

Summary of Issues from the State Board of Education, Bureau of Special Education

A summary of the issues that will be decided by the State Board of Education when they vote on the proposed NH Rules for the Education of Children with Disabilities on April 9th

The following issues are from a list generated by the NH Department of Education, Bureau of Special Education and include excerpts from the proposed NH Rules for the Education of Children with Disabilities

EVALUATION TIMELINE: Should it continue to be 45 days (with one 15-day extension allowed) or should it be longer and/or with unlimited extensions?

Ed 1107.01(c) The evaluation process, including a written summary report, shall be completed within 45 days after receipt of parental consent for testing.

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

THE IEP: Should NH keep the following key components?

Short-term objectives for all children with disabilities (allows parents to decide STOs are not needed)

The “sufficiency statement” (whether the child’s progress is sufficient to meet the annual goal) as part of the regular progress reports to parents;

Transition services beginning by age 14 (age 16 is being considered)

A vocational education component if vocational education is to be provided

Ed 1109.01 Elements of an Individualized Education Program.

(a) Each IEP shall include:

(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 will be measured and provided to the parents and whether progress reported is sufficient to achieve the annual goals by the end of the school year.

(9) A statement of transition services that meets the requirements of 34 CFR 300.43 and 34 CFR .300.320, with the exception that the transition services detailed in 34 CFR 300.320 will be provided no later than the first

IEP to be in effect when the child turns 14, or younger if determined necessary by the child's IEP Team; and

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

REQUIRES THE SCHOOL DISTRICT TO RESPOND WITHIN 21 DAYS WHEN A PARENT REQUESTS A MEETING

Ed 1109.06 Monitoring and Annual Review of IEPs.

(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.

ATTORNEYS FEES REIMBURSEMENT (One issue that was discussed was whether expert witness fees reimbursement should be allowed in certain situations)

Ed 1123.22 Post hearing Matters.

(c) Attorney's fees shall be awarded consistent with 34 CFR 300.517.

This next issue was not on the list generated by the NH Department of Education, Bureau of Special Education, but was identified by some members of the State Board as an issue to be revisited:

THE DEFINITION OF RELATED SERVICES AND "MAPPING" OF A COCHLEAR IMPLANT: If NH adopts by reference the language in the IDEA (Federal law) statute, mapping would be an allowable related service; if NH instead references the language in the IDEA regulations, mapping would be excluded.

USE OF AVERSIVES AND RESTRAINT IN PRIVATE PROGRAMS:

Ed 1114.09 Use of Aversive Behavioral Interventions.

(a) If authorized in writing by a physician and an IEP team, the following interventions may be used.

(1) A non-medical mechanical restraint that physically restricts a student's movement;

(2) Physical restraint, not in response to a threat of imminent, serious, physical harm.

(b) Aversive behavioral interventions may only be used when:

(1) At least 2 written positive behavioral interventions were previously implemented without success;

(2) The individual implementing the aversive intervention has been trained and is knowledgeable in the use of positive interventions, restrictive

treatment procedures, and alternatives for de-escalation of problem behavior;

(3) A behavioral intervention plan detailing the use of the restrictive procedure has been developed and incorporated as a part of the IEP;

(4) A description of the target behavior that will be addressed using the restrictive intervention is included in the IEP;

(5) A description of the measurable criteria stating the expected change in the target behavior or behaviors is included in the IEP;

(6) A specific time limit for the use of the restrictive behavioral intervention procedure is detailed in the IEP;

(7) A system is developed to record the frequency, duration, and results of the intervention;

(8) A system is developed to regularly inform the parents of the progress in changing the target behavior using the restrictive intervention procedures; and

(9) The parent or parents have given informed consent to the use of the restrictive intervention procedures separate from the consent for the IEP.

PARENTAL CONSENT ISSUE

Ed 1120.04 Parental Consent.

(e) LEAs shall advise the parent in writing of:

(1) The necessity of signing documents which describe actions requiring the parent's consent for the purpose of ensuring the timely provision of appropriate services;

(2) The parent's right to access all of the rights and procedures outlined in this section if the parent disagrees; and

(3) The parent's right to an extension of the 14-day time limit, provided the parent and the LEA

mutually agree to such extension.

STATE DEPARTMENT OF EDUCATION ENFORCEMENT (they will discuss revised language for this section)

Ed 1125.03 Opportunity for a Hearing.

(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.

Other Issues That the State Board Plans to Revisit:

DEFINITION OF AN “APPROVED PROGRAM”

Ed 1102.10 “Approved program” means a program of special education that has been approved by the state board of education and that is maintained by a local school district, collaborative program, private provider of special education, public academy, or state institution for the benefit of children with disabilities and includes home instruction.

LIMITING THE NUMBER OF CHILDREN SERVED IN A RESOURCE ROOM AT ANY ONE TIME

Ed 1113.10 Class Size and Age Range

(c) The following shall apply to resource rooms:

(4) The maximum number of children with disabilities served in a resource room at any given time shall be 20;

WHEN SHOULD AN IEP BE IN EFFECT

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

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

Note: 186-C:9 says (changes proposed by House Bill 766 are in red):

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

RATE SETTING (They will be looking at the impact of changing the rates from 90% to 80%)

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:

(3) The agency than shall multiply the program capacity rate by 90%;

(4) The agency shall compute the annual rate by dividing the net expenses of the program by 90% of the program capacity rate;

Note: The Bureau of Special Education sets rates for approved private special education programs in the state. The rates are set using a budget proposal and other documentation. The annual rate setting (yearly tuition) is computed by dividing the net expenses of the program by 90% of the program capacity.

Currently in rules: \$1,292,000.00 (Net expenses)

32 (90% of {36 student} Program Capacity) = \$40,375 annual rate per student

Public Comment on Proposed rules

\$1,292,000.00 (Net expenses) 29 (80% of {36 student} Program Capacity) =

\$44,552 annual rate per student