

Readopt with amendment Ed 1101 effective 6-28-08 (Document #9197), to read as follows:

PART Ed 1101 PURPOSE AND SCOPE

Ed 1101.01 Purpose. The purpose of Ed 1100, adopted by the state board of education, is to ensure that all children with disabilities have available to them a free, appropriate, public education pursuant to the Individuals with Disabilities Education Act (IDEA), 20 U.S.C 1400, et seq., as amended by the Individuals with Disabilities Education Improvement Act of 2004 (IDEIA) and the implementing regulations found in 34 CFR 300 et seq. and RSA 186-C.

Ed 1101.02 Scope. These rules shall apply only to programs that receive public funds.

Readopt with amendment Ed 1102.01 effective 6-28-08 (Document 9197), amended effective 11-11-10 (Document #9812), to read as follows:

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, validity, or both 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.

(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.

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

- (1) Neutral conference; and
- (2) Mediation.

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

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

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

(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).

(p) “Chartered public school” means “chartered public school” as defined in RSA 194-B:1, III.

(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 requires 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).

(t) “Child with a disability” means:

- (1) A “Child with a disability” as defined in 34 CFR 300.8 who is 3 years of age or older but less than 21 years of age and who has not yet received a regular high school diploma as provided in 34 CFR 300.102;
- (2) A child with a developmental delay as defined in Ed 1102.01(s) above; and
- (3) A child with acquired brain injury as defined in Ed 1102.01(r) above.

(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 at least 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, are able to enter into under RSA 186-C:8.

(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.

(y) “Core academic subjects” means “core academic subjects” as defined in 34 CFR 300.10.

(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, experiences, or both that are offered within the early childhood program to address all aspects of development and to promote meaningful learning experiences regarding preschoolers, their families and their community.

Readopt Ed 1102.02, effective 6-28-08 (Document #9197), to read as follows:

Ed 1102.02 Definitions D-G.

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

(b) “Department” means the New Hampshire department of education.

(c) “Destruction,” in reference to information in education records, means “destruction” as defined in 34 CFR 300.611(a).

(d) “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.

(e) “Disability” means any of the conditions listed in 34 CFR 300.8(c).

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

(g) “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.

(h) “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.

(i) “Education records” means “education records” as defined in 34 CFR 300.611(b).

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

(k) “Equipment” means “equipment” as defined in 34 CFR 300.14.

(l) “Elementary and Secondary Education Act” (ESEA) means the Elementary and Secondary Education Act of 1965.

(m) “Evaluation” means “evaluation” as defined in 34 CFR 300.15 and consistent with the requirements in Ed 1107.

(n) “Evaluation process” means the completion of initial evaluations, reevaluations and assessments, a written summary report, and a meeting of the IEP team to review the results of the evaluations and assessments. When the purpose of the meeting is to determine eligibility for special education and related services, the evaluation process also includes the determination of eligibility.

(o) “Extracurricular and nonacademic activities” means those activities and services detailed in 34 CFR 300.107(b).

(p) “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.

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

(r) “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.

(s) “Functional behavioral assessment” means an assessment of a student’s behavior.

(t) “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.

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

(v) “Functionally blind” means “functionally blind” as defined in RSA 186-C:2[-], VI.

Readopt with amendment Ed 1102.03-Ed 1102.05 effective 6-28-08 (Document #9197), to read as follows:

Ed 1102.03 Definitions H-M.

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

(b) “Health Evaluation” means an evaluation that provides the IEP team with information on the child’s physical condition and may include, but is not limited to, a physical assessment, health screening, or both a review of a child’s medical history, classroom observations of the child with health related concerns, identification of health barriers to learning etc., as determined by the IEP team.

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

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

(e) “Home for children” means:

- (1) Any orphanage, or 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-C:5.

(f) “Home instruction” means a home-based LEA placement as detailed in Ed 1111.04 that provides home instruction for school-aged children.

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

(h) “Individualized education program” (IEP) means “individualized education program” as defined in 34 CFR 300.22 and which meets the requirements in Ed 1109.

(i) “Individualized education program team” (IEP team) means “individualized education program team” as defined in 34 CFR 300.23 and which meets the requirements in Ed 1103.01(b) and (c).

(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.

(k) “Individuals with Disabilities Education Act (IDEA) and Individuals with Disabilities Education Improvement Act (IDEIA)” each mean the Individuals with Disabilities Education Act, 20 U.S.C. 1400, et seq., as amended by the Individuals with Disabilities Education Improvement Act of 2004, and as implemented by the U.S. Department of Education’s regulations, 34 CFR 300 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.

(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.

(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) and 300.322(e).

(o) “Local education agency” (LEA) means “local education agency” as defined in 34 CFR 300.28.

(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.

(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).

(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.

(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.

(v) “Modification” means any change in instruction or evaluation determined necessary by the IEP team that impacts the rigor, validity or both, 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.

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

(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.

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

(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.

(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.

(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 non-district 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 chartered public 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 chartered public school.

(m) “Professional licensed to provide a health evaluation” means anyone, who under their specific licensing is qualified to provide a health evaluation. This may include, but is not limited to: a school nurse, a registered nurse, physician, psychiatrist, and naturopathic doctors.

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

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

(p) 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 34 CFR 300.103.

(q) “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.

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

(s) “Related services” means “related services” as defined in 34CFR 300.34(a).

(t) “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).

(b) “School district means “school district” as defined in RSA 195-A:1.

(c) “Sending district” means” sending district” as defined in RSA 193:27, IV.

(d) “Special education” means “special education” as defined in 34 CFR 300.39.

(e) “State education agency” (SEA) means the New Hampshire department of education.

(f) “Services plan” means a written statement developed and implemented in accordance with 34 CFR 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.

(g) “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.

(h) “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.

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

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

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

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

(m) “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.

(n) “Transition services” means “transition services” as defined in 34 CFR 300.43.

(o) “Universal design” means “universal design” as defined in 34 CFR 300.44.

(p) “Written affirmation” means “written affirmation” as described in 34 CFR 300.135.

(q) “Written prior notice” means “prior notice by the public agency” as described in 34 CFR 300.503.

Readopt with amendment Ed 1103, effective 6-28-08 (Document #9197), to read as follows:

## 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 and Ed 1103.01(b) and (c).

(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).

(c) A representative of DCYF and an appointed Guardian ad Litem (GAL) shall be considered “other individuals” who have knowledge or special expertise regarding the child as referred to in 34 CFR 300.321(a)(6).

(d) When any vocational, career or technical education components are being considered, the IEP team membership shall include an individual knowledgeable about the vocational education and/or career and technical education programs being considered.

(e) The LEA or parent shall notify the other party of the expected absence of a team member at least 72 hours before a scheduled meeting or upon learning of the expected absence of a team member, whichever occurs first.

Ed 1103.02 Parent Participation.

(a) The LEA shall ensure that the parent or parents of the child with a disability receive a written notice no fewer than 10 days before an IEP meeting. If the parent(s) agrees in writing, the LEA may satisfy this requirement via transmittal by electronic mail. Such an agreement shall be effective until revoked in writing. A notice sent by first class or certified U.S. mail 12 days prior to the meeting shall be deemed received 10 days before an IEP team meeting.

(b) Provided that for a manifestation determination review under 34 CFR 300.530(e) the LEA shall ensure that the parent or parents receive a written notice no fewer than 5 days before the review.

(c) The notice shall include the purpose, time, location of the meeting and the identification of the participants.

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

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

(f) 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).

Readopt Ed 1104, effective 6-28-08 (Document #9197), to read as follows:

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.

Readopt Ed 1105.01- Ed 1105.03 effective 6-28-08 (Document #9197), to read as follows:

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.
- (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 described in Ed 1104, 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. Schools shall forward referrals to the IEP team for further review.

(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.

(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 1106.01(c).

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

Readopt with amendment Ed 1105.04, effective 6-28-08 (Document #9197), to read as follows:

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.
- (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 will be 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 family centered early supports and services 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.

Readopt Ed 1106, effective 6-28-08 (Document #9197), to read as follows:

**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;

(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 business 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 evaluations, if any, are needed to address any remaining concerns raised by the referral;

(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 34 CFR 300.503 through 300.504 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;

(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; and

(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).

Readopt with amendment Ed 1107.01 effective 6-28-08 (Document #9197), cited and to read as follows:

#### 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.

(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.

(c) For initial evaluations, the evaluation process, as defined in Ed 1102.02(n), shall be completed within 60 days after receipt of parental consent to evaluate.

(d) For reevaluations, the evaluation process as defined in Ed 1102.02(n) shall be completed within 60 days after the receipt of parental consent to evaluate, or at the conclusion of any extension provided in Ed 1107.01(e).

(e) Upon written consent of the parties, the 60 day time limit required by Ed 1107.01(d) may be extended by a specific number of days, not to exceed 30 days.

(f) For 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.

(g) If a referral is ordered by a court pursuant to RSA 169-B:22, 169-C:20 or 169-D:18, upon the receipt of the order for referral, 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.

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

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

Readopt with amendment Ed 1107.02, effective 6-28-08 (Document #9197), to read as follows:

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

(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.

Readopt Ed 1103, effective 6-28-08 (Document #9197), to read as follows:

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.

(c) The agency criteria determined by the LEA, as described in 34 CFR 300.502(a)(2) and 300.502(e), to the extent that they exceed qualified examiner criteria or establish geographic limitations, shall not be so restrictive that the parent does not have a choice of independent evaluators.

Readopt with amendment Ed 1107.04, effective 6-28-08 (Document #9197), as amended 11-11-10 (Document #9812), to read as follows:

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
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 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 disability	Varies based on the suspected disability
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

INTELLECTUAL DISABILITY	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
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	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
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
	Communicative Skills	Speech-Language Pathologist Speech-Language Specialist
TRAUMATIC BRAIN INJURY/ACQUIRED 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
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

\*\*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) The LEA shall provide parents with copies of each examiner’s evaluation and assessment report(s) at least 5 days prior to the meeting of the IEP team at which the evaluation and assessment report(s) will be discussed. The LEA shall provide the report(s) by sending the report(s) to the parents via US mail unless the parents and the LEA agree upon another method.

(e) The parent may waive, in writing, paragraph d.

Readopt Ed 1107.05, effective 6-28-08 (Document #9197), to read as follows:

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 a reevaluation will be conducted.

(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, 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.

Readopt with amendment Ed 1108 - Ed 1109 effective 6-28-08 (Document #9197), to read as follows:

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.

(b) For determination of eligibility, the composition of the IEP team described in 34 CFR 300.306 shall be the IEP team.

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 34 CFR 300.320;
- (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; and
- (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, vocational education, or career and technical education.

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

(b) All drivers of such vehicles shall be licensed according to Saf-C 1304.

(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 or she is not under contract or reimbursement agreement with a municipality.

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

(a) The LEA shall provide special education, related services, supplementary aids and services, accommodations, and modifications to a child with a disability in accordance with the child's IEP. IEPs shall be in effect in accordance with 34 CFR 300.323.

(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).

(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.

(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).

(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.

(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.

(j) Transition services, other than those provided by a NH Department of Education approved special education program which the child attends, shall be monitored by LEA personnel, on no less than a weekly basis.

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

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:

- (1) Special education and related services provided;
- (2) 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 post-secondary goals, shall be provided to the child prior to the child's eligibility termination described in 34 CFR 300.305(e)(2).

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.

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.

Readopt Ed 1110, effective 6-28-08 (Document #9197), to read as follows:

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.

(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, other than those provided by a NH Department of Education approved special education program which the child attends, shall be monitored by LEA personnel on no less than a weekly basis.

Readopt with amendment Ed 1111 effective 6-28-08 (Document #9197), to read as follows:

PART Ed 1111 PLACEMENT OF CHILDREN WITH DISABILITIES

Ed 1111.01 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.

(b) A child with a disability shall be admitted to regional vocational, career or technical 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 and/or career and technology education as part of FAPE shall receive such services as determined by the IEP team in the least restrictive environment.

Ed 1111.02 Continuum of Alternative Educational Environments

(a) The LEA shall comply with the requirements of 34 CFR 300.115, relative to continuum of alternative educational environments as set forth in Table 1100.3 and table 1100.4.

(b) School districts shall, at a minimum, give evidence that the continuum of alternative educational environments from least restrictive to most restrictive set forth in Table 1100.2, "Continuum of Alternative Educational Environments for Children Ages 3-5." and as set forth in Table 1100.2, "Continuum of Alternative Educational Environments for Children Ages 6-21" and as set forth in Table 1100.4, "Continuum of Alternative Educational Environments –Ages 6-21 is available or would be made available as placements for children with disabilities, including children of preschool age.

Ed 1111.03 Placement Decisions.

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

(b) Preschool children with disabilities shall be educated in an educational environment that is appropriate to implement the IEP or IFSP and is the least restrictive environment consistent with 34 CFR 300.116, placements.

(c) Preschool children with disabilities may receive their special education program in any of the environments listed in Table 1100.2 as follows:

Table 1100.2 Continuum of Alternative Educational Environments – Ages 3-5

<u>Preschool Educational Environments</u>	<u>Description</u>
Early childhood program	A preschool child with a disability attends an early childhood program that includes at least 50% nondisabled children.
Home	A preschool child with a disability receives some or all of his/her supports and services in the child's home.
Early childhood special education program	A preschool child with a disability attends [a] an early childhood special education program which can include any of the classrooms described in Ed 1113.10(c)(5).
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.

(d) Children age 6-21 may receive their special education program at any of the environments listed in Table 1100.3 as follows:

Table 1100.3 Continuum of Alternative Learning Environments – Ages 6-21

<u>Educational Environments</u>	<u>Description</u>
Regular Education Setting	A child with a disability attends regular class with supports and services required in the IEP.
Resource room	A child with a disability attends a regular class and receives assistance at or through the special education resource room for no more than 60% of the child's school day.
Self-contained Special Education Class	A child with a disability attends a self-contained special class for more than 60% of their school day.
Separate Approved Special Education Program/School	A child with a disability attends a publicly or privately operated special education program/school.
Residential placement	A child with a disability attends a publicly or privately operated residential program.
Home Instruction	A child with a disability receives all or a portion of his or her special education program at home.
Hospital or institution	A child with a disability receives special education while in a hospital or institution.

Ed 1111.04 Home Instruction for School-Aged Children with Disabilities

(a) Home instruction is an alternative placement for children at least 6 years of age but less than 21 years of age in accordance with CFR 300.115.

**§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) This section shall not apply to children with disabilities who have been removed from school for violations of a code of student conduct or removals to an interim alternative educational setting as authorized in 34 CFR 300.530(b) through (d) and 300.532(b). Such children shall receive services consistent with Ed 1124; provided that such services, if provided at the child’s home, shall consist of: (a) a minimum of 10 hours/week of instruction, including special education as specified in the child’s IEP; and (b) related services as specified in the child’s IEP.

(c) Home instruction for children at least 6 years of age but less than 21 years of age shall not include parent-designed home instruction programs as authorized in Ed 315.

(d) Pursuant to CFR 300.116, a child’s placement is determined at a least annually and is based on the child’s IEP.

**§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.

**PART Ed 315 PROCEDURES FOR THE OPERATION OF HOME EDUCATION PROGRAMS**

(e) Children who are placed in home instruction should be allowed to participate with nondisabled children to the maximum extent appropriate to the needs of the child, as required by 34 CFR 300.114(a)(2)(i).

(f) Length of the school year and school day for a home instruction placement shall be consistent with RSA 186-C: 15 except as follows:

(1) When the superintendent has excused a student from full-time attendance in accordance with RSA 193:1, I(c) or RSA 193:5, in which case the superintendent and parent shall agree on the number of hours per week of instruction, including special education and related services that the student shall receive.

(2) For children with disabilities ages 18-21, the procedures in Ed 1111.04(e) (1) shall apply as if the child with a disability were under 18 years of age.

**186-C: 15 Length of School Year. –**  
 I. The length of the school year and school day for a child with a disability shall be the same as that provided by the local school district for a child without a disability 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 individualized education program team determines that such services are necessary to provide the child with a free appropriate public education.

**193:1 Duty of Parent; Compulsory Attendance by Pupil. –**  
 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: (a) The child is attending a New Hampshire public school outside the district to which the child is assigned or an approved New Hampshire private school for the same time;  
 (b) The child is receiving home education pursuant to RSA 193-A and is therefore exempt from this requirement;  
 (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 adequate education grants under RSA 198:41;

**193:5 Exemption From Attendance.** – Whenever it shall appear to the superintendent of schools that the welfare of any child will be best served by the withdrawal of such child from school, the superintendent or a majority of the members of the school board shall make recommendation to the commissioner of education, who shall, if the facts warrant it, make an order exempting such child from attendance for such period of time as seems best for the interest of such child.

Readopt Ed 1112, effective 6-28-08 (Document #9197), to read as follows:

**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.

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.

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.

Readopt Ed 1113.01-Ed1113.02 effective 6-28-08 (Document #9197), to read as follows:

**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.

(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.

(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.

(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.

(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).

Readopt with amendment Ed 1113.03, effective 6-28-08 (Document #9197), to read as follows:

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;
- (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.

(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.

(d) A program for children with disabilities shall provide those components of the child's approved IEP as required in 34 CFR 300.320.

(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) 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.

Readopt Ed 1113.04 –Ed 1113.05, effective 5-15-14 (Document #10590), to read as follows:

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 of the following aversive behavioral interventions:

- (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 or drink programs;
- (5) Electrical stimulation;
- (6) Placement of a child in an unsupervised or unobserved room from which the child cannot exit without assistance; and
- (7) Physical restraint, unless in response to a threat of imminent, serious, physical harm pursuant to RSA 126-U.

Ed 1113.05 Emergency Intervention Procedures. All crisis or emergency intervention procedures shall be included in the student's IEP and shall comply with Ed 1113.04 and RSA 126-U:5

Ed 1113.06 RESERVED

Readopt Ed 1113.07, effective 6-28-08 (Document #9197), to read as follows:

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.

Readopt with amendment Ed 1113.08, effective 6-28-08 (Document #9197), to read as follows:

Ed 1113.08 Curricula.

(a) The LEA shall ensure that every preschool child with a disability has full access to appropriate preschool activities, in compliance with 34 CFR 300.320(a)(1)(ii).

(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).

Readopt with amendment Ed 1113.09, effective 6-28-08 (Document #9197) to read as follows:

Ed 1113.09 Equipment, Materials and Assistive Technology.

(a) Each LEA shall provide in an appropriate and timely manner, instructional equipment and materials adequate to implement the IEP for each child with a disability, as required by 34 CFR 300.105.

(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.

(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.

Readopt with amendment Ed 1113.10- Ed 1113.11, effective 6-28-08 (Document #9197), to read as follows:

Ed 1113.10 Class Size and Age Range.

(a) The following shall apply to the early childhood program for children with disabilities ages 3 through 5:

(1) A preschool child may receive some or all special education and related services in a regular early childhood program as determined by the IEP team; and

(2) Qualified personnel shall provide services as identified in the IEP or IFSP.

(b) 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.

(c) The following shall apply to early childhood special education programs which are made up of early childhood special education classes:

(1) An early childhood special education class shall be considered a special education class when it includes less than 50% children without disabilities;

(2) In an early childhood special education program there may be more than one early childhood special education class.

- (3) The LEA shall ensure the individual needs of the children with disabilities can be met when determining the number of children to be enrolled and staffing in the early childhood special education class;
  - (4) Preschool children with disabilities will be placed in an early childhood special education program consistent with Ed 1111.01(a) and CFR 300.114;
  - (5) Preschool children in an early childhood special education class shall be between the ages of 3 and 5 years of age, 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;
  - (6) The minimum teacher to student ratio in all early childhood special education class 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;
  - (7) The maximum number of preschool children in an early childhood special education class shall be 12;
  - (8) 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.
- (d) 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 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.

(e) 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.

Readopt with amendment Ed 1113.12, effective 6-28-08 (Document #9197), to read as follows:

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.

(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;
  - (4) Monitor the behavior of children with whom they are working; and
  - (5) Assist in the provision of special education and related services.
- (c) Paraprofessional personnel providing services to children with disabilities shall not:
- (1) Design programs;
  - (2) Evaluate the effectiveness of programs;
  - (3) Assume responsibilities of a teacher or a substitute teacher; or
  - (4) Instruct a child with a disability.

Readopt with amendment Ed 1113.13, effective 6-28-08 (Document #9197), to read as follows:

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.

(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.

Readopt with amendment Ed 1113.14, effective 6-28-08 (Document #9197), to read as follows:

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 186-C:15, I, RSA 189:1 and RSA 189:24 and Ed 306.18-Ed 306.21.

(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.

Readopt with amendment Ed 1113.15, effective 6-28-08 (Document #9197), to read as follows:

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).

Readopt with amendment Ed 1114.01- Ed 1114.0~~6~~2, effective 6-28-08 (Document #9197), cited and to read as follows:

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.

Readopt with amendment Ed 1114.04, effective 6-28-08 (Document #9197), cited and to read as follows:

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 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.

(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.

Readopt with amendment Ed 1114.05 effective 6-28-08 (Document #9197), to read as follows:

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;
- (6) Any preplacement requirements for the child, the parent, and the placing agency; and
- (7) Accessibility to educational materials.

(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.

(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.

Readopt Ed 1114.06 effective 6-28-08 (Document #9197), to read as follows:

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) 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.

(h) 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.

(i) 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.

(j) The reports required in Ed 1114.06 (j) 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.

(k) Reports provided to parents shall be in the native language or other mode of communication used by the parent.

Readopt with amendment Ed 1114.07, effective 5-15-14 (Document #10590), to read as follows:

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 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 Ed. 1114.07.

(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, or other public agency, private provider of special education or other non-LEA program shall not employ any of the following aversive and deprivation behavioral interventions:

- (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 or drink programs;
- (5) Electrical stimulation;
- (6) Placement of a child in an unsupervised or unobserved room from which the child cannot exit without assistance; and
- (7) Physical restraint, unless in response to a threat of imminent, serious, physical harm, pursuant to RSA 126-U.

Readopt Ed 1114.08 effective 5-15-14 (Document #10590), to read as follows:

Ed 1114.08 Emergency Intervention Procedures. All crisis or emergency intervention procedures shall be included in the student's IEP and shall comply with Ed 1114.07 and RSA 126-U:5.

Ed 1114.09 RESERVED

Readopt Ed 1114.10- Ed 1114.22, effective 6-28-08 (Document #9197), to read as follows:

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.

(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.

(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.

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.

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 501.

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.

(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.

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.

(e) Each private provider or other non-LEA program shall have written procedures for behavioral interventions that outline staff responsibilities with regard to procedures for personnel who are qualified and trained in behavioral crisis intervention response so that quick, organized responses can occur.

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.

Readopt with amendment Ed 1115 effective 6-28-08 (Document #9197), to read as follows:  
PART Ed 1115 SURROGATE PARENTS

Ed 1115.01 Basis for Appointment of a Surrogate Parent.

(a) Pursuant to RSA 186-C:14, III, (a), if a child with a disability is in need of special education and the parent or guardian is unknown or cannot be located after reasonable efforts are taken to find said parent, or if the child is in legal custody of the division of children, youth and families, the commissioner or designee, shall appoint a surrogate parent who shall represent the child in the educational decision-making process.

(b) In the case of a child is in legal custody of the division of children, youth and families and a judge is actively overseeing the child's case pursuant to the Individuals with Disabilities Education Act, 20 U.S.C section 1415(b)(2)(A)(i), the judge may appoint a surrogate parent. The appointed surrogate parent must meet the requirements for selection of surrogate parents pursuant to Ed 1115.06.

(c) In the case of a child who is an unaccompanied youth as defined in the McKinney-Vento Homeless Assistance Act, 42 U.S.C. section 11434a(6), the school district shall appoint a surrogate parent on a temporary basis. The appointed surrogate parent must meet the requirements for selection of surrogate parents pursuant to Ed 1115.06.

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 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 LEA shall initiate the appointment of a surrogate parent, pursuant to Ed 1115.02.

(c) 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.

(d) 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) 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.

(c) A parent shall be considered "not able to be located" when the LEA cannot discover the whereabouts of the parent and can document it's efforts through a record of its attempts to do so, including evidence that the LEA has contacted DCYF, including but not limited to, telephone calls and emails, each including the date, time, person, or agency contacted.

(d) The LEA shall mail 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.

(e) The notice under Ed 1115.03(d) shall include:

(1) A request for the parent to participate in the special education process for the child;

(2) The procedural safeguards notice described in 34 CFR 300.504;

(3) Upon location of a parent, the parent may resume responsibility as the child's educational decision-maker upon written notification to the LEA.

(f) The child shall be determined to be a ward of the state under this section when, as documented in court records, the child is in legal custody of DCYF.

(g) A judge overseeing the case of a child who might be or is a child with a disability may appoint a surrogate parent for a child.

(h) The LEA's homeless liaison shall determine if the child is an unaccompanied homeless youth as defined in section 725(6) of the McKinney Vento Homeless Assistance Act (42 U.S.C 1143a(6)) who might be or is a child with a disability.

(i) 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.

(j) 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 or his or her designee appoint a surrogate parent.

(b) The written request for appointment of a surrogate parent shall include:

(1) The date the 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 parent(s), if known, and whose parental rights have not been surrendered or terminated;
- f. The child's guardian, if any;
- g. The contact persons of the child's liable or 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 the child is in evaluation status or has already been determined to have a disability;
- (5) A statement of the child's legal relationship and custody status with DCYF;
- (6) A written statement by the superintendent of schools or the superintendent's designee attesting that the LEA investigated the child's need for a surrogate parent and the LEA determined that:
  - a. The child's parent is unknown or not able to be located;
  - b. The child is under legal custody of DCYF or guardianship of DCYF per RSA 463 as documented in a court order;
  - c. The LEA's homeless liaison has signed a statement that the child is an unaccompanied homeless youth as defined in section 725(6) of the McKinney Vento Homeless Assistance Act (42 U.S.C 1143a(6)) who might be or is a child with a disability; or
  - d. A judge overseeing the case of a child, who might be or is a child with a disability, has appointed a surrogate parent as documented in a court order; and
- (7) Documentation of efforts to contact the parent as described in Ed 1115.03, as well as a copy of evidence of documentation that DCYF has been contacted or copies of court orders showing DCYF has legal custody or guardianship per RSA 463 or that a judge has appointed an educational surrogate parent.

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).
- (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
  - (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; and
  - (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;
    - d. The surrogate parent has a conflict of interest with the child's interests and is removed;  
or
    - e. The surrogate parent resigned, died, or has been 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 to a court of competent jurisdiction.
- (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, or 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 custody of DCYF or guardianship of DCYF per RSA 463; or

(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.

(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 Request for Appointment of Educational Surrogate Parent 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 personally or professionally with the interest of the child he or she represents;

(11) Are not employees of an SEA, LEA, or any other 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.

(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 80 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.

(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 or her designee, and all interested parties or persons.

(e) Surrogate parents shall have the same right of access to records concerning the child as provided by RSA 186-C:14, V.

Readopt with amendment Ed 1116, effective 6-28-08 (Document #9197), to read as follows:

PART Ed 1116 ALTERNATIVE METHODS FOR THE APPOINTMENT OF SURROGATE PARENTS

Ed 1116.01 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 might be a child with a disability.

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).

(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.

Readopt with amendment Ed 1116.03, effective 6-28-08 (Document #9197) to read as follows:

Ed 1116.03 Appointment of a Surrogate Parent by Court Order for a Child who is or **may** might 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) A judge who oversees the case of a child may appoint a surrogate parent, for a child who is in legal custody of DCYF or guardianship of DCYF per RSA 463, 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, and the school district 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.

Readopt with amendment Ed 1116.04, effective 6-28-08 (Document #9197), to read as follows:

Ed 1116.04 Appointment of Foster Parents as Surrogate Parents Pursuant to RSA 186-C:14-a.

(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.

(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 parent(s) or child's biological or adoptive 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 either:

a. 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.

Readopt with amendment Ed 1117, effective 6-28-08 (Document #9197), to read as follows:

PART Ed 1117 EDUCATION OF CHILDREN WHO MAY BE SUBJECT TO COURT ORDERED RESIDENTIAL PLACEMENT 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 02(s) to children with or who might have educational disabilities.

(b) These provisions shall apply to the initial court ordered residential placement of children and all successive court ordered residential placements by a state court acting pursuant to RSA 169-B, RSA 169-C or RSA 169-D.

Ed 1117.02 Definitions.

(a) Definitions provided in RSA 193:27 and RSA 186-C:19, I-IV shall apply:

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

(2) "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.

(3) “Liable school district” means the school district which is legally responsible for the education of a child with a disability, pursuant to Ed 1128.08(a)(5).

(4) “State institution” means the New Hampshire hospital, Laconia developmental services, and the youth development center.

Ed 1117.03 Review Procedures For Children Previously Determined to Have Disabilities.

(a) When a court is considering or DCYF is recommending a court ordered residential placement for a child with a disability, the liable school district shall make a recommendation to the court as to where the child’s educational needs can be met in accordance with state and federal education laws.

(b) When making its recommendation to the court under (a), the school district shall address the following factors:

- (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 implement 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. Other factors contributing to the need for a change in educational assignment;
- (6) Any dissenting recommendation(s) made by an IEP team member that were not included in the IEP team’s proposal;
- (7) Once the recommendation is submitted to the court, a copy of the recommendation must be provided to the parents 5 days prior to the court hearing.

(c) Nothing in this section shall diminish the responsibility of the financially liable school district as defined in RSA 186-C:19 to develop and implement an individualized education program or to fulfill its obligations under other sections of this rule for a child in placement for which DCYF has financial responsibility, regardless of whether such child was initially placed by a school district, the parent or some other agent.

(d) The liable school district shall provide written notice of an IEP team meeting as provided in Ed 1103.02(a) to a representative of DCYF, and appointed Guardian ad Litem involved with the child for whom court ordered residential placement is being considered.

(1) If a representative of DCYF or appointed Guardian ad Litem does not elect to attend the meeting, the liable school district shall, after notifying parent(s), promptly provide DCYF with a copy of any special education records developed during or as a result of each such meeting;

(e) 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 educational 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 court ordered residential placement decision made by the state court in conformity with an IEP developed by the team for use during such placement.

Ed 1117.04 Emergency Placement Review Procedures For Children Previously Determined to Have Disabilities. When DCYF or notifies the liable school district that the court has ordered an immediate court ordered residential placement or an immediate change in the court ordered residential placement the school district shall:

(a) Immediately notify parents of the district's intent to convene an IEP team meeting.

(b) If the immediate court ordered placement has an impact on where the child attends school the school district shall immediately forward a copy of the child's IEP to the new educational placement.

(c) Convene an IEP team meeting in accordance with the requirements of Ed 1117.04 ~~(d)~~ (b) 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 1117.05 Review Procedures for Children Not Previously Determined to Have Disabilities.

(a) Upon receipt of a court order under RSA 169-B:22, C:20 or D:18, joining the liable school district for a child who has not yet been determined to be a child with a disability, the school district shall initiate the referral process in accordance with Ed 1107.01(f).

(b) If a referral or an evaluation is ordered by a court pursuant to RSA 169:B,C or D, upon the receipt of the order for referral, and/or evaluation, 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.

Ed 1117.06 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 court ordered residential 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 shall identify, evaluate or otherwise provide FAPE to the child with a disability.

(b) In all cases where there is a dispute, regarding the identification of the liable school district, either school district may seek resolution from a court of competent jurisdiction or as otherwise provided by law.

Ed 1117.07 Transfer of Student Records.

(a) Whenever a court makes or changes a child's court ordered residential placement that results in a change in the educational placement, the liable school district shall immediately provide a copy of all necessary educational records of the child including, but not limited to, the child's current IEP and evaluations.

Readopt with amendment Ed 1118, effective 6-28-08 (Document #9197), to read as follows:

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 age 18 through 21 who:

- (1) Had been identified as a child with a disability prior to incarceration; and
- (2) 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.

Readopt with amendment Ed 1119, effective 6-28-08 (Document #9197), to read as follows:

#### PART Ed 1119 CONFIDENTIALITY OF INFORMATION

##### Ed 1119.01 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.

(b) Each LEA and private provider of special education shall adopt a policy regarding the retention and destruction of special education records and shall comply with the following requirements:

(1) An LEA shall not destroy a student's special education records prior to the student's 25th birthday, except with prior written consent of the parent or, where applicable, the adult student, pursuant to 34 CFR 300.624(b). The LEA must maintain a copy of the last IEP that was in effect prior to the student's exit from special education until the student's 60<sup>th</sup> birthday. An LEA may retain and store the student's special education records in electronic form or any other form. An LEA shall provide a parent or adult student a written notice of its document destruction policies upon the student's graduation with a regular high school diploma or at the transfer of rights or whichever occurs first. The LEA shall provide public notice of its document destruction policy at least annually.

(2) A private provider of special education shall not destroy a student's special education records prior to the student's 25<sup>th</sup> birthday, except with prior written consent of the parent or, where applicable, adult student, pursuant to 34 CFR 300.624(b). A private provider of special education may destroy a student's special education records prior to the student's 25<sup>th</sup> birthday if the private provider of special education has sent all of the student's records or copies of such records to the most recent LEA of record. A private provider of special education may retain and store the student's special education records in electronic form or any other form. A private provider of special education shall provide a parent or adult student a copy of its document destruction policy upon the student's discharge from the private provider of special education.

(c) 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.

Ed 1119.02 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.

Readopt Ed 1120.01-Ed 1120.02, effective 6-28-08 (Document #9197), cited and to read as follows:

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.

(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.

Readopt with amendment Ed 1120.03, effective 6-28-08 (Document #9197), cited and to read as follows:

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 CFR 300.504.

Readopt with amendment Ed 1120.04, effective 6-28-08 (Document #9197) as amended effective 5-15-14, (Document #10590), to read as follows:

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) Access to public insurance pursuant to 34 CFR 300.154(d); 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, or refusal of consent or partial consent as set forth below:

(d) A public agency shall not use a parent's refusal to consent to one service or activity or request of additional services, or activities to deny the child any other services or activities to which the parent has consented.

(e) When the parent refuses consent to one or more of the proposed services or activities, and/or requests changes to services or activities in the initial proposal, the parent shall specify, in writing, the items that they are refusing or requesting.

(f) Upon receipt of a parent's partial consent, the LEA:

(1) May schedule a mutually agreeable time and date for an IEP team meeting;

(2) Shall, if requested by the parent, pursuant to Ed 1109.06(b) convene the IEP team to discuss the requested changes and/or additions to the IEP, except as set forth in (3) below.

(3) May refuse to convene the IEP team meeting if it determines that the requested changes and/or additions to the IEP have been addressed at a prior IEP team meeting. In such event, the LEA shall issue a Written Prior Notice pursuant to Ed 1109.06(b)(3), explaining why the LEA refuses to convene the meeting.

(g) If a parent refuses consent for a proposed IEP or placement, the child's most recent agreed upon IEP and/or placement shall remain in effect unless the LEA and parent agree otherwise, until the matters are resolved unless and until a party files for due process, in which case the IEP and placement shall be governed by 34 CFR 300.518.

(h) A parent or a public agency may file a due process complaint on any of the matters described in 34 CFR 300.503(a) (1) and (2) and Ed 1120.04(a), pursuant to 34CFR 300.507.

(i) The 14-day time limit shall be extended if the LEA and the parent mutually agree to an extension.

(j) 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.

(k) 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.

Readopt with amendment Ed 1120.05, effective 6-11-09 (Document 9482), as amended effective 11-11-10, (Document #9812), to read as follows:

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 or re-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) 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.

Readopt Ed 1120.06, effective 6-28-08 (Document #9197), as amended effective 11-11-10 (Document 4812), to read as follows:

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).

Readopt Ed 1120.07, effective 6-28-08 (Document #9197), to read as follows:

Ed 1120.07 Independent Educational Evaluations. An LEA shall comply with 34 CFR 300.502 and Ed 1107.03, relating to independent educational evaluation.

Readopt with amendment Ed 1120.08, effective 6-28-08 (Document #9197), as amended effective 5-15-14 (Document #10590), to read as follows:

Ed 1120.08 Public and Private Insurance.

(a) An LEA shall comply with the requirements detailed in 34 CFR 300.154 and He-M 1301 when proposing to access public and private insurance. The LEA:

- (1) Shall obtain informed parental consent once, pursuant to 34 CFR 300.154(d), the first time the public agency seeks to access the child's public insurance;
- (2) Shall provide annual notification pursuant to 34 CFR 300.154(d)(2)(v). The annual notification shall include a withdrawal of consent provision. The withdrawal of consent provision shall terminate the LEA's authority to access the child's state public benefits or insurance program. This withdrawal of consent provision shall be effective upon the LEA's receipt of the parent's signed withdrawal;
- (3) Shall notify the parents that the parents' refusal to allow access to their public insurance does not relieve the public agency of its responsibility to ensure that all services detailed in the IEP are provided to the child at no cost to the parents;
- (4) Shall not require parents to sign up for or enroll in public benefits or insurance programs;
- (5) Shall not require parents to incur out of pocket expenses, deductible, or co-pay;
- (6) Shall not use the child's benefit if it would reduce the available lifetime coverage or other benefit;

(7) 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;

(8) Shall not result in an increase of the parents' premiums or result in the discontinuation of benefits or insurance; or

(9) 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 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.

(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 and 34 CFR 300.203.

Readopt with amendment Ed 1121-Ed 1122, effective 6-28-08 (Document #9197), to read as follows:

#### 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.

(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.

(d) Complaints shall be directed to:

Commissioner of Education  
101 Pleasant Street  
Concord, NH 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.

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).

(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 20 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. Any corrective action ordered by the commissioner for the benefit of a child with a disability shall be

implemented and continue until the conclusion of the reconsideration and, unless reversed upon reconsideration or stayed, during any appeal.

(b) Within 15 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 to the NH Supreme Court or a NH Superior Court.

#### 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.

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.

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.

Readopt with amendment Ed 1123, effective 6-28-08, (Document #9197), to read as follows:

#### 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-.518.

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;

(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, as defined by the hearing officer, an administrative due process hearing shall be limited to 2 days; and

(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).

(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).

(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;
- (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.

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 shall forward a copy of the due process hearing complaint to the office of legislation and hearings, department of education, within 2 business days of the date that party provided the original notice of the due process hearing complaint to the other party.

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 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:

- (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 ;
- (e) The due process complaint that meets the requirements of 34 CFR 300.508(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; and

(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.

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).

(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;

(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);

(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; and

(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 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);

(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 decision 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 repugnant to state or federal law resulting from a settlement agreement or a signed written agreement, reached by the parties at alternative dispute resolution; and

(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 rules and 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.

(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.

(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 Post-hearing Matters.

(a) The decision of a hearing officer shall be implemented immediately, except as provided in Ed 1123.23, unless a delay is agreed to in writing by both parties, or one party files a timely appeal under 34 CFR 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.

(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.

(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.

(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.

(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 or 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).

(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.

Readopt with amendment Ed 1124-Ed1125, effective 6-28-08 (Document #9197) to read as follows:

#### 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, appeals, placement, protection, and referral for children with disabilities, consistent with the provisions of 34 CFR 300.530 - 300.536.

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. Such services, if provided at the child's home, shall consist of: (a) a minimum of 10 hours/week of instruction, including special education as specified in the child's IEP; and (b) related services as specified 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 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;
- (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 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) A review of programs which may include a desk audit, scheduled on-site reviews, and unannounced on-site reviews, to ensure compliance shall, take place weekly, monthly, or quarterly.

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 shall remain in the program.

Ed 1125.04 Financial Audits. The department's office of business management, shall audit all state and federal special education monies allocated to any public or private agency by the department.

Readopt with amendment Ed 1126, effective 6-28-08 (Document #9197) to read as follows:

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.

(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.
  - a. Regional programs the LEA shall make available to children with disabilities;
  - b. Non-public schools within the LEA serving children with disabilities;
  - c. Non-public schools the LEA shall use for out-of-LEA placements for children with disabilities; and
  - d. 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;

(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 written report of findings indicating compliance or noncompliance shall include corrective actions for each area of non-compliance and timelines for which the corrective actions shall be completed.

(c) 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.

(d) 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 issue(s) of non-compliance are systemic in scope; and
- b. 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.

(e) 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.

(f) 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. Incomplete applications may be completed within 6 months. Incomplete applications after 6 months will be closed.

(g) No students may be placed or attend a program until the application process is complete and the program has received a notice of either initial approval or final approval.

Ed 1126.04 Waiver Process for Placements in Approved In-State Programs.

(a) The LEA may submit a request 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's request and shall approve said request 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 request detailed in Ed 1126.04(d)-(e), may:

(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 evidence 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 request for the waiver must include the following information:

a. Information on a current waiver (if applicable);

b. Student name;

c. Date of birth;

d. Current grade;

e. Name of LEA;

f. Name of private in-state agency;

g. Name of approved special education program;

h. Name and contact information of person completing the request;

i. Description of how the proposed placement will provide the student with a FAPE;

j. Description of how the proposed placement will provide the student access to, and the ability to, progress in the general curriculum;

k. A copy of the student's IEP.

(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.

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;

(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 statutes and rules for schools as referenced in (2) above, including copies of documents relating to inspections currently in effect supplied by the person performing the fire 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; and

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;
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 300.320(a)(5), and the projected date for initiation and anticipated duration of the special education or special education and related services;

(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.

(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.

Readopt with amendment Ed 1127, effective 6-28-08 (Document #9197), to read as follows:

**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 awaiting disposition of the court following arraignment pursuant to RSA 169-B:13.

(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 “legal custody” as defined in RSA 169-C:3, XVII.

(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) Invoices for such financial assistance shall be made within 30 days from the date the local school district's financial liability commences

(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.

(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.

Readopt with amendment Ed 1128.01 –Ed 1128.07 effective 6-28-08, (Document #9197), cited and to read as follows:

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 RSA 186-C:18, III to a responsible school district.

(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.

(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.

Ed 1128.02 Reimbursement. A responsible school district shall be reimbursed for catastrophic aid if the requirements of this section 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.

(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.

(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 the Superintendent's Verification of CAT AID 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; and

(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 Ed 1129, 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; and

(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 tuition costs from out-of-state facilities, if applicable;
- (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.

(b) 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).

(c) 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.

(d) 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.

(e) 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:

(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.

Readopt with amendment Ed 1128.08, effective 4-16-10 (Document #9694), to read as follows:

Ed 1128.08 State Aid For In-District Programs.

(a) For the purposes of this section, “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; and

(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.

Readopt with amendment Ed 1129, effective 6-28-08 (Document #9197), to read as follows:

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 arm's 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; and

(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 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 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 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 or professional fees, such as program evaluations;

b. Fees incurred for any type of professional development 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 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;

3. 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;

4. The consultants are not trustees, directors, officers or employees of the organization nor of any parent organization; and

5. 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 or 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 the University of New Hampshire's in state, per graduate credit cost.

d. Costs of conferences or meetings shall be allowed when the primary purpose of 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;
- e. The cost of lease purchase agreements shall not be included.; and
- f. Allowable costs shall be as follows:
  - 1. Rental costs as specified in sale and leaseback agreements shall be allowable to the extent of actual costs had the organization continued to own the property;
  - 2. If any party as lessor is in common with the 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, and 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 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, and 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, and magazine or book subscriptions for 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; and
    - 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.
- (aa) Capital expenditures shall:
- (1) Be recorded in account 660; and
  - (2) Include and comply with the following:
    - a. The cost of furnishings and equipment valuing more than \$1,000 for each item;
    - b. Groups of items valuing \$1,000 or more, even if individual items are valued at less than \$1,000, shall be depreciated;
    - c. Compensation for the use of buildings, or other capital improvements and equipment shall be made through depreciation charges;
    - d. All other asset items used for program purposes costing \$1,000 or more having a useful life of one year or more shall be depreciated;
    - e. Reimbursement for capital expenditures shall be available through depreciation charges only;
    - f. Depreciation charges shall be based on historical acquisition cost less estimated salvage value of the asset;
    - g. Property records shall be maintained and the straight-line method of computing depreciation shall be used;

- h. All capital expenditures including purchases, major renovations and leasehold improvements for which department reimbursement is requested shall be included in the budget proposal;
- i. Any expenditure not so included shall not be reimbursed;
- j. The need to fund extraordinary or emergency capital expenditures shall be approved;
- k. These costs shall be cost allocated to programs and general management based upon square footage or full-time equivalents;
- l. 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;
- m. The amount of the credit or charge under l. shall be the difference between the amount realized on the asset and the undepreciated basis;
- n. 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
- o. The following shall be excluded from allowable depreciation expense:
  - 1. Cost of land; and
  - 2. 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, 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
  - d. 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. Transportation 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 insurance against crime and theft shall:

(1) Be recorded in account 761; and

(2) Include all costs to meet the department's requirements for professional liability and criminal liability.

(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. Working capital as used in this clause means 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

f. 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 75% of the average full-time, of the previous year, of the New Hampshire Superintendent salaries.

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, and 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 as determined by application 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 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) The following organized fund raising costs:

(1) Solicitations of gifts;

(2) Bequests;

(3) Financial campaigns; and

(4) Endorsement drives.

(k) Voluntary payments and contributions such as payments in lieu of real estate taxes;

(l) 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;

(m) Management fees or payments included in lease or rental agreements between parties who are related as defined in Ed 1129.01(k);

(n) Reimbursement for expenditures or depreciation of personally owned or leased assets excluding motor vehicles;

(o) Income and business profits taxes;

(p) Bonuses of any nature conveyed and paid;

(q) 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;

(r) Charges for investment counsel, staff, and similar expenses incurred solely to enhance income from investments;

(s) 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.

(t) Medical services and supplies, other than those cited in Ed 1129.08(z);

(u) Medical supplies or costs of medical supplies provided by the agency's own staff; and

(v) 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, arm's 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 or circumstances which are similar;

(4) Year to year cost increase shall not deviate from those cost increases as measured by the price indices in the consumer price index or 5%, whichever is greater.

(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 then 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 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.
- (b) 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.
- (c) 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.
- (d) 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.

(e) 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  or 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 or 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 or 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.

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) 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.

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.

(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.

**APPENDIX**

<b>Rule</b>	<b>Statute Implemented</b>
Ed 1101.01	34 CFR 300.1
Ed 1101.02	34 CFR 300.2
Ed 1102	RSA 541-A:7
Ed 1102.01(r)	RSA 186-C:2,I
Ed 1102.01(s)	RSA 186-C:2,I-a
Ed 1102.01(t)	RSA 186-C:2,I
Ed 1103.01	34 CFR 300.321
Ed 1103.02	34 CFR 300.322
Ed 1104.01	RSA 541-A:7
Ed 1105	34 CFR 300.111
Ed 1106.01	34 CFR 300.101(a) and (b), 300(a), 124, and 530(d)
Ed 1107.01	34 CFR.320, 34 CFR.531, 34 CFR.533-34 CFR.536
Ed 1107.01(a)	34 CFR 300.301(a),(c), and (d) and 300.321
Ed 1107.01(b)	34 CFR 300.302 - 305
Ed 1107.01(c)&(d)	34 CFR 300(c)(1)(ii)
Ed 1107.01(e)	34 CFR 300.124(b)
Ed 1107.02	34 CFR 300.121, 34 CFR 300.132, 34CFR 300.533 (a)
Ed 1107.02	34 CFR 300.307(a)(2) and (a)(3)
Ed 1107.03	34 CFR 300.502
Ed 1107.04	34 CFR 300.304(c),(1)(iv),
Ed 1107.05	34 CFR 300.306(a)(2)
Ed 1108	34 CFR 300.301 - 311
Ed 1109.01	34 CFR 300.320
Ed 1109.02	RSA 263:29, RSA 266:7
Ed 1109.03	34 CFR 300.323, 324(c), RSA 186-C:7-b, and RSA 186-C:9
Ed 1109.04	34 CFR 300.323(d)
Ed 1109.05	34 CFR 300.325
Ed 1109.06	34 CFR 300.322(a)-(b) and 34 CFR 300.324(b)
Ed 1110.01	34 CFR 300.106
Ed 1111.01	34 CFR 300.114
Ed 1111.02	34 CFR 300.115
Ed 1111.03	34 CFR 300.116
Ed 1111.03(c)	RSA 186-C:11
Ed 1112	34 CFR 300.130-144 and 34 CFR 300.148
Ed 1113.01 - 1113.02(e)	34 CFR 300.320
Ed 1113.02(f)-(g)	34 CFR 300.320(a)(4), 34 CFR 300.107-108, 34 CFR 300.110 and 34 CFR 300.117
Ed 1113.03	34 CFR 300.320
Ed 1113.03(b)(3)	RSA 186-C:10
Ed 1113.03(c)	34 CFR 300.114(a)(2)(i)
Ed 1113.04	RSA 126-U:1,IV(d)
Ed 1113.04(c)	RSA 541-A:7
Ed 1113.05	RSA 126-U:5
Ed 1113.07	RSA 126-U:1,IV(d)
Ed 1113.08	RSA 126-U:5

Ed 1113.09	34 CFR 300.105
Ed 1113.10	RSA 186-C:9
Ed 1113.11	RSA 189:24
Ed 1113.12	34 CFR 300.18 and 34 CFR 300.156
Ed 1113.13	34 CFR 300.102
Ed 1113.14	RSA 189:1 and RSA 189:24
Ed 1113.15	RSA 189:1; RSA 189:2, RSA 189:24 and RSA 189:25
Ed 1114.01 – Ed 1114.04	34 CFR 300.149 and RSA 541-A:7
Ed 1114.05 – Ed 1114.06	34 CFR 300.325 and RSA 186-C
Ed 1114.07	34 CFR 300.324(a)(2)
Ed 1114.08	34 CFR 300.15 and 34 CFR 300.34(b)(10)
Ed 1114.09	34 CFR 300.156
Ed 1114.10	34 CFR 300.156 (a) and (b)
Ed 1114.11	RSA 189:13-a
Ed 1114.12	34 CFR 300.325
Ed 1114.13	34 CFR 300.501
Ed 1114.14	RSA 186-C:9
Ed 1114.15	RSA 189:1; RSA 189:2, RSA 189:24 and RSA 189:25
Ed 1114.16	RSA 200:11
Ed 1114.17 – Ed 114.18	34 CFR 300.149 and RSA 541-A:7
Ed 1114.19	RSA 186-C:3-a, IV
Ed 1114.20	34 CFR 300.625
Ed 1114.21	34 CFR 300.320
Ed 1114.22	34 CFR 300.146
Ed 1115	RSA 186-C:14
Ed 1116	34 CFR 300.519
Ed 1117.02	RSA 186-C:13
Ed 1117.03	RSA 193:28
Ed 1117.04	34 CFR 300.149
Ed 1117.06 – Ed 1117.10	REPEALED
Ed 1118	RSA 194:60
Ed 1119	34 CFR 300.610
Ed 1120.01 – Ed 1120.04	34 CFR 300.500 – 34 CFR 300.518 and 34 CFR 300.520
Ed 1120.04 (a) intro and (a)(7)	34CFR 300.154(d)
Ed 1120.05	20 USC § 1414(a)(1)(D); 34 CFR§300.300
Ed 1120.06 – Ed 1120.07	34 CFR 300.500 – 34 CFR 300.518 and 34 CFR 300.520
Ed 1120.06(c)	20 USC § 1414(a)(1)(D); 34 CFR§300.300
Ed 1120.08	34 CFR 300.154
Ed 1120.08 (a) intro.,(a)(1)-(2)	34CFR 300.154(d)
Ed 1121	34 CFR 300.151 - 34 CFR 300.153
Ed 1122	34 CFR 300.506 and RSA 186-C:23-a, -b and RSA 186-C:24
Ed 1123	34 CFR 300.507 - 34 CFR 300.515
Ed 1124	34 CFR 300.530 - 34 CFR 300.536
Ed 1125	34 CFR 300.149 and 34 CFR 300.600 et seq
Ed 1126	34 CFR 300.600 - 34 CFR 300.609
Ed 1127	RSA 186-C:19-a and -b
Ed 1128.01 – Ed 1128.07	RSA 186-C:18
Ed 1128.08	RSA 186-C:18, XI(b)
Ed 1129	RSA 21-N:5,I(g) and RSA 186-C:7,III

