private provider of special education or other non-LEA program shall have written procedures to ensure that children with disabilities receive prompt and competent medical attention in the event of injury or illness while at the program or while participating in any program or activity while in the custody of the program.

(b) Each private provider of special education shall provide staff training in first aid, including training in the administration of CPR.

(c) Each private provider of special education or other non-LEA program shall have formulated written policies and procedures regarding the use and administration of medicine to children in compliance with state law and rules. Medication shall be dispensed only under medical order.

(d) Each private provider of special education or other non-LEA program shall maintain locked storage space for prescription drugs which shall only be accessible to persons authorized to dispense them.

(e) When a child has an illness that is contagious or poses a health threat to other children enrolled in a private provider of special education or other non-LEA program, the program shall immediately notify the child's parent(s), the sending LEA, the department, and the bureau of communicable disease control of the department of health and human services.

(f) In the case of an accident injuring a child, a private provider of special education or other non-LEA program shall immediately notify the child's parent(s), the sending LEA, the department, and the local law enforcement agency.

(g) In the case of the death of a child, a private provider of special education or other non-LEA program shall immediately notify the child's parent(s), the sending LEA, the department, and the local law enforcement agency.

Ed 1114.19 Insurance Coverage.

(a) Each private provider of special education or other non-LEA program which accepts prepayment of public funds, directly or indirectly, shall maintain bonding in an amount adequate to cover the amount of public funds received and expenses associated with the recovery of such funds.

(b) All persons delegated the authority to sign checks or manage funds shall be bonded at the program's expense.

(c) Each private provider of special education or other non-LEA program shall carry, for protection of children in care and in amounts as recommended by the facility or program's insurance provider, which provider shall be licensed to do business in the State of New Hampshire:

(1) Professional liability and bonding insurance;
(2) Vehicle insurance; and
(3) Comprehensive property and liability insurance in compliance with Ed 1129.08(al).

Ed 1114.20 Photography and Audio or Audio-Visual Recording.

(a) Each private provider of special education or other non-LEA program shall have written policies and procedures regarding the photographing and audio or audio-visual recordings of children in care.

(b) The written consent of the child's parent shall be obtained before the child is photographed or recorded.

Ed 1114.21 Emergency Planning and Preparedness.

(a) Each private provider of special education or other non-LEA program shall have written procedures for staff and children to follow in case of emergency. These procedures shall be developed with the assistance of state or local fire and safety personnel and shall include provisions for the evacuation of buildings and assignment of staff during emergencies.

(b) At least quarterly each private provider of special education or other non-LEA program shall conduct emergency drills which shall include actual evacuation of children to safe areas. The program shall ensure that all personnel on all shifts are trained to perform assigned tasks during emergencies and ensure that all personnel on all shifts are familiar with the use of the fire-fighting equipment available at the program.

(c) The following conditions shall apply to each such emergency drill:

(1) A record of such emergency drills shall be maintained;
(2) All persons in the building shall participate in emergency drills;
(3) Emergency drills shall be held at unexpected times and under varying conditions to prepare children for evacuation in case of fire or other emergencies;
(4) The program shall make provisions to ensure that all children with disabilities are evacuated safely; and

(5) The program shall establish procedures to help children with disabilities understand the nature of such drills.

(d) Each private provider of special education or other non-LEA program with residential components shall maintain an active safety program, including investigation of all accidents and recommendations for prevention.

Ed 1114.22 Protections Afforded to Children With Disabilities. A child placed by an LEA in an approved private provider of special education or other non-LEA program shall be afforded all the rights of a child with a disability who is served by a public agency as provided in 34 CFR 300.146.

§300.146 Responsibility of SEA.
Each SEA must ensure that a child with a disability who is placed in or referred to a private school or facility by a public agency--
(a) Is provided special education and related services--
(1) In conformance with an IEP that meets the requirements of §§300.320 through 300.325; and
(2) At no cost to the parents;
(b) Is provided an education that meets the standards that apply to education provided by the SEA and LEAs including the requirements of this part, except for §300.18 and §300.156(c); and
(c) Has all of the rights of a child with a disability who is served by a public agency.

PART Ed 1115
SURROGATE PARENTS

Ed 1115.01 Commissioner's Responsibility; Basis for Appointment of Surrogate by Commissioner.

(a) Pursuant to RSA 186-C:14, III and RSA 186-C:14, IV, the determination of the need for and the appointment of surrogate parents shall be the responsibility of the Commissioner of Education or the Commissioner's designee.

RSA 186-C:14, III and RSA 186-C:14, IV III. DETERMINING NEED.
(a) When, ***a child with a disability***, as defined in RSA 186-C:2, needs special education and the parent or guardian of the child is unknown or after reasonable efforts cannot be located, or the child is a ward of the state ***a court of competent jurisdiction may appoint*** a surrogate parent who shall represent the child in the educational decision-making process. ***If the court does not appoint a surrogate parent, the Commissioner of the Department of Education or designee shall appoint the surrogate parent.***
(b) ***In the case of a child who is an unaccompanied youth, as defined by the McKinney-Vento Homeless Assistance Act, 42 U.S.C. section 11434a(6), the school district shall appoint a surrogate in accordance with this section.***
(c) ***All appointments of a surrogate parent shall be consistent with the requirements of applicable state and federal laws.***
IV. APPOINTMENT OF SURROGATE.
Appointment ***of a surrogate parent under paragraph III*** shall be effective until the child reaches 18 years of age, and may be extended by order of the Commissioner until the child graduates from high school or reaches 21 years of age, whichever occurs first. If the surrogate parent resigns, dies**,** or is removed, the Commissioner of Education or designee may appoint a successor**,** surrogate parent in the same manner as provided in paragraph III.

(b) In order to protect the educational rights of children with disabilities, the Commissioner or designee shall appoint a surrogate parent when the child's parent is not known, the child is under legal guardianship of DCYF, or a court has issued a written order for a surrogate parent.

Ed 1115.02 Initiating a Request for Appointment of a Surrogate Parent.

(a) Any employee of an LEA, the department, or a residential school or hospital, any physician, any judicial officer, or any other person who knows or believes that a child's parent is not known, or is not able to be located, or that the child is under legal guardianship of DCYF, or any person who knows or believes that a court has issued a written order for a surrogate parent, shall initiate the appointment of a surrogate parent, pursuant to Ed 1115.02(b).

(b) The process for appointment of a surrogate parent shall be initiated by submitting a written referral to the superintendent of schools or the superintendent's designee.

(c) A copy of the referral shall be sent to the Commissioner of Education or the Commissioner's designee.

Ed 1115.03 Investigation and Determination of the Need for a Surrogate Parent.

(a) The superintendent of schools or the superintendent's designee shall conduct an investigation to determine whether the child is in need of a surrogate parent.

(b) Procedures used to determine whether or not the child's parent is in fact unknown or if the child is under legal guardianship of DCYF, or if a court has issued a written order for a surrogate parent, shall include but not be limited to, sending a written notice, by certified mail, of the need for parental participation in the special education process to the last known address of the parent or following the procedures in (e) below.

(c) The notice under Ed 1115.03(b) shall include:

(1) A request for the parent to participate in the special education process for the child;

(2) A description of parental rights;

(3) A statement within 14 days of receipt of the certified letter that the parent does not want or is unable to act as the child's educational decision-maker at this time; and

(4) A statement that the parent may resume responsibility as the child's educational decision maker upon written notification to the LEA.

(d) A parent shall be considered unknown when there is no written record of the existence of such a person available to the superintendent of schools or the superintendent's designee.

(e) A parent shall be considered "not able to be located" when:

(1) The parent notifies the LEA in writing that the parent does not want or is unable to act as the child's educational decision-maker at this time; or

(2) The public agency cannot discover the whereabouts of the parent as documented by a record of its attempts to contact the parent, such as:

a. Detailed records of telephone calls made or attempted, including:

1. Date;
2. Time;
3. Caller;
4. Person called;
5. Telephone number called;
6. Duration of the call;
7. Person, if any, with whom the caller spoke;
8. Description of the conversation, if any; and
9. Description of the message left, if any, on voice mail or an answering machine;

b. Copies of correspondence, including certified letters, sent to the parent and any response received; or

c. Detailed records of visits made to the home or place of employment of the parent, including:

1. Date;
2. Time;
3. Address visited;
4. Person making the visit;
5. Person to be visited;
6. Duration of visit; and
7. Result of the visit.

(f) The child shall be determined to be a ward of the state under this section when the parent's rights have been terminated or relinquished as documented in court records or the parent is deceased.

(g) The superintendent of schools or the superintendent's designee shall, based on the evidence gathered during the investigation, determine whether the child is in need of a surrogate parent within 30 days following receipt of the original referral for a surrogate.

(h) If it is determined that a child does not need a surrogate parent, the superintendent of schools or the superintendent's designee shall place a copy of the determination in the child's school record.

Ed 1115.04 Requesting Appointment of a Surrogate Parent.

(a) If it is determined that a child needs a surrogate parent the superintendent of schools or the superintendent's designee shall submit a written request that the Commissioner of Education of his/her designee appoint a surrogate parent.

(b) The written request for appointment of a surrogate parent shall include:

(1) The date request for appointment of a surrogate parent is made;

(2) The name, title, agency name, address and telephone number of the following people:

a. The person requesting appointment to be made;

b. The child's DCYF caseworker;

c. The child's guardian ad litem or attorney, or both, if a child has both;

d. The child's adult caretaker and/or the child's foster parent;

e. The child's biological mother and biological father, if known, and whose parental rights have not been relinquished or terminated;

f. The child's guardian, if any;

g. The contact persons of the child's liable/receiving LEA and sending LEA, liable for reimbursement, if any;

h. The contact person of the child's current educational placement; and

i. The contact person of any other agency or party having jurisdiction over the child;

(3) Information identifying the child including:

a. The child's name and date of birth;

b. The child's current address; and

c. The name and address of the facility where the child is currently going to school;

(4) A statement whether child is in evaluation status or has already been determined to have a disability;

(5) A statement of the child's legal relationship/custody status with DCYF;

(6) A written statement by the superintendent of schools or the superintendent's designee attesting that:

a. The LEA investigated the child's need for a surrogate parent and the LEA determined that the child's parent is unknown or not able to be located;

b. The child is under legal guardianship of DCYF; or

c. A court has issued a written order for a surrogate parent and that the child is therefore in need of a surrogate parent; and

(7) Documentation of efforts to contact the parent as described in Ed 1115.03.

Ed 1115.05 Appointment.

(a) If the Commissioner of Education or the Commissioner's designee finds that the materials submitted by the superintendent of schools or the superintendent's designee are complete and document that the child is in need of a surrogate parent the Commissioner shall appoint a surrogate parent who shall represent the child in the educational decision-making process pursuant to 34 CFR 300.519(h).

***§*300.519(h) SEA responsibility.** The SEA must make reasonable efforts to ensure the assignment of a surrogate parent not more than 30 days after a public agency determines that the child needs a surrogate parent.

(b) The current residence of the surrogate parent shall be of no relevance in determining the child's LEA of residence or liability.

(c) Appointment of surrogate parents shall be effective until the child reaches 18 years of age unless:

(1) The child requests in writing that the Commissioner of Education or his/her designee extend the original appointment until the child is awarded a regular high school diploma or reaches 21 years of age, whichever occurs first;

(2) The child is determined to be incapacitated under RSA 464-A, Guardians and Conservators, and the guardian is determined to be unknown under Ed 1115.03; or

RSA 464-A GUARDIANS AND CONSERVATORS **Appendix A**

(3) The surrogate parent resigns, dies, or is removed pursuant to Ed 1115.05(d).

(d) The Commissioner of Education, within 30 days of the receipt of a written complaint requesting the removal of a surrogate parent shall:

(1) Investigate the allegation(s) made in the written complaint;

(2) Render a decision that shall indicate whether;

a. The surrogate is meeting the requirements for being a surrogate parent;

b. The surrogate parent shall receive additional training;

c. The surrogate parent has not fulfilled the responsibilities of a surrogate parent and is removed; or

d. The surrogate parent has a conflict of interest with the child's interests and is removed.

(e) Any party to a decision rendered under Ed 1115.05(d) within 10 days of receipt of the Commissioner's written decision under Ed 1115.05(d), may make a written request to the Commissioner for reconsideration of the decision.

(f) Within 20 days of the receipt of the written request for reconsideration, the Commissioner shall:

(1) Review the evidence presented in the investigation;

(2) If necessary, gather additional evidence;

(3) Review the decision; and

(4) Issue a final written decision.

(g) Any party who is aggrieved by the final written decision of the commissioner under Ed 1115.05(f) may appeal in accordance with RSA 541.

RSA 541. REHEARINGS AND APPEALS IN CERTAIN CASES **Appendix A**

(h) The Commissioner of Education or the commissioner's designee shall terminate the appointment of a surrogate parent when:

(1) A parent becomes known, is located, rescinds his or her request or consent to have a surrogate parent appointed and will assume educational decision-making;

(2) The child ceases to be under legal guardianship of DCYF;

(3) The adult student rescinds his or her request for the appointment of a surrogate parent and will assume educational decision-making for him or herself; or

(4) In the case of a parent who has requested a surrogate parent because the parent is unable to act as the child's educational decision maker, the parent notifies the LEA in writing that the parent is able to resume responsibility as the child's educational decision-maker.

(i) The Commissioner of Education or the Commissioner's designee shall appoint a successor surrogate parent in the same manner and for the same period of time as previously provided when:

(1) The surrogate parent resigns; or

(2) When a surrogate parent has been removed pursuant to Ed 1115.05(d).

Ed 1115.06 Selection of Surrogate Parents.

(a) The Commissioner of Education or the Commissioner's designee shall select individuals to be available to serve as surrogate parents provided such individuals:

(1) Have volunteered to serve as a surrogate parent;

(2) Have submitted a signed and dated written application to the Commissioner of Education or the Commissioner's designee that includes:

a. The applicant's name;

b. The applicant's residence address and mailing address, if different;

c. The applicant's daytime telephone number and evening telephone number;

d. The applicant's employer's name;

e. Languages in which the applicant is conversant;

f. The applicant's experience with children including foster children or children with disabilities;

g. The applicant's experience with the educational process;

h. Whether the applicant is available to attend daytime meetings;

i. The applicant's willingness to be surrogate parent to more than one child at a time;

j. The names of particular children for whom the applicant wishes to be a surrogate parent, if relevant;

k. The applicant's preference regarding disability or geographical location; and

l. A statement of the applicant's agreement to take training, if not already trained;

(3) Have provided the names and addresses of 3 non-relative references to the Commissioner of Education or the Commissioner's designee;

(4) Have favorable letters of reference submitted to the Commissioner of Education or the Commissioner's designee from:

a. Those named in Ed 1115.06(a)(3); and

b. The individuals conducting the training for surrogate parents attesting to the volunteer's suitability to serve as an educational decision-maker on behalf of a child with a disability;

(5) Have satisfactorily completed training to serve as a surrogate parent provided by the department as described in Ed 1115.07;

(6) Are 21 years of age or over;

(7) Have agreed in writing to protect the confidentiality of any records of the child to whom the volunteer is appointed surrogate parent;

(8) Have agreed in writing to act in the interest of the child to protect the child's right to FAPE;

(9) Have agreed in writing to serve as a surrogate parent from the date of appointment until the date of termination of appointment or until 30 days after notifying the Commissioner of Education or the Commissioner's designee of the desire to end the surrogate parent relationship;

(10) Have no interest that conflicts with the interest of the child he or she represents;

(11) Are not employees of a public agency which is involved in the education or care of the child; and

(12) Shall successfully pass a background check which includes a fingerprint check.

(b) A person who otherwise qualifies to be a surrogate parent shall not be considered an employee of the public agency solely because the person has been appointed to serve as a surrogate parent.

(c) Foster parents shall be eligible to become surrogate parents in accordance with RSA 186-C: 14-a.

RSA 186-C:14-a
Foster Parent Representation of Foster Children With Educational Disabilities. –

I. A foster parent or parents may be appointed by the commissioner of the Department of Education that he or she has the knowledge and skills to represent the child adequately in services or designee, or by the director of a child placing agency licensed under RSA 170-E that has placed the child with the foster parent or parents, to make educational decisions on behalf of a foster child for the duration of the foster placement, provided that:
(a) The birth parents' parental rights have been terminated by a court of law or by death; and
(b) Each such foster parent:
(1) Is in an ongoing, long-term parental relationship with the child, as determined by the ***Commissioner of Education****;*
(2) Is willing to make the educational decisions required of parents under state and federal law;
(3) Has no interest that would conflict with the interests of the child; and
(4) Has demonstrated to the satisfaction of the commissioner of the Department of Education that he or she has the knowledge and skills to represent the child adequately in educational decision-making.

II. A foster parent appointment pursuant to this section shall supersede the appointment of a surrogate parent under RSA 186-C:14.

III. A foster parent acting as a parent shall have the same right of access as the birth parents or guardians to all records concerning the child. These records shall include, but are not limited to, educational, medical, psychological, and . and ***health and human service records.***

IV. No foster parent appointed to act in the capacity of a parent under this section shall be liable to the child entrusted to the foster parent or the parents or guardian of such child for any civil damages which result from acts or omissions of such foster parent which may arise out of ordinary negligence. This immunity shall not apply to acts or omissions constituting gross, willful, or wanton negligence.
V. The State Board of Education shall adopt rules, pursuant to RSA 541-A, necessary for the implementation of this section.

(d) Foster parents shall not be considered to be employees of DCYF.

Ed 1115.07 Training of Surrogate Parents.

(a) The department shall maintain a registry of eligible persons who are trained to serve as surrogate parents.

(b) The department shall provide for the training of persons who have been selected to serve as surrogate parents.

(c) The training shall be a minimum of 9 hours.

(d) Training of surrogate parents shall include, but not be limited to:
- (1) Study of legislative mandates for surrogate parents;
- (2) An overview of disabling conditions;
- (3) An overview of state and federal legislation regarding special education;
- (4) An overview of New Hampshire's special education process including:
  - a. Evaluation procedures;
  - b. The determination of disability;
  - c. Development of the IEP;
  - d. Selection of special education placements; and
  - e. Other decision-making;
- (5) Development of communication skills; and
- (6) Information about resources available to surrogate parents and children with disabilities.

(e) Training for surrogate parents shall conclude with a final exam based on the training provided under (c) above.

(f) In order to qualify as a surrogate parent, the adult volunteer shall attain a minimum score of 70 percent on the final exam under (e) above.

Ed 1115.08 Responsibilities of Surrogate Parents.

(a) The surrogate parent shall represent a child with a disability to the same extent as the child would be represented by a parent in all matters relating to FAPE.

(b) The liability of a surrogate parent shall be limited in accordance with RSA 186-C:14, VI.

RSA 186-C:14. VI. LIMITED LIABILITY. No surrogate parent appointed pursuant to the provisions of paragraph IV shall be liable to the child entrusted to the surrogate parent or the parents or guardian of such child for any civil damages which result from acts or omissions of such surrogate parent which may arise out of ordinary negligence. This immunity shall not apply to acts or omissions constituting gross, willful, or wanton negligence.

(c) Except as provided in Ed 1115.05(h), a surrogate parent shall represent the child until the child reaches the age of 18.

(d) The surrogate parent may ask to end the surrogate parent relationship without cause upon 30 days' written notice to the Commissioner of Education or his/her designee, and all interested parties or persons.

(e) A surrogate parent shall not recoup expenses from the LEA or the department for any services he/she provides as a surrogate.

(f) Surrogate parents shall have the same right of access to records concerning the child as provided by RSA 186-C:14, V.

RSA 186-C:14, V. (including changes proposed by HB 766) RIGHT OF ACCESS. When a surrogate parent is appointed, the surrogate parent shall have the same right of access as the natural parents or guardian to all records concerning the child. These records shall include, but not be limited to, educational, medical, psychological and ***health and human service records.***

Ed 1115.09 Surrogate Parents for Children Placed in Homes for Children, Health Care Facilities, or State Institutions.

(a) Notwithstanding the requirements of Ed 1115, Ed 1115.09(b) shall apply for children in placements pursuant to RSA 169-B, RSA 169-C or RSA 169-D.

RSA 169-B – DELINQUENT CHILDREN	**Appendix A**
RSA 169-C – CHILD PROTECTION ACT	**Appendix A**
RSA 169-D – CHILDREN IN NEED OF SERVICES	**Appendix A**

(b) Upon a DCYF or DYDS referral meeting the requirements of Ed 1115.02, the Commissioner shall appoint a surrogate parent in accordance with Ed 1115.05 except as noted below:

(1) The process for appointment of a surrogate parent shall not exceed 45 days from the date on which the department receives the request for appointment;

(2) If a parent objects to the appointment of a surrogate parent, the decision whether or not to appoint a surrogate parent shall be made within 55 days of the date on which the superintendent of schools or department received the referral; and

(3) In all instances where information from the liable LEA is necessary to make a determination whether a surrogate parent should be appointed, it shall be the responsibility of the liable LEA to provide, in a timely manner, all the information necessary to complete the process of determining whether a surrogate parent should be appointed.

PART Ed 1116
ALTERNATIVE METHODS FOR THE APPOINTMENT OF SURROGATE PARENTS

Ed 116.01 Applicability. The provisions of Ed 1116 shall apply to a child who is considered to be an accompanied homeless youth as defined in Section 725(2)(B) of the McKinney-Vento Homeless Assistance Act**,** 42 U.S.C. 1301, et seq., and who is or may be a child with a disability.

Section 725 of the McKinney-Vento Homeless Assistance Act – see Ed 1103.02(f)
Page #32

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

(a) A school district shall immediately enroll any unaccompanied child for the purposes of attending classes and participating fully in school activities.

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

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

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

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

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

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

§300.519(f) Unaccompanied homeless youth. In the case of a child who is an unaccompanied homeless youth, appropriate staff of emergency shelters, transitional shelters, independent living programs, and street outreach programs may be appointed as temporary surrogate parents without regard to paragraph (d)(2)(i) of this section, until a surrogate parent can be appointed that meets all of the requirements of paragraph (d) of this section.

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

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

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

(a) For the purposes of Ed 1116.03, a judge who oversees the care of a child shall be considered a designee of the Commissioner of Education.

(b) For a child who is a ward of the state, a judge who oversees the care of that child shall appoint a surrogate parent to represent that child in education matters provided that:

(1) The surrogate parent is selected in accordance with Ed 1115.06;

(2) Training of surrogate parents shall be accomplished in accordance with Ed 1115.07; and,

(3) The responsibilities of surrogate parents assigned by judges to oversee the care of children shall be consistent with those responsibilities outlined in Ed 1115.08.

(c) Within 10 days from the date an individual is appointed by a judge as a surrogate parent under Ed 1116.03, an official of the court shall notify the Commissioner of Education or the Commissioner's designee of the name, date of birth of the child and the name, address and telephone number of the individual who has been appointed as surrogate parent.

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

186-C:14-a
Foster Parent Representation of Foster Children With Educational Disabilities. –

I. A foster parent or parents may be appointed by the commissioner of the Department of Education that he or she has the knowledge and skills to represent the child adequately in services or designee, or by the director of a child placing agency licensed under RSA 170-E that has placed the child with the foster parent or parents, to make educational decisions on behalf of a foster child for the duration of the foster placement, provided that:

(a) The birth parents' parental rights have been terminated by a court of law or by death; and

(b) Each such foster parent:

(1) Is in an ongoing, long-term parental relationship with the child, as determined by the **Commissioner of Education**;

(2) Is willing to make the educational decisions required of parents under state and federal law;

(3) Has no interest that would conflict with the interests of the child; and

(4) Has demonstrated to the satisfaction of the Commissioner of the Department of Education that he or she has the knowledge and skills to represent the child adequately in educational decision-making.

II. A foster parent appointment pursuant to this section shall supersede the appointment of a surrogate parent under RSA 186-C:14.

III. A foster parent acting as a parent shall have the same right of access as the birth parents or guardians to all records concerning the child. These records shall include, but are not limited to, educational, medical, psychological, and . and ***health and human service records.***

IV. No foster parent appointed to act in the capacity of a parent under this section shall be liable to the child entrusted to the foster parent or the parents or guardian of such child for any civil damages which result from acts or omissions of such foster parent which may arise out of ordinary negligence. This immunity shall not apply to acts or omissions constituting gross, willful, or wanton negligence.

V. The State Board of Education shall adopt rules, pursuant to RSA 541-A, necessary for the implementation of this section.

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

RSA 170-E –
CHILD DAY CARE, RESIDENTIAL CARE, AND CHILD-PLACING AGENCIES
Appendix A

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

(1) The natural parents' parental rights have been terminated by a court of law or by death;

(2) The foster parent is in an on-going, long term relationship with the child for at least one year;

(3) The foster parent is willing to make educational decisions required of parents under federal and state law;

(4) The foster parent has no interest that would conflict with the child; and

(5) The foster parent has demonstrated to the commissioner of the department of education or the commissioner's designee that he or she has the knowledge and skills to represent the child adequately in educational decision making by:

a. Either fulfilling all of the requirements specified in Ed 1115.07 (b) through (f) and successfully passing a background check which includes a fingerprint check; or

b. Attaining a minimum score of 80 on the final exam given to surrogate parent candidates and successfully passing a background check which includes a fingerprint check.

(c) Within 10 days from the date an individual is appointed as a surrogate parent under Ed 1116.04, the director of the child placing agency shall notify the Commissioner of Education or the Commissioner's designee and the name, date of birth, address and telephone number of the foster parent who has been assigned as a surrogate parent.

PART Ed 1117
EDUCATION OF CHILDREN PLACED IN HOMES FOR CHILDREN, HEALTH CARE FACILITIES, OR STATE INSTITUTIONS

Ed 1117.01 Purpose and Scope.

(a) The purpose of this part is to assure the provision of a FAPE as defined in Ed 1102.44 to children with or who might have educational disabilities who are in residential placement or placements awaiting disposition of the courts and committed juvenile students with or who might have educational disabilities to the extent that such students are not covered under Ed 1127.

(b) These provisions shall apply to the initial placement of children and all successive placements by a state court acting pursuant to RSA 169-B, RSA 169-C or RSA 169-D.

RSA 169-B – DELINQUENT CHILDREN	**Appendix A**
RSA 169-C – CHILD PROTECTION ACT	**Appendix A**
RSA 169-D – CHILDREN IN NEED OF SERVICES	**Appendix A**

Ed 1117.02 Definitions.

(a) Definitions provided in Ed 1102 shall apply, except that the following definitions shall apply for the purpose of Ed 1117 only:

(1) "Child," means" child with a disability" as defined in Ed 1102.18. The term also includes "student" or "youth";

(2) "Class member" means a child 3 years of age, but less than 18, unless DCYF jurisdiction has been extended beyond the age of 18, in which case class member means a child up to the age of 21 who has not yet received a regular high school diploma;

(3) "Days," means calendar days except that when the period of time prescribed or allowed is less than 11 days, intermediate Saturdays, Sundays, and legal holidays are excluded;

(4) "Educational records" means any document in the possession of the DJJS, the department, or any school district which is relevant to the identification, evaluation, or educational placement of the child or the provision of FAPE to the child consistent with 34 CFR 300.611(b) and 34 CFR Part 99, but does not include the records listed in Ed1117.03.

§300.611(b) Education records means the type of records covered under the definition of "education records" in 34 CFR part 99 (the regulations implementing the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. 1232g (FERPA)).
34 CFR part 99 - regulations implementing the Family Educational Rights and Privacy Act

(5) "Emergency" means an event, crisis, or set of circumstances necessitating immediate action without the opportunity to follow the procedures set forth in Ed 1116, including but not limited to changes in a child's placement necessitated by a life or safety emergency, or the unavailability of a placement;

(6) “Employment records” means records relating to an individual employed by an educational agency or institution that:
  a. Are made and maintained in the normal course of business;
  b. Relate exclusively to the individual in that individual’s capacity as an employee; and
  c. Are not available for use for any other purpose;

(7) “Facility” means the Tobey School, Philbrook Center, the youth services detention unit of the youth services center, or the youth development center;

(8) “Liable school district” means the school district responsible for overseeing a child’s educational program including a child’s special education program;

(9) “Parent” means any person, including a surrogate parent, with the authority to make decisions regarding the provision of FAPE to a child;

(12) “Place” means the act of enrolling a child in a placement;

(13) “Placement” means the enrollment of a child in, or committing or moving a child to, an educational program or residential program or facility, or the act of transferring a child from one educational program or residential program or facility to another or the site in which a child has been or will be placed;

(14) “Program or services” means a service or collection of services provided to a child in connection either with an adjudication by the state district or superior courts pursuant to RSA 169-B, RSA 169-C, or RSA 169-D, or with identification as a child with a disability pursuant to the IDEA and RSA 186-C;

(15) “Receiving district” means the school district in which a home for children or a health care facility is located if a child who is placed therein attends a public school in that district or receives educational services from that district in accordance with RSA 193:27, RSA 193:28 and RSA 193:29;

RSA 193:27 Definitions. – As used in this subdivision:

I. "Home for children" means any orphanage; institution for the care, treatment, or custody of children; child care agency as defined by RSA 170-E:25, II and III; or any residential school approved under RSA 186:11, XXIX.

II. "Health care facility" means any hospital, nursing home, sheltered home, or other institution licensed under RSA 151.

III. "State institution" means the New Hampshire hospital, Laconia developmental services, and the youth development center.

IV. "Sending district" means the school district in which a child most recently resided other than in a home for children, the home of a relative or friend in which a child is placed by the department of health and human services or a court of competent jurisdiction pursuant to RSA 169-B, RSA 169-C, RSA 169-D, or RSA 463, health care facility, or state institution, if such child is not in the l legal custody of a parent or if the parent resides outside the state; if the child is retained in the legal custody of a parent residing within the state, "sending district" means the school district in which the parent resides. For the purposes of this paragraph a parent shall not have legal custody if legal custody has been awarded to some other individual or agency, even if that parent retains residual parental rights. An award of legal custody by a court of competent jurisdiction, in this state or in any other state, shall determine legal custody under this paragraph.

V. "Receiving district" means the school district in which a home for children or health care facility is located if a child who is placed therein attends a public school in that district or receives educational services from that district.

VI. "School district" means a school district in the state

RSA 193:28 Right of Attendance. – Whenever any child is placed and cared for in any home for children, or is placed by the Department of Health and Human Services in the home of a relative or friend of such child pursuant to RSA 169-B, RSA 169-C, RSA 169-D, or RSA 463, such child, if of school age, shall be entitled to attend:

I. The public schools of the school district that the child attended prior to placement, if continuing in the same school district is in the best interest of the child as determined by the court, if the home is within a reasonable distance of the school to be attended, and if suitable transportation can be arranged without imposing additional transportation costs on a school district or the department of health and human services; or

II. The public schools of the school district in which said home is located, unless such placement was solely for the purpose of enabling a child residing outside said district to attend such schools, provided that the school district for a child placed in a group home, as defined in RSA 170-E:25, II(b), within a cooperative school district, shall be the cooperative school district, not the pre-existing district within the cooperative.

RSA 193:29 Liability for Education of Children in Homes for Children or Health Care Facilities. –

I. For any child placed and cared for in any home for children or health care facility, the sending district shall make payments to the receiving district as follows:

(a) For a child attending a public school in the receiving district who receives special education as required by RSA 186-C, the sending district is liable for either the average per pupil cost of the receiving district as estimated by the State Board of Education under RSA 193:4, or for the actual prorated cost of the special education and any educationally related services, as defined in RSA 186-C:2, provided by the receiving district, whichever is greater.

(b) For a child attending a public school to which the receiving district as defined in RSA 193:27 shall pay tuition under an AREA or other contractual agreement, the sending district as defined in RSA 193:27 is liable for all costs which said receiving district must pay under that agreement.

(c) If a child is assigned to an out-of-district special education program, the sending district is liable for all costs under RSA 186-C.

II. Actual fiscal liability under paragraph I commences upon enactment of this statute. However, the determination of liability as applied in paragraph I refers to children placed in a home for children or health care facility prior to as well as subsequent to enactment.

III. If the receiving district receives any state or federal aid for educating a child in any home for children or health care facility, including but not limited to aid for foster children under RSA 198:23, that amount shall be deducted from the liability of the sending district for that child.

IV. The agency responsible for placing the child shall inform the sending and receiving districts of where the child presently resides and where the child last resided before placement in a home for children, health care facility, or state institution or where the parent of the child resides if the child is in the legal custody of a parent who resides within the state.

V. The cooperative school district, not the pre-existing district, shall be liable for the cost associated with the education of children placed in a group home, as defined in RSA 170-E:25, II(b), within such cooperative school district provided, however, that the provisions of RSA 193:29, I(a) shall apply to children receiving special education.

(16) "Residence" means the physical location of the home, program, or facility in which the child is housed;

(17) "Sending district" means the school district, as defined in RSA 193:27, in which a child most recently resided other than in a home for children, health care facility, or state institution as those terms are defined in RSA 193:27, if the child is not in the legal custody of a parent or if the parent resides outside the state. If the child is retained in the legal custody of a parent residing within the state, "sending district" means the school district in which the parent resides;

RSA 193:27 – see Ed 1117.02(a)(15) Page #118

(18) "Student" means "child" as defined at Ed 1117.02(a)(1); and

(19) "Written prior notice" means a written document provided to a parent in accordance with Ed 1120.03 and 34 CFR 300.503 and 34 CFR 300.504 which describes the action the school district proposes to take, or action it refuses to take, with respect to the referral, evaluation, determination of eligibility, educational program, placement or services of a child with a disability.

For §300.503 or 300.504, see Ed 1120.03 Written Prior Notice. Page #133

Ed 1117.03 Records Excluded from the Definition of Educational Records. The following records shall be excluded from the definition of "educational records" in Ed 1117.02:

(a) Records of instructional, supervisory, and administrative personnel and ancillary educational personnel that are kept in the sole possession of the maker of the record, and that are not accessible or revealed to any other person except a temporary substitute for the maker of the record.

(b) Records of a law enforcement unit of an educational agency or institution, but only if educational records maintained by the agency or institution are not disclosed to the unit, and the law enforcement records are:

(1) Maintained separately from education records;

(2) Maintained solely for law enforcement purposes; and

(3) Disclosed only to law enforcement officials of the same jurisdiction.

(c) Employment records, unless that employment results from status as a student.

(d) Records relating to a child who is 18 years of age or older, or who is attending an institution of post-secondary education, that:

(1) Are made or maintained by a physician, psychiatrist, or psychologist acting in his or her professional capacity or by paraprofessional personnel working under the supervision of a physician, psychiatrist, or psychologist;

(2) Are made, maintained, or used only in connection with treatment of the child which does not include remedial educational activities or activities that are part of the program of instruction at the agency or institution; and

(3) Are disclosed only to individuals providing the treatment.

(e) Records that only contain information about an individual concerning acts or occurrences which happen after the individual is no longer a student at that agency or institution.

Ed 1117.04 Preplacement and Placement Review Procedures For Children Previously Determined to Have Disabilities.

(a) The liable school district shall ensure that when a child is placed by the court or when the court changes a child's existing placement pursuant to RSA 169-B, RSA 169-C or RSA 169-D, the child shall, to the extent possible and appropriate according to Ed 1101 and Ed 1117.01,continue his/her current IEP as described in Ed 1109.01.

(b) Placements under Ed 1117.04(a) shall allow for the child's attendance at:

(1) The same educational program to which the child has already been assigned; or

(2) If continuation of the same educational program is not possible, then the child shall be assigned to the least restrictive, appropriate educational program which provides similar services as the child was receiving in the child's last educational program.

(c) Once joined by the court, the school district identified as the liable school district shall be responsible, during the pendency of any proceedings under RSA 169-B, RSA 169-C, or RSA 169-D, for evaluating the child, and reviewing, revising, developing, or implementing the IEP and educational placement and in all other respects providing the child with a disability with FAPE unless and until another school district is substituted as a party by order of the state court. If the child has already been identified as a child with a disability, the liable school district shall convene an IEP team meeting pursuant to Ed 1111.01 prior to the change in placement.

(d) When making placements under Ed 1111, the team shall consider:
(1) The impact of the proposed change in placement on the child's current IEP;
(2) Whether the proposed change in placement or a change in placement as a result of a proposed placement change, is appropriate and in the least restrictive environment;
(3) Whether the proposed placement is appropriate for the implementation of the child's IEP;
(4) What changes shall be made to accommodate the child's IEP in the proposed placement; and
(5) Any other matters relating to the placement of a child made in accordance with Ed 1101 and Ed 1117, including:
a. Evaluation;
b. Identification;
c. Effectiveness of previous placements; or
d. Other factors contributing to the need for a change in educational assignment.

(e) The liable school district shall request that a representative of DCYF, DJJS, or both DCYF and DJJS involved with the child for whom placement is being considered, receive notice of and be invited to attend any meetings convened pursuant to Ed 1117.04 any time an IEP team is convened under Ed 1117.

(f) The liable school district shall provide such notice to DCYF and to DJJS representatives and permit both DCYF and DJJS participation as follows:
(1) If the representatives of DCYF, DJJS, or both DCYF and DJJS elect to attend the meeting, those persons shall be a member of the IEP team convened pursuant to Ed 1117.04(d); and
(2) If a representative of DCYF or DJJS does not elect to attend the meeting, the liable school district shall, after notifying parent(s), promptly provide DCYF or DJJS with a copy of any educational records developed during or as a result of each such meeting;

(g) An educational assignment shall be recommended by the IEP team only if it finds that the educational assignment is one in which the child can receive FAPE in the least restrictive environment in accordance with Ed 1101, and that the IEP shall be promptly implemented after assignment of the child.

(h) Once the IEP team reaches the determination required by this section, the liable school district shall provide the parent or surrogate parent with notice, meeting the requirements of Ed 1115.03, of the IEP team's:
  (1) Proposed educational assignment; and
  (2) Findings relative to:
    a. The appropriateness and restrictiveness of the proposed educational assignment; and
    b. The extent to which the IEP can be implemented in the placement proposed by DCYF, DJJS, or by both DCYF and DJJS.

(i) At least 5 days prior to the court hearing on DCYF or DJJS placement, the liable school district shall file with the state district court having jurisdiction over the child a report of the school district's written recommendations and copy of the written prior notice pursuant to Ed 1120.03. The team's report to the state court shall also include a statement as to whether any of the other placements being considered, including any separate recommendations submitted to a state district court, is appropriate, in the least restrictive environment and capable of implementing the child's IEP.

(j) At any time prior to a district court hearing regarding placement, any member of the team, including the DCYF, DJJS, or both the DCYF and DJJS representatives, may submit to the state court having jurisdiction over the child under RSA 169-B, RSA 169-C or RSA 169-D, recommendations which differ from those of the IEP team's decision. In this event, that interested party, if other than a parent, shall provide the parent with a written copy of such differing recommendations;

(k) Notice of these dissenting recommendations shall be provided to the parent, school district, DCYF and DJJS, and the district court at least 5 days prior to the hearing on placement.

(l) Notice of these dissenting recommendations shall contain all information as required by Ed 1120.03, as well as an explanation as to how alternate recommendations on educational assignment are more appropriate than those of the IEP team's group recommendation.

(m) The parents shall have a right to be heard on the issue of placement pursuant to RSA 169-B, RSA 169-C or RSA 169-D, in any court having jurisdiction over the placement or in any appropriate administrative proceeding including the impartial due process hearings pursuant to Ed 1123.

(n) If the dissenting interested party has reason to believe that the provision of such dissenting recommendations could result in the child being threatened by physical harm or severe and irreparable psychological harm, the party shall apply to the school district and petition the district court simultaneously to:
  (1) Declare the parent to be unknown as defined in Ed 1115.03(d);
  (2) Request the court to order the Commissioner of Education to appoint a surrogate parent pursuant to Ed 1115.04;
  (3) Delay implementation of notice of the dissenting recommendations pursuant to (j) above, until such time as a surrogate is appointed, unless ordered by the court to provide notice of the dissenting recommendations; and
  (4) Provide such notice of dissenting recommendations only to the surrogate parent.

(o) In any instance where a state district court issues an order authorizing or making a placement, program or service which differs from or conflicts with the placement, program or services recommended by the team, special education and special education and related services shall be provided in a manner consistent with the placement decision made by the state court in conformity with an IEP developed by the team for use during such placement.

Ed 1117.05 Emergency Placement Review Procedures For Children Previously Determined to Have Disabilities.
When DCYF or DJJS notifies the liable school district of an emergency that requires a change in residential placement the school district shall:

(a) Immediately notify parents of the district's intent to convene an IEP team meeting.

(b) Convene an IEP team meeting in accordance with the requirements of Ed 1117.04(d) no later than 10 days after notice to parents for the purpose of:
(1) Reviewing the nature of the emergency and its relation to the child's educational disability;
(2) Reviewing the IEP in light of the emergency presented;
(3) Considering the appropriateness of the education assignment; and
(4) Revising of the child's IEP if necessary.

Ed 1117.06 Preplacement and Placement Review Procedures for Children Not Previously Determined to Have Disabilities.

(a) Upon receipt of notice according to Ed 1106 by DCYF or by DJJS or upon order of the state court having jurisdiction for whom there is reason to believe a disability might exist, the liable school district shall initiate full evaluation procedures pursuant to Ed 1107.
(b) To the extent that the liable school district is not able to secure parental consent, the district may:
(1) Seek appointment of a surrogate parent;
(2) Seek a court order for an evaluation; or
(3) Waive the 45-day requirement to the extent of a parent's delay in providing the district with consent.
(c) Once the evaluation is complete, an IEP team meeting shall be convened by the liable school district pursuant to Ed 1107 to determine the existence and/or nature of any educational disability the child might have.

(d) The liable school district shall provide DCYF or DJJS with notice of and invitation to attend the IEP team meeting.

(e) If the child is determined by the IEP team to have a disability, the school district shall initiate and comply with procedures set forth in Ed 1109, Ed 1111, and Ed 1117.04.

Ed 1117.07 Placement Review Procedures For Emergency DCYF or DJJS Placements of Children Not Previously Determined to have Disabilities. When DCYF or DJJS notifies the liable school district of an emergency that requires a change in residential placement the provisions of Ed 1117.06 shall apply.

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

RSA 193:12, VI -
(a) The commissioner of the Department of Education, or designee, shall decide residency issues for all pupils, including homeless children and youths, in accordance with this section. If more than one school district is involved in a residency dispute, or the parents who live apart cannot agree on the residence of a minor child, the respective superintendents shall jointly make such decision. In those instances when an agreement cannot be reached, the commissioner of the Department of Education, or designee, shall make a determination within 14 days of notice of the residency dispute and such determination shall be final. In any case, a written explanation shall be provided to the parties of record and a copy of such explanation shall be kept on file by the Department of Education. No school district shall deny a pupil attendance or implementation of an existing individual education plan.
(b) A pupil shall remain in attendance in the pupil's school of origin during the pendency of a determination of residency. If a child does not have a school of origin within this state, the child shall be immediately admitted to the school in which enrollment is sought pending determination of the residency dispute, provided such school is in the school district in which the child temporarily resides. For the purpose of this paragraph, "school of origin" means the school the child attended when permanently housed or the school in which the child was last enrolled.
(c) Notwithstanding the provisions of RSA 21-N:11, III any person aggrieved by a determination of the commissioner may appeal such determination to a court of competent jurisdiction.

Ed 1117.09 Dispute Resolution Procedures.

(a) If a liable school district has not been identified or has refused to assume responsibility for carrying out provisions set forth in Ed 1117, unless such placement is in a health care facility, residential school or state institution as defined in RSA 193:27, the school district in which the child has been placed outside the home by DCYF or by DJJS shall identify, evaluate or otherwise provide FAPE to the child with a disability.

RSA 193:27 – see Ed 1117.02(a)(15) Page #118

(b) In cases where the liable school district has not assumed responsibility for a child, the department shall fulfill the role of a liable school district for purposes of evaluating the child pursuant to Ed 1107 and for reviewing, revising, developing and implementing the IEP in accordance with Ed 1109 until a liable school district assumes these responsibilities on its own or by virtue of a determination of liability by the department. In addition to any other actions taken by the department, Ed 1125 shall apply.

(c) Any actions taken by a school district joined as a party in proceedings under RSA 169-B, RSA169-C or RSA 169-D, regarding the provision of FAPE to a child with a disability, shall, pursuant to RSA 193:29, be without prejudice to a school district's right to recover monies expended for the provision of such education from a sending district or from any public agency as defined by 34 CFR 300.33.

RSA 193:29 – See Ed 1117.02 Definitions
§300.33 Public agency includes the SEA, LEAs, ESAs, nonprofit public charter schools that are not otherwise included as LEAs or ESAs and are not a school of an LEA or ESA, and any other political subdivisions of the State that are responsible for providing education to children with disabilities.

(d) The liable school district shall not be responsible for the funding of programs or services necessary for the purposes of implementing an existing or amended program of special education or special education and related services during the pendency of a dispute concerning school district joinder and liability;

(e) A dispute as to the appropriateness of an evaluation, determination of disability, IEP or educational assignment, as reflected in a local school district decision may be appealed as provided in Ed 1123. The decision of the hearing officer shall be implemented and the procedures for reporting to the court set forth in Ed 1117.04 shall be followed.

(f) All other issues shall be submitted to the department for investigation by a complaint officer pursuant to Ed 1121.

(g) In all cases where there is a dispute, the provisions of Ed 1123.11 shall apply unless the placement, program or services for any child are changed or modified by a court of competent jurisdiction or a district court acting pursuant to RSA 169-B, RSA 169-C and RSA 169-D.

(h) When DCYF or DJJS notifies the school district of an emergency:

(1) The issues in dispute shall be submitted to the state district court having jurisdiction pursuant to RSA 169-B, RSA 169-C and RSA 169-D; and

(2) In any instance where a district court issues an order authorizing the provision of a special education assignment, program, or service which differs from or conflicts with the educational assignment, program or service recommended by the IEP team, special education and related services shall be provided at no charge to the parents and in conformity with an IEP developed by the IEP team for use during such placement.

Ed 1117.10 Student Files Maintained.

(a) Whenever a child is placed in a residential program or facility other than a home for children as defined in RSA 193:27, I, the liable school district shall ensure that:

RSA 193:27, I "Home for children" means any orphanage; institution for the care, treatment, or custody of children; child care agency as defined by RSA 170-E:25, II and III; or any residential school approved under RSA 186:11, XXIX.

(1) The IEP team develops a written document which shall be included in the student file maintained by the liable school district indicating:

a. The date of initial placement in the residential program or facility;
b. The placing agency;
c. The reason for the placement;
d. The specific steps to be taken to obtain a less restrictive program for the child, including but not limited to, cooperative planning with the child's parent and other interested parties; and
e. The projected date for change of this placement to a less restrictive environment; and

(2) A copy of all necessary educational records of the child including, but not limited to, the child's current IEP and evaluations is provided to the child's new educational program so the IEP then in effect can be implemented immediately.

(b) A residential school approved under RSA 186:11, XXIX shall not be considered a "home for children" for the purposes of this section.

RSA 186:11, XXIX. Adopt rules, pursuant to RSA 541-A, relative to reasonable criteria for approving non-public schools for the purpose of compulsory attendance requirements. The State Board of Education may, upon request, designate which schools meet those criteria, and may, upon the request of a non-public school, approve or disapprove its education program and curriculum.

PART Ed 1118
INCARCERATED CHILDREN WITH DISABILITIES

Ed 1118.01 Definitions. Except where the context makes another meaning clear, the following words have the meaning indicated when used in Ed 1118:

(a) "Eligible offender with a disability" means an incarcerated person who:
  (1) Is age 18 through 21, who;
  (2) Had been identified as a child with a disability prior to incarceration; or
  (3) Had an IEP prior to incarceration.

(b) "State correctional facility" means the New Hampshire state prison for men or the New Hampshire state prison for women.

Ed 1118.02. Eligible Offenders With Disabilities Incarcerated in State Correctional Facilities. An eligible offender with a disability incarcerated at the state correctional facility shall be eligible for services.

Ed. 1118.03 Incarcerated Children under the age of 18 – An incarcerated individual under the age of 18 shall have the right to be evaluated, identified, and if appropriate, special education and related services provided.

Ed 1118.04 Children With Disabilities Incarcerated in County Correctional Facilities. When a child with a disability is incarcerated at a county correctional facility, the liable LEA shall evaluate the child and make a determination of eligibility under Ed 1108 and develop, implement, and monitor an IEP for the child under Ed 1109.

PART Ed 1119
CONFIDENTIALITY OF INFORMATION

Ed 1119.01 Definitions. Except where the context makes another meaning clear, the following words have the meaning indicated when used in Ed 1119:

(a) "Participating agency" means "participating agency" as defined in 34 CFR 300.611(c).

§300.611 – see Ed 1119.02(a) -- below

Ed 1119.02 Confidentiality Requirements.

(a) Each participating agency shall comply with 34 CFR 300.610 - 300.627**,** relative to confidentiality of information, including compliance with the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. 1232G, (FERPA) and its implementing regulations in 34 CFR Part 99.

§300.610 Confidentiality.
The Secretary takes appropriate action, in accordance with section 444 of GEPA, to ensure the protection of the confidentiality of any personally identifiable data, information, and records collected or maintained by the Secretary and by SEAs and LEAs pursuant to Part B of the Act, and consistent with §§300.611 through 300.627.

§300.611 Definitions.
As used in §§300.611 through 300.625--

(a) Destruction means physical destruction or removal of personal identifiers from information so that the information is no longer personally identifiable.

(b) Education records means the type of records covered under the definition of "education records" in 34 CFR part 99 (the regulations implementing the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. 1232g (FERPA)).

(c) Participating agency means any agency or institution that collects, maintains, or uses personally identifiable information, or from which information is obtained, under Part B of the Act.

§300.612 Notice to parents.

(a) The SEA must give notice that is adequate to fully inform parents about the requirements of §300.123, including--

(1) A description of the extent that the notice is given in the native languages of the various population groups in the State;

(2) A description of the children on whom personally identifiable information is maintained, the types of information sought, the methods the State intends to use in gathering the information (including the sources from whom information is gathered), and the uses to be made of the information;

(3) A summary of the policies and procedures that participating agencies must follow regarding storage, disclosure to third parties, retention, and destruction of personally identifiable information; and

(4) A description of all of the rights of parents and children regarding this information, including the rights under FERPA and implementing regulations in 34 CFR part 99.

(b) Before any major identification, location, or evaluation activity, the notice must be published or announced in newspapers or other media, or both, with circulation adequate to notify parents throughout the State of the activity.

§300.613 Access rights.

(a) Each participating agency must permit parents to inspect and review any education records relating to their children that are collected, maintained, or used by the agency under this part. The agency must comply with a request without unnecessary delay and before any meeting regarding an IEP, or any hearing pursuant to §300.507 or §§300.530 through 300.532, or resolution session pursuant to §300.510, and in no case more than 45 days after the request has been made.

(b) The right to inspect and review education records under this section includes--

(1) The right to a response from the participating agency to reasonable requests for explanations and interpretations of the records;

(2) The right to request that the agency provide copies of the records containing the information if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records; and

(3) The right to have a representative of the parent inspect and review the records.

(c) An agency may presume that the parent has authority to inspect and review records relating to his or her child unless the agency has been advised that the parent does not have the authority under applicable State law governing such matters as guardianship, separation, and divorce.

§300.614 Record of access.

Each participating agency must keep a record of parties obtaining access to education records collected, maintained, or used under Part B of the Act (except access by parents and authorized employees of the participating agency), including the name of the party, the date access was given, and the purpose for which the party is authorized to use the records.

§300.615 Records on more than one child.

If any education record includes information on more than one child, the parents of those children have the right to inspect and review only the information relating to their child or to be informed of that specific information.

§300.616 List of types and locations of information.

Each participating agency must provide parents on request a list of the types and locations of education records collected, maintained, or used by the agency.

§300.617 Fees.

(a) Each participating agency may charge a fee for copies of records that are made for parents under this part if the fee does not effectively prevent the parents from exercising their right to inspect and review those records.

(b) A participating agency may not charge a fee to search for or to retrieve information under this part.

§300.618 Amendment of records at parent's request.

(a) A parent who believes that information in the education records collected, maintained, or used under this part is inaccurate or misleading or violates the privacy or other rights of the child may request the participating agency that maintains the information to amend the information.

(b) The agency must decide whether to amend the information in accordance with the request within a reasonable period of time of receipt of the request.

(c) If the agency decides to refuse to amend the information in accordance with the request, it must inform the parent of the refusal and advise the parent of the right to a hearing under §300.619.

§300.619 Opportunity for a hearing.

The agency must, on request, provide an opportunity for a hearing to challenge information in education records to ensure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child.

§300.620 Result of hearing.

(a) If, as a result of the hearing, the agency decides that the information is inaccurate, misleading or otherwise in violation of the privacy or other rights of the child, it must amend the information accordingly and so inform the parent in writing.

(b) If, as a result of the hearing, the agency decides that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child, it must inform the parent of the parent's right to place in the records the agency maintains on the child a statement commenting on the information or setting forth any reasons for disagreeing with the decision of the agency.

(c) Any explanation placed in the records of the child under this section must--

(1) Be maintained by the agency as part of the records of the child as long as the record or contested portion is maintained by the agency; and

(2) If the records of the child or the contested portion is disclosed by the agency to any party, the explanation must also be disclosed to the party.

§300.621 Hearing procedures.

A hearing held under §300.619 must be conducted according to the procedures in 34 CFR 99.22.

§300.622 Consent.

(a) Parental consent must be obtained before personally identifiable information is disclosed to parties, other than officials of participating agencies in accordance with paragraph (b)(1) of this section, unless the information is contained in education records, and the disclosure is authorized without parental consent under 34 CFR part 99.

(b) (1) Except as provided in paragraphs (b)(2) and (b)(3) of this section, parental consent is not required before personally identifiable information is released to officials of participating agencies for purposes of meeting a requirement of this part.

(2) Parental consent, or the consent of an eligible child who has reached the age of majority under State law, must be obtained before personally identifiable information is released to officials of participating agencies providing or paying for transition services in accordance with §300.321(b)(3).

(3) If a child is enrolled, or is going to enroll in a private school that is not located in the LEA of the parent's residence, parental consent must be obtained before any personally identifiable information about the child is released between officials in the LEA where the private school is located and officials in the LEA of the parent's residence.

§300.623 Safeguards.

(a) Each participating agency must protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages.

(b) One official at each participating agency must assume responsibility for ensuring the confidentiality of any personally identifiable information.

(c) All persons collecting or using personally identifiable information must receive training or instruction regarding the State's policies and procedures under §300.123 and 34 CFR Part 99.

(d) Each participating agency must maintain, for public inspection, a current listing of the names and positions of those employees within the agency who may have access to personally identifiable information.

§300.624 Destruction of information.

(a) The public agency must inform parents when personally identifiable information collected, maintained, or used under this part is no longer needed to provide educational services to the child.

(b) The information must be destroyed at the request of the parents. However, a permanent record of a student's name, address, and phone number, his or her grades, attendance record, classes attended, grade level completed, and year completed may be maintained without time limitation.

§300.625 Children's rights.

(a) The SEA must have in effect policies and procedures regarding the extent to which children are afforded rights of privacy similar to those afforded to parents, taking into consideration the age of the child and type or severity of disability.

(b) Under the regulations for FERPA in 34 CFR 99.5(a), the rights of parents regarding education records are transferred to the student at age 18.

(c) If the rights accorded to parents under Part B of the Act are transferred to a student who reaches the age of majority, consistent with §300.520, the rights regarding educational records in §§300.613 through 300.624 must also be transferred to the student. However, the public agency must provide any notice required under section 615 of the Act to the student and the parents.

§300.626 Enforcement.

The SEA must have in effect the policies and procedures, including sanctions that the State uses, to ensure that its policies and procedures consistent with §§300.611 through 300.625 are followed and that the requirements of the Act and the regulations in this part are met.

§300.627 Department use of personally identifiable information.

If the Department or its authorized representatives collect any personally identifiable information regarding children with disabilities that is not subject to the Privacy Act of 1974, 5 U.S.C. 552a, the Secretary applies the requirements of 5 U.S.C. 552a(b)(1) and (b)(2), 552a(b)(4) through (b)(11); 552a(c) through 552a(e)(3)(B); 552a(e)(3)(D); 552a(e)(5) through (e)(10); 552a(h); 552a(m); and 552a(n); and the regulations implementing those provisions in 34 CFR part 5b.

(b) Each participating agency shall comply with the safeguard provisions of 34 CFR 300.623. The department or the LEA shall provide notice to parents in accordance with 34 CFR 300.612.

§300.610-300.627 – see Ed 1119.02(a) **Page #128**

Ed 1119.03 Children's Rights.

(a) Each public agency shall comply with 34 CFR 300.625, relating to children's rights.

§300.610-300.627 – see Ed 1119.02(a) **Page #128**

(b) The rights of parents under Ed 1100 shall be transferred to the child as provided in Ed 1120.01(b).

Ed 1119.04 Disciplinary Information.

(a) Each public agency shall include in the record of a child with a disability a statement of any current or previous disciplinary action that has been taken against the child. Such statements shall be included in, and transferred with, the disabled child's record to the same extent that the disciplinary information is included in, and transmitted with, the student records of nondisabled children.

(b) Each statement of current or previous disciplinary action and the transmission of the record of a child with a disability who transfers from one school to another shall comply with the requirements of 34 CFR 300.229.

§300.229 Disciplinary information.

(a) The State may require that a public agency include in the records of a child with a disability a statement of any current or previous disciplinary action that has been taken against the child and transmit the statement to the same extent that the disciplinary information is Included in, and transmitted with, the student records of nondisabled children.

(b) The statement may include a description of any behavior engaged in by the child that required disciplinary action, a description of the disciplinary action taken, and any other information that is relevant to the safety of the child and other individuals involved with the child.

(c) If the State adopts such a policy, and the child transfers from one school to another, the transmission of any of the child's records must include both the child's current IEP and any statement of current or previous disciplinary action that has been taken against the child.

Ed 1119.05 Prior Consent for Disclosure Required.

(a) Consent for disclosure of personally identifiable information shall be made in accordance with 34 CFR 300.622.

§300.610-300.627 – see Ed 1119.02(a) **Page #128**

(b) If a parent of a child with a disability or the eligible child refuses to provide consent to release personally identifiable information, the LEA shall initiate a court proceeding to obtain a court order if it still wishes to disclose the information.

Ed 1119.06 Prior Consent for Disclosure Not Required in Certain Situations. Consent shall not be required when the conditions of 34 CFR 300.535 apply.

§300.535 Referral to and action by law enforcement and judicial authorities.

(a) Rule of construction. Nothing in this part prohibits an agency from reporting a crime committed by a child with a disability to appropriate authorities or prevents State law enforcement and judicial authorities from exercising their responsibilities with regard to the application of Federal and State law to crimes committed by a child with a disability.

(b) Transmittal of records.

(1) An agency reporting a crime committed by a child with a disability must ensure that copies of the special education and disciplinary records of the child are transmitted for consideration by the appropriate authorities to whom the agency reports the crime.

(2) An agency reporting a crime under this section may transmit copies of the child's special education and disciplinary records only to the extent that the transmission is permitted by the Family Educational Rights and Privacy Act.

PART Ed 1120
PROCEDURAL SAFEGUARDS

Ed 1120.01 Applicability; Transfer of Rights.

(a) All of the rights and guarantees delineated in Ed 1120 shall apply to parents, adult students, and public agencies, which include LEAs.

(b) The rights of parents under Ed 1100 shall be transferred to children with disabilities who are emancipated minors or who have attained the age of 18 years and have not been adjudicated incompetent consistent with the provisions of 34 CFR 300.320(c) and 34 CFR 300.520.

§300.320 (c) Transfer of rights at age of majority.
Beginning not later than one year before the child reaches the age of majority under State law, the IEP must include a statement that the child has been informed of the child's rights under Part B of the Act, if any, that will transfer to the child on reaching the age of majority under §300.520.

§300.520 Transfer of parental rights at age of majority.

(a) General. A State may provide that, when a child with a disability reaches the age of majority under State law that applies to all children (except for a child with a disability who has been determined to be incompetent under State law)--

(1) (i) The public agency must provide any notice required by this part to both the child and the parents; and

(ii) All rights accorded to parents under Part B of the Act transfer to the child;

(2) All rights accorded to parents under Part B of the Act transfer to children who are incarcerated in an adult or juvenile, State or local correctional institution; and

(3) Whenever a State provides for the transfer of rights under this part pursuant to paragraph (a)(1) or (a)(2) of this section, the agency must notify the child and the parents of the transfer of rights.

(b) Special rule. A State must establish procedures for appointing the parent of a child with a disability, or, if the parent is not available, another appropriate individual, to represent the educational interests of the child throughout the period of the child's eligibility under Part B of the Act if, under State law, a child who has reached the age of majority, but has not been determined to be incompetent, can be determined not to have the ability to provide informed consent with respect to the child's educational program.

(c) A parent, as defined in Ed 1102.04(h), or an adult student may authorize an individual to act on their behalf pursuant to a duly executed power of attorney.

Ed 1120.02 Rights and Responsibilities.

(a) The parent shall have the right to appeal any decision of the LEA regarding the referral, evaluation, determination of eligibility, IEP, provision of FAPE, or placement of a child with a disability using the procedures delineated in Ed 1123.

(b) The parent shall have the right to file a complaint in accordance with Ed 1121.01(a) to report actions taken by an LEA which are contrary to the provisions of state and federal requirements regarding the education of children with disabilities.

(c) Each LEA shall develop written procedures to ensure the effective implementation of the procedural safeguards described in this section. These written procedures shall be included in the LEA request for federal special education funds under Ed 1126.01.

Ed 1120.03 Written Prior Notice.

(a) Parent(s) of a child with a disability shall be notified in writing within a reasonable time, but not less than 14 days, before the LEA proposes to initiate or change, or refuses to initiate or change, the referral, evaluation, determination of eligibility, IEP, or educational placement of the child or the provision of FAPE to the child.

(b) The notice shall comply with 34 CFR 300.503 through 300.504.

§300.503 Prior notice by the public agency; content of notice.

(a) Notice. Written notice that meets the requirements of paragraph (b) of this section must be given to the parents of a child with a disability a reasonable time before the public agency--

(1) Proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child; or

(2) Refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child.

(b) Content of notice. The notice required under paragraph (a) of this section must include--

(1) A description of the action proposed or refused by the agency;

(2) An explanation of why the agency proposes or refuses to take the action;

(3) A description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action;

(4) A statement that the parents of a child with a disability have protection under the procedural safeguards of this part and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained;

(5) Sources for parents to contact to obtain assistance in understanding the provisions of this part;

(6) A description of other options that the IEP Team considered and the reasons why those options were rejected; and

(7) A description of other factors that are relevant to the agency's proposal or refusal.

(c) Notice in understandable language.

(1) The notice required under paragraph (a) of this section must be--

(i) Written in language understandable to the general public; and

(ii) Provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so.

(2) If the native language or other mode of communication of the parent is not a written language, the public agency must take steps to ensure--

(i) That the notice is translated orally or by other means to the parent in his or her native language or other mode of communication;

(ii) That the parent understands the content of the notice; and

(iii) That there is written evidence that the requirements in paragraphs (c)(2)(i) and (ii) of this section have been met.

§300.504 Procedural safeguards notice.

(a) General. A copy of the procedural safeguards available to the parents of a child with a disability must be given to the parents only one time a school year, except that a copy also must be given to the parents--

(1) Upon initial referral or parent request for evaluation;

(2) Upon receipt of the first State complaint under §§300.151 through 300.153 and upon receipt of the first due process complaint under §300.507 in a school year;

(3) In accordance with the discipline procedures in §300.530(h); and

(4) Upon request by a parent.

(b) Internet Web site. A public agency may place a current copy of the procedural safeguards notice on its Internet Web site if a Web site exists.

(c) Contents. The procedural safeguards notice must include a full explanation of all of the procedural safeguards available under §300.148, §§300.151 through 300.153, §300.300, §§300.502 through 300.503, §§300.505 through 300.518, §300.520, §§300.530 through 300.536 and §§300.610 through 300.625 relating to--

(1) Independent educational evaluations;

(2) Prior written notice;

(3) Parental consent;

(4) Access to education records;

(5) Opportunity to present and resolve complaints through the due process complaint and State complaint procedures, including--

(i) The time period in which to file a complaint;

(ii) The opportunity for the agency to resolve the complaint; and

(iii) The difference between the due process complaint and the State complaint procedures, including the jurisdiction of each procedure, what issues may be raised, filing and decisional timelines, and relevant procedures;

(6) The availability of mediation;
(7) The child's placement during the pendency of any due process complaint;
(8) Procedures for students who are subject to placement in an interim alternative educational setting;
(9) Requirements for unilateral placement by parents of children in private schools at public expense;
(10) Hearings on due process complaints, including requirements for disclosure of evaluation results and recommendations;
(11) State-level appeals (if applicable in the State);
(12) Civil actions, including the time period in which to file those actions; and
(13) Attorneys' fees.

(d) Notice in understandable language. The notice required under paragraph (a) of this section must meet the requirements of §300.503(c).

Ed 1120.04 Parental Consent.

(a) An LEA shall obtain informed, written consent from the parent of a child with a disability prior to:
(1) Conducting an initial evaluation;
(2) Initial provision of special education and related services to a child with a disability;
(3) Annual renewal of the IEP and placement of a child with a disability;
(4) Determining or changing the disability classification;
(5) Changing the nature or extent of the special education or special education and related services;
(6) Conducting a reevaluation;
(7) Annual access to public insurance or when changes in services paid by public insurance are made; and
(8) Each time the public agency proposes to access private insurance.

(b) If a parent fails to respond to a request for informed, written consent to any of the actions described in Ed 1120.04(a)(3), (4), (5), or (6), the LEA shall proceed in accordance with Ed 1120.06.

(c) Parents of children with disabilities shall have 14 days after the sending of written prior notice under Ed 1120.03 to sign documents included with the notice to indicate consent, consent with conditions, or denial of consent. An LEA shall comply with 34 CFR 300.300 relative to parental consent.

§300.300 Parental consent.
(a) Parental consent for initial evaluation.
(1) (i) The public agency proposing to conduct an initial evaluation to determine if a child qualifies as a child with a disability under §300.8 must, after providing notice consistent with §§300.503 and 300.504, obtain informed consent, consistent with §300.9, from the parent of the child before conducting the evaluation.
(ii) Parental consent for initial evaluation must not be construed as consent for initial provision of special education and related services.
(iii) The public agency must make reasonable efforts to obtain the informed consent from the parent for an initial evaluation to determine whether the child is a child with a disability.
(2) For initial evaluations only, if the child is a ward of the State and is not residing with the child's parent, the public agency is not required to obtain informed consent from the parent for an initial evaluation to determine whether the child is a child with a disability if--
(i) Despite reasonable efforts to do so, the public agency cannot discover the whereabouts of the parent of the child;

(ii) The rights of the parents of the child have been terminated in accordance with State law; or

(iii) The rights of the parent to make educational decisions have been subrogated by a judge in accordance with State law and consent for an initial evaluation has been given by an individual appointed by the judge to represent the child.

(3) (i) If the parent of a child enrolled in public school or seeking to be enrolled in public school does not provide consent for initial evaluation under paragraph (a)(1) of this section, or the parent fails to respond to a request to provide consent, the public agency may, but is not required to, pursue the initial evaluation of the child by utilizing the procedural safeguards in subpart E of this part (including the mediation procedures under §300.506 or the due process procedures under §§300.507 through 300.516), if appropriate, except to the extent inconsistent with State law relating to such parental consent.

(ii) The public agency does not violate its obligation under §300.111 and §§300.301 through 300.311 if it declines to pursue the evaluation.

(b) Parental consent for services.

(1) A public agency that is responsible for making FAPE available to a child with a disability must obtain informed consent from the parent of the child before the initial provision of special education and related services to the child.

(2) The public agency must make reasonable efforts to obtain informed consent from the parent for the initial provision of special education and related services to the child.

(3) If the parent of a child fails to respond or refuses to consent to services under paragraph (b)(1) of this section, the public agency may not use the procedures in subpart E of this part (including the mediation procedures under §300.506 or the due process procedures under §§300.507 through 300.516) in order to obtain agreement or a ruling that the services may be provided to the child.

(4) If the parent of the child refuses to consent to the initial provision of special education and related services, or the parent fails to respond to a request to provide consent for the initial provision of special education and related services, the public agency--

(i) Will not be considered to be in violation of the requirement to make available FAPE to the child for the failure to provide the child with the special education and related services for which the public agency requests consent; and

(ii) Is not required to convene an IEP Team meeting or develop an IEP under §§300.320 and 300.324 for the child for the special education and related services for which the public agency requests such consent.

(c) Parental consent for reevaluations.

(1) Subject to paragraph (c)(2) of this section, each public agency--

(i) Must obtain informed parental consent, in accordance with §300.300(a)(1), prior to conducting any reevaluation of a child with a disability.

(ii) If the parent refuses to consent to the reevaluation, the public agency may, but is not required to, pursue the reevaluation by using the consent override procedures described in paragraph (a)(3) of this section.

(iii) The public agency does not violate its obligation under §300.111 and §§300.301 through 300.311 if it declines to pursue the evaluation or reevaluation.

(2) The informed parental consent described in paragraph (c)(1) of this section need not be obtained if the public agency can demonstrate that--

(i) It made reasonable efforts to obtain such consent; and

(ii) The child's parent has failed to respond.

(d) Other consent requirements.

(1) Parental consent is not required before—-

(i) Reviewing existing data as part of an evaluation or a reevaluation; or

(ii) Administering a test or other evaluation that is administered to all children unless, before administration of that test or evaluation, consent is required of parents of all children.

(2) In addition to the parental consent requirements described in paragraph (a) of this section, a State may require parental consent for other services and activities under this part if it ensures that each public agency in the State establishes and implements effective procedures to ensure that a parent's refusal to consent does not result in a failure to provide the child with FAPE.

(3) A public agency may not use a parent's refusal to consent to one service or activity under paragraphs (a) or (d)(2) of this section to deny the parent or child any other service, benefit, or activity of the public agency, except as required by this part.

(4) (i) If a parent of a child who is home schooled or placed in a private school by the parents at their own expense does not provide consent for the initial evaluation or the reevaluation, or the parent fails to respond to a request to provide consent, the public agency may not use the consent override procedures (described in paragraphs (a)(3) and (c)(1) of this section); and

(ii) The public agency is not required to consider the child as eligible for services under §§300.132 through 300.144.

(5) To meet the reasonable efforts requirement in paragraphs (a)(1)(iii), (a)(2)(i), (b)(2), and (c)(2)(i) of this section, the public agency must document its attempts to obtain parental consent using the procedures in §300.322(d).

(d) The 14-day time limit shall be extended if the LEA and the parent mutually agree to an extension.

(e) LEAs shall advise the parent in writing of:

(1) The necessity of signing documents which describe actions requiring the parent's consent for the purpose of ensuring the timely provision of appropriate services;

(2) The parent's right to access all of the rights and procedures outlined in this section if the parent disagrees; and

(3) The parent's right to an extension of the 14-day time limit, provided the parent and the LEA mutually agree to such extension.

(f) A copy of any document signed by a parent in which the parent gives consent in writing shall be provided to the parent, and a copy of such document shall also be placed in the child's education records.

Ed 1120.05 Parental Refusal of Consent; Initiation of Due Process Hearing by LEA. **

(a) A parent who refuses informed consent to all or part of any change proposed by the LEA shall indicate the refusal in writing within 14 days after the sending of written prior notice as provided in Ed 1120.03, or within the time frame allowed by a mutually agreed-upon extension as provided in Ed 1120.04(d).

(b) Alternative dispute resolution as provided in Ed 1122 may be requested by either party at any time.

(c) If a parent refuses consent to a proposal included in Ed 1120.04(a)(1), or (a) (6) the LEA shall have the authority to pursue the initial evaluation by the initiation of a due process hearing under Ed 1123.

***** (d) If a parent refuses consent or fails to respond for the initial provision of special education services, the LEA shall not pursue the initial provision of special education services by initiating a due process hearing under Ed 1123**.

(e) If at any time subsequent to the initial provision of special education and related services, the parent of a child revokes consent in writing for the continued provision of special education and related services, pursuant to 34 C.F.R §300.300(b)(4) the LEA:

(1) Shall not continue to provide special education and related services to the child;

(2) Shall provide a prior written notice; in accordance with 34 C.F.R §300.503 before ceasing the provision of special education and related service;

(3) Shall not use the mediation or due process procedures to obtain an agreement or ruling that the services may be provided to the child;

(4) Shall not be considered in violation of the requirement to make FAPE available to the child; and

(5) Shall not be required to convene the IEP Team meeting or develop an IEP for the child;

(f) If a parent refuses consent to any proposal included in Ed 1120.04(a)(3), (4), or (5), and if the proposal is necessary to provide a free appropriate public education to the child, the LEA shall initiate a hearing.

(g) A public agency shall not use a parent's refusal to consent to one service or activity to deny the child services, benefits, or activities that the parent has agreed to.

****Effective June 10, 2009**
*****Effective November 10, 2010**

Ed 1120.06 Parental Failure to Respond; Implementation of Changes by LEA. ***

(a) If a parent fails to respond within 14 days after the sending of written prior notice pursuant to Ed 1120.04(b), the LEA shall implement its proposed changes if the LEA has taken reasonable measures to obtain informed written consent.

(b) Reasonable measures shall include:

(1) Documentation of telephone calls to the parent made or attempted and the results of those calls; and

(2) Copies of correspondence sent to the parent and any responses received, which correspondence shall be sent certified mail, return receipt requested.

(c) The processes provided for in Ed 1123 can be requested by either party at any time subject to the exceptions of Ed 1120.05(d) and (e).

*** **Effective November 10, 2010**

Ed 1120.07 Independent Educational Evaluations. An LEA shall comply with 34 CFR 300.502 and Ed 1107.03, relating to independent educational evaluation.

§300.502 Independent educational evaluation.

(a) General.

(1) The parents of a child with a disability have the right under this part to obtain an independent educational evaluation of the child, subject to paragraphs (b) through (e) of this section.

(2) Each public agency must provide to parents, upon request for an independent educational evaluation, information about where an independent educational evaluation may be obtained, and the agency criteria applicable for independent educational evaluations as set forth in paragraph (e) of this section.

(3) For the purposes of this subpart--

(i) Independent educational evaluation means an evaluation conducted by a qualified examiner who is not employed by the public agency responsible for the education of the child in question; and

(ii) Public expense means that the public agency either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parent, consistent with §300.103.

(b) Parent right to evaluation at public expense.

(1) A parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the public agency, subject to the conditions in paragraphs (b)(2) through (4) of this section.

(2) If a parent requests an independent educational evaluation at public expense, the public agency must, without unnecessary delay, either--

(i) File a due process complaint to request a hearing to show that its evaluation is | appropriate; or

(ii) Ensure that an independent educational evaluation is provided at public expense, unless the agency demonstrates in a hearing pursuant to §§300.507 through 300.513 that the evaluation obtained by the parent did not meet agency criteria.

(3) If the public agency files a due process complaint notice to request a hearing and the final decision is that the agency's evaluation is appropriate, the parent still has the right to an independent educational evaluation, but not at public expense.

(4) If a parent requests an independent educational evaluation, the public agency may ask for the parent's reason why he or she objects to the public evaluation. However, the public agency may not require the parent to provide an explanation and may not unreasonably delay either providing the independent educational evaluation at public expense or filing a due process complaint to request a due process hearing to defend the public evaluation.

(5) A parent is entitled to only one independent educational evaluation at public expense each time the public agency conducts an evaluation with which the parent disagrees.

(c) Parent-initiated evaluations. If the parent obtains an independent educational evaluation at public expense or shares with the public agency an evaluation obtained at private expense, the results of the evaluation--

(1) Must be considered by the public agency, if it meets agency criteria, in any decision made with respect to the provision of FAPE to the child; and

(2) May be presented by any party as evidence at a hearing on a due process complaint under subpart E of this part regarding that child.

(d) Requests for evaluations by hearing officers. If a hearing officer requests an independent educational evaluation as part of a hearing on a due process complaint, the cost of the evaluation must be at public expense.

(e) Agency criteria.

(1) If an independent educational evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria that the public agency uses when it initiates an evaluation, to the extent those criteria are consistent with the parent's right to an independent educational evaluation.

(2) Except for the criteria described in paragraph (e)(1) of this section, a public agency may not impose conditions or timelines related to obtaining an independent educational evaluation at public expense.

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

§300.154 Methods of ensuring services.

(a) Establishing responsibility for services. The Chief Executive Officer of a State or designee of that officer must ensure that an interagency agreement or other mechanism for interagency coordination is in effect between each noneducational public agency described in paragraph (b) of this section and the SEA, in order to ensure that all services described in paragraph (b)(1) of this section that are needed to ensure FAPE are provided, including the provision of these services during the pendency of any dispute under paragraph (a)(3) of this section. The agreement or mechanism must include the following:

(1) An identification of, or a method for defining, the financial responsibility of each agency for providing services described in paragraph (b)(1) of this section to ensure FAPE to children with disabilities. The financial responsibility of each noneducational public agency described in paragraph (b) of this section, including the State Medicaid agency and other public insurers of children with disabilities, must precede the financial responsibility of the LEA (or the State agency responsible for developing the child's IEP).

(2) The conditions, terms, and procedures under which an LEA must be reimbursed by other agencies.

(3) Procedures for resolving interagency disputes (including procedures under which LEAs may initiate proceedings) under the agreement or other mechanism to secure reimbursement from other agencies or otherwise implement the provisions of the agreement or mechanism.

(4) Policies and procedures for agencies to determine and identify the interagency coordination responsibilities of each agency to promote the coordination and timely and appropriate delivery of services described in paragraph (b)(1) of this section.

(b) Obligation of noneducational public agencies.

(1) (i) If any public agency other than an educational agency is otherwise obligated under Federal or State law, or assigned responsibility under State policy or pursuant to paragraph (a) of this section, to provide or pay for any services that are also considered special education or related services (such as, but not limited to, services described in §300.5 relating to assistive technology devices, §300.6 relating to assistive technology services, §300.34 relating to related services, §300.41 relating to supplementary aids and services, and §300.42 relating to transition services) that are necessary for ensuring FAPE to children with disabilities within the State, the public agency must fulfill that obligation or responsibility, either directly or through contract or other arrangement pursuant to paragraph (a) of this section or an agreement pursuant to paragraph (c) of this section.

(ii) A noneducational public agency described in paragraph (b)(1)(i) of this section may not disqualify an eligible service for Medicaid reimbursement because that service is provided in a school context.

(2) If a public agency other than an educational agency fails to provide or pay for the special education and related services described in paragraph (b)(1) of this section, the LEA (or State agency responsible for developing the child's IEP) must provide or pay for these services to the child in a timely manner. The LEA or State agency is authorized to claim reimbursement for the services from the noneducational public agency that failed to provide or pay for these services and that agency must reimburse the LEA or State agency in accordance with the terms of the interagency agreement or other mechanism described in paragraph (a) of this section.

(c) Special rule. The requirements of paragraph (a) of this section may be met through--

(1) State statute or regulation;

(2) Signed agreements between respective agency officials that clearly identify the responsibilities of each agency relating to the provision of services; or

(3) Other appropriate written methods as determined by the Chief Executive Officer of the State or designee of that officer and approved by the Secretary.

(d) Children with disabilities who are covered by public benefits or insurance.
(1) A public agency may use the Medicaid or other public benefits or insurance programs in which a child participates to provide or pay for services required under this part, as permitted under the public benefits or insurance program, except as provided in paragraph (d)(2) of this section.
(2) With regard to services required to provide FAPE to an eligible child under this part, the public agency--
(i) May not require parents to sign up for or enroll in public benefits or insurance programs in order for their child to receive FAPE under Part B of the Act;
(ii) May not require parents to incur an out-of-pocket expense such as the payment of a deductible or co-pay amount incurred in filing a claim for services provided pursuant to this part, but pursuant to paragraph (g)(2) of this section, may pay the cost that the parents otherwise would be required to pay;
(iii) May not use a child's benefits under a public benefits or insurance program if that use would--
(A) Decrease available lifetime coverage or any other insured benefit;
(B) Result in the family paying for services that would otherwise be covered by the public benefits or insurance program and that are required for the child outside of the time the child is in school;
(C) Increase premiums or lead to the discontinuation of benefits or insurance; or
(D) Risk loss of eligibility for home and community-based waivers, based on aggregate health-related expenditures; and
(iv) (A) Must obtain parental consent, consistent with §300.9, each time that access to public benefits or insurance is sought; and
(B) Notify parents that the parents' refusal to allow access to their public benefits or insurance does not relieve the public agency of its responsibility to ensure that all required services are provided at no cost to the parents.

(e) Children with disabilities who are covered by private insurance.
(1) With regard to services required to provide FAPE to an eligible child under this part, a public agency may access the parents' private insurance proceeds only if the parents provide consent consistent with §300.9.
(2) Each time the public agency proposes to access the parents' private insurance proceeds, the agency must--
(i) Obtain parental consent in accordance with paragraph (e)(1) of this section; and
(ii) Inform the parents that their refusal to permit the public agency to access their private insurance does not relieve the public agency of its responsibility to ensure that all required services are provided at no cost to the parents.

(f) Use of Part B funds.
(1) If a public agency is unable to obtain parental consent to use the parents' private insurance, or public benefits or insurance when the parents would incur a cost for a specified service required under this part, to ensure FAPE the public agency may use its Part B funds to pay for the service.
(2) To avoid financial cost to parents who otherwise would consent to use private insurance, or public benefits or insurance if the parents would incur a cost, the public agency may use its Part B funds to pay the cost that the parents otherwise would have to pay to use the parents' benefits or insurance (e.g., the deductible or co-pay amounts).

(g) Proceeds from public benefits or insurance or private insurance.
(1) Proceeds from public benefits or insurance or private insurance will not be treated as program income for purposes of 34 CFR 80.25.
(2) If a public agency spends reimbursements from Federal funds (e.g., Medicaid) for services under this part, those funds will not be considered "State or local" funds for purposes of the maintenance of effort provisions in §§300.163 and 300.203.

(h) Construction. Nothing in this part should be construed to alter the requirements imposed on a State Medicaid agency, or any other agency administering a public benefits or insurance program by Federal statute, regulations or policy under title XIX, or title XXI of the Social Security Act, 42 U.S.C. 1396 through 1396v and 42 U.S.C. 1397aa through 1397jj, or any other public benefits or insurance program.

PART He-M 1301 Medical Assistance Services Provided by Education Agencies
Appendix A

(a) When accessing public insurance the LEA:

(1) Shall obtain informed parental consent annually and when there is a change in services paid for by public insurance;

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

(3) Shall not require parents to sign up for or enroll in public benefits or insurance programs;

(4) Shall not require parents to incur out of pocket expenses, deductible, or co-pay;

(5) Shall not use the child's benefit if it would reduce the available lifetime coverage or other benefit;

(6) Shall not require the family to pay for services that otherwise would be covered by public benefits or insurance programs and are required for the child outside the time the child is in school;

(7) Shall not result in an increase of the parents' premiums or result in the discontinuation of benefits or insurance; or

(8) Shall not risk the loss of eligibility for home or community waivers based on aggregate health-related expenditures.

(b) When accessing private insurance the LEA shall:

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

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

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

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

§80.25 Program Income.

(a) General. Grantees are encouraged to earn income to defray program costs. Program income includes income from fees for services performed, from the use or rental of real or personal property acquired with grant funds, from the sale of commodities or items fabricated under a grant agreement, and from payments of principal and interest on loans made with grant funds. Except as otherwise provided in regulations of the Federal agency, program income does not include interest on grant funds, rebates, credits, discounts, refunds, etc. and interest earned on any of them.

(b) Definition of program income. Program income means gross income received by the grantee or subgrantee directly generated by a grant supported activity, or earned only as a result of the grant agreement during the grant period. "During the grant period" is the time between the effective date of the award and the ending date of the award reflected in the final financial report.

(c) Cost of generating program income. If authorized by Federal regulations or the grant agreement, costs incident to the generation of program income may be deducted from gross income to determine program income.

(d) Governmental revenues. Taxes, special assessments, levies, fines, and other such revenues raised by a grantee or subgrantee are not program income unless the revenues are specifically identified in the grant agreement or Federal agency regulations as program income.
(e) Royalties. Income from royalties and license fees for copyrighted material, patents, and inventions developed by a grantee or subgrantee is program income only if the revenues are specifically identified in the grant agreement or Federal agency regulations as program income. (See §80.34.)
(f) Property. Proceeds from the sale of real property or equipment will be handled in accordance with the requirements of §§80.31 and 80.32.
(g) Use of program income. Program income shall be deducted from outlays which may be both Federal and non-Federal as described below, unless the Federal agency regulations or the grant agreement specify another alternative (or a combination of the alternatives). In specifying alternatives, the Federal agency may distinguish between income earned by the grantee and income earned by subgrantees and between the sources, kinds, or amounts of income. When Federal agencies authorize the alternatives in paragraphs (g) (2) and (3) of this section, program income in excess of any limits stipulated shall also be deducted from outlays.
    (1) Deduction. Ordinarily program income shall be deducted from total allowable costs to determine the net allowable costs. Program income shall be used for current costs unless the Federal agency authorizes otherwise. Program income which the grantee did not anticipate at the time of the award shall be used to reduce the Federal agency and grantee contributions rather than to increase the funds committed to the project.
    (2) Addition. When authorized, program income may be added to the funds committed to the grant agreement by the Federal agency and the grantee. The program income shall be used for the purposes and under the conditions of the grant agreement.
    (3) Cost sharing or matching. When authorized, program income may be used to meet the cost sharing or matching requirement of the grant agreement. The amount of the Federal grant award remains the same.
(h) Income after the award period. There are no Federal requirements governing the disposition of program income earned after the end of the award period (i.e., until the ending date of the final financial report, see paragraph (a) of this section), unless the terms of the agreement or the Federal agency regulations provide otherwise.

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

§300.163 Maintenance of State financial support.
(a) General. A State must not reduce the amount of State financial support for special education and related services for children with disabilities, or otherwise made available because of the excess costs of educating those children, below the amount of that support for the preceding fiscal year.
(b) Reduction of funds for failure to maintain support. The Secretary reduces the allocation of funds under section 611 of the Act for any fiscal year following the fiscal year in which the State fails to comply with the requirement of paragraph (a) of this section by the same amount by which the State fails to meet the requirement.
(c) Waivers for exceptional or uncontrollable circumstances. The Secretary may waive the requirement of paragraph (a) of this section for a State, for one fiscal year at a time, if the Secretary determines that--
    (1) Granting a waiver would be equitable due to exceptional or uncontrollable circumstances such as a natural disaster or a precipitous and unforeseen decline in the financial resources of the State; or
    (2) The State meets the standard in §300.164 for a waiver of the requirement to supplement, and not to supplant, funds received under Part B of the Act.
(d) Subsequent years. If, for any fiscal year, a State fails to meet the requirement of paragraph (a) of this section, including any year for which the State is granted a waiver under paragraph (c) of this section, the financial support required of the State in future years under paragraph (a) of this section shall be the amount that would have been required in the absence of that failure and not the reduced level of the State's support.

§300.203 Maintenance of effort.

(a) General. Except as provided in §§300.204 and 300.205, funds provided to an LEA under Part B of the Act must not be used to reduce the level of expenditures for the education of children with disabilities made by the LEA from local funds below the level of those expenditures for the preceding fiscal year.

(b) Standard.

(1) Except as provided in paragraph (b)(2) of this section, the SEA must determine that an LEA complies with paragraph (a) of this section for purposes of establishing the LEA's eligibility for an award for a fiscal year if the LEA budgets, for the education of children with disabilities, at least the same total or per capita amount from either of the following sources as the LEA spent for that purpose from the same source for the most recent prior year for which information is available:

(i) Local funds only.

(ii) The combination of State and local funds.

(2) An LEA that relies on paragraph (b)(1)(i) of this section for any fiscal year must ensure that the amount of local funds it budgets for the education of children with disabilities in that year is at least the same, either in total or per capita, as the amount it spent for that purpose in the most recent fiscal year for which information is available and the standard in paragraph (b)(1)(i) of this section was used to establish its compliance with this section.

(3) The SEA may not consider any expenditures made from funds provided by the Federal Government for which the SEA is required to account to the Federal Government or for which the LEA is required to account to the Federal Government directly or through the SEA in determining an LEA's compliance with the requirement in paragraph (a) of this section.

PART Ed 1121
COMPLAINT PROCEDURES

Ed 1121.01 Filing a Complaint.

(a) Individuals or organizations may report alleged violations of a public agency which are contrary to the provisions of state and federal requirements regarding the education of children with disabilities by filing a complaint.

(b) A complaint shall be filed according to the provisions of 34 CFR 300.153.

§300.153 Filing a complaint.

(a) An organization or individual may file a signed written complaint under the procedures described in §§300.151 through 300.152.

b) The complaint must include--

(1) A statement that a public agency has violated a requirement of Part B of the Act or of this part;

(2) The facts on which the statement is based;

(3) The signature and contact information for the complainant; and

(4) If alleging violations with respect to a specific child--

(i) The name and address of the residence of the child;

(ii) The name of the school the child is attending;

(iii) In the case of a homeless child or youth (within the meaning of section 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(2)), available contact information for the child, and the name of the school the child is attending;

(iv) A description of the nature of the problem of the child, including facts relating to the problem; and

(v) A proposed resolution of the problem to the extent known and available to the party at the time the complaint is filed.

(c) The complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received in accordance with §300.151.

(d) The party filing the complaint must forward a copy of the complaint to the LEA or public agency serving the child at the same time the party files the complaint with the SEA

(c) Complaints filed pursuant to 34 CFR 300.136(b) relative to private school consultation shall be investigated, reviewed, and resolved using the process detailed in Ed 1121.02 and Ed 1121.03.

***§*300.136(b) Procedure.**
(1) If the private school official wishes to submit a complaint, the official must provide to the SEA the basis of the noncompliance by the LEA with the applicable private school provisions in this part; and
(2) The LEA must forward the appropriate documentation to the SEA.
(3) (i) If the private school official is dissatisfied with the decision of the SEA, the official may submit a complaint to the Secretary by providing the information on noncompliance described in paragraph (b)(1) of this section; and
(ii) The SEA must forward the appropriate documentation to the Secretary.

(d) Complaints shall be directed to:
Commissioner of Education
101 Pleasant Street
Concord, New Hampshire 03301

Ed 1121.02 Investigation of Complaints and Complaint Procedures.

(a) The Commissioner of Education shall assign an employee of the department or, if an employee of the department is not available, an independent investigator to:
(1) Investigate the alleged complaint including conducting an on-site investigation if necessary; and
(2) Issue a written report with recommendations to the Commissioner.

(b) The Commissioner shall issue a written decision that addresses each allegation in the complaint and contains:
(1) Findings of fact and conclusions; and
(2) The reasons for the department's decision.

(c) If the Commissioner finds there has been a failure to provide appropriate services, the Commissioner's order shall address:
(1) How to remediate the denial of those services, including, as appropriate, the awarding of monetary reimbursement or other corrective action appropriate to the needs of the child or the children; and
(2) Appropriate future provision of services for all children with disabilities.

(d) The Commissioner of Education shall mail the written decision and a copy of the independent investigator's report to the public agency named in the complaint, including, if necessary, orders to the agency with specific timelines for the corrective actions if such actions were found necessary in order to attain compliance. If the complaint filed under Ed 1121.01 concerns a specific child, the parent of that child shall receive copies of the decision, the investigator's report, and any orders issued.

(e) Complaint procedures shall be in compliance with 34 CFR 300.151- 153.

§300.151 Adoption of State complaint procedures.
(a) General. Each SEA must adopt written procedures for--
(1) Resolving any complaint, including a complaint filed by an organization or individual from another State, that meets the requirements of §300.153 by--
(i) Providing for the filing of a complaint with the SEA; and
(ii) At the SEA's discretion, providing for the filing of a complaint with a public agency and the right to have the SEA review the public agency's decision on the complaint; and
(2) Widely disseminating to parents and other interested individuals, including parent training and information centers, protection and advocacy agencies, independent living centers, and other appropriate entities, the State procedures under §§300.151 through 300.153.

(b) Remedies for denial of appropriate services. In resolving a complaint in which the SEA has found a failure to provide appropriate services, an SEA, pursuant to its general supervisory authority under Part B of the Act, must address--

(1) The failure to provide appropriate services, including corrective action appropriate to address the needs of the child (such as compensatory services or monetary reimbursement); and

(2) Appropriate future provision of services for all children with disabilities.

§300.152 Minimum State complaint procedures.

(a) Time limit; minimum procedures. Each SEA must include in its complaint procedures a time limit of 60 days after a complaint is filed under §300.153 to--

(1) Carry out an independent on-site investigation, if the SEA determines that an investigation is necessary;

(2) Give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint;

(3) Provide the public agency with the opportunity to respond to the complaint, including, at a minimum--

(i) At the discretion of the public agency, a proposal to resolve the complaint; and

(ii) An opportunity for a parent who has filed a complaint and the public agency to voluntarily engage in mediation consistent with §300.506;

(4) Review all relevant information and make an independent determination as to whether the public agency is violating a requirement of Part B of the Act or of this part; and

(5) Issue a written decision to the complainant that addresses each allegation in the complaint and contains--

(i) Findings of fact and conclusions; and

(ii) The reasons for the SEA's final decision.

(b) Time extension; final decision; implementation. The SEA's procedures described in paragraph (a) of this section also must--

(1) Permit an extension of the time limit under paragraph (a) of this section only if--

(i) Exceptional circumstances exist with respect to a particular complaint; or

(ii) The parent (or individual or organization, if mediation or other alternative means of dispute resolution is available to the individual or organization under State procedures) and the public agency involved agree to extend the time to engage in mediation pursuant to paragraph (a)(3)(ii) of this section, or to engage in other alternative means of dispute resolution, if available in the State; and

(2) Include procedures for effective implementation of the SEA's final decision, if needed, including-

(i) Technical assistance activities;

(ii) Negotiations; and

(iii) Corrective actions to achieve compliance.

(c) Complaints filed under this section and due process hearings under §300.507 and §§300.530 through 300.532.

(1) If a written complaint is received that is also the subject of a due process hearing under §300.507 or §§300.530 through 300.532, or contains multiple issues of which one or more are part of that hearing, the State must set aside any part of the complaint that is being addressed in the due process hearing until the conclusion of the hearing. However, any issue in the complaint that is not a part of the due process action must be resolved using the time limit and procedures described in paragraphs (a) and (b) of this section.

(2) If an issue raised in a complaint filed under this section has previously been decided in a due process hearing involving the same parties--

(i) The due process hearing decision is binding on that issue; and

(ii) The SEA must inform the complainant to that effect.

(3) A complaint alleging a public agency's failure to implement a due process hearing decision must be resolved by the SEA.

§300.153 Filing a complaint.

(a) An organization or individual may file a signed written complaint under the procedures described in §§300.151 through 300.152.

(b) The complaint must include--

(1) A statement that a public agency has violated a requirement of Part B of the Act or of this part;

(2) The facts on which the statement is based;

(3) The signature and contact information for the complainant; and

(4) If alleging violations with respect to a specific child--
(i) The name and address of the residence of the child;
(ii) The name of the school the child is attending;
(iii) In the case of a homeless child or youth (within the meaning of section 725(2) of t the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(2)), available contact information for the child, and the name of the school the child is attending;
(iv) A description of the nature of the problem of the child, including facts relating to the problem; and
(v) A proposed resolution of the problem to the extent known and available to the party at the time the complaint is filed.

(c) The complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received in accordance with §300.151.

(d) The party filing the complaint must forward a copy of the complaint to the LEA or public agency serving the child at the same time the party files the complaint with the SEA.

Ed 1121.03 Resolution of Complaints.

(a) All complaints shall be resolved within 60 days of receipt of the written complaint. The 60-day time limit may be extended consistent with 34 CFR 300.152(b)(1).

For §300.151-300.153,
see – Ed 1121.02 Investigation of Complaints and Complaint Procedures.
Page #145

(b) The sanctions described in Ed 1125 shall be applied as needed to enforce compliance with orders issued to resolve findings and achieve compliance with respect to the provision of FAPE for children with disabilities.

Ed 1121.04 Reconsideration and Appeals.

(a) Any party to the complaint may, within 10 days of receipt of the commissioner's written decision under Ed 1121.02(b), make a written request to the commissioner for reconsideration of the decision.

(b) Within 20 days of the receipt of the written request for reconsideration, the Commissioner shall:
(1) Review the investigator's report;
(2) Review the evidence presented in the investigation;
(3) If necessary, gather additional evidence;
(4) Review the decision; and
(5) Issue a final written decision.

(c) Any party who is aggrieved by the final written decision of the commissioner under Ed 1121.04(b)(5) may appeal in accordance with RSA 541.

Chapter 541: REHEARINGS AND APPEALS IN CERTAIN CASES Appendix A

PART Ed 1122
ALTERNATIVE DISPUTE RESOLUTION

Ed 1122.01 Availability of Alternative Dispute Resolution. Alternative dispute resolution shall be voluntary and available to parents and LEAs in accordance with RSA 186-C:23 and 34 CFR 300.506.

RSA 186-C:23 (including revisions proposed by HB 766) Alternative Dispute Resolution. –

I. In order to encourage informal resolution of differences of opinion regarding the provision of special education, the following methods of alternative dispute resolution shall be available to parents and school districts:
   (a) Facilitated team meeting
   (b) Mediation.
   (c) Neutral conference.

II. To assist parents and schools, this subdivision requires the local education agency to notify the Department of Education in writing that an individualized education program, educational placement, identification, or evaluation of a child has been rejected by the parent, and establishes a 30-day period for discussion beginning on the date such notice is received by the Department of Education. Immediately following notification, the department shall communicate to the parent a description of the alternative dispute resolution process. While the use of these informal resolution procedures is strongly encouraged, it is not mandatory for either party. If this option is chosen by both parties, the department shall, during the 30-day period, schedule and conduct an alternative dispute resolution conference. The conference shall not be used to delay a due process hearing; however, both parties may agree to postpone the hearing pending a resolution.

III. Alternative dispute resolution proceedings shall be confidential and shall not impair the right of the participants to demand a due process hearing. Information, evidence, or the admission of any party shall not be disclosed or used in any subsequent proceeding. Statements made and documents prepared by a party, attorney, or other participant in aid of such proceeding shall be privileged and shall not be disclosed. In addition, the parties shall not introduce into evidence in any subsequent proceeding the fact that there was an alternative dispute resolution proceeding or any other matter concerning the conduct of such proceedings. The authority of the Department of Education in alternative dispute resolution proceedings initiated under this section shall be limited to the provisions of paragraphs I and II.

IV. There shall be no record made of any alternative dispute resolution proceedings.

V. Evidence that would otherwise be admissible in a due process hearing or in a subsequent court hearing shall not be rendered inadmissible as a result of its use in an alternative dispute resolution proceeding.

§300.506 Mediation.

(a) General. Each public agency must ensure that procedures are established and implemented to allow parties to disputes involving any matter under this part, including matters arising prior to the filing of a due process complaint, to resolve disputes through a mediation process.

(b) Requirements. The procedures must meet the following requirements:

(1) The procedures must ensure that the mediation process--
   (i) Is voluntary on the part of the parties;
   (ii) Is not used to deny or delay a parent's right to a hearing on the parent's due process complaint, or to deny any other rights afforded under Part B of the Act; and
   (iii) Is conducted by a qualified and impartial mediator who is trained in effective mediation techniques.

(2) A public agency may establish procedures to offer to parents and schools that choose not to use the mediation process, an opportunity to meet, at a time and location convenient to the parents, with a disinterested party--
   (i) Who is under contract with an appropriate alternative dispute resolution entity, or a parent training and information center or community parent resource center in the State established under section 671 or 672 of the Act; and
   (ii) Who would explain the benefits of, and encourage the use of, the mediation process to the parents.

(3) (i) The State must maintain a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of special education and related services.
(ii) The SEA must select mediators on a random, rotational, or other impartial basis.
(4) The State must bear the cost of the mediation process, including the costs of meetings described in paragraph (b)(2) of this section.
(5) Each session in the mediation process must be scheduled in a timely manner and must be held in a location that is convenient to the parties to the dispute.
(6) If the parties resolve a dispute through the mediation process, the parties must execute a legally binding agreement that sets forth that resolution and that--
(i) States that all discussions that occurred during the mediation process will remain confidential and may not be used as evidence in any subsequent due process hearing orcivil proceeding; and
(ii) Is signed by both the parent and a representative of the agency who has the authority to bind such agency.
(7) A written, signed mediation agreement under this paragraph is enforceable in any State court of competent jurisdiction or in a district court of the United States. Discussions that occur during the mediation process must be confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding of any Federal court or State court of a State receiving assistance under this part.

(c) Impartiality of mediator.
(1) An individual who serves as a mediator under this part--
(i) May not be an employee of the SEA or the LEA that is involved in the education or care of the child; and
(ii) Must not have a personal or professional interest that conflicts with the person's objectivity.
(2) A person who otherwise qualifies as a mediator is not an employee of an LEA or State agency described under §300.228 solely because he or she is paid by the agency to serve as a mediator.

Ed 1122.02 Forms of Alternative Dispute Resolution. Alternative dispute resolution may take the form of mediation as described in RSA 186-C:24 and Ed. 205.03, a neutral conference, as described in RSA 186-C:23-b, or a local school district alternative dispute resolution program as described in RSA 186-C:23-a.

186-C:24 Mediation; Procedure. (including revisions proposed by HB 766) –

I. When disputes arise under this chapter, mediation shall be available through the office of the Commissioner, Department of Education. Mediation shall be provided in accordance with the following:
(a) Attempts to resolve conflicts between the parent or parents and a school district are encouraged.
(b) Either party may be accompanied and advised at mediation by individuals with special knowledge or training with respect to children with disabilities needs. At least 5 days prior to the mediation conference, the mediator shall contact the parties to determine whether either party will be accompanied by an individual with special knowledge or training and shall notify the other party if such an individual will be in attendance.

II. Mediation shall be provided as follows:
(a) A request for mediation shall be made in writing by either party to the commissioner of education. The mediation request shall specify the issue or issues in dispute and the relief sought;
(b) A mediation conference shall be conducted within 30 calendar days after receipt of a written request at which time:
(1) Issues shall be determined;
(2) Options explored; and
(3) Mediation attempts made within New Hampshire law.

(c) The role of the mediator shall be:
(1) To facilitate communication.
(2) To define the issues and explore alternatives.
(3) To remain neutral.
(d) The mediation conference shall be:
(1) Informal; and
(2) Held at a time and place reasonably convenient and mutually agreeable to the parties in the dispute.
(e) If the mediation results in agreement, the conclusions shall be incorporated into a written binding agreement signed by each party. If the mediation does not result in agreement, the mediator shall document the date and the participants at the meeting. No other record of the mediation shall be made. The mediator shall not be called as a witness in any additional proceedings in the specific case that the mediator mediates.
(f) The mediator may terminate the mediation after at least one meeting if in the mediator's judgment the parties are not making progress toward resolving the issue or issues in dispute.
(g) Pending the outcome of mediation, no change shall be made to a pupil's classification, program or placement, unless both parties agree to the change.

III. The Commissioner shall:
(a) Appoint impartial mediators.
(b) Assure that mediators receive appropriate training.
(c) Assign mediators on a regional basis.

Ed 205.03 Mediation Procedure. If mediation is chosen by both parties as an alternative dispute resolution, the following shall apply:
(a) A request for mediation shall be made by either party in writing and shall be accompanied by the final written decision at the local level. The mediation request shall specify the issue or issues in dispute and the relief sought.
(b) Once the mediation procedure is selected, the department shall assign and provide the parties with the name and address of a mediator. The office of legislation and hearings shall establish the time and date for the session. The session shall be conducted at a place determined by the office of legislation and hearings.
(c) A mediation conference shall be conducted within 30 calendar days after receipt of a written request in order to:
(1) Determine issues;
(2) Explore options; and
(3) Suggest an equitable resolution to the dispute.
(d) The role of the mediator shall be:
(1) To facilitate communication;
(2) To define the issues and explore possible resolutions to the dispute;
(3) To remain neutral; and
(4) To insure that parties openly, freely, and candidly discuss the strengths and weaknesses of their positions with the mediator.
(e) Information provided to the mediator in private discussion shall be confidential and shall not be divulged to the opposing side unless specifically authorized.
(f) The mediator shall not have the authority to render a decision or impose a settlement on the parties
(g) The mediation conference shall consist of a session or sessions with the parties and their counsel, if retained, to facilitate a settlement acceptable to the parties.
(h) Not later than 10 days prior to the session each party shall submit to the mediator and all other parties a summary of the significant aspects of their case. Each party shall attach to the summary copies of all documents on which they rely; such summaries shall be not more than 4 pages.
(i) Upon receipt of a party's submission, any party may send to the mediator and all other parties additional information responding to that submission.
(j) At the mediation session, all parties and counsel, if retained, shall have authority to authorize the mediation agreement.

(k) If resolution cannot be achieved on the date assigned, the mediator shall continue the mediation process, either with additional in-person mediation sessions or electronically.

(m) Within 30 days of the initial mediation session, the mediator shall file a report with the office of legislation and hearings advising that the case has been settled, that mediation is ongoing, or that mediation failed to resolve the dispute.

(n) If mediation is ongoing, the mediator shall file a final report within 3 days of the final mediation session.

186-C:23-a Local School District Alternative Dispute Resolution Programs. –

I. Each school district in New Hampshire is encouraged to develop options for alternative dispute resolutions which can be utilized at the local district level. A plan outlining these methods may be submitted to the Department of Education for review. The department shall provide technical assistance at the request of the school districts in developing and implementing these alternative dispute resolution options.

II. Local school districts and parents are encouraged to submit to the Department of Education information relating to methods of alternative dispute resolution which have proven to be effective. Pursuant to RSA 21-N:6, VII, the department shall develop a system whereby such information can be collected, compiled, and disseminated to local school districts.

186-C:23-b Neutral Conference. – (including revisions proposed by HB 766)

I. Neutral conference shall consist of an informal, abbreviated presentation of case facts and issues by the parties to a neutral who is responsible for reviewing the strengths and weaknesses of the case and issuing a recommendation. If the neutral conference is selected, the Department of Education shall provide the parties with resumes of 5 neutrals. The parties shall agree to the selection of one neutral to preside at the conference. Following such selection, the department shall schedule the neutral conference and shall provide the parties with the neutral's name and address, the time, date, and place of the neutral conference, and the date by which the parties shall furnish the neutral with required information and documentation.

II. (a) Not less than 5 days prior to the neutral conference, the parties shall submit to the neutral and exchange a summary of the significant aspects of their case. The parties shall attach to the summary copies of all documents on which they rely. Such summaries shall be not more than 4 pages.

(b) Parties shall not communicate with the neutral concerning their case.

(c) At the neutral conference, the parties shall be present and shall have authority to authorize settlement.

(d) If the neutral deems it necessary, such neutral may request additional written information prior to the conference from either party. At the neutral conference, the neutral may address questions to the parties and shall allow each party no more than 30 minutes to complement their written summaries with a brief oral statement. The conference shall be limited to not more than 2 hours.

(e) (1) At the conclusion of the oral statements, the neutral shall issue an oral opinion to the parties. The opinion shall contain a suggested settlement or disposition and the reasons therefor.

(2) If the neutral conference results in agreement, the conclusions shall be incorporated into a written binding agreement signed by each party.

(3) If the neutral conference does not result in agreement, the neutral shall document only the date and the participants at the meeting. No other record of the neutral conference shall be made. The neutral shall not be called as a witness at any additional proceedings in the specific case in which such neutral participated.

(4) The neutral shall advise the Department of Education that the neutral conference has taken place.

III. (a) (1) The neutral who presides at a conference shall have experience with students with educational disabilities and shall have knowledge of special education law, rules, and regulations.

(2) The neutral shall not have personal knowledge of the student or involvement with the school district.

(3) [Repealed.]

(b) Upon receipt of notice of appointment in a case, the neutral shall disclose any circumstances likely to create a conflict of interest, the appearance of a conflict of interest, a reasonable inference of bias, or to prevent the process from proceeding as scheduled. If the neutral withdraws, has a conflict of interest, or is otherwise unavailable, another shall be appointed by the Commissioner of Education.

(c) The participants and counsel shall recognize that the neutrals shall not be acting as legal advisors or legal representatives.

IV. The Department of Education shall evaluate the effectiveness of the alternative dispute resolution procedures annually and shall report its findings to the State Advisory Council required by the Individuals with Disabilities Education Act.

Ed 1122.03 Alternative Dispute Resolution Results.

(a) The mediator or the neutral shall submit in writing to the office of legislation and hearings in the department the results of the mediation or neutral conference. The written results shall be submitted no later than 2 days after the mediation or neutral conference is completed.

(b) The information provided in Ed 1122.03(a) shall include:

(1) The date or dates on which the alternative dispute process occurred;

(2) Whether or not the process resulted in a signed written agreement;

(3) Whether the signed written agreement resolved all of the issues included in the request for due process or resulted in a signed withdrawal of the request for due process ; and

(4) Whether the parties are continuing to negotiate the dispute privately.

Ed 1122.04 Appointment of a Hearing Officer. If an alternative dispute resolution option is utilized by the parties and resolution is not achieved, the individual selected as a neutral or mediator, shall not be the same individual who is subsequently appointed as a hearing officer to preside at an administrative due process hearing in the same matter pursuant to Ed 1123.24.

PART Ed 1123
ADMINISTRATIVE DUE PROCESS HEARING PROCEDURE

Ed 1123.01 Conducting Administrative Due Process Hearings. Administrative due process hearings shall be conducted in compliance with applicable state and federal laws and regulations, including 34 CFR 300.507-300.518.

§300.507 Filing a due process complaint.

(a) General.

(1) A parent or a public agency may file a due process complaint on any of the matters described in §300.503(a)(1) and (2) (relating to the identification, evaluation or educational placement of a child with a disability, or the provision of FAPE to the child).

(2) The due process complaint must allege a violation that occurred not more than two years before the date the parent or public agency knew or should have known about the alleged action that forms the basis of the due process complaint, or, if the State has an explicit time limitation for filing a due process complaint under this part, in the time allowed by that State law, except that the exceptions to the timeline described in §300.511(f) apply to the timeline in this section.

(b) Information for parents. The public agency must inform the parent of any free or low-cost legal and other relevant services available in the area if--

(1) The parent requests the information; or

(2) The parent or the agency files a due process complaint under this section.

§300.508 Due process complaint.

(a) General.

(1) The public agency must have procedures that require either party, or the attorney representing a party, to provide to the other party a due process complaint (which must remain confidential).

(2) The party filing a due process complaint must forward a copy of the due process complaint to the SEA.

(b) Content of complaint. The due process complaint required in paragraph (a)(1) of this section must include--

(1) The name of the child;

(2) The address of the residence of the child;

(3) The name of the school the child is attending;

(4) In the case of a homeless child or youth (within the meaning of section 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(2)), available contact information for the child, and the name of the school the child is attending;

(5) A description of the nature of the problem of the child relating to the proposed or refused initiation or change, including facts relating to the problem; and

(6) A proposed resolution of the problem to the extent known and available to the party at the time.

(c) Notice required before a hearing on a due process complaint. A party may not have a hearing on a due process complaint until the party, or the attorney representing the party, files a due process complaint that meets the requirements of paragraph (b) of this section.

(d) Sufficiency of complaint.

(1) The due process complaint required by this section must be deemed sufficient unless the party receiving the due process complaint notifies the hearing officer and the other party in writing, within 15 days of receipt of the due process complaint, that the receiving party believes the due process complaint does not meet the requirements in paragraph (b) of this section.

(2) Within five days of receipt of notification under paragraph (d)(1) of this section, the hearing officer must make a determination on the face of the due process complaint of whether the due process complaint meets the requirements of paragraph (b) of this section, and must immediately notify the parties in writing of that determination.

(3) A party may amend its due process complaint only if--

(i) The other party consents in writing to the amendment and is given the opportunity to resolve the due process complaint through a meeting held pursuant to §300.510; or

(ii) The hearing officer grants permission, except that the hearing officer may only grant permission to amend at any time not later than five days before the due process hearing begins.

(4) If a party files an amended due process complaint, the timelines for the resolution meeting in §300.510(a) and the time period to resolve in §300.510(b) begin again with the filing of the amended due process complaint.

(e) LEA response to a due process complaint.

(1) If the LEA has not sent a prior written notice under §300.503 to the parent regarding the subject matter contained in the parent's due process complaint, the LEA must, within 10 days of receiving the due process complaint, send to the parent a response that includes--

(i) An explanation of why the agency proposed or refused to take the action raised in the due process complaint;

(ii) A description of other options that the IEP Team considered and the reasons why those options were rejected;

(iii) A description of each evaluation procedure, assessment, record, or report the agency used as the basis for the proposed or refused action; and

(iv) A description of the other factors that are relevant to the agency's proposed or refused action.

(2) A response by an LEA under paragraph (e)(1) of this section shall not be construed to preclude the LEA from asserting that the parent's due process complaint was insufficient, where appropriate.

(f) Other party response to a due process complaint. Except as provided in paragraph (e) of this section, the party receiving a due process complaint must, within 10 days of receiving the due process complaint, send to the other party a response that specifically addresses the issues raised in the due process complaint.

§300.509 Model forms.

(a) Each SEA must develop model forms to assist parents and public agencies in filing a due process complaint in accordance with §§300.507(a) and 300.508(a) through (c) and to assist parents and other parties in filing a State complaint under §§300.151 through 300.153. However, the SEA or LEA may not require the use of the model forms.

(b) Parents, public agencies, and other parties may use the appropriate model form described in paragraph (a) of this section, or another form or other document, so long as the form or document that is used meets, as appropriate, the content requirements in §300.508(b) for filing a due process complaint, or the requirements in §300.153(b) for filing a State complaint.

§300.510 Resolution process.

(a) Resolution meeting.

(1) Within 15 days of receiving notice of the parent's due process complaint, and prior to the initiation of a due process hearing under §300.511, the LEA must convene a meeting with the parent and the relevant member or members of the IEP Team who have specific knowledge of the facts identified in the due process complaint that--

(i) Includes a representative of the public agency who has decision-making authority on behalf of that agency; and

(ii) May not include an attorney of the LEA unless the parent is accompanied by an attorney.

(2) The purpose of the meeting is for the parent of the child to discuss the due process complaint, and the facts that form the basis of the due process complaint, so that the LEA has the opportunity to resolve the dispute that is the basis for the due process complaint.

(3) The meeting described in paragraph (a)(1) and (2) of this section need not be held if--

(i) The parent and the LEA agree in writing to waive the meeting; or

(ii) The parent and the LEA agree to use the mediation process described in §300.506.

(4) The parent and the LEA determine the relevant members of the IEP Team to attend the meeting.

(b) Resolution period.

(1) If the LEA has not resolved the due process complaint to the satisfaction of the parent within 30 days of the receipt of the due process complaint, the due process hearing may occur.

(2) Except as provided in paragraph (c) of this section, the timeline for issuing a final decision under §300.515 begins at the expiration of this 30-day period.

(3) Except where the parties have jointly agreed to waive the resolution process or to use mediation, notwithstanding paragraphs (b)(1) and (2) of this section, the failure of the parent filing a due process complaint to participate in the resolution meeting will delay the timelines for the resolution process and due process hearing until the meeting is held.

(4) If the LEA is unable to obtain the participation of the parent in the resolution meeting after reasonable efforts have been made (and documented using the procedures in §300.322(d)), the LEA may, at the conclusion of the 30-day period, request that a hearing officer dismiss the parent's due process complaint.

(5) If the LEA fails to hold the resolution meeting specified in paragraph (a) of this section within 15 days of receiving notice of a parent's due process complaint or fails to participate in the resolution meeting, the parent may seek the intervention of a hearing officer to begin the due process hearing timeline.

(c) Adjustments to 30-day resolution period. The 45-day timeline for the due process hearing in §300.515(a) starts the day after one of the following events:

(1) Both parties agree in writing to waive the resolution meeting;

(2) After either the mediation or resolution meeting starts but before the end of the 30-day period, the parties agree in writing that no agreement is possible;

(3) If both parties agree in writing to continue the mediation at the end of the 30-day resolution period, but later, the parent or public agency withdraws from the mediation process.

(d) Written settlement agreement. If a resolution to the dispute is reached at the meeting described in paragraphs (a)(1) and (2) of this section, the parties must execute a legally binding agreement that is--

(1) Signed by both the parent and a representative of the agency who has the authority to bind the agency; and

(2) Enforceable in any State court of competent jurisdiction or in a district court of the United States, or, by the SEA, if the State has other mechanisms or procedures that permit parties to seek enforcement of resolution agreements, pursuant to §300.537.

(e) Agreement review period. If the parties execute an agreement pursuant to paragraph (c) of this section, a party may void the agreement within 3 business days of the agreement's execution.

§300.511 Impartial due process hearing.

(a) General. Whenever a due process complaint is received under §300.507 or §300.532, the parents or the LEA involved in the dispute must have an opportunity for an impartial due process hearing, consistent with the procedures in §§300.507, 300.508, and 300.510.

(b) Agency responsible for conducting the due process hearing. The hearing described in paragraph (a) of this section must be conducted by the SEA or the public agency directly responsible for the education of the child, as determined under State statute, State regulation, or a written policy of the SEA.

(c) Impartial hearing officer.

(1) At a minimum, a hearing officer--

(i) Must not be--

(A) An employee of the SEA or the LEA that is involved in the education or care of the child; or

(B) A person having a personal or professional interest that conflicts with the person's objectivity in the hearing;

(ii) Must possess knowledge of, and the ability to understand, the provisions of the Act, Federal and State regulations pertaining to the Act, and legal interpretations of the Act by Federal and State courts;

(iii) Must possess the knowledge and ability to conduct hearings in accordance with appropriate, standard legal practice; and

(iv) Must possess the knowledge and ability to render and write decisions in accordance with appropriate, standard legal practice.

(2) A person who otherwise qualifies to conduct a hearing under paragraph (c)(1) of this section is not an employee of the agency solely because he or she is paid by the agency to serve as a hearing officer.

(3) Each public agency must keep a list of the persons who serve as hearing officers. The list must include a statement of the qualifications of each of those persons.

(d) Subject matter of due process hearings. The party requesting the due process hearing may not raise issues at the due process hearing that were not raised in the due process complaint filed under §300.508(b), unless the other party agrees otherwise.

(e) Timeline for requesting a hearing. A parent or agency must request an impartial hearing on their due process complaint within two years of the date the parent or agency knew or should have known about the alleged action that forms the basis of the due process complaint, or if the State has an explicit time limitation for requesting such a due process hearing under this part, in the time allowed by that State law.

(f) Exceptions to the timeline. The timeline described in paragraph (e) of this section does not apply to a parent if the parent was prevented from filing a due process complaint due to--

(1) Specific misrepresentations by the LEA that it had resolved the problem forming the basis of the due process complaint; or

(2) The LEA's withholding of information from the parent that was required under this part to be provided to the parent.

§300.512 Hearing rights.

(a) General. Any party to a hearing conducted pursuant to §§300.507 through 300.513 or §§300.530 through 300.534, or an appeal conducted pursuant to §300.514, has the right to--

(1) Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities;

(2) Present evidence and confront, cross-examine, and compel the attendance of witnesses;

(3) Prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five business days before the hearing;

(4) Obtain a written, or, at the option of the parents, electronic, verbatim record of the hearing; and

(5) Obtain written, or, at the option of the parents, electronic findings of fact and decisions.

(b) Additional disclosure of information.

(1) At least five business days prior to a hearing conducted pursuant to §300.511(a), each party must disclose to all other parties all evaluations completed by that date and recommendations based on the offering party's evaluations that the party intends to use at the hearing.

(2) A hearing officer may bar any party that fails to comply with paragraph (b)(1) of this section from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.

(c) Parental rights at hearings. Parents involved in hearings must be given the right to--

(1) Have the child who is the subject of the hearing present;

(2) Open the hearing to the public; and

(3) Have the record of the hearing and the findings of fact and decisions described in paragraphs (a)(4) and (a)(5) of this section provided at no cost to parents.

§300.513 Hearing decisions.

(a) Decision of hearing officer on the provision of FAPE.

(1) Subject to paragraph (a)(2) of this section, a hearing officer's determination of whether a child received FAPE must be based on substantive grounds.

(2) In matters alleging a procedural violation, a hearing officer may find that a child did not receive a FAPE only if the procedural inadequacies--

(i) Impeded the child's right to a FAPE;

(ii) Significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to the parent's child; or

(iii) Caused a deprivation of educational benefit.

(3) Nothing in paragraph (a) of this section shall be construed to preclude a hearing officer from ordering an LEA to comply with procedural requirements under §§300.500 through 300.536.

(b) Construction clause. Nothing in §§300.507 through 300.513 shall be construed to affect the right of a parent to file an appeal of the due process hearing decision with the SEA under §300.514(b), if a State level appeal is available.

(c) Separate request for a due process hearing. Nothing in §§300.500 through 300.536 shall be construed to preclude a parent from filing a separate due process complaint on an issue separate from a due process complaint already filed.

(d) Findings and decision to advisory panel and general public. The public agency, after deleting any personally identifiable information, must--

(1) Transmit the findings and decisions referred to in §300.512(a)(5) to the State advisory panel established under §300.167; and

(2) Make those findings and decisions available to the public.

§300.514 Finality of decision; appeal; impartial review.

(a) Finality of hearing decision. A decision made in a hearing conducted pursuant to §§300.507 through 300.513 or §§300.530 through 300.534 is final, except that any party involved in the hearing may appeal the decision under the provisions of paragraph (b) of this section and §300.516.

(b) Appeal of decisions; impartial review.

(1) If the hearing required by §300.511 is conducted by a public agency other than the SEA, any party aggrieved by the findings and decision in the hearing may appeal to the SEA.

(2) If there is an appeal, the SEA must conduct an impartial review of the findings and decision appealed. The official conducting the review must--

(i) Examine the entire hearing record;

(ii) Ensure that the procedures at the hearing were consistent with the requirements of due process;

(iii) Seek additional evidence if necessary. If a hearing is held to receive additional evidence, the rights in §300.512 apply;

(iv) Afford the parties an opportunity for oral or written argument, or both, at the discretion of the reviewing official;

(v) Make an independent decision on completion of the review; and

(vi) Give a copy of the written, or, at the option of the parents, electronic findings of fact and decisions to the parties.

(c) Findings and decision to advisory panel and general public. The SEA, after deleting any personally identifiable information, must--

(1) Transmit the findings and decisions referred to in paragraph (b)(2)(vi) of this section to the State advisory panel established under §300.167; and

(2) Make those findings and decisions available to the public.

(d) Finality of review decision. The decision made by the reviewing official is final unless a party brings a civil action under §300.516.

§300.515 Timelines and convenience of hearings and reviews.

(a) The public agency must ensure that not later than 45 days after the expiration of the 30 day period under §300.510(b), or the adjusted time periods described in §300.510(c)--

(1) A final decision is reached in the hearing; and

(2) A copy of the decision is mailed to each of the parties.

(b) The SEA must ensure that not later than 30 days after the receipt of a request for a review-

(1) A final decision is reached in the review; and

(2) A copy of the decision is mailed to each of the parties.

(c) A hearing or reviewing officer may grant specific extensions of time beyond the periods set out in paragraphs (a) and (b) of this section at the request of either party.

(d) Each hearing and each review involving oral arguments must be conducted at a time and place that is reasonably convenient to the parents and child involved.

§300.516 Civil action.

(a) General. Any party aggrieved by the findings and decision made under §§300.507 through 300.513 or §§300.530 through 300.534 who does not have the right to an appeal under §300.514(b), and any party aggrieved by the findings and decision under §300.514(b), has the right to bring a civil action with respect to the due process complaint notice requesting a due process hearing under §300.507 or §§300.530 through 300.532. The action may be brought in any State court of competent jurisdiction or in a district court of the United States without regard to the amount in controversy.

(b) Time limitation. The party bringing the action shall have 90 days from the date of the decision of the hearing officer or, if applicable, the decision of the State review official, to file a civil action, or, if the State has an explicit time limitation for bringing civil actions under Part B of the Act, in the time allowed by that State law.

(c) Additional requirements. In any action brought under paragraph (a) of this section, the court--

(1) Receives the records of the administrative proceedings;

(2) Hears additional evidence at the request of a party; and

(3) Basing its decision on the preponderance of the evidence, grants the relief that the court determines to be appropriate.

(d) Jurisdiction of district courts. The district courts of the United States have jurisdiction of actions brought under section 615 of the Act without regard to the amount in controversy.

(e) Rule of construction. Nothing in this part restricts or limits the rights, procedures, and remedies available under the Constitution, the Americans with Disabilities Act of 1990, Title V of the Rehabilitation Act of 1973, or other Federal laws protecting the rights of children with disabilities, except that before the filing of a civil action under these laws seeking relief that is also available under section 615 of the Act, the procedures under §§300.507 and 300.514 must be exhausted to the same extent as would be required had the action been brought under section 615 of the Act.

§300.517 Attorneys' fees.

(a) In general.

(1) In any action or proceeding brought under section 615 of the Act, the court, in its discretion, may award reasonable attorneys' fees as part of the costs to--

(i) The prevailing party who is the parent of a child with a disability;

(ii) To a prevailing party who is an SEA or LEA against the attorney of a parent who files a complaint or subsequent cause of action that is frivolous, unreasonable, or without foundation, or against the attorney of a parent who continued to litigate after the litigation clearly became frivolous, unreasonable, or without foundation; or

(iii) To a prevailing SEA or LEA against the attorney of a parent, or against the parent, if the parent's request for a due process hearing or subsequent cause of action was presented for any improper purpose, such as to harass, to cause unnecessary delay, or to needlessly increase the cost of litigation.

(2) Nothing in this subsection shall be construed to affect section 327 of the District of Columbia Appropriations Act, 2005.

(b) Prohibition on use of funds.

(1) Funds under Part B of the Act may not be used to pay attorneys' fees or costs of a party related to any action or proceeding under section 615 of the Act and subpart E of this part.

(2) Paragraph (b)(1) of this section does not preclude a public agency from using funds under Part B of the Act for conducting an action or proceeding under section 615 of the Act.

(c) Award of fees. A court awards reasonable attorneys' fees under section 615(i)(3) of the Act consistent with the following:

(1) Fees awarded under section 615(i)(3) of the Act must be based on rates prevailing in the community in which the action or proceeding arose for the kind and quality of services furnished. No bonus or multiplier may be used in calculating the fees awarded under this paragraph.

(2) (i) Attorneys' fees may not be awarded and related costs may not be reimbursed in any action or proceeding under section 615 of the Act for services performed subsequent to the time of a written offer of settlement to a parent if--
(A) The offer is made within the time prescribed by Rule 68 of the Federal Rules of Civil Procedure or, in the case of an administrative proceeding, at any time more than 10 days before the proceeding begins;
(B) The offer is not accepted within 10 days; and
(C) The court or administrative hearing officer finds that the relief finally obtained by the parents is not more favorable to the parents than the offer of settlement.
(ii) Attorneys' fees may not be awarded relating to any meeting of the IEP Team unless the meeting is convened as a result of an administrative proceeding or judicial action, or at the discretion of the State, for a mediation described in §300.506.
(iii) A meeting conducted pursuant to §300.510 shall not be considered--
(A) A meeting convened as a result of an administrative hearing or judicial action; or
(B) An administrative hearing or judicial action for purposes of this section.

(3) Notwithstanding paragraph (c)(2) of this section, an award of attorneys' fees and related costs may be made to a parent who is the prevailing party and who was substantially justified in rejecting the settlement offer.

(4) Except as provided in paragraph (c)(5) of this section, the court reduces, accordingly, the amount of the attorneys' fees awarded under section 615 of the Act, if the court finds that--
(i) The parent, or the parent's attorney, during the course of the action or proceeding, unreasonably protracted the final resolution of the controversy;
(ii) The amount of the attorneys' fees otherwise authorized to be awarded unreasonably exceeds the hourly rate prevailing in the community for similar services by attorneys of reasonably comparable skill, reputation, and experience;
(iii) The time spent and legal services furnished were excessive considering the nature of the action or proceeding; or
(iv) The attorney representing the parent did not provide to the LEA the appropriate information in the due process request notice in accordance with §300.508.

(5) The provisions of paragraph (c)(4) of this section do not apply in any action or proceeding if the court finds that the State or local agency unreasonably protracted the final resolution of the action or proceeding or there was a violation of section 615 of the Act.

§300.518 Child's status during proceedings.

(a) Except as provided in §300.533, during the pendency of any administrative or judicial proceeding regarding a due process complaint notice requesting a due process hearing under §300.507, unless the State or local agency and the parents of the child agree otherwise, the child involved in the complaint must remain in his or her current educational placement.

(b) If the complaint involves an application for initial admission to public school, the child, with the consent of the parents, must be placed in the public school until the completion of all the proceedings.

(c) If the complaint involves an application for initial services under this part from a child who is transitioning from Part C of the Act to Part B and is no longer eligible for Part C services because the child has turned three, the public agency is not required to provide the Part C services that the child had been receiving. If the child is found eligible for special education and related services under Part B and the parent consents to the initial provision of special education and related services under §300.300(b), then the public agency must provide those special education and related services that are not in dispute between the parent and the public agency.

(d) If the hearing officer in a due process hearing conducted by the SEA or a State review official in an administrative appeal agrees with the child's parents that a change of placement is appropriate, that placement must be treated as an agreement between the State and the parents for purposes of paragraph (a) of this section.

Ed 1123.02 Sequence of an Administrative Due Process Hearing. The sequence of an administrative due process hearing shall be as follows:

(a) A due process complaint shall be filed with the department and with the other party as detailed in 34 CFR 300.508 and Ed 1123.05.

For §300.507-300.518, see Ed 1123.01
Conducting Administrative Due Process Hearings. **Page #153**

(b) A due process complaint shall be considered sufficient if it meets the requirements in 34 CFR 300.508.

(c) The LEA and the other party receiving a due process complaint shall respond to the complaint as required in 34 CFR 300.508(e) – (f) within 10 days of receiving the due process complaint.

(d) The LEA shall convene a resolution meeting with the parent or parents and with the relevant member or members of the IEP team within 15 days of receiving notice of the parents' due process complaint as required in 34 CFR 300.510. The parties shall also have the option of convening a mediation session.

(e) A prehearing conference governed by Ed 1123.15 shall be held no later than 17 days after the resolution meeting or the date that the parties agree, in writing, that no agreement is possible or the date the parties waive, in writing, the resolution meeting.

(f) An administrative due process hearing under Ed 1123.17 shall be held no later than 14 days after the conclusion of the prehearing conference. Except for good cause shown, an administrative due process hearing shall be limited to 2 days.

(g) A hearing officer's decision under Ed 1123.18 shall be issued no later than 45 days after the 30 day period under 34 CFR 300.510(b) or 34 CFR 300.510(c).

Ed 1123.03 Filing a Due Process Hearing Complaint.

(a) A parent or a public agency may file a due process hearing complaint on any matter described in 34 CFR 300.503(a)(1) – (2).

§300.503 (a) Notice. Written notice that meets the requirements of paragraph (b) of this section must be given to the parents of a child with a disability a reasonable time before the public agency--
(1) Proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child; or
(2) Refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child.

(b) The due process hearing complaint shall allege a violation that occurred not more than 2 years before the parent knew or should have known about the alleged action that forms the basis of the due process complaint as detailed in 34 CFR 300.507(a)(2).

For §300.507-300.518, see Ed 1123.01
Conducting Administrative Due Process Hearings. **Page #153**

(c) The timeline in Ed 1123.03(b) shall be extended if the exceptions described in 34 CFR 300.511(f) apply.

(d) The public agency shall comply with the provisions of 34 CFR 300.507(b) relative to information for parents.

Ed 1123.04 Initiation of Administrative Due Process Hearing by Parents or by LEA.

(a) The office of legislation and hearing shall make available to parents and every LEA a model form that may be used to initiate a written request for an administrative due process hearing.

(b) The notice of the administrative due process hearing complaint shall include:
(1) The name of the child;
(2) The address of the residence of the child;
(3) The name of the school the child is attending;
(4) In the case of a homeless child or youth within the meaning of section 725(2) of the McKinney-Vento Homeless Assistance Act, 42 U.S.C. 11434a(2), available contact information for the child, and the name of the school the child is attending;

Section 725 of the McKinney-Vento Homeless Assistance Act – see Ed 1103.02(f)
Page #32

(5) A description of the nature of the problem of the child relating to the proposed or refused initiation or change described in Ed 1123.03(a), including facts relating to the problem;
(6) A proposed resolution of the problem to the extent known and available to the parents at the time; and
(7) If an expedited review is requested a statement specifying the disciplinary grounds supporting the request.

Ed 1123.05 Required Notice for Filing Administrative Due Process Hearing Complaint. Public agencies and parents shall comply with the requirements detailed in 34 CFR 300.508 in regard to filing an administrative due process hearing complaint.

For §300.507-300.518, see Ed 1123.01
Conducting Administrative Due Process Hearings. **Page #153**

Ed 1123.06 Commencement of Hearing Process.

(a) The administrative due process hearing process shall commence on the date the LEA or the parent or parents receive notice of a due process hearing complaint in accordance with Ed 1123.04, unless the request is withdrawn as provided in Ed 1123.10.

(b) The party filing a due process hearing complaint, within 2 business days of the date that party received the notice of the due process hearing complaint to the other party, shall forward a copy of the due process hearing complaint to the Office of Legislation and Hearings, Department of Education.

Ed 1123.07 Scheduling of Alternative Dispute Resolution, Prehearing Conference, and Due Process Hearing.

(a) At the time of the filing notice of a due process hearing complaint under Ed 1123.04, the parties shall notify the office of legislation and hearings of mutually agreeable dates on which the parties would be available for an optional alternative dispute resolution under Ed 1122, and for a prehearing conference and a hearing.

(b) If the parties chose to engage in alternative dispute resolution the parties shall notify the office of legislation and hearings of mutually agreeable dates on which the parties would be available for a mediation, a neutral conference, or a local school district alternative dispute resolution program.

(c) The scheduling shall allow for the following:
(1) A day for an alternative dispute resolution, if the parties so decide;
(2) A half day for a prehearing conference; and
(3) A minimum of 2 days for a hearing.

Ed 1123.08 Resolution Process. Public agencies shall comply with the requirements in 34 CFR 300.510 relative to the resolution process.

Ed 1123.09 Time of Hearing. The hearing shall be conducted no later than 31 days after:

For §300.507-300.518, see Ed 1123.01
Conducting Administrative Due Process Hearings. **Page #153**

(a) The parties agree in writing to waive the alternative dispute resolution session;

(b) The parties conduct an alternative dispute resolution session and do not reach a settlement agreement;

(c) The parties agree not to use alternative dispute resolution in Ed 1122;

(d) The complaint is not resolved during the 30-day resolution period provided in 34 CFR 300.510 or;

(e) The due process complaint that meets the requirements of 34 CFR 300.507(c)-(f) has been filed by a public agency.

Ed 1123.10 Parental Withdrawal of Due Process Hearing Complaint. A parent may withdraw an administrative due process hearing complaint without prejudice until such time as the parent retains legal counsel.

Ed 1123.11 Local Education Agency Responsibilities when an Administrative Due Process Hearing Complaint is Filed. Each LEA shall:

(a) Inform each parent that the parent has the right to request an administrative due process hearing to appeal the matters described in Ed 1123.03(a).

(b) Provide each parent with the procedural safeguards notice as required by 34 CFR 300.504.

§300.504 – see Ed 1120.03 Written Prior Notice. **Page #134**

(c) Inform the parent or parents as required by 34 CFR 300.507(b) of any low-cost legal services and other relevant services available in the area.

§300.507(b) Information for parents. The public agency must inform the parent of any free or low-cost legal and other relevant services available in the area if--
(1) The parent requests the information; or
(2) The parent or the agency files a due process complaint under this section.

Ed 1123.12 Department Administrative Due Process Hearing Responsibilities.

(a) The office of legislation and hearings shall schedule optional alternative dispute resolution, if requested, a prehearing conference, and an administrative due process hearing as follows:

(1) Immediately upon receipt of mutually agreeable dates from the parties as provided in Ed 1123.07(a); or

(2) If the parties fail to supply mutually agreeable dates, the office of legislation and hearings shall schedule the alternative dispute resolution, if requested, a prehearing conference, and an administrative due process hearing.

(b) The office of legislation and hearings shall appoint a hearing officer, who shall be an attorney or an individual who meets the standards in 34 CFR 300.511(c).

For §300.518, see Ed 1123.01
Conducting Administrative Due Process Hearings Page #153

(c) The office of legislation and hearings shall notify the parties in writing of:

(1) The time and place of the requested optional alternative dispute resolution;

(2) The time and place of the prehearing conference;

(3) The time, place, and nature of the administrative due process hearing;

(4) Legal authority under which the hearing is to be held;

(5) The particular sections of the statutes and rules involved, including a copy of Ed 1123;

(6) A short and plain statement of the issues involved;

(7) The party's right to have an attorney present to represent the party at the party's expense; and

(8) The names of the hearing officer who shall conduct the mediation, and

(9) The name of the hearing officer who shall review the sufficiency statement and conduct the due process hearing.

Ed 1123.13 Voluntary Production of Information.

(a) Each party shall attempt in good faith to make a complete response to requests, as soon as practicable, for the voluntary production of information.

(b) When a dispute between parties arises concerning a request for the voluntary production of information, releases or documents, any party may file a motion to compel the production of the requested information under Ed 1123.14.

Ed 1123.14 Motion to Compel Production of Information.

(a) Any party may file a motion requesting that the hearing officer order the parties to comply with information requests. The motion shall be filed at least 15 days before the date scheduled for the hearing, or as soon as possible after receiving the notice of hearing. Any objection to the motion to compel shall be filed within 5 days of the date receipt of the motion.

(b) The moving party's motion shall:

(1) Set forth in detail those factors which it believes justify its request for information; and

(2) List with specificity the information it is seeking to discover.

(c) When a party has demonstrated that such requests for information are relevant to the issues described in the hearing notice and are necessary for a full and fair presentation of the evidence at the hearing, the hearing officer shall grant the motion to compel.

Ed 1123.15 Prehearing Procedures. A prehearing conference shall be conducted by a hearing officer and governed by the following:

(a) Parties shall be prepared to discuss the issues described in RSA 541-A:31,V(c)

RSA 541-A:31,V(c) Prehearing conferences may include, but are not limited to, consideration of any one or more of the following:

(1) Offers of settlement.
(2) Simplification of the issues.
(3) Stipulations or admissions as to issues of fact or proof, by consent of the parties
(4) Limitations on the number of witnesses.
(5) Changes to standard procedures desired during the hearing, by consent of the parties.
(6) Consolidation of examination of witnesses by the parties.
(7) Any other matters which aid in the disposition of the proceeding.

(b) Parties shall exchange, and provide to the hearing officer, witness lists including a brief description of each witness's testimony, and documentary evidence at least 5 business days before the hearing. Documentary evidence exchanged shall be legibly labeled in the upper right-hand corner with consecutive Arabic numerals as either "School District Exhibit (number)" or "Parent Exhibit (number)", as appropriate. An index, by title, of all exhibits submitted shall also be exchanged. Submission of evidence, evaluations, and recommendations shall comply with 34 CFR 300.512.

For §300.507-300.518, see Ed 1123.01
Conducting Administration Due Process Hearings **Page #153**

(c) In order to limit testimony at the hearing to only those factual matters which remain in dispute between the parties, each party shall submit a statement of facts.

Ed 1123.16 Notification Concerning Agreement. If the parent and the LEA reach an agreement prior to the hearing, the LEA superintendent or the superintendent's designee shall, within 5 business days after the signing of the agreement, provide written notice to the office of legislation and hearings requesting the cancellation of the hearing because an agreement has been reached.

Ed 1123.17 Hearing Procedures. The hearing shall be conducted by a hearing officer, governed by the following:

(a) The party that has initiated the hearing shall present its case first unless the hearing officer determines that the change in the order of presentation would not materially | prejudice any party's right to a full and fair hearing, and:

(1) The hearing would proceed in a more timely manner if the party not initiating the hearing presents their case first; or

(2) The hearing would proceed in a more efficient manner if the party not initiating the hearing presents their case first.

(b) All hearings shall be electronically recorded by the hearing officer or the hearing officer's designee. The hearing officer recording shall be the official record of the hearing unless a party requests and pays for stenographic recording of such hearing. If a party requests and pays for a stenographic recording of the hearing, the stenographic record shall be under the control of the hearing officer and shall be the official record.

(c) Any party to a hearing shall have the right to:

(1) Be accompanied and advised by and advised by an attorney, or by individuals with special knowledge or training with respect to children with disabilities, pursuant to 34 CFR 300.512;

(2) Present evidence and confront, cross-examine, and compel the attendance of witnesses in accordance with RSA 186:16-a and 34 CFR 300.512(a)(2);

RSA 186:16-a Special Education Hearing Officers. – Hearing officers appointed by the Department of Education to hear special education impartial due process appeals shall have the authority to compel the attendance of witnesses in accordance with RSA 516:1 including issuing subpoenas for parents who are representing themselves. Any costs incurred in issuing a subpoena shall be the responsibility of the party requesting the subpoena, unless otherwise determined by the hearing officer. The State Board of Education may adopt rules pursuant to RSA 541-A to implement the provisions of this section, including guidelines to be used for consideration by the hearing officers in determining the responsibility of costs of the subpoena. Nothing in this section shall prohibit any justice from issuing a subpoena for such hearing in accordance with RSA 516:3.

(3) Request that the hearing officer prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least 5 business days before the first day of the scheduled hearing;

(4) Obtain an electronic verbatim record of the hearing, at any point during the hearing or afterwards;

(5) Obtain a decisions of the hearing officer that sets forth the factual findings and legal conclusions; and

(6) Record the hearing.

(d) At the conclusion of the hearing a parent may request one copy of the verbatim record of the hearing and/or one copy of the hearing officer's written decision at no cost. These documents shall be provided in either electronic or written format at the discretion of the parent.

(e) If the parent requests more than one copy the department shall charge the parent as follows:

(1) In the case of a parental request for information detailed in Ed 1123.17(c), the first format requested shall be the one provided at no cost;

(2) Subsequent requests for the same information in an alternative format shall be provided and the department shall charge only its cost for providing the information in the alternative format; and

(3) Parental requests for additional copies shall be provided at the department's cost.

(f) A parent involved in an administrative due process hearing has the right to open the hearing to the public. However, if an administrative due process hearing is open to the public, the hearing officer shall seat the members of the public and position their equipment in such a way that the public and equipment do not interfere with the proceedings.

(g) Each party shall have one day to present its case, unless additional time is necessary for a full, fair disclosure of the facts necessary to arrive at a conclusion.

(h) The hearing officer shall limit the number of additional witnesses to eliminate redundant, cumulative, or irrelevant testimony.

(i) The hearing officer shall limit examination of a witness by either party to avoid redundant, cumulative, or irrelevant testimony.

(j) The hearing officer shall not include in an order or in a final decision any terms or conditions resulting from a settlement agreement or a signed written agreement reached by the parties resulting from alternative dispute resolution.

(k) The department shall enforce the elements of settlement agreements or alternative dispute resolution agreements only if they are adopted as amendments to an IEP and only if the agreement meets the requirements of the IDEA, New Hampshire RSAs, and the implementing regulations of those laws.

Ed 1123.18 Hearing Officer Decision.

(a) Requests for findings of fact shall be limited to those facts necessary to support the decision.

(b) Requests for rulings of law shall be limited to those central issues of law, if any, which are contested or essential.

(c) The hearing officer shall render a decision, including findings of facts and rulings of law consistent with RSA 541-A:35.

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

(d) Any party aggrieved by the decision of the hearing officer may appeal the decision as provided in Ed 1123.20.

(e) The department shall ensure that not later than 45 days after the time for conducting an administrative due process hearing in Ed 1123.09:

(1) A final decision is reached in the hearing consistent with RSA 541-A:35; and

(2) A copy of the decision is sent by certified mail to each of the parties.

Ed 1123.19 Extension of 45-Day Period.

(a) A hearing officer may grant extensions of time beyond the period set out in Ed 1123.18(e), except as to expedited hearings, for specific periods of time at the request of either party if:

(1) The child's educational progress or well-being would not be jeopardized by the delay;

(2) A party would not have adequate time to prepare and present the party's position at the hearing in accordance with the requirements of due process; and

(3) The need for the delay is greater than any financial or other detrimental consequences likely to be suffered by a party in the event of delay.

(b) A hearing shall not be continued by the hearing officer because of the hearing officer's schedule.

Ed 1123.20 Appeal of Decision of Hearing Officer.

(a) Any party aggrieved by a final decision of the hearing officer in a hearing may appeal that decision to a court of competent jurisdiction in accordance with 34 CFR 300.516(a).

(b) Parties aggrieved by the findings and final decision of the hearing officer in a due process hearing may bring a civil action under 34 CFR 300.516(a).

Ed 1123.21 Copies of Decisions to be Available. The office of legislation and hearings shall:

(a) Provide to the state advisory committee a copy of each decision of the hearing officers, including findings of fact, after the deletion of personally identifiable information as set forth in 34 CFR 99.

34 CFR part 99 –
regulations implementing the Family Educational Rights and Privacy Act
Appendix A

(b) Make available to the general public a copy of each decision of the hearing officers, after the deletion of personally identifiable information.

Ed 1123.22 Posthearing Matters.

For §300.507-300.518, see Ed 1123.01
Conducting Administrative Due Process Hearings **Page #153**

(a) The decision of a hearing officer shall be implemented immediately, except as provided in Ed1123.23, unless a delay is agreed to in writing by both parties, or one party files a timely appeal under 34 CFR 3005.16(a) [300.516(a)] to a court of competent | | jurisdiction. Unless an appeal to court is filed by either party, or a delay is agreed to, the hearing officer's decision shall be fully implemented within 30 days.

(b) If neither party appeals the decision of the hearing officer to court, the LEA shall, within 90 days following the date of the decision, provide to the office of legislation and hearings a written report describing the implementation of the hearing officer's decision and provide a copy of this report to the opposing party. If the opposing party does not concur with the LEA's report, he or she shall submit his or her own report to the office of legislation and hearings.

(c) Attorney's fees shall be awarded consistent with 34 CFR 300.517.

Ed 1123.23 Child's Status During Proceedings.

For §300.507-300.518, see Ed 1123.01
Conducting Administrative Due Process Hearings. **Page #153**

(a) Unless both parties agree otherwise, during the pendency of an administrative due process hearing or judicial proceeding, the child involved shall remain in his or her current educational placement, pursuant to 34 CFR 300.518 except for the circumstances detailed in 34 CFR 300.533.

§300.533 Placement during appeals. - When an appeal under §300.532 [actions related to discipline for violating a code of student conduct] has been made by either the parent or the LEA, the child must remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the time period specified in §300.530(c) or (g), whichever occurs first, unless the parent and the SEA or LEA agree otherwise.

(b) If the matter involves an application for initial admission to public school, the student, with the consent of the parent if a minor, or a consenting adult student, shall be placed in the public school until the completion of all the proceedings.

(c) If the decision of a hearing officer in an administrative due process hearing agrees with the child's parents or the adult student that a change of placement is appropriate, that placement shall, pursuant to 34 CFR 300.518(d), be treated as an agreement between the state or LEA and the parents or adult student for the purposes of (a) above.

Ed 1123.24 Hearing Officers.

(a) The office of legislation and hearings, pursuant to 34 CFR 300.511(c), shall keep a list of persons who serve as hearing officers. This list shall include a statement of the qualifications of each of those persons.

(b) Hearing officers appointed by the department under RSA 186-C:16-a shall be attorneys who have been admitted to the practice of law in at least one jurisdiction or other individuals with knowledge of state and federal special education law.

RSA 186-C:16-a Special Education Hearing Officers. – Hearing officers appointed by the Department of Education to hear special education impartial due process appeals shall have the authority to compel the attendance of witnesses in accordance with RSA 516:1 including issuing subpoenas for parents who are representing themselves. Any costs incurred in issuing a subpoena shall be the responsibility of the party requesting the subpoena, unless otherwise determined by the hearing officer. The State Board of Education may adopt rules pursuant to RSA 541-A to implement the provisions of this section, including guidelines to be used for consideration by the hearing officers in determining the responsibility of costs of the subpoena. Nothing in this section shall prohibit any justice from issuing a subpoena for such hearing in accordance with RSA 516:3.

(c) The Commissioner of Education shall enter into contracts with attorneys or other individuals with knowledge of state and federal special education law to serve as impartial due process hearing officers at administrative due process hearings.

(d) Such hearings shall not be conducted:

(1) By a person who is an employee of a state agency or LEA which is involved in the education or care of the child;

(2) By any person having a personal or professional interest which would conflict with his or her objectivity in the impartial due process hearing; or

(3) By any elected member of a local school board.

(e) An attorney or other individuals with knowledge of state and federal special education law under contract to serve as a hearing officer pursuant to 34 CFR 300.511(c) for purposes of this rule shall not be considered to come under (d)(1) above.

For §300.507-300.518, see Ed 1123.01
Conducting Administrative Due Process Hearings. **Page #153**

(f) Hearing officers shall attend training sessions concerning current special education practices and law.

(g) The training sessions required for hearing officers shall include:

(1) Case management programs approved by the Federal District Court for the District of New Hampshire; and

(2) Training for hearing officers provided by the department to include, but not be limited to, developments in state and federal special education law.

(h) If a person shall serve as a hearing officer he/she shall have no clients in a special education matter in New Hampshire.

(i) No person shall serve as a hearing officer who has served as a state or local school board official or a school administrator, including a special education administrator, or as an advocate for students with educational disabilities or their parents, in New | Hampshire or in any other state within the immediately preceding 12-month period.

(j) No attorney or other individuals with knowledge of state and federal special education law shall preside as a hearing officer in any hearing in which there is a party:

(1) Whom the attorney or other individuals with knowledge of state and federal special education law has represented in any matter within the immediately preceding 12 month period; or

(2) By whom the hearing officer has been employed during the immediately preceding 3-year period.

Ed 1123.25 Expedited Due Process Hearings.

(a) An expedited due process hearing procedure shall be available for disciplinary issues in accordance with 34 CFR 300.532(b)–34 CFR 300.533, as provided in 34 CFR 300.532(c).

§300.532(b) Authority of hearing officer.

(1) A hearing officer under §300.511 hears, and makes a determination regarding an appeal under paragraph (a) of this section.

(2) In making the determination under paragraph (b)(1) of this section, the hearing officer may--

(i) Return the child with a disability to the placement from which the child was removed if the hearing officer determines that the removal was a violation of §300.530 or that the child's behavior was a manifestation of the child's disability; or

(ii) Order a change of placement of the child with a disability to an appropriate interim alternative educational setting for not more than 45 school days if the hearing officer determines that maintaining the current placement of the child is substantially likely to result in injury to the child or to others.

(3) The procedures under paragraphs (a) and (b)(1) and (2) of this section may be repeated, if the LEA believes that returning the child to the original placement is substantially likely to result in injury to the child or to others.

(c) Expedited due process hearing.

(1) Whenever a hearing is requested under paragraph (a) of this section, the parents or the LEA involved in the dispute must have an opportunity for an impartial due process hearing consistent with the requirements of §§300.507 and 300.508(a) through (c) and §§300.510 through 300.514, except as provided in paragraph (c)(2) through (4) of this section.

(2) The SEA or LEA is responsible for arranging the expedited due process hearing, which must occur within 20 school days of the date the complaint requesting the hearing is filed. The hearing officer must make a determination within 10 school days after the hearing.

(3) Unless the parents and LEA agree in writing to waive the resolution meeting described in paragraph (c)(3)(i) of this section, or agree to use the mediation process described in §300.506–-

(i) A resolution meeting must occur within seven days of receiving notice of the due process complaint; and

(ii) The due process hearing may proceed unless the matter has been resolved to the satisfaction of both parties within 15 days of the receipt of the due process complaint.

(4) A State may establish different State-imposed procedural rules for expedited due process hearings conducted under this section than it has established for other due process hearings, but, except for the timelines as modified in paragraph (c)(3) of this section, the State must ensure that the requirements in §§300.510 through 300.514 are met.
(5) The decisions on expedited due process hearings are appealable consistent with §300.514.

§300.533 Placement during appeals – When an appeal under §300.532 has been made by either the parent or the LEA, the child must remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the time period specified in §300.530(c) or (g), whichever occurs first, unless the parent and the SEA or LEA agree otherwise.

(b) The expedited procedure shall provide a full due process hearing, but under a restricted time schedule as set out in (c) – (e) below.

(c) Expedited hearings shall:
(1) Not exceed 2 days;
(2) Be held within 20 school days after the request for hearing is filed; and
(3) A decision shall be mailed to the parties within 10 days of the conclusion of the hearing.

(d) The parties shall provide the hearing officer with mutually agreeable dates for the hearing, allowing for 2 days for the hearing, within 5 business days after a party has requested an expedited hearing.

(e) A prehearing conference shall occur at least 2 business days before the hearing at which time the parties shall exchange witness and exhibit lists.

(f) The expedited due process hearing shall meet the requirements of 34 CFR 300.512.

(g) At least 2 business days prior to the hearing, each party shall disclose to all other parties all evaluations completed by that date and evidence to be offered at the hearing, and recommendations based on the offering party's evaluations that the party intends to use at the hearing. Any party to the hearing has the right to request that the hearing officer prohibit the introduction of evidence at the hearing that has not been disclosed to that party at least 2 business days before the hearing.

(h) Hearings shall be held from 9:00 a.m. to 4:00 p.m.

(i) The following procedures shall apply to hearings:
(1) At the completion of any witness's testimony or within 2 business days of the conclusion of the hearing, any party may request an extension if the party demonstrates that additional time is necessary for a full and fair disclosure of the facts upon which the decision will be rendered;
(2) The hearing officer shall respond to a request for extension within 2 business days;
(3) If the hearing officer grants the request for additional time, the other party shall have 2 business days to respond;
(4) The hearing officer shall have 2 business days to make a final ruling on any objection or request made in the other party's response;
(5) Requests for findings of facts shall be limited to those facts necessary to support the decision;
(6) Requests for rulings of law shall be limited to those central issues of law, if any, which are contested;
(7) No additional written memoranda shall be filed unless requested by the hearing officer on a particular issue;

(8) The hearing officer shall waive any of the procedures in this paragraph in a case, but only to the extent necessary to preserve the full and fair nature of the due process hearing;
(9) The hearing officer shall render a decision, including findings of facts and rulings of law;
(10) The hearing officer shall mail a written decision to the parties by certified mail within 10 days of the conclusion of the hearing;
(11) There shall be no exceptions or extensions of the 45-day period; and
(12) Any party aggrieved by the decision of the hearing officer may appeal the decision as provided in Ed 1123.20.

PART Ed 1124
DISCIPLINARY PROCEDURES FOR CHILDREN WITH DISABILITIES

Ed 1124.01 Disciplinary Procedures. Each LEA shall develop disciplinary procedures, including, but not limited to, suspension , expulsion, manifestation determination review, appeals, placement, protection, and referral for children with disabilities, consistent with the provisions of 34 CFR 300.530 -300.536.

§300.530 Authority of school personnel.

(a) Case-by-case determination. School personnel may consider any unique circumstances on a case-by-case basis when determining whether a change in placement, consistent with the other requirements of this section, is appropriate for a child with a disability who violates a code of student conduct.

(b) General.

(1) School personnel under this section may remove a child with a disability who violates a code of student conduct from his or her current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than 10 consecutive school days (to the extent those alternatives are applied to children without disabilities), and for additional removals of not more than 10 consecutive school days in that same school year for separate incidents of misconduct (as long as those removals do not constitute a change of placement under §300.536).

(2) After a child with a disability has been removed from his or her current placement for 10 school days in the same school year, during any subsequent days of removal the public agency must provide services to the extent required under paragraph (d) of this section.

(c) Additional authority. For disciplinary changes in placement that would exceed 10 | consecutive school days, if the behavior that gave rise to the violation of the school code is determined not to be a manifestation of the child's disability pursuant to paragraph (e) of this section, school personnel may apply the relevant disciplinary procedures to children with disabilities in the same manner and for the same duration as the procedures would be applied to children without disabilities, except as provided in paragraph (d) of this section.

(d) Services.

(1) A child with a disability who is removed from the child's current placement pursuant to paragraphs (c), or (g) of this section must--

(i) Continue to receive educational services, as provided in §300.101(a), so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP; and

(ii) Receive, as appropriate, a functional behavioral assessment, and behavioral intervention services and modifications, that are designed to address the behavior violation so that it does not recur.

(2) The services required by paragraph (d)(1), (d)(3), (d)(4), and (d)(5) of this section may be provided in an interim alternative educational setting.

(3) A public agency is only required to provide services during periods of removal to a child with a disability who has been removed from his or her current placement for 10 school days or less in that school year, if it provides services to a child without disabilities who is similarly removed.

(4) After a child with a disability has been removed from his or her current placement for 10 school days in the same school year, if the current removal is for not more than 10 consecutive school days and is not a change of placement under §300.536, school personnel, in consultation with at least one of the child's teachers, determine the extent to which services are needed, as provided in §300.101(a), so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP.

(5) If the removal is a change of placement under §300.536, the child's IEP Team determines appropriate services under paragraph (d)(1) of this section.

(e) Manifestation determination.

(1) Within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the LEA, the parent, and relevant members of the child's IEP Team (as determined by the parent and the LEA) must review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents to determine--

(i) If the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or

(ii) If the conduct in question was the direct result of the LEA's failure to implement the IEP.

(2) The conduct must be determined to be a manifestation of the child's disability if the LEA, the parent, and relevant members of the child's IEP Team determine that a condition in either paragraph (e)(1)(i) or (1)(ii) of this section was met.

(3) If the LEA, the parent, and relevant members of the child's IEP Team determine the condition described in paragraph (e)(1)(ii) of this section was met, the LEA must take immediate steps to remedy those deficiencies.

(f) Determination that behavior was a manifestation. If the LEA, the parent, and relevant members of the IEP Team make the determination that the conduct was a manifestation of the child's disability, the IEP Team must--

(1) Either-–

(i) Conduct a functional behavioral assessment, unless the LEA had conducted a functional behavioral assessment before the behavior that resulted in the change of placement occurred, and implement a behavioral intervention plan for the child; or

(ii) If a behavioral intervention plan already has been developed, review the behavioral intervention plan, and modify it, as necessary, to address the behavior; and

(2) Except as provided in paragraph (g) of this section, return the child to the placement from which the child was removed, unless the parent and the LEA agree to a change of placement as part of the modification of the behavioral intervention plan.

(g) Special circumstances. School personnel may remove a student to an interim alternative educational setting for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the child's disability, if the child--

(1) Carries a weapon to or possesses a weapon at school, on school premises, or to or at a school function under the jurisdiction of an SEA or an LEA;

(2) Knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises, or at a school function under the jurisdiction of an SEA or an LEA; or

(3) Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of an SEA or an LEA.

(h) Notification. On the date on which the decision is made to make a removal that constitutes a change of placement of a child with a disability because of a violation of a code of student conduct, the LEA must notify the parents of that decision, and provide the parents the procedural safeguards notice described in §300.504.

(i) Definitions. For purposes of this section, the following definitions apply:

(1) Controlled substance means a drug or other substance identified under schedules I, II, III, IV, or V in section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)).

(2) Illegal drug means a controlled substance; but does not include a controlled substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under that Act or under any other provision of Federal law.

(3) Serious bodily injury has the meaning given the term "serious bodily injury" under paragraph (3) of subsection (h) of section 1365 of title 18, United States Code.

(4) Weapon has the meaning given the term "dangerous weapon" under paragraph (2) of the first subsection (g) of section 930 of title 18, United States Code.

§300.531 Determination of setting.
The child's IEP Team determines the interim alternative educational setting for services under §300.530(c), (d)(5), and (g).

§300.532 Appeal.
(a) General. The parent of a child with a disability who disagrees with any decision regarding placement under §§300.530 and 300.531, or the manifestation determination under §300.530(e), or an LEA that believes that maintaining the current placement of the child is substantially likely to result in injury to the child or others, may appeal the decision by requesting a hearing. The hearing is requested by filing a complaint pursuant to §§300.507 and 300.508(a) and (b).
(b) Authority of hearing officer.
(1) A hearing officer under §300.511 hears, and makes a determination regarding an appeal under paragraph (a) of this section.
(2) In making the determination under paragraph (b)(1) of this section, the hearing officer may-
(i) Return the child with a disability to the placement from which the child was removed if the hearing officer determines that the removal was a violation of §300.530 or that the child's behavior was a manifestation of the child's disability; or
(ii) Order a change of placement of the child with a disability to an appropriate interim alternative educational setting for not more than 45 school days if the hearing officer determines that maintaining the current placement of the child is substantially likely to result in injury to the child or to others.
(3) The procedures under paragraphs (a) and (b)(1) and (2) of this section may be repeated, if the LEA believes that returning the child to the original placement is substantially likely to result in injury to the child or to others.
(c) Expedited due process hearing.
(1) Whenever a hearing is requested under paragraph (a) of this section, the parents or the LEA involved in the dispute must have an opportunity for an impartial due process hearing consistent with the requirements of §§300.507 and 300.508(a) through (c) and §§300.510 through 300.514, except as provided in paragraph (c)(2) through (4) of this section.
(2) The SEA or LEA is responsible for arranging the expedited due process hearing, which must occur within 20 school days of the date the complaint requesting the hearing is filed. The hearing officer must make a determination within 10 school days after the hearing.
(3) Unless the parents and LEA agree in writing to waive the resolution meeting described in paragraph (c)(3)(i) of this section, or agree to use the mediation process described in §300.506–-
(i) A resolution meeting must occur within seven days of receiving notice of the due process complaint; and
(ii) The due process hearing may proceed unless the matter has been resolved to the satisfaction of both parties within 15 days of the receipt of the due process complaint.
(4) A State may establish different State-imposed procedural rules for expedited due process hearings conducted under this section than it has established for other due process hearings, but, except for the timelines as modified in paragraph (c)(3) of this section, the State must ensure that the requirements in §§300.510 through 300.514 are met.
(5) The decisions on expedited due process hearings are appealable consistent with §300.514.

§300.533 Placement during appeals.
When an appeal under §300.532 has been made by either the parent or the LEA, the child must remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the time period specified in §300.530(c) or (g), whichever occurs first, unless the parent and the SEA or LEA agree otherwise.

§300.534 Protections for children not determined eligible for special education and related services.
(a) General. A child who has not been determined to be eligible for special education and related services under this part and who has engaged in behavior that violated a code of student conduct, may assert any of the protections provided for in this part if the public agency had knowledge (as determined in accordance with paragraph (b) of this section) that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred.

(b) Basis of knowledge. A public agency must be deemed to have knowledge that a child is a child with a disability if before the behavior that precipitated the disciplinary action occurred--
  (1) The parent of the child expressed concern in writing to supervisory or administrative personnel of the appropriate educational agency, or a teacher of the child, that the child is in need of special education and related services;
  (2) The parent of the child requested an evaluation of the child pursuant to §§300.300 through 300.311; or
  (3) The teacher of the child, or other personnel of the LEA, expressed specific concerns about a pattern of behavior demonstrated by the child directly to the director of special education of the agency or to other supervisory personnel of the agency.

(c) Exception. A public agency would not be deemed to have knowledge under paragraph (b) of this section if--
  (1) The parent of the child--
    (i) Has not allowed an evaluation of the child pursuant to §§300.300 through 300.311; or
    (ii) Has refused services under this part; or
  (2) The child has been evaluated in accordance with §§300.300 through 300.311 and determined to not be a child with a disability under this part.

(d) Conditions that apply if no basis of knowledge.
  (1) If a public agency does not have knowledge that a child is a child with a disability (in accordance with paragraphs (b) and (c) of this section) prior to taking disciplinary measures against the child, the child may be subjected to the disciplinary measures applied to children without disabilities who engage in comparable behaviors consistent with paragraph (d)(2) of this section.
  (2) (i) If a request is made for an evaluation of a child during the time period in which the child is subjected to disciplinary measures under §300.530, the evaluation must be conducted in an expedited manner.
    (ii) Until the evaluation is completed, the child remains in the educational placement determined by school authorities, which can include suspension or expulsion without educational services**.**
    (iii) If the child is determined to be a child with a disability, taking into consideration information from the evaluation conducted by the agency and information provided by the parents, the agency must provide special education and related services in accordance with this part, including the requirements of §§300.530 through 300.536 and section 612(a)(1)(A) of the Act.

§300.535 Referral to and action by law enforcement and judicial authorities.

(a) Rule of construction. Nothing in this part prohibits an agency from reporting a crime committed by a child with a disability to appropriate authorities or prevents State law enforcement and judicial authorities from exercising their responsibilities with regard to the application of Federal and State law to crimes committed by a child with a disability.

(b) Transmittal of records.
  (1) An agency reporting a crime committed by a child with a disability must ensure that copies of the special education and disciplinary records of the child are transmitted for consideration by the appropriate authorities to whom the agency reports the crime.
  (2) An agency reporting a crime under this section may transmit copies of the child's special education and disciplinary records only to the extent that the transmission is permitted by the Family Educational Rights and Privacy Act.

§300.536 Change of placement because of disciplinary removals.

(a) For purposes of removals of a child with a disability from the child's current educational placement under §§300.530 through 300.535, a change of placement occurs if--
  (1) The removal is for more than 10 consecutive school days; or
  (2) The child has been subjected to a series of removals that constitute a pattern--
    (i) Because the series of removals total more than 10 school days in a school year;
    (ii) Because the child's behavior is substantially similar to the child's behavior in previous incidents that resulted in the series of removals; and
    (iii) Because of such additional factors as the length of each removal, the total amount of time the child has been removed, and the proximity of the removals to one another.

(b) (1) The public agency determines on a case-by-case basis whether a pattern of removals constitutes a change of placement.
(2) This determination is subject to review through due process and judicial proceedings.

Ed 1124.02 Services for Children with Disabilities Removed from Current Placement. When a child with disabilities has been removed from the child's current placement for more than 10 days in a school year, in addition to providing services necessary to enable the child to continue to participate in the general education curriculum, as provided in 300.530(d)(1)(i), the LEA shall provide service necessary to provide the child with a disability an opportunity to progress in the general education curriculum consistent with the child's IEP.

§300.530(d) Services.
(1) A child with a disability who is removed from the child's current placement pursuant to paragraphs (c), or (g) of this section must--
(i) Continue to receive educational services, as provided in §300.101(a), so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP;

PART Ed 1125
STATE DEPARTMENT OF EDUCATION ENFORCEMENT

Ed 1125.01 Department Enforcement of These Regulations.

(a) The application of these enforcement procedures shall occur subsequent to the issuance of orders resulting from a complaint investigated in accordance with Ed 1121, a due process hearing conducted in accordance with Ed 1123, or a monitoring activity conducted in accordance with Ed 1126.

(b) In the event an LEA, other public agency, private provider of special education or other non-LEA program fails or refuses to comply with the regulations specified in Ed 1100, the department shall invoke the enforcement procedures described in Ed 1125.02 below.

Ed 1125.02 Enforcement Procedures.

(a) The Commissioner of Education or the Commissioner's designee shall appoint personnel from the Bureau of Special Education to monitor the execution of the orders of compliance issued to an LEA, other public agency, private provider of special education or other non-LEA program as a result of a complaint investigated in accordance with Ed 1121, a due process hearing conducted in accordance with Ed 1123, or a monitoring activity conducted in accordance with Ed 1126.

(b) At the conclusion of the time limit specified for the LEA, other public agency, private provider of special education or other non-LEA program to have completed the corrective action specified in the orders of compliance, the Administrator of the Bureau of Special Education of the department shall forward to the Commissioner of Education a written report indicating whether the issues have been resolved, and if not the extent to which the agency had taken corrective action to achieve compliance with the IDEA and Ed 1100.

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

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

(e) Enforcement action shall include but not be limited to:
(1) Corrective action plan development, implementation, and monitoring;
(2) Voluntary and mandatory technical assistance as determined by the department;
(3) Mandatory, targeted professional development as determined by the department;
(4) Directives ordering specific corrective or remedial actions, including but not limited to withdrawing program approval, pending an appeal;
(5) Targeting or redirecting the use of federal special education funds in the areas of concern;
(6) Formal referral to the bureau of credentialing for review in accordance with Ed. 511.02;

Ed 511.02 Grounds for Suspension or Revocation of Educator's Certification.

(a) A certificate for an educator or an endorsement shall be suspended or revoked based on the following grounds:

(1) Incompetence;

(2) Conviction of a felony:

a. That would potentially place a student or students in physical or emotional jeopardy;

b. When the board determines that either the nature or circumstances of the crime, or the moral turpitude associated with the crime render the individual unfit for continued certification; and

c. When the underlying behavior or circumstances of the offense render the educator unfit for continued certification based on the educator's inability to perform assigned duties;

(3) Misconduct or unprofessional conduct, on or off duty:

a. That would potentially place a student or students in physical or emotional jeopardy;

b. Where the nature or circumstances of the conduct so detract from the educator's professional standing as to render the educator unfit for continued certification based on the educator's inability to perform assigned duties; and

c. Where there is a nexus between the off duty misconduct or unprofessional conduct of the educator and the educator's ability to carry out assigned duties;

(4) Falsification or misrepresentation of information provided in connection with an application for certification or endorsement or renewal or reinstatement discovered subsequent to issuance of the certificate;

(5) If the individual is a superintendent, assignment of duties by the superintendent to an individual who does not hold the appropriate certificate or endorsement for the duties assigned, except as otherwise provided in RSA 189:39-b;

(6) If the individual is a principal, to report to the superintendent any allegations or conduct by an educator for which there is credible evidence of a potential professional conduct violation that might constitute ground for suspension or revocation of an educator's certificate or endorsement; or

(7) If the individual is a superintendent, failure to report to the commissioner any allegations or conduct by an educator for which there is credible evidence of a professional conduct violation that might constitute grounds for suspension or revocation of an educator's certificate or endorsement.

(7) Order the cessation of operations of discrete programs operated by a school district, collaborative program, private provider of special education, public academy, or state institution for the benefit of children with disabilities;

(8) Require redirection of federal funds to remediate noncompliance of more than one year;

(9) Making no further payments of state or federal funds to the LEA or other public agency until the department determines that there is no longer any failure to comply with the orders;

(10) Order, in accordance with a final state audit resolution determination, the repayment of misspent or misapplied state and/or federal funds;

(11) In the case of an LEA or other public agency, refer the matter to the department of justice for further action; and

(12) In the case of a private provider of special education or other non-LEA program, order all school districts with students placed in the private provider of special education to relocate the students for whom each district is responsible to other programs or facilities that are in compliance with the IDEA and Ed 1100.

(f) Reviews of programs to ensure compliance which shall include:
(1) Desk audit;
(2) Scheduled on-site reviews; and
(3) Unannounced on-site reviews.

(g) The frequency of the program reviews shall take place consistent with the provisions of (d)-(f).

Ed 1125.03 Opportunity for a Hearing.

(a) The LEA, other public agency, private provider of special education or other non-LEA program may request a hearing before the State Board of Education if it believes that the orders of compliance are inaccurate, invalid, not based on fact, or any combination of the foregoing.

(b) An LEA, other public agency, private provider of special education or other non-LEA program requesting a hearing shall do so within 14 days after the date of the Commissioner of Education's written notification of the enforcement action that will be taken.

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

Ed 1125.04 Financial Audits. The department's office of business management, within available resources, shall audit all state and federal special education monies allocated to any public or private agency by the department.

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

Ed 1126.01 Local Education Agency Request for Special Education Funds.

(a) Each LEA shall file a written request for federal special education funds with the department in order to qualify for assistance under the IDEA as provided in 34 CFR 300.200. LEAs shall review their requests annually and make revisions as necessary. The LEA's request and any revisions shall be submitted to the department for approval. Requests that are in compliance with the requirements and criteria established in 34 CFR 300.201 through 34 CFR 300.212 and Ed 1126.01 shall be approved. LEAs not having an approved request in effect shall not be eligible to receive state or federal special education funds.

§300.200 Condition of assistance.
An LEA is eligible for assistance under Part B of the Act for a fiscal year if the agency submits a plan that provides assurances to the SEA that the LEA meets each of the conditions in §§300.201 through 300.213.

§300.201 Consistency with State policies.
The LEA, in providing for the education of children with disabilities within its jurisdiction, must have in effect policies, procedures, and programs that are consistent with the State policies and procedures established under §§300.101 through 300.163, and §§300.165 through 300.174.

§300.202 Use of amounts.
(a) General. Amounts provided to the LEA under Part B of the Act--
(1) Must be expended in accordance with the applicable provisions of this part;
(2) Must be used only to pay the excess costs of providing special education and related services to children with disabilities, consistent with paragraph (b) of this section; and
(3) Must be used to supplement State, local, and other Federal funds and not to supplant those funds.
(b) Excess cost requirement.
(1) General.
(i) The excess cost requirement prevents an LEA from using funds provided under Part B of the Act to pay for all of the costs directly attributable to the education of a child with a disability, subject to paragraph (b)(1)(ii) of this section.
(ii) The excess cost requirement does not prevent an LEA from using Part B funds to pay for all of the costs directly attributable to the education of a child with a disability in any of the ages 3, 4, 5, 18, 19, 20, or 21, if no local or State funds are available for nondisabled children of these ages. However, the LEA must comply with the nonsupplanting and other requirements of this part in providing the education and services for these children.
(2) (i) An LEA meets the excess cost requirement if it has spent at least a minimum average amount for the education of its children with disabilities before funds under Part B of the Act are used.
(ii) The amount described in paragraph (b)(2)(i) of this section is determined in accordance with the definition of excess costs in §300.16. That amount may not include capital outlay or debt service.
(3) If two or more LEAs jointly establish eligibility in accordance with §300.223, the minimum average amount is the average of the combined minimum average amounts determined in accordance with the definition of excess costs in §300.16 in those agencies for elementary or secondary school students, as the case may be.

§300.203 Maintenance of effort.

(a) General. Except as provided in §§300.204 and 300.205, funds provided to an LEA under Part B of the Act must not be used to reduce the level of expenditures for the education of children with disabilities made by the LEA from local funds below the level of those expenditures for the preceding fiscal year.

(b) Standard.

(1) Except as provided in paragraph (b)(2) of this section, the SEA must determine that an LEA complies with paragraph (a) of this section for purposes of establishing the LEA's eligibility for an award for a fiscal year if the LEA budgets, for the education of children with disabilities, at least the same total or per capita amount from either of the following sources as the LEA spent for that purpose from the same source for the most recent prior year for which information is available:

(i) Local funds only.

(ii) The combination of State and local funds.

(2) An LEA that relies on paragraph (b)(1)(i) of this section for any fiscal year must ensure that the amount of local funds it budgets for the education of children with disabilities in that year is at least the same, either in total or per capita, as the amount it spent for that purpose in the most recent fiscal year for which information is available and the standard in paragraph (b)(1)(i) of this section was used to establish its compliance with this section.

(3) The SEA may not consider any expenditures made from funds provided by the Federal Government for which the SEA is required to account to the Federal Government or for which the LEA is required to account to the Federal Government directly or through the SEA in determining an LEA's compliance with the requirement in paragraph (a) of this section.

§300.204 Exception to maintenance of effort.

Notwithstanding the restriction in §300.203(a), an LEA may reduce the level of expenditures by the LEA under Part B of the Act below the level of those expenditures for the preceding fiscal year if the reduction is attributable to any of the following:

(a) The voluntary departure, by retirement or otherwise, or departure for just cause, of special education or related services personnel.

(b) A decrease in the enrollment of children with disabilities.

(c) The termination of the obligation of the agency, consistent with this part, to provide a program of special education to a particular child with a disability that is an exceptionally costly program, as determined by the SEA, because the child--

(1) Has left the jurisdiction of the agency;

(2) Has reached the age at which the obligation of the agency to provide FAPE to the child has terminated; or

(3) No longer needs the program of special education.

(d) The termination of costly expenditures for long-term purchases, such as the acquisition of equipment or the construction of school facilities.

(e) The assumption of cost by the high cost fund operated by the SEA under §300.704(c).\

§300.205 Adjustment to local fiscal efforts in certain fiscal years.

(a) Amounts in excess. Notwithstanding §300.202(a)(2) and (b) and §300.203(a), and except as provided in paragraph (d) of this section and §300.230(e)(2), for any fiscal year for which the allocation received by an LEA under §300.705 exceeds the amount the LEA received for the previous fiscal year, the LEA may reduce the level of expenditures otherwise required by §300.203(a) by not more than 50 percent of the amount of that excess

(b) Use of amounts to carry out activities under ESEA. If an LEA exercises the authority under paragraph (a) of this section, the LEA must use an amount of local funds equal to the reduction in expenditures under paragraph (a) of this section to carry out activities that could be supported with funds under the ESEA regardless of whether the LEA is using funds under the ESEA for those activities.

(c) State prohibition. Notwithstanding paragraph (a) of this section, if an SEA determines that an LEA is unable to establish and maintain programs of FAPE that meet the requirements of section 613(a) of the Act and this part or the SEA has taken action against the LEA under section 616 of the Act and subpart F of these regulations, the SEA must prohibit the LEA from reducing the level of expenditures under paragraph (a) of this section for that fiscal year.

(d) Special rule. The amount of funds expended by an LEA for early intervening services under §300.226 shall count toward the maximum amount of expenditures that the LEA may reduce under paragraph (a) of this section.

§300.206 Schoolwide programs under title I of the ESEA.

(a) General. Notwithstanding the provisions of §§300.202 and 300.203 or any other provision of Part B of the Act, an LEA may use funds received under Part B of the Act for any fiscal year to carry out a schoolwide program under section 1114 of the ESEA, except that the amount used in any schoolwide program may not exceed--

(1) (i) The amount received by the LEA under Part B of the Act for that fiscal year; divided by

(ii) The number of children with disabilities in the jurisdiction of the LEA; and multiplied by

(2) The number of children with disabilities participating in the schoolwide program.

(b) Funding conditions. The funds described in paragraph (a) of this section are subject to the following conditions:

(1) The funds must be considered as Federal Part B funds for purposes of the calculations required by §300.202(a)(2) and (a)(3).

(2) The funds may be used without regard to the requirements of §300.202(a)(1).

(c) Meeting other Part B requirements. Except as provided in paragraph (b) of this section, all other requirements of Part B of the Act must be met by an LEA using Part B funds in accordance with paragraph (a) of this section, including ensuring that children with disabilities in schoolwide program schools--

(1) Receive services in accordance with a properly developed IEP; and

(2) Are afforded all of the rights and services guaranteed to children with disabilities under the Act.

§300.207 Personnel development.

The LEA must ensure that all personnel necessary to carry out Part B of the Act are appropriately and adequately prepared, subject to the requirements of §300.156 (related to personnel qualifications) and section 2122 of the ESEA.

§300.208 Permissive use of funds.

(a) Uses. Notwithstanding §§300.202, 300.203(a), and 300.162(b), funds provided to an LEA under Part B of the Act may be used for the following activities:

(1) Services and aids that also benefit nondisabled children. For the costs of special education and related services, and supplementary aids and services, provided in a regular class or other education-related setting to a child with a disability in accordance with the IEP of the child, even if one or more nondisabled children benefit from these services.

(2) Early intervening services. To develop and implement coordinated, early intervening educational services in accordance with §300.226.

(3) High cost special education and related services. To establish and implement cost or risk sharing funds, consortia, or cooperatives for the LEA itself, or for LEAs working in a consortium of which the LEA is a part, to pay for high cost special education and related services.

(b) Administrative case management. An LEA may use funds received under Part B of the Act to purchase appropriate technology for recordkeeping, data collection, and related case management activities of teachers and related services personnel providing services described in the IEP of children with disabilities, that is needed for the implementation of those case management activities.

§300.209 Treatment of charter schools and their students.

(a) Rights of children with disabilities. Children with disabilities who attend public charter schools and their parents retain all rights under this part.

(b) Charter schools that are public schools of the LEA.
(1) In carrying out Part B of the Act and these regulations with respect to charter schools that are public schools of the LEA, the LEA must-–
(i) Serve children with disabilities attending those charter schools in the same manner as the LEA serves children with disabilities in its other schools, including providing supplementary and related services on site at the charter school to the same extent to which the LEA has a policy or practice of providing such services on the site to its other public schools; and
(ii) Provide funds under Part B of the Act to those charter schools--
(A) On the same basis as the LEA provides funds to the LEA's other public schools, including proportional distribution based on relative enrollment of children with disabilities; and
(B) At the same time as the LEA distributes other Federal funds to the LEA's other public schools, consistent with the State's charter school law.
(2) If the public charter school is a school of an LEA that receives funding under §300.705 and includes other public schools--
(i) The LEA is responsible for ensuring that the requirements of this part are met, unless State law assigns that responsibility to some other entity; and
(ii) The LEA must meet the requirements of paragraph (b)(1) of this section.
(c) Public charter schools that are LEAs. If the public charter school is an LEA, consistent with §300.28, that receives funding under §300.705, that charter school is responsible for ensuring that the requirements of this part are met, unless State law assigns that responsibility to some other entity.
(d) Public charter schools that are not an LEA or a school that is part of an LEA.
(1) If the public charter school is not an LEA receiving funding under §300.705, or a school that is part of an LEA receiving funding under §300.705, the SEA is responsible for ensuring that the requirements of this part are met.
(2) Paragraph (d)(1) of this section does not preclude a State from assigning initial responsibility for ensuring the requirements of this part are met to another entity. However, the SEA must maintain the ultimate responsibility for ensuring compliance with this part, consistent with §300.149.

§300.210 Purchase of instructional materials.
(a) General. Not later than December 3, 2006, an LEA that chooses to coordinate with the National Instructional Materials Access Center (NIMAC), when purchasing print instructional materials, must acquire those instructional materials in the same manner, and subject to the same conditions as an SEA under §300.172.
(b) Rights of LEA.
(1) Nothing in this section shall be construed to require an LEA to coordinate with the NIMAC.
(2) If an LEA chooses not to coordinate with the NIMAC, the LEA must provide an assurance to the SEA that the LEA will provide instructional materials to blind persons or other persons with print disabilities in a timely manner.
(3) Nothing in this section relieves an LEA of its responsibility to ensure that children with disabilities who need instructional materials in accessible formats but are not included under the definition of blind or other persons with print disabilities in §300.172(e)(1)(i) or who need materials that cannot be produced from NIMAS files, receive those instructional materials in a timely manner.

§300.211 Information for SEA.
The LEA must provide the SEA with information necessary to enable the SEA to carry out its duties under Part B of the Act, including, with respect to §§300.157 and 300.160, information relating to the performance of children with disabilities participating in programs carried out under Part B of the Act.

§300.212 Public information.
The LEA must make available to parents of children with disabilities and to the general public all documents relating to the eligibility of the agency under Part B of the Act.

(b) The LEA request shall fully and accurately describe the LEA's policies and procedures regarding the provision of FAPE to all children with disabilities and include:

(1) A child find component in compliance with Ed 1105;

(2) A confidentiality component that shall describe the LEA's policies and procedures to ensure confidentiality of student records;

(3) A section on special education facilities, personnel, and services that shall provide a detailed description of all facilities, personnel, and services the LEA is required to make available in those instances where the educational needs of the child with a disability cannot be met in a regular education setting, including:

a. The full range of opportunities the LEA shall make available in public schools, including:

1. Class size;

2. Staff;

3. Related services;

4. Extent of participation in special education programming;

5. The maximum number of children who can be served;

6. Types of disabilities served; and

7. Ages of children served;

b. Regional programs the LEA shall make available to children with disabilities;

c. Non-public schools within the LEA serving children with disabilities;

d. Non-public schools the LEA shall use for out-of-LEA placements for children with disabilities; and

e. Vocational programs the LEA shall provide for children with disabilities;

(4) A personnel development component describing the LEA's policies and procedures to ensure that professional development opportunities shall be available to teachers, staff and administrators which enhance their knowledge and skills related to the education of children with disabilities, including a description of current in-service activities and those for the next school year;

(5) A parent involvement component that shall describe the LEA's policies and procedures, specifying the participation of parents in the process of identifying, evaluating, developing IEPs, and determining placement of children with disabilities;

(6) A public participation component that shall describe the LEA's policies and procedures to ensure the LEA application is available for review by parents, other agencies, and the general public;

(7) A procedural safeguards component describing the LEA's policies and procedures which shall ensure that due process, confidentiality, and other required procedural safeguards are available in written form to children with disabilities and their parents;

(8) A pupil evaluation to placement section describing the LEA's policies and procedures for referral, evaluation, development of IEPs, and placement for children with disabilities which shall describe, in chronological order, all participants in the decision making and implementation;

(9) A program evaluation component that shall describe the LEA's policies and procedures for determining:

a. The degree to which the special education or special education and related services being provided for children with disabilities are effectively meeting the identified needs of the children with disabilities;

b. The methods the LEA shall use for determining program deficiencies and future needs;
c. Strategies designed to eliminate identified gaps and program needs; and
d. A plan aimed at complying with findings of the report issued by the Commissioner of Education following an on-site compliance monitoring review of the LEA's special education programs and the LEA's implementation of the IDEA by the LEA pursuant to the LEA's duties as assigned by RSA 186-C:5;

RSA 186-C:5 Program Approval, *Monitoring, and Corrective Action*. –
The State Board of Education shall adopt rules establishing ***a process and*** standards for the approval ***and monitoring*** of programs of education that are maintained by school districts, regional special education centers, and private organizations or state institutions for the benefit of children ***with disabilities***, including home-based programs, ***and alternative schools or programs (hereinafter sometimes referred to as school districts and non district programs),*** except, however, that approval of education programs for the special district established in RSA 194:60 shall be pursuant to the standards set forth in the interagency agreements between the department of corrections and the Department of Education.

(10) A component concerning other agencies that shall describe the LEA's policies and procedures to ensure coordination with other local and state agencies in meeting the needs of children with disabilities;
(11) A component that shall describe the LEA's policies and procedures to ensure that children with disabilities enrolled in private schools by parents who reside in the jurisdiction of the LEA have the opportunity for equitable participation in special education programs in accordance with Ed 1111; and
(12) A component that shall describe the LEA's reasonable steps to ensure that children with disabilities who need instructional materials in accessible formats receive those materials at the same time other children receive instructional materials.

(c) With respect to children with disabilities placed by their parents in private schools, whether or not FAPE is an issue, an LEA's application as required by Ed 1126.01 shall contain:
(1) A description of how the LEA shall meet the federal requirements for participation by these children;
(2) The number of children who have been identified as eligible for IDEA -funded program benefits;
(3) The number of children who shall receive benefits under the IDEA -funded program;
(4) The basis the LEA used to select the children;
(5) The manner and extent to which the LEA consulted with representatives of private school children with disabilities;
(6) The places and times that children will receive benefits under the program; and
(7) The differences, if any, between the IDEA-funded program benefits the LEA shall provide to public and private school students and the reasons for the differences.

Ed 1126.02 Criteria for Approval of Public and Non-Public Programs.

(a) The department shall use the requirements in Ed 1126 as the basis for determining program approval.

(b) The department shall approve public and non-public programs for children with disabilities through a monitoring process, including but not limited to on-site visit(s) and examination of written documentation, by reviewing the following:

(1) Administrative staff, including certification and professional development;

(2) Instructional staff, including certification and professional development;

(3) Policies and procedures, including:

a. Procedures for handling confidential information;

b. Due process guarantees;

c. Least restrictive environment processes;

d. Child find activities;

e. Non-discriminatory testing practices; and

f. IEPs;

(4) School program operation;

(5) School program information;

(6) Related services;

(7) Fiscal aspects of the school, class, or program;

(8) Physical plant;

(9) Monitoring of IDEA and Title I of the Elementary and Secondary Education Act;

(10) Compliance with state statutes and State Board of Education rules;

(11) Compliance with federal statutes and regulations;

(12) For LEAs, a review of the LEA request for special education funds;

(13) Review of complaint procedures;

(14) For LEAs, a review of placement practices;

(15) Review of data systems;

(16) Examination of least restrictive environment practices; and

(17) Any other component mentioned elsewhere in Ed 1100.

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

(a) All programs operated by LEAs, public academies, private providers of special education, public agencies, and other non-LEA programs shall be approved, utilizing the New Hampshire special education approval process in Ed 1126.02 as determined by the Bureau of Special Education in the department. The Bureau of Special Education in the department shall issue a written report of findings to the monitored program, indicating compliance or non-compliance with statutes and rules relative to all programmatic components and issues monitored by the reviewing team.

(b) The monitored program listed in Ed 1126.03(a) may respond to the bureau of special education's report and request changes regarding factual errors within 15 days of receipt of the written report. The director of the Bureau of Special Education shall review the request for reconsidering evidence of fact(s) presented and issue the Bureau's decision and final report no later than 30 days after receiving the request for changes from the monitored program.

(c) Those monitored programs found to be in noncompliance shall:

(1) Submit to the bureau of special education a corrective action/improvement plan including proposed activities, timelines, and evidence by which any noncompliance specific to a student and/or systemic noncompliance will be corrected;

(2) Include in the corrective action/improvement plan an assurance from the superintendent or director of the public or nonpublic program that the plan will be implemented within the designated timeline; and

(3) Correct all noncompliance within the corrective action timeline but in no case no later than one year from the notification of the identified noncompliance.

(d) The Bureau of Special Education in the department shall take one of the following steps:

(1) Accept the plan as written;

(2) Require modification to the plan;

(3) Modify the plan and accept the modified plan; or

(4) Reject the plan and order the appropriate enforcement actions specified in Ed 1125.02(e).

(e) The Bureau of Special Education in the department shall issue an approval of the program as follows:

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

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

(3) The private provider of special education, public academy or other non-LEA program shall receive provisional approval if:

a. The program has been identified with an area(s) in need of correction;

b. The program has an approved corrective action plan in place;

c. The issue(s) of non-compliance are systemic in scope; and

d. Students in the program are receiving a FAPE.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Ed 1126.05 Placements in In-State Programs Not Currently Approved to Provide Special Education and Related Services.

(a) An LEA shall not place a child with a disability in a program not currently approved to provide special education and related services until the following requirements have been met:

(1) The LEA shall have conducted a search and determined that there are no approved in-state special education programs available to meet the individual child's need for special education and related services;

(2) The LEA shall review inspection reports and certificates to determine that the in-state facility meets New Hampshire health and fire regulations for non-public schools as established by public health statute RSA 200:11, Ed 306.07, and the State Fire Code as adopted by the New Hampshire department of safety in Saf-C 6000;

RSA 200:11 Investigation of Sanitary Conditions. – The Department of Health and Human Services shall, upon complaint of any responsible person, investigate the sanitary conditions of any schoolhouse or building used for school purposes.

Ed 306.07 School Facilities.
The local school board shall :
(a) Require that the facilities for each school provide the following:
(1) Consistent with RSA 189:24, a clean, healthy, and safe learning environment for all areas of the school building, grounds, and school-related activities;
(2) Lighting in compliance with the state building code as provided in RSA 155-A; and
(3) Exhaust and outdoor air ventilation, proper temperature and humidity conditions in compliance with the state building code as provided in RSA 155-A.
(b) With regard to school facilities:
(1) Customize classrooms and other school-related environments to the needs of different content areas;
(2) Provide for accessibility of students with disabilities;
(3) Demonstrate compliance with Saf-C 6000 relating to NFPA 101, "Life Safety Code, 2000 edition;" and
(4) Document compliance with regulations relating to school building, sanitation, sewage disposal, water supply, and other matter affecting public health.

Saf-C 6000 - STATE FIRE CODE **Appendix A**

(3) A representative of the LEA shall have:
a. Visited the facility;
b. Reviewed staff qualifications to confirm that such staff are qualified personnel as set forth in Ed 1114.10(a);
c. Reviewed instructional materials and setting; and
d. Discussed the child's needs with staff providing direct services;

(4) Subsequent to the visitation required in (3) above, the LEA's IEP team shall determine whether the facility is capable of implementing the child's IEP; and

(5) The following documentation shall be provided by the LEA to the department to demonstrate program compliance under this paragraph:
a. A statement that the facility meets New Hampshire fire and health regulations for schools as referenced in (2) above, including copies of documents relating to inspections currently in effect supplied by the person performing the fire and/or health inspection;
b. The date the facility was visited by a representative of the LEA;

c. A description of:
   1. The specific needs of the child which cannot be met by any approved special education program;
   2. A list of the approved programs which were considered and rejected and why they were rejected; and
   3. Why the proposed placement is the least restrictive environment for the child;

d. A copy of the child's IEP;

e. The following information regarding the proposed program:
   1. School name;
   2. Program name;
   3. Start date;
   4. End date;
   5. Disabilities served by the program;
   6. Whether the education setting is a regular setting or a special setting;
   7. Whether the environment is a self-contained program, a resource room program, a regular education program, or a home-based program;
   8. Age range served;
   9. Sex of students served;
   10. Whether the program is day or residential;
   11. The name of the contact person for the program;
   12. The contact person's title; and
   13. The contact person's telephone number;

f. Copies of the certification/licensing credentials of the staff who will be providing the special education and related services to the child;

g. Statements provided shall include:
   1. A statement of how the instructional materials and setting will provide the required involvement in the general curriculum, resulting in progress in the general curriculum as required under 34 CFR 300.320;

§300.320 Definition of Individualized Education Program. –
See Ed 1109.01 Elements of an IEP Page #55

   2. A statement, in compliance with the child's IEP, of how the child will participate in state and district-wide assessments;
   3. A statement that the program is capable of implementing the child's IEP and providing FAPE; and
   4. A statement that the program is in full compliance with the child management requirements detailed in Ed 1120.

(b) The department shall review all documentation submitted by the LEA and shall approve requests for individual placement of children with disabilities at in-state facilities not currently approved to provide special education and related services when the documentation demonstrates that the child will receive FAPE in the least restrictive environment.

(c) The maximum number of placements of individual children with disabilities the department shall approve at any one facility not currently approved to provide special education and related services shall be 5.

(d) Facilities not currently approved to provide special education and related services wishing to serve more than 5 children with disabilities shall apply for special education program approval.

Ed 1126.06 Out-Of-State Placements.

(a) Public agencies shall place children with disabilities, for the purpose of receiving special education and related services, in only those out-of-state schools, classes, or programs which are approved by the host state for the purpose of providing special education and related services within that state. Any limitation by the host state on the state's approval of the school's provision of special education and related services, such as by category of disability served or other comparable standard, shall apply to the schools, classes, and programs approved for New Hampshire children.

(b) If an out-of-state program does not meet the standards of Ed 1114.07-1114.09, the LEA shall not place a student in the program.

Ed 1126.07 New Hampshire Special Education Information System (NHSEIS).

(a) After parental consent is obtained as required under Ed 1120.04, the LEA shall transmit the following information electronically to the department using NHSEIS:

(1) Information describing the child, including:

a. The child's name;
b. The child's town of residence;
c. The child's LEA;
d. The child's date of birth; and
e. The child's identifying number, if the department has already assigned a number through its NHSEIS computer system.

(2) Identification of the evaluations conducted to determine that the child has a disability, the categories of qualified examiners administering the evaluations, and the dates administered;

(3) Identification of the child's disability;

(4) Identification of the child's specific special education program and if necessary, related services, the extent to which the child will not participate with nondisabled children in regular educational programs as required by 34 CFR 300.347, and the projected date for initiation and anticipated duration of the special education or special education and related services;

NOTE: Reference should be §300.320 (a)(5) An explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class and in the activities described in paragraph (a)(4) of this section.

(5) The dates that:

a. The IEP team determined the child to have a disability;
b. The parent approved the IEP; and
c. The IEP team selected the child's education placement;

(6) Discharge information for transition planning; and

(7) The date and duration of the removal, if any, of the child from the child's current educational placement for disciplinary reasons, and any other information required to comply with the federal reporting requirements under 34 CFR 300.170.

§300.170 Suspension and expulsion rates.

(a) General. The SEA must examine data, including data disaggregated by race and ethnicity, to determine if significant discrepancies are occurring in the rate of long-term suspensions and expulsions of children with disabilities--

(1) Among LEAs in the State; or

(2) Compared to the rates for nondisabled children within those agencies.

(b) Review and revision of policies. If the discrepancies described in paragraph (a) of this section are occurring, the SEA must review and, if appropriate, revise (or require the affected State agency or LEA to revise) its policies, procedures, and practices relating to the development and implementation of IEPs, the use of positive behavioral interventions and supports, and procedural safeguards, to ensure that these policies, procedures, and practices comply with the Act.

(b) When a child is no longer receiving special education or related services, the LEA or public agency shall enter into NHSEIS the reason why the child is no longer receiving special education or related services.

(c) For financial and monitoring purposes, the LEA shall be responsible for entering information into NHSEIS within 20 days of any action required to be entered into NHSEIS in order to comply with federal reporting requirements under 34 CFR 300.640–34 CFR 300.641.

§300.640 Annual report of children served--report requirement.

(a) The SEA must annually report to the Secretary on the information required by section 618 of the Act at the times specified by the Secretary.

(b) The SEA must submit the report on forms provided by the Secretary.

§300.641 Annual report of children served--information required in the report.

(a) For purposes of the annual report required by section 618 of the Act and §300.640, the State and the Secretary of the Interior must count and report the number of children with disabilities receiving special education and related services on any date between October 1 and December 1 of each year.

(b) For the purpose of this reporting provision, a child's age is the child's actual age on the date of the child count.

(c) The SEA may not report a child under more than one disability category.

(d) If a child with a disability has more than one disability, the SEA must report that child in accordance with the following procedure:

(1) If a child has only two disabilities and those disabilities are deafness and blindness, and the child is not reported as having a developmental delay, that child must be reported under the category "deaf-blindness."

(2) A child who has more than one disability and is not reported as having deaf-blindness or as having a developmental delay must be reported under the category "multiple disabilities."

PART Ed 1127
CHILDREN WITH DISABILITIES IN PLACEMENTS FOR WHICH DCYF HAS FINANCIAL RESPONSIBILITY

Ed 1127.01 Definitions. The following definitions shall apply for the purposes of Ed 1127:

(a) "Children in placement for which DCYF has financial responsibility" means all children receiving special education or special education and related services whose placements were made pursuant to RSA 169-B, RSA 169-C or RSA 169-D, except children at the Philbrook Center while awaiting disposition of the court following arraignment pursuant to RSA 169-B:13.

RSA 169-B:13 - Arraignment; Court Referrals; Uncompensated Public Service by Minors. –

I. No minor shall be detained for more than 24 hours, Sundays and holidays excluded, from the time of being taken into custody without being brought before a court. At any arraignment the court shall:
   (a) Advise the minor in writing and orally of any formal charges;
   (b) Inform the minor of the applicable constitutional rights;
   (c) Appoint counsel pursuant to RSA 169-B:12;
   (d) Establish any conditions for release; and
   (e) Set a hearing date.

   However, no plea shall be taken until the minor has the opportunity to consult with counsel or until a waiver is filed pursuant to RSA 169-B:12.

II. The court may, at any time after arraignment, dispose of the petition by referring the minor or the minor and family for participation in an approved court intervention program.

III. A referral under this section may include an order for the minor to perform up to 50 hours of uncompensated public service subject to the approval of the elected or appointed official authorized to give approval of the city or town in which the offense occurred. The court's order for uncompensated public service shall include the name of the official who will provide supervision to the minor. However, no person who performs such public service under this paragraph shall receive any benefits that such employer gives to its other employees, including, but not limited to, workers' compensation and unemployment benefits and no such employer shall be liable for any damages sustained by a person while performing such public service or any damages caused by that person unless the employer is guilty of gross negligence.

b) "Financially responsible school district" means:
   (1) The school district in which a child most recently resided other than in a home for children, health care facility, or state institution, if such child is not in the legal custody of a parent or if the parent resides outside the state; or
   (2) The school district in which the parent resides if the child is retained in the legal custody of a parent residing within the state.

(c) "Legal custody" means those rights and responsibilities as specified in RSA 169-C:3, XVII.

RSA 169-C:3, XVII. "Legal custody" means a status created by court order embodying the following rights and responsibilities unless otherwise modified by court order:
   (a) The right to determine where and with whom the child shall live;
   (b) The right to have the physical possession of the child;
   (c) The right and the duty to protect and constructively discipline the child; and
   (d) The responsibility to provide the child with food, clothing, shelter, education, emotional security and ordinary medical care provided that such rights and responsibilities shall be exercised subject to the power, rights, duties and responsibilities of the guardian of the child and subject to residual parental rights and responsibilities if these have not been terminated by judicial decree.

(d) "Legal supervision" means a legal status created by court order wherein the child is permitted to remain in his or her home under the supervision of a child placing agency subject to further court order.

Ed 1127.02 Application and Criteria for Financial Assistance.

(a) Local school districts may make application to the department for financial assistance for children with disabilities in placement for which DCYF has financial responsibility.

(b) Applications for such financial assistance shall be made within 30 days from the date the local school district's financial liability commences and shall be accomplished through the electronic application program available in NHSEIS.

(c) A school district shall receive financial assistance under this program when:

(1) The school district furnishes the department with written evidence that the child is in placement for which DCYF has financial responsibility;

(2) The child is identified as a child with a disability in accordance with the requirements of Ed 1107;

(3) The child has an IEP for the placement as required in Ed 1109; and

(4) The child has been placed at a private school for the current school year as evidenced by information supplied by the financially responsible school district or districts and maintained in NHSEIS pursuant to Ed 1126.07(c).

Ed 1127.03 Limitations and Financial Liability.

(a) A school district's liability for expenses for special education and related services for a child with a disability in placement for which DCYF has financial responsibility shall be limited as stated in RSA 186-C:19-b, II, namely, "to 3 times the estimated state average expenditure per pupil for the school year preceding the year of distribution" or actual costs, whichever is less.

RSA 186-C:19-b, II (including revisions proposed by HB 766)

II. The school district liability for expenses for special education or for special education and related services for ***a child with a disability*** in a placement for which the department of health and human services has financial responsibility shall be limited to 3 times the estimated state average expenditure per pupil, for the school year preceding the year of distribution. The liability of a school district under this section shall be prorated if the placement is for less than a full school year and the district shall be liable for only the prorated amount. This section shall not limit a school district's financial liability for children who receive special education or special education and related services in a public school or program identified in RSA 186-C:10.

(a) Any costs of special education or special education and related services in excess of 3 times the estimated state average expenditure per pupil for the school year preceding the year of distribution shall be the liability of the Department of Education. Costs for which the Department of Education is liable under this section shall be paid to education service providers by the Department of Education. The Department of Education shall develop a mechanism for allocating the funds appropriated for the purposes of this section.

(b) The Department of Health and Human Services shall be liable for all court-ordered costs pursuant to RSA 169-B:40, 169-C:27, and 169-D:29 other than for special education or special education and related services.

(c) The Department of Education shall distribute special education payments under subparagraph II(a) within 60 days of receipt of invoice from the school district. School districts shall submit education service providers costs to the department within 30 days of receipt of such costs. The department shall then verify the cost and distribute the appropriate amounts to the education service provider.

(b) A school district's liability shall begin when the child with a disability is placed in a placement for which DCYF has financial responsibility.

(c) The department's financial liability for the cost of a child with a disability in placement for which DCYF has financial responsibility shall be limited to the difference between 3 times the estimated state average expenditure per pupil for the school year preceding the year of distribution paid to the private provider by the liable school district or districts and the total approved special education or special education and related service costs for that provider as set for that private provider of special education services pursuant to Ed 1127.

(d) In those instances where approved special education or special education and related service figures are not delineated separately from other costs, the liability of the department for the costs shall be limited to the difference between 3 times the estimated state average expenditure per pupil for the school year preceding the year of distribution paid to the private provider and 50% of the total approved costs for that provider as set for that private provider of special education services pursuant to Ed 1127.

Ed 1127.04 Criteria for State Payments. In order for a provider to receive payments from the state, the financially liable school district shall enter cost information into NHSEIS and submit invoices to the department.

PART Ed 1128
SPECIAL EDUCATION CATASTROPHIC AID

Ed 1128.01 Definitions. The following definitions shall apply for the purposes of Ed 1128.

(a) "Catastrophic aid" means financial assistance for special education costs distributed under RSA186-C:18, III to a responsible school district.

RSA 186-C:18, III

(a) The State Board of Education through the commissioner, Department of Education, shall distribute aid available under this paragraph as entitlement to such school districts as have a special education pupil for whose costs they are responsible, for whom the costs of special education in the fiscal year exceed 3 1/2 times the estimated state average expenditure per pupil for the school year preceding the year of distribution. If in any year, the amount appropriated for distribution as catastrophic special education 186-C:18 aid in accordance with this section is insufficient therefore, the appropriation shall be prorated proportionally based on entitlement among the districts entitled to a grant. If there are unexpended funds appropriated under this paragraph at the end of any fiscal year, such funds shall be distributed for court-ordered placements under RSA 186-C:19-b. The state may designate up to $250,000 of the which are appropriated as required by this paragraph, for each fiscal year, to assist those school districts which, under guidelines established by rules of the State Board of Education, may qualify for emergency assistance for special education costs. Upon application to the Commissioner of Education, and approval by the commissioner, such funds may be accepted and expended by school districts in accordance with this chapter; provided, however, that if a school district has received emergency assistance funds for certain ***children with disabilities***, it shall not receive catastrophic special education aid for those same ***children with disabilities***. If any of the funds designated for emergency assistance under this paragraph are not used for such emergency assistance purposes, the funds shall be used to assist school districts in meeting catastrophic cost increases in their special education programs as provided by this paragraph.

(b) The school district shall be liable for 3- 1/2 times the estimated state average expenditure per pupil for the school year preceding the year of distribution, plus 20 percent of the additional cost, up to 10 times the estimated state average expenditure per pupil for the school year preceding the year of distribution.

(c) The Department of Education shall be liable for 80 percent of the cost above the 3- 1/2 times the estimated state average expenditure per pupil for the school year preceding the year of distribution, up to 10 times the estimated state average expenditure per pupil for the school year preceding the year of distribution. The Department of Education shall be liable for all costs in excess of 10 times the estimated state average expenditure per pupil for the school year preceding the year of distribution.

(b) "Contributed funds" means funds contributed to defray the cost of a special education and by any party or agency other than the LEA.

(c) "Direct costs" means those costs which can be identified specifically with the provision of special education and related services, as included in a child's IEP.

(d) "Emergency assistance" means funds appropriated for special education costs as provided in 186 C:18, III.

RSA-C:186-C:18,III – See Ed 1128.01 -- above

(e) "Indirect costs" means those costs which have been incurred for common or joint objectives and which cannot be identified with the provision of special education and related services as included in a particular child's IEP.

(f) "Responsible school district" means a school district which is responsible for a child with a disability for whom the costs of special education exceed the formula established by RSA 186 C:18, III.

RSA-C:186-C:18, III – See Ed 1128.01	**Page #196**

Ed 1128.02 Reimbursement. A responsible school district shall be reimbursed for catastrophic aid if the following requirements are met.

(a) The special education costs for which the district is seeking payment shall exceed the statutory threshold established by RSA 186-C:18, III.

RSA-C:186-C:18, III – See Ed 1128.01	**Page #196**

(b) Each child with a disability for whom the responsible district is seeking catastrophic aid reimbursement shall be:

(1) Enrolled in an approved special education program that:

a. Provides FAPE; and

b. Meets the requirements established in:

1. Ed 1128.02;
2. Ed 1128.03;
3. Ed 1128.05; or
4. Ed 1117; or

(2) In a placement for which a hearing officer, pursuant to Ed 1123, orders the responsible school district to reimburse parents in accordance with 34 CFR 300.148.

§300.148 Placement of children by parents when FAPE is at issue.

(a) General. This part does not require an LEA to pay for the cost of education, including special education and related services, of a child with a disability at a private school or facility if that agency made FAPE available to the child and the parents elected to place the child in a private school or facility. However, the public agency must include that child in the population whose needs are addressed consistent with §§300.131 through 300.144.

(b) Disagreements about FAPE. Disagreements between the parents and a public agency regarding the availability of a program appropriate for the child, and the question of financial reimbursement, are subject to the due process procedures in §§300.504 through 300.520.

(c) Reimbursement for private school placement. If the parents of a child with a disability, who previously received special education and related services under the authority of a public agency, enroll the child in a private preschool, elementary school, or secondary school without the consent of or referral by the public agency, a court or a hearing officer may require the agency to reimburse the parents for the cost of that enrollment if the court or hearing officer finds that the agency had not made FAPE available to the child in a timely manner prior to that enrollment and that the private placement is appropriate. A parental placement may be found to be appropriate by a hearing officer or a court even if it does not meet the State standards that apply to education provided by the SEA and LEAs.

(d) Limitation on reimbursement. The cost of reimbursement described in paragraph (c) of this section may be reduced or denied--

(1) If--

(i) At the most recent IEP Team meeting that the parents attended prior to removal of the child from the public school, the parents did not inform the IEP Team that they were rejecting the placement proposed by the public agency to provide FAPE to their child, including stating their concerns and their intent to enroll their child in a private school at public expense; or

(ii) At least ten (10) business days (including any holidays that occur on a business day) prior to the removal of the child from the public school, the parents did not give written notice to the public agency of the information described in paragraph (d)(1)(i) of this section.

(2) If, prior to the parents' removal of the child from the public school, the public agency informed the parents, through the notice requirements described in §300.503(a)(1), of its intent to evaluate the child (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parents did not make the child available for the evaluation; or

(3) Upon a judicial finding of unreasonableness with respect to actions taken by the parents.

(e) Exception. Notwithstanding the notice requirement in paragraph (d)(1) of this section, the cost of reimbursement--

(1) Must not be reduced or denied for failure to provide the notice if--

(i) The school prevented the parents from providing the notice;

(ii) The parents had not received notice, pursuant to §300.504, of the notice requirement in paragraph (d)(1) of this section; or

(iii) Compliance with paragraph (d)(1) of this section would likely result in physical harm to the child; and

(2) May, in the discretion of the court or a hearing officer, not be reduced or denied for failure to provide this notice if--

(i) The parents are not literate or cannot write in English; or

(ii) Compliance with paragraph (d)(1) of this section would likely result in serious emotional harm to the child.

(c) The responsible school district shall report evaluation, placement, and eligible cost data for a child with a disability for catastrophic aid in accordance with Ed 1128.07.

(d) The information entered into NHSEIS under Ed 1128.04 shall be verified on a catastrophic aid verification form signed and dated by an individual authorized to make application for catastrophic aid on behalf of the responsible school district. The verification form shall be submitted to the department no later than 4:30 p.m. on August 15 or, if August 15 falls on a weekend, no later than 4:30 p.m. on the next business day.

Ed 1128.03 Limitations on Reimbursement.

A responsible school district shall:

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

(b) Not be reimbursed for:

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

(2) Indirect costs.

Ed 1128.04 Application for Catastrophic Aid.

To apply for the catastrophic aid, a responsible school district shall:

(a) Enter the following program information into the NHSEIS database system:

(1) Instructional costs;

(2) Room and board costs;

(3) Tuition costs;

(4) Costs for related services, for which the department has approved a rate under Ed1129, including:

a. Counseling, both individual and group;

b. Occupational therapy, both individual and group;

c. Physical therapy, both individual and group; and

d. Speech pathology, both individual and group;

(5) Costs for related services for which the department had not approved a rate under Ed 1129, provided such services are included in the IEP of the child with a disability;

(6) Transportation costs;

(7) Exceptional costs, including diagnostic costs for services defined under Ed 1107; and

(8) Any contributed funds.

(b) Send supporting documentation to the department for:

(1) Transportation costs under (a)(6) above in excess of $5,000;

(2) Exceptional costs under (a)(7);

(3) Instruction, room and board, and/or tuition costs from out-of-state facilities;

(4) Instructional costs from public programs; and

(5) All related services when no rate is set.

Ed 1128.05 Calculation of Cost of Special Education.
The cost of special education for a particular child with a disability shall equal the costs entered into NHSEIS under Ed 1128.04(a)(1) – (7), less contributed funds entered into NHSEIS under Ed 1128.04(a)(8).

Ed 1128.06 Emergency Assistance.

(a) Emergency assistance shall be available pursuant to RSA 186-C 18, III.

RSA-C:186-C:18,III – See Ed 1128.01	**Page #196**

(b) The department shall mail application forms for emergency assistance to all school districts in the state no later than the first Friday in April.

(c) When a responsible school district applies for emergency assistance, it shall:

(1) Enter information into NHSEIS as provided in Ed 1128.04(a); and

(2) Supply supporting documentation as provided in Ed 1128.04(b).

(d) An application for emergency assistance for the school year in progress shall be submitted to the department by a responsible school district no later than 4:30 p.m. on the first Friday of May.

(e) On applications for emergency assistance, a responsible school district shall document that:

(1) The district could not have anticipated the need of this child with a disability for a comprehensive special educational program;

(2) The district is experiencing a financial crisis and could not, through line item budget transfers or other financial management techniques, appropriate the funds necessary to provide this child with a disability with FAPE; and

(3) There are no other sources of financial support available to assist the district with the funding of this placement.

(f) If a responsible school district receives emergency assistance funds for certain children with a disability, it shall not receive catastrophic aid for these same children.

Ed 1128.07 Proration. Pursuant to RSA 186-C:18,IX, when a child with a disability transfers from one responsible school district to another during the school year, the following shall apply to the proration of catastrophic aid and emergency assistance among responsible districts:

RSA 186-C:18,IX - When a student for whom a district receives state aid for special education under this section transfers to another school district during the school year, both the district liability and the reimbursement under this section shall be prorated among such districts. This proration shall be based upon the number of school days that the student was a resident of each district.

(a) Each district shall be reimbursed for only each school day on which the child was a resident of the district; and

(b) Each district shall file separate application forms.

Ed 1128.08 State Aid for In-District Programs **

(a) The following definitions shall apply for the purposes of this section:

(1) "State Aid for Out-of-District Placements" means the funding to establish or support school district based programs for children with disabilities who have been in out-of-district placements in the previous school year under RSA186-C:18, XI;

(2) "Contributed funds" means funds provided to defray the cost of a special education by any party or agency other than the LEA;

(3) "Direct costs" means those costs which can be identified specifically with the provision of special education and related services, as included in a child's IEP;

(4) "Indirect costs" means those costs which have been incurred for common or joint objectives and which cannot be identified with the provision of special education and related services as included in a particular child's IEP;

(5) "Liable school district" means a school district which is legally responsible for the education of the child with a disability; and

(6) "Supplemental costs" means the difference between the district's average per pupil cost and the cost of education for the child with a disability.

(b) A liable school district shall be reimbursed for the development or maintenance of an in-district special education program, under this paragraph, if the following requirements are met:

(1) The costs for which the district is seeking reimbursement shall establish or support a school district-based program for a child with disabilities who was in an out-of-district placement in the previous school year as required in RSA 186-C:18, XI;

(2) The in-district program shall be approved pursuant to the provisions of Ed 1126.02;

(3) The child for whom the district is seeking reimbursement shall have been placed in the in-district program pursuant to the provisions of Ed 1111.02;

(4) The child for whom the district shall be seeking reimbursement is receiving a FAPE;

(5) The liable school district shall report eligible cost data for a child with a disability pursuant to Ed 1128.04, (a), (1) through (5) and in accordance with Ed 1128.07, if applicable;

(6) The information entered into NHSEIS under Ed 1128.04 shall be verified on a state aid verification form signed and dated by an individual authorized to make application for state aid on behalf of the liable school district;

(7) The verification form shall be submitted to the department no later than 4:30 p.m. on August 15 or, if August 15 falls on a weekend, no later than 4:30 p.m. on the next business day; and

(8) Payment to the school district, under this paragraph, shall be on or before January 1.

(c) Limitations on reimbursement shall be as follows:

(1) A liable school district shall be eligible for reimbursement, under this paragraph only for children with disabilities whose placement has changed from an out-of-district placement to an in-district program developed or maintained by the responsible school district, and only for:

a. The direct costs that are included in the IEP in accordance with (b) (5) above; and

b. The direct costs that qualify as special education and related services, that allow the student with disabilities to be educated in the local school district program;

(2) A liable school district shall not be reimbursed for:

a. Costs which exceed rates established by Ed 1129 for tuition, instruction, and related services;

b. Indirect costs; or

c. Contributed funds;

(3) The reimbursement amount the school district shall receive shall be the greater of:

a. The supplemental costs incurred by the school district to educate the child in the in-district program; or

b. The amount the school district received for the child in the last year of the out-of-district program, prior to placing the student in the in-district program, under this paragraph;

(4) The reimbursement under (c) (3) above shall be made for 3 years, as follows:

a. Reimbursement under (c) (3) a. above the supplemental amount for all 3 years; or

b. Reimbursement under (c) (3) b. above:

1. In year one, 70 percent of the total amount in (c) (3) b. above;

2. In year 2, 50 percent of the total amount in (c) (3) b. above; and,

3. In year 3, 30 percent of the total amount in (c) (3) above.

(d) Funds distributed under RSA 186-C:18, XI shall be:

(1) Made in accordance with the provisions of (b) above;

(2) Prorated in accordance with RSA 186-C:18, III (a), if insufficient funds are appropriated; and

(3) Used to assist school districts in meeting catastrophic aid costs in their special education programs to the extent that they are not used to fund the program set out in RSA 186-C:18, XI.

**** Effective April 13, 2010**

PART Ed 1129
RATE SETTING

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

(a) "Accrual basis of accounting" means an accounting method which recognizes revenue when it is earned rather than when it is received, and expense is recognized when it is incurred rather than when it is paid.

(b) "Advertising costs" means those costs of media services, solicitations of bids for goods and services, recruiting personnel and development of school brochures and program descriptions.

(c) "Agency" means any private provider of special education services which has been approved by the department as a provider of special education and/or related services.

(d) "Allowable costs" means those costs determined by the department to be reasonable in accordance with Ed 1129.12 and required for the operation of approved special education programs pursuant to Ed 1100.

(e) "Consultant" means an independent contractor who is a member of a particular profession who provides professional services or expert advice to an agency.

(f) "Direct costs" means costs which can be identified specifically with the organization's final cost objectives, as determined in accordance with Ed 1129.13.

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

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

(h) "Indirect costs" means those costs which have been incurred for common or joint objectives and cannot be readily identified with a particular final cost objective, as determined in accordance with Ed 1129.14.

(i) "Length of the school year" means the total number of days during which the program provides services in the rate setting period.

(j) "Program capacity" means the maximum number of children with disabilities that can be enrolled in a school, class or program as specified in Ed 1100.

(k) "Related party" means all affiliates of an enterprise, including but not limited to the following:

(1) Its management and their immediate families;
(2) Its principal owners and their immediate families;
(3) Beneficial employee trusts that are managed by the management of the organization; and
(4) Any party that can or does deal with the organization and has ownership of, control over, or can significantly influence the management or operating policies of another party to the extent that an arms length transaction cannot be achieved.

(l) "Reasonable costs" means those costs which are prudent, within cost limitations and are required for the operation of approved special education programs.

(m) "Special education costs" means the sum of all costs less applicable credits.

(n) "Surplus" means the positive net difference of revenue over expense from operations, regardless of whether that difference is called surplus, profit, excess of support and revenue over expense, or fund balance increase on the entity's books of account.

Ed 1129.02 Rate Setting Budget Proposal.

(a) In order to obtain a rate for special education instruction, room and board, physical therapy, occupational therapy, speech therapy and counseling from the department, the agency shall complete a budget proposal and submit it to the department.

(b) The department shall not act on any proposal which is incomplete, and/or which contains substantive errors or omissions. Any such proposal shall be returned for corrections and/or completion.

(c) The agency shall submit the following in the budget proposal:
(1) Form 1129A: Cover Sheet;
(2) Form 1129B: Personnel;
(3) Form 1129C: Assets and Depreciation;
(4) Form 1129D: Program Data;
(5) Form 1129E: Revenues; and
(6) Form 1129F: Expenses by Line Item.

Ed 1129.03 Form 1129A: Cover Sheet.

(a) The purpose of the cover sheet shall be to identify the agency making the budget proposal and to provide certification from the agency that the information in (b) below is correct.

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

Ed 1129.04 Form 1129B: Personnel.

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

(3) Give the fiscal year or years for which the personnel report is being prepared, the month and year or years on which the fiscal year or years begin, and the month and year or years the fiscal year or years end;

(4) Give the date on which the original or amended personnel report is being prepared;

(5) Give each employee's full name;

(6) Give the field(s) of study and degree(s) received, if any, for each employee;

(7) Give each employee's annual wage or salary;

(8) Allocate that portion of each employee's wage or salary which pertains to administrative and general management activities;

(9) Allocate that portion of each employee's wage or salary which pertains to fundraising;

(10) Allocate that portion of each employee's wage or salary which pertains to other non-special education costs;

(11) Give the amount of each employee's wage or salary which pertains to special education instruction;

(12) Give the amount of each employee's wage or salary which pertains to any special education room and board costs;

(13) Give the amount of each employee's wage or salary which pertains to occupational therapy, physical therapy, speech therapy, and counseling activities;

(14) Give the total of general management costs, total costs of fund raising, and total costs of non-special education programs;

(15) Give the total of each employee's wage or salary which pertains to all special education programs; and

(16) Give the total of each employee's wage or salary which pertains to any special education room and board costs, and to occupational therapy, physical therapy, speech therapy, and counseling activities.

(b) The allocation in (10) above, shall be the percentage of each employee's total work time which pertains to this activity. Agencies which do not have a fund raising activity shall indicate "N/A".

(c) The allocations in (11) above, shall be the percentage of each employee's total work time which pertains to this activity. Entities which do not have non- special education costs shall indicate "N/A".

(d) The allocation in (12) above, shall be the percentage of each employee's total work time which pertains to special education instruction.

(e) The allocation in (13) above, shall be the percentage of each employee's total work time which pertains to any special education room and board costs.

(f) The allocations in (14) above, shall be the percentage of each employee's total work time which pertains to these activities.

Ed 1129.05 Form 1129C: Assets and Depreciation.

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

(a) Indicate whether the report being submitted is the original or an amended submission;

(b) Give the name of the agency;

(c) Give the fiscal year or years for which the assets and depreciation report is being prepared, the month and year or years on which the fiscal year or years begin, and the month and year or years the fiscal year or years end;

(d) Give the date on which the original or amended assets and depreciation report is being prepared;

(e) Give the description of the item to be depreciated such as an electric typewriter or an automobile;

(f) Describe how the item was acquired, using the following codes:
(1) “P” for items purchased;
(2) “D” for items donated; and
(3) “O” for other.

(g) If “O” was used to describe the acquisition of any item in (7) above, an explanation shall be provided at the bottom of the form;

(h) Give the month and year or years, using numerals, when the item was put into use or service;

(i) Give the number of items acquired;

(j) Give the amount actually paid for the item(s);

(k) Give the estimated salvage or trade-in value of the item(s) at the end of its/their useful life;

(l) Give the difference between the salvage value and the actual cost;

(m) Give the expected number of years during which the item(s) will be effectively usable;

(n) Give the quotient resulting from dividing the amount to be depreciated by the useful life;

(o) Give the percent of time that the item(s) will be used for programs or activities funded by the department;

(p) Give the result from multiplying the total annual depreciation by the percent of the time the item(s) will be used for programs or activities funded by the department; and

(q) Give the total applicable annual depreciation amounts.

Ed 1129.06 Form 1129D: Program Data.
When completing Form 1129D: Program Data, the agency shall:

(a) Indicate whether the report being submitted is the original or an amended submission;

(b) Give the name of the agency;

(c) Give the fiscal year or years for which the program data report is being prepared, the month and year or years on which the fiscal year or years begin, and the month and year or years the fiscal year or years end;

(d) Give the date on which the original or amended program data report is being prepared;

(e) Give a listing of each special education program or therapy for which a rate is being requested;

(f) Give the maximum capacity of each program, as defined in Ed 1129.01(j), operating during the regular school year or years;

(g) Give the length of the regular school year or years for each program;

(h) Give the inclusive dates of the regular school year or years;

(i) Give the maximum capacity of each program operating during the summer school year as defined in Ed 1129.01(j);

(j) Give the length of the summer school for each program;

(k) Give the inclusive dates of the summer school year or years;

(l) Give the actual occupancy figures for each of the 12 months immediately preceding the preparation of the budget proposal, or for each month of operation, if a shorter period than 12 months; and

(m) Give the units of service available for each therapy for which a rate is being requested.

Ed 1129.07 Form 1129E: Revenues.

(a) When completing Form 1129E: Revenues, the agency shall:

(1) Indicate whether the report being submitted is the original or an amended submission;

(2) Give the name of the agency;

(3) Give the fiscal year or years for which the revenue report is being prepared, the month and year or years on which the fiscal year or years begin, and the month and year or years the fiscal year or years end;

(4) Give the date on which the original or amended revenue report is being prepared;

(5) Give program service fees from sources other than the department;

(6) Allocate costs among different funding sources when anticipated revenues for program funding come from sources other than the department such as revenues from local and federal governments, Medicaid, Medicare, private insurance, and special purpose funds;

(7) Give all revenue from sales of goods or services related to programs;

(8) Give all income from direct sales, contracts or services;

(9) Give all funds from United Way;

(10) Give all funds from towns, cities and/or counties;

(11) Give income from restricted or unrestricted contributions;

(12) Give interest, dividends, and capital gain distributions in cash from endowments;

(13) Give any federal grants, including:

a. Funds to supplement the cost of providing education to children with disabilities;

b. Funds to purchase or subsidize the purchase of food and the value of food commodities; and

c. Any other federal grants;

(14) Give all revenues from non-endowment savings accounts;

(15) Give all interest under general management, unless the interest is restricted and allocated for a specific use or program;

(16) Give all recognized gains on the sale of assets;

(17) Give all other revenues;

(18) Give any surplus generated in the most recent fiscal year;

(19) Give total of all revenue amounts;

(20) Give total general management revenue amount to be allocated as specified by the department;

(21) Give total of all revenue amounts and general management amount to be allocated; and

(22) Give the amount of the department fees they are requesting.

(b) All program service fees identified in (6) above shall be budgeted and reported.

(c) All revenue from private and public sources shall be budgeted and reported. All revenue in this category shall be allocated based on donor restrictions.

(d) All revenue line items shall be at least equal to the prior year's levels. If expected to be less, specific explanation and documentation shall be provided. The facility or entity shall apply for public and private sources of funds. If the facility or entity does not apply for public and private sources of funds, specific explanation and documentation shall be provided to the department.

(e) Rental income which can be allocated to specific programs shall be allocated on the basis of square footage or full-time equivalents of the program(s) involved. All rental income that cannot be identified to specific programs shall be included in general management. This shall include income from rental of computer hardware and/or software, and time-sharing income.

(f) The following shall apply to revenue allocations:

(1) All revenues shall be reported and the appropriate allocations made;

(2) A tuition rate shall be computed from expenses for which no revenue has been received from the following sources:

a. Receipts from federal government;

b. Cash receipts which reduce the cost of an item; and

c. Donations and gifts;

(3) Agencies shall allocate costs among different funding sources when revenues come from :

a. Government contracts or grants;

b. Medicaid, Medicare, private insurance; and

c. Specific purpose funds where applicable.

(4) Revenues and expenses of non-special education programs shall not be reported as special education activity; and

(5) Revenues received from school districts shall not be offset against costs when a tuition rate is calculated.

(g) Surplus equal to and for the purpose of funding 6 weeks' of wage and salary expense, including benefits and payroll taxes, may be retained by the entity and may be excluded from the amount of surplus to be carried forward.

Ed 1129.08 Form 1129F: Expenses by Line Item.

(a) When completing Form 1129F: Expenses by Line Item, the agency shall:

(1) Indicate whether the budget report being submitted is the original or an amended submission;

(2) Give the name of the agency;

(3) Give the fiscal year or years for which the budget report is being prepared, the month and year or years on which the fiscal year or years begin, and the month and year or years the fiscal year or years end;

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

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

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

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

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

(f) Client evaluations shall:

(1) Be recorded in account 621; and

(2) Include and comply with the following:

a. All professional services purchased which are for purposes of obtaining any evaluations;

b. This shall not include the cost of any full or part-time staff, as reflected in the personnel budget, whose responsibilities include evaluations of children with disabilities; and

c. The amount budgeted for evaluations of children with disabilities shall be based upon past documented actual costs.

(g) Client treatment or services shall:

(1) Be recorded in account 622; and

(2) Include all costs for purchasing specialized client services on a full or part-time basis.

(h) Accounting and audit fees shall:

(1) Be recorded in account 623; and

(2) Include and comply with the following:

a. The cost of accounting and auditing services supplied by outside providers, including check-writing and payroll fees; and

b. These services shall not be provided by employees of, or other people who are affiliated with the agency. These costs shall be included in general management.

(i) Legal fees shall:

(1) Be recorded in account 624; and

(2) Include and comply with the following:

a. All legal service costs which the agency expects to incur in order to fulfill obligations to the department;

b. No funds shall be used to pay any legal fees that involve litigation or disputes against the department or any other state agency; and

c. No funds shall be used to pay any fines, payback or other court-ordered payments as a result of investigation or litigation against the facility or program.

(j) Other professional services and consultants shall:

(1) Be recorded in account 625; and

(2) Include and comply with the following:

a. Consultants and/or professional fees, such as program evaluations;

b. Fees incurred for any type of professional development and/or training shall be reflected in the appropriate professional development line item; and

c. Consultants' costs shall be allowed when:

1. The nature and scope of the consultant's services rendered are necessary, pertain to the organization's functions, activities or programs or to nutritional services, and cannot be provided by the organization's employees or can be more economically performed by consultants than by employees;

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

(k) Journals and publications shall:

(1) Be recorded in account 631; and

(2) Include the cost of all books, publications and training materials purchased for professional development/training purposes.

(l) In-service training shall:

(1) Be recorded in account 632; and

(2) Include and comply with the following:

a. All professional development and training costs for conferences, workshops, conventions, in-service training and tuition except for travel costs;

b. Travel costs shall be shown in staff transportation;

c. These professional development and training cost requests shall not exceed a total sum of money computed by multiplying the number of the program's full-time employees by $300;

d. Costs of conferences or meetings shall be allowed when the primary purpose the conference is dissemination of technical information and is part of the facility's approved professional development plan; and

e. Allowable costs include meals, transportation, rental of facilities and other items incidental to such conferences.

(m) Conferences and conventions shall:

(1) Be recorded in account 633; and

(2) Include and comply with the following:

a. Expenses for attending any conferences, workshops, and conventions except travel costs; and

b. Travel costs shall be shown in Account 742, staff transportation.

(n) Other professional development shall:

(1) Be recorded in account 634; and

(2) Include any development costs not covered by the accounts above such as an individual staff member's tuition.

(o) Rent shall:

(1) Be recorded in account 641; and

(2) Include and comply with the following:

a. The cost of renting any building utilized for the facility or program;

b. Rental cost for space shall not exceed the cost of comparable space and facilities in the same locality;

c. Rentals shall be documented by a lease agreement;

d. Any leases shall stipulate the extent of the lessee's responsibility for renovations; and

e. The cost of lease purchase agreements shall not be included.

f. Allowable costs shall be as follows:

1. Rental costs as specified in sale and leaseback agreements shall be allowable to the extent of actual costs had the organization continued to own the property;

2. If any party as leasor is in common with the leasee, the rental costs shall be limited to actual costs, including but not limited to mortgage payments, insurance premium payments, and property taxes; and

3. The cost of lease-purchase agreements shall be excluded as a rental expense.

(p) Heating costs shall:

(1) Be recorded in account 643; and

(2) Include and comply with the following:

a. All heating costs, such as electricity, gas or oil;

b. These costs shall be excluded if they are including in a rental or lease agreement; and

c. These costs shall be cost-allocated to programs and general management based upon square footage or full-time equivalents.

(q) Other utilities shall:

(1) Be recorded in account 644; and

(2) Include and comply with the following:

a. All other utility costs, such as electricity, water, sewage, gas;

b. These costs shall be excluded if they are included in a rental or lease agreement; and

c. These costs shall be cost-allocated to programs and general management based upon square footage or full-time equivalents.

(r) Maintenance and repairs shall:

(1) Be recorded in account 645; and

(2) Include and comply with the following:

a. The costs of materials and supplies needed for routine maintenance and repairs and/or maintenance contracts such as garbage removal and snowplowing;

b. These costs shall be excluded if they are included in a rental or lease agreement;

c. These costs shall be cost-allocated to programs and general management based upon square footage or full-time equivalents; and

d. The following shall apply to repair and maintenance of plant:

1. Costs incurred for necessary maintenance, repair and upkeep of property which do not add to its useful life but keep it in efficient operating condition shall be allowable when they are not included in rental or other charges for space; and
2. Costs incurred for necessary maintenance, repair or upkeep of movable equipment which keep it in efficient operating condition shall be allowable.

(s) Taxes shall:

(1) Be recorded in account 646; and

(2) Include and comply with the following:

a. Taxes which the organization is required to pay and which are paid or accrued in accordance with generally accepted accounting principles and payments made to local governments shall be allowable;

b. These costs shall be cost-allocated to programs and general management based upon square footage or full-time equivalents; and

c. Taxes for which an exemption is available and payments in lieu of taxes shall be disallowed.

(t) Other occupancy costs shall:

(1) Be recorded in account 647; and

(2) Include and comply with the following:

a. Any other occupancy costs not covered by above accounts; and

b. Renovation costs shall be included in account 660 Capital Expenditures.

(u) Office supplies shall:

(1) Be recorded in account 651; and

(2) Include and comply with the following:

a. Costs of consumable materials used for office operations, such as paper, pens notebooks, printed checks, photocopy supplies; and

b. These costs shall be cost-allocated to programs and general management based upon direct costs or full-time equivalents.

(v) Building and household supplies shall:

(1) Be recorded in account 652; and

(2) Include and comply with the following:

a. Costs of consumable supplies used for buildings and grounds as well as all household supplies such as toilet paper, towels, crockery, flatware, cleaning supplies; and

b. These costs shall be cost-allocated to programs and general management based upon direct costs or full-time equivalents.

(w) Educational and training supplies shall:

(1) Be recorded in account 653; and

(2) Include and comply with the following:

a. Costs of materials used in programs for children with disabilities, such as paper, pens, paint brushes, sets of practice materials, magazine or book subscriptions or children’s use; and

b. These costs shall be cost-allocated to programs or direct costs or full-time equivalents.

(x) Production and sales shall:

(1) Be recorded in account 654; and

(2) Include and comply with the following:

a. The cost of materials which are purchased for the purpose of making products which are to be sold; and

b. The production and sales expense shall not be more than the revenue generated from sales.

(y) Food shall:

(1) Be recorded in account 655; and

(2) Include the cost of raw and prepared food goods:

(z) Medical supplies shall:

(1) Be recorded in account 656; and

(2) Include and comply with the following:

a. The costs of services which would be available to children with disabilities if they were enrolled in a public school;

b. Costs of speech, physical or occupational therapy, or counseling if included in an IEP of a child with a disability, shall be allowable under a separate rate setting program and shall not be included as part of instruction and room and board rates;

c. The cost of a medical examination for an employee or applicants for employment, or the cost of furnishing any records required by the employer as a condition of employment shall be allowable; and

d. Other medical services or the costs of medical supplies provided by the agency's own staff shall not be included in this account. These costs are not allowed and shall be included in the non-special education section of expenditure Form 1129F.

(aa) Capital expenditures shall:

(1) Be recorded in account 660; and

(2) Include and comply with the following:

a. The cost of furnishings and equipment valuing more than $1,000 for each item;

b. Groups of items valuing $1,000 or more, even if individual items are valued at less then $1,000, shall be depreciated;

c. Compensation for the use of buildings, or other capital improvements and equipment shall be made through depreciation charges;

d. All other asset items used for program purposes costing $1,000 or more having a useful life of one year or more shall be depreciated;

e. Reimbursement for capital expenditures shall be available through depreciation charges only;

f. Depreciation charges shall be based on historical acquisition cost less estimated salvage value of the asset;

g. Useful life shall be determined on the basis of the particular operating conditions and the generally accepted useful life of similar assets;

h. Property records shall be maintained and the straight-line method of computing depreciation shall be used;

i. All capital expenditures including purchases, major renovations and leasehold improvements for which department reimbursement is requested shall be included in the budget proposal;

j. Any expenditure not so included shall not be reimbursed;

k. The need to fund extraordinary or emergency capital expenditures shall be approved;

l. These costs shall be cost allocated to programs and general management based upon square footage or full-time equivalents;

m. Gains and losses on sale, retirement, or other disposition of property which qualify as depreciable shall be reflected as a credit or a charge to the program in which the asset was being used;

n. The amount of the credit or charge under n. shall be the difference between the amount realized on the asset and the undepreciated basis;

o. No gain or loss from the sale of depreciated property shall be recorded as a credit or charge under the following conditions:

1. The gain or loss is, or could be, processed against a depreciation account;
2. The property is given in exchange as part of the price of a similar asset and the gain or loss is taken into account in determining the depreciation costs basis of the new asset;
3. A loss occurs from the failure to maintain permissible insurance;
4. Gains or losses resulting from mass or extraordinary sales, retirements, or other dispositions shall be considered on a case-by-case basis; and
5. Gains or losses resulting from the sale or exchange of non-special education assets or those not qualifying for depreciation are not allowable; and

p. The following shall be excluded from allowable depreciation expense:

1. Cost of land;
2. Donated assets or assets purchased with donated funds;
3. Assets acquired through grants from federal, state or local governments, or from private organizations, foundations, or companies;
4. Idle or excess assets; and
5. Depreciation expense computed under methods other than the straight line method.

(ab) Equipment rental shall:

(1) Be recorded in account 670; and

(2) Include and comply with the following:

a. Costs of renting equipment, such as copiers; and

b. The renting of postage meters shall be included in account 730, postage.

(ac) Equipment maintenance and repairs shall:

(1) Be recorded in account 680; and

(2) Include costs of equipment repairs, and service maintenance contracts or agreements.

(ad) Advertising shall:

(1) Be recorded in account 700; and

(2) Include and comply with the following:

a. Advertising costs for employee recruitment only;

b. Other advertising costs shall not be allowed;

c. The costs of media services such as a newspaper, magazines, radio resulting from the recruitment of personnel, the solicitation of bids for goods and services; and

d. All other advertising, public relations or community education costs which cannot be demonstrated to have direct benefit to the education program shall not be allowable and shall be recorded in a program cost center not included in the special education rate base.

(ae) Printing shall:

(1) Be recorded in account 710; and

(2) Include costs of printing forms, leaflets and brochures, if the costs are specifically related to programs funded by the department.

(af) Telephone and communications shall:

(1) Be recorded in account 720; and

(2) Include costs related to telephones, telegrams, and similar communications expenses.

(ag) Postage and shipping shall:

(1) Be recorded in account 730; and

(2) Include costs related to postage stamps, trucking, delivery, and rental of postage meters.

(ah) Vehicle leasing, maintenance and repair shall:

(1) Be recorded in account 741; and

(2) Include and comply with the following:

a. Vehicle lease expense for vehicles used for program purposes;

b. Copies of vehicle leases and registrations.

c. The purchase of a vehicle shall be depreciated; and

c. Cost related to vehicle maintenance and repair.

(ai) Client and staff transportation shall:

(1) Be recorded in account 742; and

(2) Include and comply with the following:

a. Costs of travel directly related to the school education program;

b. Costs of transportation to and from the home of a child with a disability to the school program shall be the responsibility of the local school district and shall be excluded from the tuition rate;

c. The agency shall be compensated for the lease, purchase, maintenance and use of vehicles provided when they are needed for an approved education program;

d. Transportation, lodging, subsistence and related items incurred by employees who are on official business incidental to a special education program;

e. Such costs shall be charged on an actual cost basis or per diem/mileage basis provided that the method chosen is consistently applied to each event;

f. Cost of mileage for the business use of private vehicles at a rate not to exceed the prevailing reimbursement rate per mile used by the State of New Hampshire;

g. If vehicles are leased or rented and include so-called “Free Mileage”, such mileage shall not be eligible for reimbursement;

h. Any portion of vehicle expense which is reimbursed through depreciation charges shall be excluded from the mileage reimbursement rate; and

i. Cost of gasoline for leased or purchased facility vehicles used for program purposes.

(aj) Professional liability and bonding shall:

(1) Be recorded in account 761; and

(2) Include all costs to meet the department’s requirements for professional liability and bonding.

(ak) Vehicle insurance shall:

(1) Be recorded in account 762; and

(2) include all vehicle insurance costs.

(al) Comprehensive property and liability insurance costs shall:

(1) Be recorded in account 763; and

(2) Include and comply with the following:

a. Comprehensive property and liability and directors’ and officers’ insurance costs;

b. Comprehensive general liability insurance against all claims of bodily injury, death, and property damage or loss shall be in amounts of not less than $250,000 per claim and $1,000,000 per incident;

c. Fire and extended coverage insurance covering all property shall be in an amount not less than 80% of the whole replacement value of the property;

d. Self-insurance costs but only if the agency provides documentation to show that sufficient self-insurance coverage is maintained to guard the program against those losses which would have been normally covered if the agency had purchased the appropriate level of insurance;

e. Only employee group insurance plans shall be approved;

f. Costs resulting from losses not covered under deductible insurance policy provisions, contracted for and in keeping with sound business practice; and

g. Actual losses which could have been covered by permissible insurance shall be excluded.

(am) Membership dues shall:

(1) Be recorded in account 770; and

(2) Include and comply with the following:

a. Dues, memberships and subscriptions in civic, business, technical and professional organizations;

b. Costs shall be allowable only when the benefit from membership is related to the organization’s special education programs, the cost is reasonable in relation to the value or benefits received, and the expense is not for membership in an organization which devotes a substantial part of its activities to influencing legislation;

c. The total allowable amount of department funds that may be used for this expense shall not exceed $2,000; and

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

(an) Interest expense shall:

(1) Be recorded in account 780; and

(2) Include and complying with the following:

a. Interest costs for the purchase or improvement of capital assets which have been approved;

b. Interest on loans for working capital that are directly related to cash flow deficiencies which are beyond the entity's ability to control;

c. The interest rate shall not exceed the prevailing rates at the time the loan was secured;

d. Interest charges shall not be at a rate in excess of what a borrower would pay at the time the loan was taken;

e. Interest charges for borrowing for land, buildings and working capital that is in excess of program requirements shall be excluded;

f. Working capital as used in this section shall mean a loan obtained to provide temporary cash in order to meet a current cash shortfall arising from time differences between expense and revenue cycles; and

g. The entity shall bear responsibility for providing documentation that working capital deficiencies were beyond its control.

(ao) Other expenditures shall:

(1) Be recorded in account 800; and

(2) Include any other program costs not included in any of the above line items.

(ap) Parent overhead shall:

(1) Be recorded in account 900; and

(2) Include and comply with the following:

a. Charges to an organization's programs from a parent or affiliated organization provided that the charges are defined as allowable costs and that the charges are allocated to all programs on the same basis; and

b. If a program or facility includes charges for general management, parent overhead charges shall not also be reimbursable.

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

Ed 1129.09 General Rate Setting Information.

(a) Tuition rates shall be set based on the agency's budget proposal which shall be submitted on those forms prescribed in Ed 1129.02. Deadline for submission of all prescribed forms shall be the first of April, annually.

(b) Any adjustments to the agency's budget proposal shall be made by the department based solely upon these rules and evaluation of required budget materials and information.

(c) Rates shall become effective on July first, and shall be set annually.

(d) Once the department has established a final rate for an agency, no further adjustments shall be made to the rate(s) for the fiscal year in which the agency's budget proposal was submitted.

(e) The department shall notify the agency by certified mail of the established rate(s).

(f) The daily and annual rate(s) established through this process shall be the maximum reimbursement paid to the agency on a per-child basis.

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

(h) Any parent organization or related party providing services, facilities, or supplies to an agency submitting a budget proposal shall make available documentation including but not limited to invoices, leases, loan-notes, insurance policies supporting the related party costs. The related party costs shall be considered services for the purposes of establishing rates.

(i) Each agency shall establish a chart of accounts reflecting the functions specified in (i) below and shall maintain accounting records in accordance with the chart.

(j) All revenues and expenditures shall be assigned to the following functions:

(1) General Management;
(2) Fund Raising;
(3) Other non special education costs;
(4) Special education programs - Instruction;
(5) Special education programs - Room and Board costs;
(6) Special education programs - Occupational therapy;
(7) Special education programs - Physical therapy;
(8) Special education programs - Speech therapy; and
(9) Special education programs - Counseling.

(k) Rates for out-of-state agencies shall be set at the rate established by the rate-setting authority in the state where the agency is located. In states where no rate-setting authority exists, the department shall establish the rate payable to the agency through application of these rules. Requests for rate changes for out-of-state agencies shall be accompanied by a copy of the revised official rate notification from the rate-setting authority in the state where the agency operates.

(l) Each agency shall submit the following information:

(1) A complete rate setting budget proposal as specified in Ed 1129.02(c)(1)-(6); and

(2) Actual data from the previous year or years to allow the department to compare the budget to actual expenditures for the year or years.

(m) The agency shall submit a copy of the audited financial statements and special report made by an independent auditor as specified in Ed 1129.18. The actual data and independent auditors' reports shall be due within 120 days of completion of the fiscal year. The financial statements shall at a minimum contain supplemental schedules using the same line items and functions used in the budget submitted with the rate request.

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

Ed 1129.10 Allowable Costs.

(a) To be considered an allowable special education cost the following criteria shall be met:

(1) The cost shall be reasonable within the definition of Ed 1129.12;

(2) The cost shall have a direct relationship to the policies and procedures of the organization;

(3) The cost shall be recognized by and reported in accordance with generally accepted accounting principles;

(4) The cost shall be supported by documentation including but not limited to:

a. Invoices;
b. Leases;
c. Loan-notes;
d. Insurance policies; and
e. Service contracts; and

(5) The cost shall pertain and be readily identifiable to an activity, function or program relative to the provision of special education and related services.

(b) If personal vehicles or living accommodations are prerequisites for certain positions such expenses shall be approved.

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

(a) Political and charitable contributions;

(b) Investment expenses which are in excess of investment income;

(c) Amusement of facility or program officers or employees or for non-organization related activities, entertainment, and any related costs such as meals, lodging, rentals, transportation and gratuities;

(d) Ordinary living expenses which are normally assumed by parents of children attending public day schools;

(e) Fees and expenses of trustees and directors;

(f) Fines and penalties which are imposed by a court and/or which result from violations of or the failure to comply with federal, state, county or municipal law, rule, or regulation;

(g) Bad debts, actual or estimated, resulting from uncollectible accounts or other claims, and related collection and legal costs;

(h) Contributions to a contingency fund or any similar fund except for an unemployment reserve fund;

(i) Advertising expenses except for personnel recruitment, bids for goods and services, and medical services;

(j) Organized fund raising expenses in excess of revenue received and applied to department programs;

(k) The following organized fund raising costs:
(1) Solicitations of gifts;
(2) Bequests;
(3) Organized fund raising;
(4) Financial campaigns; and
(5) Endorsement drives.

(l) Voluntary payments and contributions such as payments in lieu of real estate taxes;

(m) Any expenses of the organization which are not reasonable as defined in Ed 1129.12 or unrelated to required special education or necessary related services;

(n) Management fees or payments included in lease or rental agreements between parties who are related as defined in Ed 1129.01(k);

(o) Reimbursement for expenditures or depreciation of personally owned or leased assets excluding motor vehicles;

(p) Income and business profits taxes;

(q) Bonuses of any nature conveyed and/or paid;

(r) Charges by parties who are related as defined in Ed 1129.01(k) for services, facilities, and supplies furnished to the operating entity if such charges exceed the cost to the related party for providing the services, facilities or supplies;

(s) Charges for investment counsel, staff and similar expenses incurred solely to enhance income from investments;

(t) All personal expenses such as:
(1) Personal travel expenses;
(2) Laundry charges;
(3) Beverage charges;
(4) Gift certificates to staff and vendors;
(5) Flowers or parties for departing staff;
(6) Holiday parties;
(7) Repairs on a personal vehicle; and
(8) Rental expenses of personal apartments.

(u) Medical services and supplies, other than those cited in Ed 1129.08(z);

(v) Medical supplies or costs of medical supplies provided by the agency's own staff; and

(w) Salaries for positions that are vacant for 2 consecutive years shall not be used in the calculation of the rate(s).

Ed 1129.12 Reasonable Costs.

(a) The reasonableness of specific costs shall be determined by the department by applying (b), below.

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

(4) Year to year cost increase requests shall not deviate by more than one percentage point from those cost increases as measured by such price indices as the consumer price index or other similar publications from the New Hampshire Department of Employment Security or United States Department of Labor; and

(5) The cost request can be explained by a minimum 10% fluctuation in school enrollment from year to year.

Ed 1129.13 Direct Costs.

(a) Costs identified specifically with activities required for operation of an approved facility, function or program shall be treated as direct costs.

(b) If costs are not allowable as special education costs, they shall be treated as direct costs and allocated with their share of the organization's indirect costs when they represent activities which:

(1) Include the salaries of non-executive personnel;

(2) Occupy space; or

(3) Benefit from the organization's direct costs, including, but not limited to, the types of costs listed in Ed 1129.16(c).

Ed 1129.14 Indirect Costs.

(a) Indirect costs shall be allocated to all of the organization's activities pursuant to Ed 1129.16.

(b) Indirect costs shall include, but not be limited to:

(1) Salaries and expenses of executives;

(2) Expenses for accounting;

(3) Costs of operating and maintaining facilities;

(4) Depreciation allowances on buildings and equipment; and

(5) General administration expenses.

Ed 1129.15 Basis of Accounting.

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

Ed 1129.16 Method of Allocation.

(a) When an organization has only one major purpose or when all its major functions benefit from its indirect costs to approximately the same degree, the direct allocation method shall be used. Under the direct allocation method all costs except general administration shall be treated as direct costs.

(b) Costs shall be separated into 9 basic functions as outlined in Ed 1129.09(j).

(c) Costs which directly benefit multiple final cost objectives of an organization and include such costs as depreciation, operation and maintenance of facilities, telephone and utilities shall be prorated individually as direct costs of each function using a base appropriate to the costs being prorated.

(d) Indirect costs consisting exclusively of general administration and general expenses shall be distributed to the organization's functions using total direct costs of each activity as a base.

(e) Organizations proposing to treat indirect costs in a manner different from (a) and (b) above shall submit a waiver request to the department which is:

(1) In writing;

(2) Signed by the person who has prepared the rate setting proposal; and

(3) Submitted not later than 120 days prior to the submission of a new rate proposal.

(f) The department shall approve all requests received pursuant to (e) above unless the request(s) violates any requirement of Ed 1129 or generally accepted accounting principles.

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

(a) On Form 1129.11, the agency shall calculate the rate for a special education program as follows:

(1) The agency shall compute the net expenses of the program;

(2) The net expenses of the program shall be equal to the total expenses from Form 1129F less the total revenues from Form 1129E;

(3) The agency than shall multiply the program capacity rate by 90%;

(4) The agency shall compute the annual rate by dividing the net expenses of the program by 90% of the program capacity rate; and

(5) The agency shall compute the daily rate by dividing the annual rate by the length of the program year.

(b) On Form 1129.11, the agency shall calculate the rates for special education therapies as follows:

(1) The agency shall compute the net expenses of the program;

(2) The net expenses of the program shall be equal to the total expenses from Form 1129F less the total revenues from Form 1129E;

(3) The agency shall record the units of service available as reported on Form 1129D; and

(4) The agency shall compute the therapy rate by dividing the net expenses of the program by the units of service available.

Ed 1129.18 Audit Requirements.

(a) Audits shall be made in accordance with the U.S. Office of Management and Budget Circular A-133, Titled Audits of States, Local Governments and Non-Profit Organizations which was published in the Federal Register June 29, 1997.

(b) Audits shall include an examination of the systems of internal control, systems established to insure compliance with laws and rules affecting the expenditure of LEA funds, and financial transactions and accounts.

(c) The examinations required by (b), above, shall be used to determine whether:

(1) There is effective control over and proper accounting for revenues, expenses, assets and liabilities;

(2) The financial statements are presented fairly in accordance with generally accepted accounting principles;

(3) The department financial reports contain accurate and reliable financial data; and

(4) LEA funds are being expended in accordance with Ed 1129.

(d) In order to accomplish the above purposes cited in (c) above, a representative number of charges to special education programs shall be tested to determine whether the charges:

(1) Are required for the proper administration of the program;

(2) Were given consistent accounting treatment and applied uniformly to all activities of the organization;

(3) Were net of applicable credits;

(4) Did not include costs properly chargeable to the organization's other programs;

(5) Were properly recorded with the correct amount and date and supported by source documentation; and

(6) Were allocated equitably to benefiting activities, including non-special education activities.

(e) Audits shall be made annually and include:

(1) Financial statements, including footnotes, of the organization;

(2) The auditors' comments on the financial statements which shall:

a. Identify the statements examined and the period covered;

b. Identify the various special education programs for which a rate was set and the amounts of LEA funds received;

c. State that the audit was done in accordance with Ed 1129.18;

d. Express an opinion as to whether the financial statements are fairly presented in accordance with generally accepted accounting principles, but if an unqualified opinion cannot be expressed then the nature of the qualification shall be stated; and

e. Comment on the accuracy and completeness of the department financial reports, including an expression of negative assurance with respect to compliance with Ed 1129.

(f) Work papers and reports shall be retained for a minimum of 3 years from the date of the audit report unless the auditor is notified in writing by the department of the need to extend the retention period. The work papers shall be made available upon request to the department.

Ed 1129.19 Rate Notification.

(a) The department shall notify the agency by certified mail of the tentative rate(s) and the notification shall include any schedule of adjustments used in the determination of the tentative rate(s).

(b) The agency shall review the notification and schedule of adjustments. If the agency has questions, problems, or both, with the tentative rate(s) the agency shall request a meeting with the department's rate setter within 14 working days of receipt of the notification letter from the department which states the tentative rate(s).

(c) The request for a meeting with the department's rate setter shall state the specific reasons why the agency believes there was an error in the tentative rate(s).

(d) Unless a written request for a meeting with the department's rate setter is received by the department within 14 working days of the agency's receipt of the letter or other written notification from the department which states the tentative rate(s), the tentative rate(s) shall become final.

(e) If the agency requests a meeting with the department's rate setter concerning the tentative rate(s) and the results of that meeting do not satisfactorily resolve the concern(s) of the agency, the agency shall be informed by the department's rate setter of his/her right to a review pursuant to Ed 1129.20.

(f) During any review held pursuant to Ed 1129.20, the agency's most recent approved final rate(s) shall remain in effect for billing purposes. If the agency has not had a previously approved final rate(s) adopted by the department, the agency may bill-for-services at the tentative rate(s).

Ed 1129.20 Hearing Mechanism for Special Education Rates.

(a) A private provider of special education making a request for reconsideration of the rates established by the department shall adhere to the procedures set forth in (b) - (d) below.

(b) A request for reconsideration shall be filed within 14 days of the date of the receipt of the notification letter which states the rate(s) and which is sent by the state to the agency.

(c) A request for reconsideration shall be made in writing, shall be signed by a person duly authorized by the agency to submit the request for reconsideration and shall be filed with the Director, Division of Instruction, New Hampshire Department of Education.

(d) The request for reconsideration shall state the specific reasons why the agency believes there was an error in the original determination.

(e) The director shall render a decision in writing regarding the request within 14 days of the date on which the letter is received by the state. If the director determines that the request for reconsideration reasons are vague, he/she shall require that the agency file a more detailed statement of request for reconsideration. In such case, the requirements specified in (b) - (d) above shall apply to any such statements.

(f) If the director agrees with any or all portions of the agency's request for reconsideration, the department's rate setter shall recalculate the agency's rate(s) accordingly.

(g) If the director does not agree with any or all portions of the agency's request for reconsideration, the director shall notify the agency of his/her decision pursuant to the requirements set forth in (e) above.

(h) Agencies who wish to appeal the decision of the director pursuant to Ed 1129.20(e) shall do so by filing an appeal with the Commissioner of Education, New Hampshire Department of Education.

(i) The appeal shall be made in writing, shall be signed by a person duly authorized by the agency to submit the appeal and shall state specific reasons for the appeal.

(j) The appeal shall be filed within 14 days of the date of the notification letter which states the decision of the director which is sent by the department to the agency.

(k) The appeal shall be heard under RSA 541-A:31-36 by the Commissioner of Education or his/her designee and in accordance with Ed 200.

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

I. An agency shall commence an adjudicative proceeding if a matter has reached a stage at which it is considered a contested case or, if the matter is one for which a provision of law requires a hearing only upon the request of a party, upon the request of a party.

II. An agency may commence an adjudicative proceeding at any time with respect to a matter within the agency's jurisdiction.

III. In a contested case, all parties shall be afforded an opportunity for an adjudicative proceeding after reasonable notice. The notice shall include:

(a) A statement of the time, place, and nature of the hearing.

(b) A statement of the legal authority under which the hearing is to be held.

(c) A reference to the particular sections of the statutes and rules involved.

(d) A short and plain statement of the issues involved. Upon request an agency shall, when possible, furnish a more detailed statement of the issues within a reasonable time.

(e) A statement that each party has the right to have an attorney present to represent the party at the party's expense.

(f) For proceedings before an agency responsible for occupational licensing as provided in paragraph VII-a, a statement that each party has the right to have the agency provide a certified shorthand court reporter at the party's expense and that any such request be submitted in writing at least 10 days prior to the proceeding.

IV. Opportunity shall be afforded all parties to respond and present evidence and argument on all issues involved.

V. (a) Unless precluded by law, informal disposition may be made of any contested case, at any time prior to the entry of a final decision or order, by stipulation, agreed settlement, consent order or default.

(b) In order to facilitate proceedings and encourage informal disposition, the presiding officer may, upon motion of any party, or upon the presiding officer's own motion, schedule one or more informal prehearing conferences prior to beginning formal proceedings. The presiding officer shall provide notice to all parties prior to holding any prehearing conference.

(c) Prehearing conferences may include, but are not limited to, consideration of any one or more of the following:

(1) Offers of settlement.

(2) Simplification of the issues.

(3) Stipulations or admissions as to issues of fact or proof, by consent of the parties.

(4) Limitations on the number of witnesses.

(5) Changes to standard procedures desired during the hearing, by consent of the parties.

(6) Consolidation of examination of witnesses by the parties.

(7) Any other matters which aid in the disposition of the proceeding.

(d) The presiding officer shall issue and serve upon all parties a prehearing order incorporating the matters determined at the prehearing conference.

VI. The record in a contested case shall include all of the following that are applicable in that case:

(a) Any prehearing order.

(b) All pleadings, motions, objections, and rulings.

(c) Evidence received or considered.

(d) A statement of matters officially noticed.

(e) Proposed findings and exceptions.

(f) Any decision, opinion, or report by the officer presiding at the hearing.

(g) The tape recording or stenographic notes or symbols prepared for the presiding officer at the hearing, together with any transcript of all or part of the hearing considered before final disposition of the proceeding.

(h) Staff memoranda or data submitted to the presiding officer, except memoranda or data prepared and submitted by agency legal counsel or personal assistants and not inconsistent with RSA 541-A:36.

(i) Matters placed on the record after an ex parte communication.

VII. The entirety of all oral proceedings shall be recorded verbatim by the agency. Upon the request of any party or upon the agency's own initiative, such record shall be transcribed by the agency if the requesting party or agency shall pay all reasonable costs for such transcription. If a transcript is not provided within 60 days of a request by a person who is a respondent party in a disciplinary hearing before an agency responsible for occupational licensing, the proceeding shall be dismissed with prejudice. Any party may record an oral proceeding, have a transcription made at the party's expense, or both, but only the transcription made by the agency from its verbatim record shall be the official transcript of the proceed

VII-a. At the request of a party in any oral proceeding involving disciplinary action before an agency responsible for occupational licensing except for an emergency action under RSA 541-A:30, III, the record of the proceeding shall be made by a certified shorthand court reporter provided by the agency at the requesting party's expense. A request shall be submitted to the agency in writing at least 10 days prior to the day of the proceeding.

VIII. Findings of fact shall be based exclusively on the evidence and on matters officially noticed in accordance with RSA 541-A:33, V.

541-A:32 Intervention. –

I. The presiding officer shall grant one or more petitions for intervention if:
   (a) The petition is submitted in writing to the presiding officer, with copies mailed to all parties named in the presiding officer's notice of the hearing, at least 3 days before the hearing;
   (b) The petition states facts demonstrating that the petitioner's rights, duties, privileges, immunities or other substantial interests may be affected by the proceeding or that the petitioner qualifies as an intervenor under any provision of law; and
   (c) The presiding officer determines that the interests of justice and the orderly and prompt conduct of the proceedings would not be impaired by allowing the intervention.

II. The presiding officer may grant one or more petitions for intervention at any time, upon determining that such intervention would be in the interests of justice and would not impair the orderly and prompt conduct of the proceedings.

III. If a petitioner qualifies for intervention, the presiding officer may impose conditions upon the intervenor's participation in the proceedings, either at the time that intervention is granted or at any subsequent time. Such conditions may include, but are not limited to:
   (a) Limitation of the intervenor's participation to designated issues in which the intervenor has a particular interest demonstrated by the petition.
   (b) Limitation of the intervenor's use of cross-examination and other procedures so as to promote the orderly and prompt conduct of the proceedings.
   (c) Requiring 2 or more intervenors to combine their presentations of evidence and argument, cross-examination, and other participation in the proceedings.

IV. Limitations imposed in accordance with paragraph III shall not be so extensive as to prevent the intervenor from protecting the interest which formed the basis of the intervention.

V. The presiding officer shall render an order granting or denying each petition for intervention, specifying any conditions and briefly stating the reasons for the order. The presiding officer may modify the order at any time, stating the reasons for the modification.

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

I. All testimony of parties and witnesses shall be made under oath or affirmation administered by the presiding officer.

II. The rules of evidence shall not apply in adjudicative proceedings. Any oral or documentary evidence may be received; but the presiding officer may exclude irrelevant, immaterial or unduly repetitious evidence. Agencies shall give effect to the rules of privilege recognized by law. Objections to evidence offered may be made and shall be noted in the record. Subject to the foregoing requirements, any part of the evidence may be received in written form if the interests of the parties will not thereby be prejudiced substantially.

III. Documentary evidence may be received in the form of copies or excerpts if the original is not readily available. Upon request, parties shall be given an opportunity to compare the copy with the original.

IV. A party may conduct cross-examinations required for a full and true disclosure of the facts.

V. Official notice may be taken of any one or more of the following:
(a) Any fact which could be judicially noticed in the courts of this state.
(b) The record of other proceedings before the agency.
(c) Generally recognized technical or scientific facts within the agency's specialized knowledge.
(d) Codes or standards that have been adopted by an agency of the United States, of this state or of another state, or by a nationally recognized organization or association.

VI. Parties shall be notified either before or during the hearing or by reference in preliminary reports or otherwise of the material noticed, including any staff memoranda or data, and they shall be afforded an opportunity to contest the material so noticed. The agency's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence.

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

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

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

Ed 200 - RULES OF PRACTICE AND PROCEDURE

Ed 1129.21 The Joint Rate Setting Process.

(a) The department shall jointly administer the joint rate setting process with the department of health and human services pursuant to the requirements of Ed 1129.21, Ed 1129.22 and Ed 1129.23.

(b) An agreement signed by the commissioner of the department of health and human services and the commissioner of the Department of Education in March of 1999, “Agreement Between the New Hampshire Department of Education and the New Hampshire Department of Health and Human Services Relative to Students with Disabilities Ages Birth to Twenty One,” shall be used as the basis for the administration of the joint rate setting process.

(c) When rates are jointly set by the Department of Health and Human Services and the department in accordance with RSA 170-G:4, XVII and XVII-a, any conflicts identified by the state agencies existing between rate setting rules of the department of health and human services and the department shall be resolved by both state agencies applying the stricter of the 2 sets of rules.

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

Ed 1129.22 Joint Rate Notification.

(a) The department and the Department of Health and Human Services shall both notify the agency by certified mail of the tentative rate(s) and the notification shall include any schedule of adjustments used in the determination of the tentative rate(s).

(b) The agency shall review the notification and schedule of adjustments. If the agency has questions, problems, or both, with the tentative rate(s) the agency shall request a joint meeting with the department's rate setter and the department of health and human services rate setter within 14 working days of receipt of the notification letter from the department and Department of Health and Human Services which states the tentative rate(s).

(c) The request for a joint meeting with the department's rate setter and the department of health and human services rate setter shall state the specific reasons why the agency believes there was an error in the tentative rate(s).

(d) Unless a written request for a meeting is received by the department and the Department of Health and Human Services within 14 working days of the agency's receipt of the notification letter from the department and the department of health and human services which states the tentative rate, the tentative rate(s) shall become final.

(e) If the agency requests a joint meeting with both of the state's rate setters concerning the tentative rate(s) and the results of that meeting do not satisfactorily resolve the concern(s) of the agency, the agency shall be informed by both rate setters of his/her right to review pursuant to rules of the Department of Health and Human Services and the department.

(f) During any review held pursuant to rules of the department of health and human services or the department, the agency's most recent approved final rate(s) shall remain in effect for billing purposes. If the agency has not had a previously approved final rate(s) adopted by the department and the department of health and human services, the agency may bill for services at the tentative rate(s).

Ed 1129.23 Hearing Mechanism for Jointly Set Special Education Rates.

(a) A private provider of special education services making a request for reconsideration of the rates established jointly by the department and the department of health and human services shall adhere to the procedures set forth in (b) - (d) below.

(b) A request for reconsideration made under (c) below shall be filed within 14 days of the date of receipt of the notification letter which states the rate(s) and which is sent by both state agencies to the private provider.

(c) A request for reconsideration shall be made in writing, shall be signed by a person duly authorized by the agency to submit the request for reconsideration and shall be filed with the Director, DCYF and the Director, Division of Instruction, New Hampshire State Department of Education or their designees.

(d) The request for reconsideration shall state the specific reasons why the agency believes there was an error in the original determination.

(e) Both directors or their designees shall render a joint decision in writing regarding the request within 14 working days of the date on which the letter is received by both state agencies. If the directors or their designees determine that the request for reconsideration reasons are vague, they shall require that the private provider file a more detailed statement of request for reconsideration. In such case, the requirements specified in (b) - (d) above shall apply to any such statements.

(f) If the directors agree with any or all portions of the agency's request for reconsideration, both state rate setters shall recalculate the agency's rates accordingly.

(g) If the directors disagree with each other, and the agency wishes to pursue the issue, the agency shall appeal under RSA 541-A:31-36 as provided in (l) below.

RSA 541-A:31-36 – See Ed 1129.20	**Page #223**

(h) If the directors do not agree with any or all portions of the agency's request for reconsideration, the directors shall notify the agency of their decision pursuant to the requirements set forth in (e) above.

(i) Agencies who wish to appeal the decision of both directors pursuant to Ed 1129.23(e) shall do so by filing an appeal with the commissioner, Department of Education, and the Commissioner, Department of Health and Human Services.

(j) The appeal shall be made in writing, shall be signed by a person duly authorized by the agency to submit the appeal and shall state specific reasons for the appeal.

(k) The appeal shall be filed within 14 days of the date of the letter or other written notification which states the decision of the directors or their designees which is sent by the department and DCYF to the agency.

(l) The appeal shall be heard under RSA 541-A:31-36 by the Commissioner of Education and the Commissioner of the Department of Health and Human Services or their designees in accordance with Ed 200 and He-C 200, provided that, if such rules are in conflict, the stricter rules shall apply.

RSA 541-A:31-36 – See Ed 1129.20	**Appendix A**
Ed 200 - RULES OF PRACTICE AND PROCEDURE	**Appendix A**
He-C 200 RULES OF PRACTICE AND PROCEDURE	**Appendix A**

APPENDIX A

The documents in Appendix A have been determined to be too lengthy to be incorporated into the body of the N.H. Rules. A web link is provided for these documents. If you would like a paper copy of any Law or Rule cited the Department will provide it to you, upon request, at no charge.

ESEA Section 1111(b) http://www.ed.gov/policy/elsec/leg/esea02/pg2.html#sec1111

ESEA Section 6111 http://www.ed.gov/policy/elsec/leg/esea02/pg87.html#sec6111

Ed 306 Minimum Standards for the Public School Approval
http://www.ed.state.nh.us/education/laws/Ed306.htm

Ed 500 Certification Standards For Educational Personnel
http://www.gencourt.state.nh.us/Rules/ed500.html

RSA 193-A Home Education http://www.gencourt.state.nh.us/rsa/html/xv/193-a/193-a-mrg.htm

RSA 170-E Child Day Care, Residential Care, and Child-Placing Agencies
http://www.gencourt.state.nh.us/rsa/html/xii/170-e/170-e-mrg.htm

RSA 169-C http://www.gencourt.state.nh.us/rsa/html/xii/169-c/169-c-mrg.htm

RSA 189:13-a http://www.gencourt.state.nh.us/rsa/html/XV/189/189-13-a.htm

Saf-C 6000 State Fire Code http://www.gencourt.state.nh.us/rules/saf-c6000.html

RSA 464-A Guardians and Conservators
http://www.gencourt.state.nh.us/rsa/html/XLIV/464-A/464-A-4.htm

RSA 541 Rehearings and Appeals in Certain Cases
http://www.gencourt.state.nh.us/rsa/html/LV/541/541-mrg.htm

RSA 169-B http://www.gencourt.state.nh.us/rsa/html/xii/169-b/169-b-mrg.htm

RSA 169-C http://www.gencourt.state.nh.us/rsa/html/xii/169-c/169-c-mrg.htm

RSA 169-D http://www.gencourt.state.nh.us/rsa/html/xii/169-d/169-d-mrg.htm

He-M 1301 http://www.gencourt.state.nh.us/rules/he-m1300.html

34 CFR 99
http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&tpl=/ecfrbrowse/Title34/34cfr99_main_02.tpl

RSA 541-A:31 http://www.gencourt.state.nh.us/rsa/html/LV/541-A/541-A-31.htm
RSA 541-A:32 http://www.gencourt.state.nh.us/rsa/html/LV/541-A/541-A-32.htm
RSA 541-A:33 http://www.gencourt.state.nh.us/rsa/html/LV/541-A/541-A-33.htm
RSA 541-A:34 http://www.gencourt.state.nh.us/rsa/html/LV/541-A/541-A-34.htm
RSA 541-A:35 http://www.gencourt.state.nh.us/rsa/html/LV/541-A/541-A-35.htm
RSA 541-A:36 http://www.gencourt.state.nh.us/rsa/html/LV/541-A/541-A-36.htm

He-C 200 Rules of Practice and Procedure http://www.gencourt.state.nh.us/Rules/he-c200.html

Appendix A also contains a link to the complete Federal Special Education Regulations:
34 CFR Part 300 et seq.

http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&tpl=/ecfrbrowse/Title34/34cfr300_main_02.tpl