Since the NH Standards for the Education of Children with Disabilities were readopted with amendments on March 23, 2017, a number of additional revisions have been made.

On August 8, 2018, through the rulemaking process, revisions to Ed 1102.01, Ed 1102.03, and Ed 1113.12 to reflect the amendments made to IDEA to align with the Every Student Succeeds Act (ESSA). Accordingly, parts of Ed 1102.01 and Ed 1102.03 were renumbered.

Part Ed 1128 was also amended, primarily to replace the term “catastrophic aid” with “special education aid”, consistent with the revisions made to RSA 186-C, and to provide additional clarity.

On April 10, 2020, revisions to 2 sections were adopted:

- Ed 1102.04(h) the definition to “parent” and
- Ed 1119.01 confidentiality requirements to reflect revisions to RSA 186-C’s records retention requirements and to include in Ed 1119.01 the definition of “adult student” in FERPA, 20 USC 1232g(d). Accordingly sections Ed 1119.01(b)- (c) were renumbered.

During the 2021-22 legislative session, several changes were made to NH’s special education law, RSA 186-C. These revisions will be reflected in Ed 1100 through the rulemaking process. A clarifying note has been added to the 8/2022 Guide to the NH Standards for the Education of Children with in each of the sections that will be impacted.

- In June 2022, RSA 186-C:2, the definition of a “child with a disability” was revised to include children with disabilities between the ages of 3 and 21 inclusive. This change is reflected in the following sections:
  - Ed 1102.01(f)  –  Ed 1106.01  –  Ed 1113.13(b)
  - Ed 1102.01(t)  –  Ed 1111.02(b)  –  Ed 1113.14(b) & (c)
  - Ed 1105.01(b)& (c)(2)  –  Ed 1111.03(d)  –  Ed 1115.05(c)
  - Ed 1105.02(b)  –  Table 1100.3
  - Ed 1105.03(c)  –  Ed 1111.04(a), (c) & (f)(2)

- On January 1, 2022, a new section, RSA 186-C:3-c regarding supported decision-making became effective (information about this revision is included in a note following Ed 1109.01(a)(10)).

- On August 16, 2022, a new section, RSA 186-C:8-a regarding IEP teams having a discussion of voter registration as an appropriate transition goal, became effective (information about this revision is included in a note following Ed 1109.01(a)(10)).

- A note has been added following Ed 1119.01(b) where it references 20 U.S.C. section 1232g to clarify that while FERPA provides an up-to 45-day timeframe for participating agencies to make records available to a child’s parents, NH has established a 14-day timeline for schools to allow parents to inspect and review their student’s records (RSA 189:66, IV(a)).

- Effective June 25, 2023 several sections of RSA 186-C, as well as RSA 189:1-a, RSA 194:60 and RSA 193:1-c, I were amended to be consistent with the definition of a “child with a disability” in RSA 186-C:2 (making the age of eligibility between the ages of 3 and 21 inclusive, or up to age 22). These changes are reflected in the following sections:
  - Ed 1109.03(k)  –  Ed 1115.08(b)

The updated Guide to the NH Standards for the Education of Children with Disabilities (8/7/2023)

- The change in the age of eligibility was also reflected in RSA 186-C:14, V, which is referenced in Ed 1115.05 (Surrogate Parent)
- Effective July 1, 2023, RSA 186-C:18, III(a) and RSA 186-C:19-b were amended to include “episode(s) of treatment”. These changes are reflected in the following sections:
  - Ed 1107.01(g)
  - Ed 1117.02(a)
  - Ed 1127.03
  - Ed 1128.01(a)

Insert to the Guide to the NH Standards for the Education of Children with Disabilities (8/7/2023)

- Ed 1102.01(p) was revised to reflect a change in the citation for “chartered public school"
- RSA 194-A:4 Home Education was revised by a 2022 amendment. This change is reflected in Ed 1102.03(c)
- RSA 170-E:25 was amended in 2023. This change is reflected in Ed 1102.03(d), Ed 1117.02(a)(2) and Ed 1117.06(a)
- Definitions for the terms “serious bodily injury” and “dangerous weapon” were added as notes in the supplementary text for Ed 1102.03(k)
- A note was added to the supplemental text for Ed 1102.03(l) “interpreter services” clarifying the changes in references that resulted from a 2022 amendment.
- As a result of an amendment effective 8/6/2023, the option to continue the 30-day timeline for mediation (Ed 1102.03(s) and alternative dispute resolution (Ed 1122.01)
- Effective 8/19/2023, RSA 186-C:14 requires the department of education to complete a criminal record check of each surrogate parent. This is referenced in Ed 1115.06(a)(12)
- Typographical errors were corrected in Ed 1111.02(b), Ed 1111.04(f)(2) and Ed 1129.08(a)(7), and in the supplemental text for Ed 1123.21(a)

The following are supplemental pages that may be inserted into a print copy of the Guide to the NH Standards for the Education of Children with Disabilities (Guide to the NH Standards), version updated 11/4/2018.

~ Whenever feasible, changes are highlighted with light yellow shading. ~

Please note that the page numbers in this document refer to the page numbers in the print copy of the 2018 Guide to the NH Standards for the Education of Children with Disabilities.

Page numbers in the updated (8/7/2023) version of the Guide to the NH Standards have been changed to accommodate text that was added to the document.

Ed 1102.01(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

Note: In June 2022, RSA 186-C:2, the definition of a “child with a disability” was revised to include children with disabilities between the ages of 3 and 21 inclusive [up to 22 years of age].
Ed 1102.01(p) “Chartered public school” means “chartered public school” as defined in RSA 194-B:1, III.

The note below was added:

**[NOTE: As a result of a 2022 amendment, RSA 194-B:1, III is the definition for “Board of trustees”; RSA 194-B:1, IV is the definition for “Chartered public school”]**

RSA 194-B:1, IV. "Chartered public school" means an open enrollment public school, operated independent of any school board and managed by a board of trustees. A chartered public school shall operate as a nonprofit secular organization under a charter granted by the state board and in conformance with this chapter.
Ed 1102.01(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;

**Note:** In June 2022, RSA 186-C:2, the definition of a “child with a disability” was amended to include children with disabilities between the ages of 3 and 21 inclusive [up to 22 years of age].
Ed 1102.03(c) “Home education” means “home education” as defined in RSA 193-A:4, and includes the term home schooling.

193-A:4 Home Education; Defined. –
I. Instruction shall be deemed home education if it consists of instruction in science, mathematics, language, government, history, health, reading, writing, spelling, the history of the constitutions of New Hampshire and the United States, and an exposure to and appreciation of art and music. Home education shall be provided, coordinated, or directed by a parent for his or her own child. [Note: this last sentence reflects a 2022 amendment to RSA 193-A:4 (the amendment removed, “unless the provider is as otherwise agreed upon by the appropriate parties named in paragraph II”.)]

II. The department of education, resident district superintendent, or a nonpublic school shall work with parents upon request in meeting the requirements of this section.
Ed 1102.03 (d) “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.

[NOTE: When RSA 170-E:25 was amended in 2023, “independent living home and “child care institution” were included as part of the definition for “child care agency”, and “experiential/wilderness facility” was removed from RSA 170-E:25, so that RSA 170-E:25 reads as follows: ]

RSA 170-E:25 Definitions. – In this subdivision:
"Child care agency" means any person, corporation, partnership, voluntary association or other organization either established for profit or otherwise, who regularly receives for care one or more children, unrelated to the operator of the agency, apart from the parents, in any facility as defined in this subdivision and maintained for the care of children. The types of child care agencies are defined as follows:

(a) "Child care institution" means a child care agency where more than 12 children are received and maintained for 24-hour care for the purpose of providing them with care or training, or both. The term "child care institution" shall not include:
   1. Any state operated institution for child care or juvenile detention established by law.
   2. Any institution, home, place, or facility operating under a license pursuant to RSA 151:2.
   3. Any boarding school in which children are primarily taught branches of education corresponding to those taught in public elementary schools or high schools, or both, and which operates on a regular academic school year basis, and which is approved by the department of education.
   4. Any licensed recreation camp.

(b)(1) "Foster family home" means child care in a residence in which family care and training are provided on a regular basis for no more than 6 unrelated children, unless all the children are of common parentage. The maximum of 6 children includes the children living in the home and children received for child care who are related to the residents.

   (2) If the limit of 6 children under subparagraph (a)(1) is reached, the foster family is willing and able to take a sibling or a group of siblings of a child already in their care, and the department has concluded that the foster family is able to provide for the safety, permanency, and well-being of the child or children, the department may, notwithstanding the limitations of subparagraph (a)(1), place the sibling or group of siblings in the foster family home.

   (c) "Group home" means a child care agency which regularly provides specialized care for at least 5 but no more than 12 children who can benefit from residential living either on a short-term or long-term basis.

~ Note: definition continues on next page ~
(d) "Independent living home" means a child care agency which regularly provides specialized services in adult living preparation in an experiential residential setting for persons 16 years of age or older who have a legal relationship with the department of health and human services and who can benefit from independent living training.

(e) "Specialized care" means a child care agency which regularly provides general care for children who are diagnosed as mentally ill, intellectually disabled, or physically disabled and who are determined to be in need of special mental treatment or nursing care, or both.

(f) "Homeless youth program" means a program, including any housing facilities utilized by such program, which receives any child for the purpose of providing services to facilitate independent living including all of the following program components: individual assessment, referral, housing, and case management. Such services may be provided directly by the agency or through one or more contracts for services.

(g)(1) "Kinship care home" means a type of foster home in which an individual or individuals are licensed to provide care exclusively to kin. There shall be a maximum of 6 children including the children living in the home and children received for child care who are related to the residents.

(2) Notwithstanding the limit of 6 children under subparagraph (e)(1), if the kinship care family is willing and able to take a sibling or a group of siblings of a child already in their care, and the department has concluded that the kinship care family is able to provide for the safety, permanency, and well-being of the child or children, the department may place the sibling or group of siblings in the kinship care home.
Ed 1102.03(k) “Interim alternative educational setting” means the setting, as determined by the IEP team pursuant to 34 CFR 300.530(g) through 34 CFR 300.532, in which a child with a disability receives services when removed from placement for disciplinary reasons.

§300.530(g) Special circumstances. School personnel may remove a student to an interim alternative educational setting for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the child’s disability, if the child—

(1) Carries a weapon to or possesses a weapon at school, on school premises, or to or at a school function under the jurisdiction of an SEA or an LEA;

(2) Knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises, or at a school function under the jurisdiction of an SEA or an LEA; or

(3) Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of an SEA or an LEA.

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

(i) Definitions. For purposes of this section, the following definitions apply:

(1) Controlled substance means a drug or other substance identified under schedules I, II, III, IV, or V in section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)).

(2) Illegal drug means a controlled substance; but does not include a controlled substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under that Act or under any other provision of Federal law.

(3) Serious bodily injury has the meaning given the term “serious bodily injury” under paragraph (3) of subsection (h) of section 1365 of title 18, United States Code.

[Note: 18 U.S.C. §1365(h)(3): “The term ‘serious bodily injury’ means bodily injury that involves — (A) A substantial risk of death; (B) Extreme physical pain; (C) Protracted and obvious disfigurement; or (D) Protracted loss or impairment of the function of a bodily member, organ, or mental faculty.”]

(4) Weapon has the meaning given the term “dangerous weapon” under paragraph (2) of the first subsection (g) of section 930 of title 18, United States Code.

[Note: 18 U.S.C. §93(g)(2): "The term ‘dangerous weapon’ means a weapon, device, instrument, material, or substance, animate or inanimate, that is used for, or is readily capable of, causing death or serious bodily injury, except that such term does not include a pocket knife with a blade of less than 2 1/2 inches in length.’"]

[Note: Also includes the full text of: §300.531 Determination of setting and §300.532 Appeal.]
Ed 1102.03(l) “Interpreter services” means interpreting services provided by an interpreter for the deaf and hard of hearing who is licensed in accordance with Int 300 and RSA 326-I:2,IV that are necessary for a parent, surrogate parent, guardian, or adult student to participate in the special education process.

**CHAPTER Int 300 APPLICATIONS FOR LICENSURE**

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**RSA 326-I:2 Definitions.** – In this chapter:

VI. "Interpreter" means a person who conveys meaning between people who use signed language and spoken language.

VII. "Interpreting" means the act of conveying meaning between people who use signed and/or spoken languages.

X. "Qualified interpreter" means an interpreter meeting the requirements of this chapter.
Ed 1102.03(s) “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.

186-C:24 Mediation; Procedure. –
I. When disputes arise under this chapter, mediation shall be available through the office of the commissioner, department of education. Mediation shall be provided in accordance with the following:
   (a) Attempts to resolve conflicts between the parent or parents and a school district are encouraged.
   (b) Either party may be accompanied and advised at mediation by individuals with special knowledge or training with respect to the needs of children with disabilities. At least 5 days prior to the mediation conference, the mediator shall contact the parties to determine whether either party will be accompanied by an individual with special knowledge or training and shall notify the other party if such an individual will be in attendance.
II. Mediation shall be provided as follows:
   (a) A request for mediation shall be made in writing by either party to the commissioner of education. The mediation request shall specify the issue or issues in dispute and the relief sought;
   (b) A mediation conference shall be conducted within 30 calendar days after receipt of a written request, which may be continued if mutually agreed to by the parties [Note: the bold italicized text was added by amendment, and became effective 8/6/2023], at which time:
      (1) Issues shall be determined;
      (2) Options explored; and
      (3) Mediation attempts made within New Hampshire law.
   (c) The role of the mediator shall be:
      (1) To facilitate communication.
      (2) To define the issues and explore alternatives.
      (3) To remain neutral.
   (d) The mediation conference shall be:
      (1) Informal; and
      (2) Held at a time and place reasonably convenient and mutually agreeable to the parties in the dispute.
   (e) If the mediation results in agreement, the conclusions shall be incorporated into a written binding agreement signed by each party. If the mediation does not result in agreement, the mediator shall document the date and the participants at the meeting. No other record of the mediation shall be made. The mediator shall not be called as a witness in any additional proceedings in the specific case that the mediator mediates.
      (f) The mediator may terminate the mediation after at least one meeting if in the mediator's judgment the parties are not making progress toward resolving the issue or issues in dispute.

[Note: RSA 186-C:24 continues onto page 34]
**Ed 1102.04(h)** “Parent” means a biological or adoptive parent, surrogate parent, or a guardian pursuant to 34 CFR 300.30. Parent does not mean the state when the state has legal guardianship.

<table>
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<th>§300.30 Parent.</th>
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<tr>
<td>(a) Parent means--</td>
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<td>(1) A biological or adoptive parent of a child;</td>
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<td>(2) A foster parent, unless State law, regulations, or contractual obligations with a State or local entity prohibit a foster parent from acting as a parent;</td>
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<td>(3) A guardian generally authorized to act as the child’s parent, or authorized to make educational decisions for the child (but not the State if the child is a ward of the State);</td>
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<td>(4) An individual acting in the place of a biological or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives, or an individual who is legally responsible for the child’s welfare; or</td>
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<td>(5) A surrogate parent who has been appointed in accordance with §300.519 or section 639(a)(5) of the Act.</td>
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<td>(b) (1) Except as provided in paragraph (b)(2) of this section, the biological or adoptive parent, when attempting to act as the parent under this part and when more than one party is qualified under paragraph (a) of this section to act as a parent, must be presumed to be the parent for purposes of this section unless the biological or adoptive parent does not have legal authority to make educational decisions for the child.</td>
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<td>(2) If a judicial decree or order identifies a specific person or persons under paragraphs (a)(1) through (4) of this section to act as the “parent” of a child or to make educational decisions on behalf of a child, then such person or persons shall be determined to be the “parent” for purposes of this section.</td>
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PART Ed 1105  CHILD FIND

Ed 1105.01 Responsibilities of the Local Education Agency.

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

§300.111(c) Other children in child find. Child find also must include--

(1) Children who are suspected of being a child with a disability under §300.8 and in need of special education, even though they are advancing from grade to grade; and

(2) Highly mobile children, including migrant children.

(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.

Note: In June 2022, RSA 186-C:2, the definition of a “child with a disability” was amended to include children with disabilities between the ages of 3 and 21 inclusive [up to 22 years of age].

(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.

See note for Ed 1105.01(b)
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:

See note for Ed 1105.01(b) [In June 2022, RSA 186-C:2, the definition of a “child with a disability” was amended to include children with disabilities between the ages of 3 and 21 inclusive (up to 22 years of age)]
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.

Note: In June 2022, RSA 186-C:2, the definition of a “child with a disability” was amended to include children with disabilities between the ages of 3 and 21 inclusive [up to 22 years of age].
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:

Note: In June 2022, RSA 186-C:2, the definition of a “child with a disability” was amended to include children with disabilities between the ages of 3 and 21 inclusive [up to 22 years of age].

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

§300.124 Transition of children from the Part C program to preschool programs.

The State must have in effect policies and procedures to ensure that--

(a) Children participating in early intervention programs assisted under Part C of the Act, and who will participate in preschool programs assisted under Part B of the Act, experience a smooth and effective transition to those preschool programs in a manner consistent with section 637(a)(9) of the Act;

(b) By the third birthday of a child described in paragraph (a) of this section, an IEP or, if consistent with §300.323(b) and section 636(d) of the Act, an IFSP, has been developed and is being implemented for the child consistent with §300.101(b); and

(c) Each affected LEA will participate in transition planning conferences arranged by the designated lead agency under section 635(a)(10) of the Act.

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

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

(d) The IEP team shall within 15 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 business 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 referral, request alternative dispute resolution as described in Ed 1122 or a due process hearing as described in Ed 1123;

§§300.503 – 300.504 – See Ed 1120.03(b)
Ed 1107.01(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 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 testing, if any, is needed to address any remaining concerns raised by the referral about how the referral is determined.

Note: Includes the full text of:
- RSA 169-B:22 Disposition of a Minor With a Disability.
- RSA 169-C:20 Disposition of a Child With a Disability.
- RSA 169-D:18 Disposition of Child With a Disability.

[Note: All 3 of these statutes reference RSA 186-C. RSA 186-C:19-b was revised effective 7/1/2023 to include episode of treatment.]

I.(a) As used in this section "children in placement for which the department of health and human services has financial responsibility" means all children receiving special education or special education and related services whose placements were made pursuant to RSA 169-B, 169-C, or 169-D, except children at the youth development center and children placed at the youth services center maintained by the department of health and human services while awaiting disposition of the court following arraignment pursuant to RSA 169-B:13.

(b) In the case of an out-of-district placement or placement for an episode of treatment, the appropriate court shall notify the department of education on the date that the court order is signed, or the need for an episode of treatment is determined, stating the initial length of time for which such placement is made. This subparagraph shall apply to the original order or determination and all subsequent modifications of that order or determination.

II. The school district liability for expenses for special education or for special education and related services for a child with a disability in placement for which the department of health and human services has financial responsibility shall be limited to 3 times the estimated state average expenditure per pupil, for the school year preceding the year of distribution. The liability of a school district under this section shall be prorated if the placement is for less than a full school year and the district shall be liable for only the prorated amount. This section shall not limit a school district's financial liability for children who receive special education or special education and related services in a public school or program identified in RSA 186-C:10.

(a) Any costs of special education or special education and related services in excess of 3 times the estimated state average expenditure per pupil for the school year preceding the year of distribution shall be the liability of the department of education. Costs for which the department of education is liable under this section shall be paid to education service providers by the department of education. The department of education shall develop a mechanism for allocating the funds appropriated for the purposes of this section. Any costs of special education or special education and related services related to an episode of treatment and the determination of placement by the department of health and human services shall be covered in full for students with disabilities by the department of education.
(b) The department of health and human services shall be liable for all court-ordered and episode of treatment costs pursuant to RSA 169-B:40, 169-C:27, and 169-D:29 other than for special education or special education and related services.

(c) The department of education shall distribute special education payments under subparagraph II(a) within 60 days of receipt of invoice from the school district. School districts shall submit education service providers costs to the department within 30 days of receipt of such costs. The department shall then verify the cost and distribute the appropriate amounts to the education service provider.

III. The department of education shall by rules adopted under RSA 541-A establish the rates charged by education service providers to the department of education or to school districts for children with disabilities in placement for which the department of health and human services has financial responsibility.

IV. The department of education is authorized to receive and take appropriate action on complaints regarding the failure to provide necessary special education or special education and related services to children with disabilities in placement for which the department of health and human services has financial responsibility.

V. If the total amount required for court ordered placements or placements for an episode of treatment exceeds the amount appropriated to the department for such payments, the governor is authorized to draw a warrant from the education trust fund for such sum to satisfy the state's obligation under this section.
Ed 1109.01(a)(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.

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

NOTES: The following new section (RSA 186-C:3-c) below became effective January 1, 2022.
The following new section (RSA 186-C:8-a) are effective August 16, 2022.
These additions to RSA 186-C may be added here following Ed 1109.01(a)(10) or added elsewhere.

186-C:3-c Supported Decision-Making. – If adult guardianship is being discussed by the IEP team with a student or the student’s family, the team shall inform the student and family of the availability of supported decision-making pursuant to RSA 464-D as an alternative to guardianship. This shall be done promptly when guardianship is first discussed. The IEP team shall make available resources to assist in establishing a supported decision-making agreement. If a supported decision-making agreement is executed, the IEP team shall abide by decisions made by the student pursuant to the supported decision-making agreement.

186-C:8-a Voter Registration. – When an individualized education program (IEP) team or planning team for accommodations pursuant to Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 701 et seq) meets for the purpose of reviewing or developing an IEP or accommodation plan for a student who is 17 years of age or older, or will be during that academic year, the team shall discuss voter registration as an appropriate community living/citizenship training goal or competency to be included in the IEP or Section 504 plan, and, if appropriate, when and how voter registration should be accomplished. Any resulting decisions shall be included in the IEP or Section 504 plan.

Insert for Guide to the NH Standards – for page 94

Ed 1109.03(k) LEAs shall comply with RSA 186-C:9 relative to required special education.

| RSA 186-C:9 Education Required. – Each child who is determined by the local school district, or special school district established under RSA 194:60, as having a disability in accordance with RSA 186-C:2 and in need of special education or special education and related services shall be entitled to attend an approved program which can implement the child's individualized education 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 inclusive, whichever occurs first, or until the child's individualized education program team determines that the child no longer requires special education in accordance with the provisions of this chapter. [Note: “inclusive” was added effective 8/19/2023] |
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 1100.2 and table 1100.3.

<table>
<thead>
<tr>
<th>§300.115 Continuum of alternative placements.</th>
</tr>
</thead>
<tbody>
<tr>
<td>(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.</td>
</tr>
<tr>
<td>(b) The continuum required in paragraph (a) of this section must—</td>
</tr>
<tr>
<td>(1) Include the alternative placements listed in the definition of special education under §300.39 (instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions); and</td>
</tr>
<tr>
<td>(2) Make provision for supplementary services (such as resource room or itinerant instruction) to be provided in conjunction with regular class placement.</td>
</tr>
</tbody>
</table>

(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 [Note: “Table 1100.4” should read “Table 1100.3” – it is a typographical error], “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.

Note: In June 2022, RSA 186-C:2, the definition of a “child with a disability” was amended, to include children with disabilities between the ages of 3 and 21 inclusive [up to 22 years of age].
Ed 1111.03(d) Children age 6-21 may receive their special education program at any of the environments listed in Table 1100.3 as follows: [See note for Ed 1111.02(b) (re: the age of eligibility being changed to between the ages of 3 and 21 inclusive (up to 22 years of age). This also applies to the table heading below.)]

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

<table>
<thead>
<tr>
<th>Educational Environments</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Regular Education Setting</td>
<td>A child with a disability attends regular class with supports and services required in the IEP.</td>
</tr>
<tr>
<td>Resource room</td>
<td>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.</td>
</tr>
<tr>
<td>Self-contained Special Education Class</td>
<td>A child with a disability attends a self-contained special class for more than 60% of their school day.</td>
</tr>
<tr>
<td>Separate Approved Special Education Program/School</td>
<td>A child with a disability attends a publicly or privately operated special education program/school.</td>
</tr>
<tr>
<td>Residential placement</td>
<td>A child with a disability attends a publicly or privately operated residential program.</td>
</tr>
<tr>
<td>Home Instruction</td>
<td>A child with a disability receives all or a portion of his or her special education program at home.</td>
</tr>
<tr>
<td>Hospital or institution</td>
<td>A child with a disability receives special education while in a hospital or institution.</td>
</tr>
</tbody>
</table>
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.

**Note:** In June 2022, RSA 186-C:2, the definition of a “child with a disability” was amended, to include children with disabilities between the ages of 3 and 21 inclusive [up to 22 years of age].

§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 §300.39 (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.

§§300.530(b) through (d) and §300.532(b) – See Ed 1124

(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.

**See note for Ed 1111.04(a).**

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

**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).

§300.114 – see Ed 1111.01(a)

(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.

RSA 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.

RSA 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;

RSA 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.

(2) For children with disabilities ages18-21, the procedures in Ed 1111.04(e)(1) [Note: “1111.04(e)(1) should read “1111.04(f)(1) – it is a typographical error] shall apply as if the child with a disability were under 18 years of age.

Note: In June 2022, RSA 186-C:2, the definition of a “child with a disability” was amended, to include children with disabilities between the ages of 3 and 21 inclusive [up to 22 years of age].
Ed 1113.13(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.

Note: In June 2022, RSA 186-C:2, the definition of a “child with a disability” was revised to include children with disabilities between the ages of 3 and 21 inclusive [up to 22 years of age].

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.

See note for Ed 1113.13(b) [In June 2022, RSA 186-C:2, the definition of a “child with a disability” was amended to include children with disabilities between the ages of 3 and 21 inclusive (up to 22 years of age)]

[Note: Includes the full text of:
- RSA 186-C:15 Length of School Year.
- RSA 189:1 Days of School.
- Ed 306.18 School Year.
- Ed 306.19 School Calendar. Each school shall maintain a school calendar.
- Ed 306.20 Alternative School-Year Scheduling Pattern.
- Ed 306.21 Off-Site Programs.]
Ed 1113.14(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.

Note: In June 2022, RSA 186-C:2, the definition of a “child with a disability” was revised to include children with disabilities between the ages of 3 and 21 inclusive [up to 22 years of age].
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).

34 CFR 300.519(h)  SEA responsibility. The SEA must make reasonable efforts to ensure the assignment of a surrogate parent not more than 30 days after a public agency determines that the child needs a surrogate parent.

(b) The current residence of the surrogate parent shall be of no relevance in determining the child’s LEA of residence or liability.

(c) Appointment of surrogate parents shall be effective until the child reaches 18 years of age unless:

(1) The child requests in writing that the commissioner of education or his/her designee extend the original appointment until the child is awarded a regular high school diploma or reaches 21 years of age, whichever occurs first;

Effective 8/19/2023, RSA 186-C:14, IV was amended to read: Appointment of Surrogate. Appointment of a surrogate parent under this section shall be effective until the child reaches 18 years of age, and may be extended by order of the commissioner until the child graduates from high school or reaches 21 inclusive years of age, whichever occurs first. If the surrogate parent resigns, dies or is removed, the commissioner of the department of education or designee, or the court with jurisdiction over the child's case, may appoint a successor surrogate parent in the same manner as provided in paragraph III.

(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

CHAPTER 464-A GUARDIANS AND CONSERVATORS

(3) The surrogate parent resigns, dies, or is 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.

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**Effective 8/19/2023, a new paragraph was added to RSA 186-C:14:**

**III-a.** The department shall complete a criminal history records check of each surrogate parent as it would a credentialing applicant pursuant to RSA 189:13-c. The department shall adopt rules under RSA 541-A, relative to the procedures for conducting criminal history records checks of surrogate parents.
Ed 1117.02 Definitions.

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

RSA 193:27 Definitions. – As used in this subdivision:

I. “Home for children” means any orphanage; institution for the care, treatment, or custody of children; child care agency as defined by RSA 170-E:25, II and III; or any residential school approved under RSA 186:11, XXIX.

II. “Health care facility” means any hospital, nursing home, sheltered home, or other institution licensed under RSA 151.

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

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

V. “Receiving district” means the school district in which a home for children or health care facility is located if a child who is placed therein attends a public school in that district or receives educational services from that district.

VI. “School district” means a school district in the state.

VII. “Episode of treatment” means when a child needs to be placed by the department of health and human services (DHHS) in a DHHS-contracted and/or certified program to receive more intensive treatment and supports and has the objective of helping children in crisis avoid or reduce the use of psychiatric hospitals or emergency rooms. [Note: This paragraph (VII) was added effective 7/1/2023]
Ed 1117.02(a)(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.

### RSA 170-E CHILD DAY CARE, RESIDENTIAL CARE, AND CHILD-PLACING AGENCIES

| 170-E:25 – Definitions – [NOTE: The definitions of “child care agency” and “child placing agency” in RSA 170-E:25 were amended in 2023; RSA 170-E:25, II and III now read as follows:]

<table>
<thead>
<tr>
<th>RSA 170-E:25 Definitions. – In this subdivision:</th>
</tr>
</thead>
<tbody>
<tr>
<td>I. &quot;Child care agency&quot; means any person, corporation, partnership, voluntary association or other organization either established for profit or otherwise, who regularly receives for care one or more children, unrelated to the operator of the agency, apart from the parents, in any facility as defined in this subdivision and maintained for the care of children. The types of child care agencies are defined as follows:</td>
</tr>
<tr>
<td>(a) &quot;Child care institution&quot; means a child care agency where more than 12 children are received and maintained for 24-hour care for the purpose of providing them with care or training, or both. The term &quot;child care institution&quot; shall not include:</td>
</tr>
<tr>
<td>(1) Any state operated institution for child care or juvenile detention established by law.</td>
</tr>
<tr>
<td>(2) Any institution, home, place, or facility operating under a license pursuant to RSA 151:2.</td>
</tr>
<tr>
<td>(3) Any boarding school in which children are primarily taught branches of education corresponding to those taught in public elementary schools or high schools, or both, and which operates on a regular academic school year basis, and which is approved by the department of education.</td>
</tr>
<tr>
<td>(4) Any licensed recreation camp.</td>
</tr>
<tr>
<td>(b)(1) &quot;Foster family home” means child care in a residence in which family care and training are provided on a regular basis for no more than 6 unrelated children, unless all the children are of common parentage. The maximum of 6 children includes the children living in the home and children received for care who are related to the residents.</td>
</tr>
<tr>
<td>(2) If the limit of 6 children under subparagraph (a)(1) is reached, the foster family is willing and able to take a sibling or a group of siblings of a child already in their care, and the department has concluded that the foster family is able to provide for the safety, permanency, and well-being of the child or children, the department may, notwithstanding the limitations of subparagraph (a)(1), place the sibling or group of siblings in the foster family home.</td>
</tr>
<tr>
<td>(c) &quot;Group home&quot; means a child care agency which regularly provides specialized care for at least 5 but no more than 12 children who can benefit from residential living either on a short-term or long-term basis.</td>
</tr>
<tr>
<td>(d) &quot;Independent living home&quot; means a child care agency which regularly provides specialized services in adult living preparation in an experiential residential setting for persons 16 years of age or older who have a legal relationship with the department of health and human services and who can benefit from independent living training.</td>
</tr>
</tbody>
</table>
(e) "Specialized care" means a child care agency which regularly provides general care for children who are diagnosed as mentally ill, intellectually disabled, or physically disabled and who are determined to be in need of special mental treatment or nursing care, or both.

(f) "Homeless youth program" means a program, including any housing facilities utilized by such program, which receives any child for the purpose of providing services to facilitate independent living including all of the following program components: individual assessment, referral, housing, and case management. Such services may be provided directly by the agency or through one or more contracts for services.

(g)(1) "Kinship care home" means a type of foster home in which an individual or individuals are licensed to provide care exclusively to kin. There shall be a maximum of 6 children including the children living in the home and children received for child care who are related to the residents.

(2) Notwithstanding the limit of 6 children under subparagraph (e)(1), if the kinship care family is willing and able to take a sibling or a group of siblings of a child already in their care, and the department has concluded that the kinship care family is able to provide for the safety, permanency, and well-being of the child or children, the department may place the sibling or group of siblings in the kinship care home.

III. "Child-placing agency" means any firm, corporation or association which:

(a) Receives any child for the purpose of providing services related to arranging for the placement of children in a foster family home, group home, or child care institution; or

(b) Receives any child for the purpose of providing services related to arranging for the placement of children in adoption.

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

RSA 193:27 Definitions. – As used in this subdivision:

I. “Home for children” means any orphanage; institution for the care, treatment, or custody of children; child care agency as defined by RSA 170-E:25, II and III; or any residential school approved under RSA 186:11, XXIX.

II. “Health care facility” means any hospital, nursing home, sheltered home, or other institution licensed under RSA 151.

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

[Note the full text of RSA 193:27 may be found following Ed 1117.02(a)]
PART Ed 1119  CONFIDENTIALITY OF INFORMATION

Ed 1119.01  Confidentiality Requirements.

(a) For the purposes of this section “adult student” means “adult student” as defined in 20 USC 1232g(d).

(Note: A new (a) was added to Ed 1119.01 (see below). Ed 1119.01(b) was previously Ed 1119.01(a))

20 USC 1232g(d) Students’ rather than parents’ permission or consent. For the purposes of this section, whenever a student has attained eighteen years of age, or is attending an institution of postsecondary education, the permission or consent required of and the rights accorded to the parents of the student shall thereafter only be required of and accorded to the student.


§300.610  Confidentiality. The Secretary takes appropriate action, in accordance with section 444 of GEPA, to ensure the protection of the confidentiality of any personally identifiable data, information, and records collected or maintained by the Secretary and by SEAs and LEAs pursuant to Part B of the Act, and consistent with §§300.611 through 300.627.

§300.611  Definitions. As used in §§300.611 through 300.625–

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

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

(c) Participating agency means any agency or institution that collects, maintains, or uses personally identifiable information, or from which information is obtained, under Part B of the Act.

§300.612  Notice to parents.

(a) The SEA must give notice that is adequate to fully inform parents about the requirements of §300.123, including–

(1) A description of the extent that the notice is given in the native languages of the various population groups in the State;

(2) A description of the children on whom personally identifiable information is maintained, the types of information sought, the methods the State intends to use in gathering the information (including the sources from whom information is gathered), and the uses to be made of the information;

(3) A summary of the policies and procedures that participating agencies must follow regarding storage, disclosure to third parties, retention, and destruction of personally identifiable information; and

(4) A description of all of the rights of parents and children regarding this information, including the rights under FERPA and implementing regulations in 34 CFR part 99.

(b) Before any major identification, location, or evaluation activity, the notice must be published or announced in newspapers or other media, or both, with circulation adequate to notify parents throughout the State of the activity.

§300.613 Access rights.

(a) Each participating agency must permit parents to inspect and review any education records relating to their children that are collected, maintained, or used by the agency under this part. The agency must comply with a request without unnecessary delay and before any meeting regarding an IEP, or any hearing pursuant to §300.507 or §§300.530 through 300.532, or resolution session pursuant to §300.510, and in no case than 45 days after the request has been made.

[NOTE: While NH complies with FERPA, the state has established a shorter timeline for making records available to a child’s parent (NH has a 14-day timeline vs. FERPA’s 45-day timeline).]

RSA 189:66, IV The department and each local education agency shall make publicly available students' and parents' rights under the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. section 1232g, et seq., and applicable state law including:

(a) The right to inspect and review the student's education records within 14 days after the day the school receives a request for access.

(b) The right to inspect and review education records under this section includes—

(1) The right to a response from the participating agency to reasonable requests for explanations and interpretations of the records;

(2) The right to request that the agency provide copies of the records containing the information if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records; and

(3) The right to have a representative of the parent inspect and review the records.

(c) An agency may presume that the parent has authority to inspect and review records relating to his or her child unless the agency has been advised that the parent does not have the authority under applicable State law governing such matters as guardianship, separation, and divorce

[Note: Also includes the full text of: §300.614 - §300.627]

34 CFR Part 99 – FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT.

| [Note: Includes the full text of §300.610 – §300.612] |
| §300.613 Access rights. |
| (a) Each participating agency must permit parents to inspect and review any education records relating to their children that are collected, maintained, or used by the agency under this part. The agency must comply with a request without unnecessary delay and before any meeting regarding an IEP, or any hearing pursuant to §300.507 or §§300.530 through 300.532, or resolution session pursuant to §300.510, and in no case more than 45 days after the request has been made. |
| NOTE: While NH complies with FERPA, we have established a shorter timeline for making records available to a child’s parent (NH has a 14-day timeline vs. FERPA’s 45-day timeline). |

RSA 189:66, IV The department and each local education agency shall make publicly available students' and parents' rights under the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. section 1232g, et seq., and applicable state law including:

(a) The right to inspect and review the student’s education records within 14 days after the day the school receives a request for access.

(b) The right to inspect and review education records under this section includes—

(1) The right to a response from the participating agency to reasonable requests for explanations and interpretations of the records;

(2) The right to request that the agency provide copies of the records containing the information if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records; and

(3) The right to have a representative of the parent inspect and review the records.

(c) An agency may presume that the parent has authority to inspect and review records relating to his or her child unless the agency has been advised that the parent does not have the authority under applicable State law governing such matters as guardianship, separation, and divorce.

| [Note: Includes the full text of §300.613 - §300.626] |

34 CFR Part 99 – FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT.
Ed 1119.01(c) Each LEA and private provider of special education shall adopt a policy regarding the retention and destruction of special education records pursuant to RSA 186-C:10-a.

RSA 186-C:10-a. I. Upon a student's graduation from high school, his or her parents may request the local education agency, in writing, to have the student's records and final individualized education program destroyed at that time or request that the records be retained until the student's twenty-sixth birthday. The parents may, at any time prior to the student's twenty-sixth birthday, request, in writing, that the records be retained until the student's thirtieth birthday.

II. Absent any request by a student's parents at the time of graduation, the local education agency shall destroy a student's records and final individualized education program within a reasonable time after the student's twenty-sixth birthday, provided that all such records be destroyed by the student's thirtieth birthday.

(d) 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.

(e) A private provider of special education may destroy a student’s special education records prior to the student’s 26th 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.

(f) Each participating agency shall comply with the safeguard provisions of 34 CFR 300.623. The department or the LEA shall provide notice to parents in accordance with 34 CFR 300.612.

§300.623 Safeguards.
(a) Each participating agency must protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages.
(b) One official at each participating agency must assume responsibility for ensuring the confidentiality of any personally identifiable information.
(c) All persons collecting or using personally identifiable information must receive training or instruction regarding the State’s policies and procedures under §300.123 and 34 CFR part 99.
(d) Each participating agency must maintain, for public inspection, a current listing of the names and positions of those employees within the agency who may have access to personally identifiable information.

§300.612 Notice to parents – See Ed 1119.01(b)
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.

<table>
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<th>186-C:23 Alternative Dispute Resolution. –</th>
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<tr>
<td>I. In order to encourage informal resolution of differences of opinion regarding the provision of special education, the following methods of alternative dispute resolution shall be available to parents and school districts:</td>
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<td>(a) Neutral conference.</td>
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<td>(b) Mediation.</td>
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<td>II. To assist parents and schools, this subdivision requires the local education agency to notify the department of education in writing that an individualized education program, educational placement, identification, or evaluation of a child has been rejected by the parent, and establishes a 30-day period for discussion beginning on the date such notice is received by the department of education, which may be continued if mutually agreed to by the parties. Immediately following notification, the department shall communicate to the parent a description of the alternative dispute resolution process. While the use of these informal resolution procedures is strongly encouraged, it is not mandatory for either party. If this option is chosen by both parties, the department shall, during the 30-day period, schedule and conduct an alternative dispute resolution conference. Such schedule may be continued if mutually agreed to by the parties. The conference shall not be used to delay a due process hearing; however, both parties may agree to postpone the hearing pending a resolution. [Note: The option allowing the parties to mutually agree to continue the 30-day period was added effective 8/6/2023]</td>
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<td>III. Alternative dispute resolution proceedings shall be confidential and shall not impair the right of the participants to demand a due process hearing. Information, evidence, or the admission of any party shall not be disclosed or used in any subsequent proceeding. Statements made and documents prepared by a party, attorney, or other participant in aid of such proceeding shall be privileged and shall not be disclosed. In addition, the parties shall not introduce into evidence in any subsequent proceeding the fact that there was an alternative dispute resolution proceeding or any other matter concerning the conduct of such proceedings. The authority of the department of education in alternative dispute resolution proceedings initiated under this section shall be limited to the provisions of paragraphs I and II.</td>
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<td>IV. There shall be no record made of any alternative dispute resolution proceedings.</td>
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<td>V. Evidence that would otherwise be admissible in a due process hearing or in a subsequent court hearing shall not be rendered inadmissible as a result of its use in an alternative dispute resolution proceeding.</td>
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§300.506 Mediation. [This section was unchanged]
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 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.

[Note: RSA 186-C:19-b, II was revised effective 7/1/2023 to include episode of treatment.]

RSA 186-C:19-b, II. The school district liability for expenses for special education or for special education and related services for a child with a disability in placement for which the department of health and human services has financial responsibility shall be limited to 3 times the estimated state average expenditure per pupil, for the school year preceding the year of distribution. The liability of a school district under this section shall be prorated if the placement is for less than a full school year and the district shall be liable for only the prorated amount. This section shall not limit a school district's financial liability for children who receive special education or special education and related services in a public school or program identified in RSA 186-C:10.

(a) Any costs of special education or special education and related services in excess of 3 times the estimated state average expenditure per pupil for the school year preceding the year of distribution shall be the liability of the department of education. Costs for which the department of education is liable under this section shall be paid to education service providers by the department of education. The department of education shall develop a mechanism for allocating the funds appropriated for the purposes of this section. Any costs of special education or special education and related services related to an episode of treatment and the determination of placement by the department of health and human services shall be covered in full for students with disabilities by the department of education.

(b) The department of health and human services shall be liable for all court-ordered and episode of treatment costs pursuant to RSA 169-B:40, 169-C:27, and 169-D:29 other than for special education or special education and related services.

(c) The department of education shall distribute special education payments under subparagraph II(a) within 60 days of receipt of invoice from the school district. School districts shall submit education service providers costs to the department within 30 days of receipt of such costs. The department shall then verify the cost and distribute the appropriate amounts to the education service provider.
Ed 1128.01 Definitions.

(a) “Special Education Aid” means financial assistance for special education costs distributed under RSA 186-C:18, III to a responsible school district.

Effective July 1, 2023, RSA 186-C:18, III(a) was amended to include “episodes of treatment”, and reads as follows:

RSA 186-C:18, III.(a) The state board of education through the commissioner, department of education, shall distribute aid available under this paragraph as entitlement to such school districts as have a special education pupil for whose costs they are responsible, for whom the costs of special education in the fiscal year exceed 3 1/2 times the estimated state average expenditure per pupil for the school year preceding the year of distribution. If in any year, the amount appropriated for distribution as special education aid in accordance with this section is insufficient therefor, the appropriation shall be prorated proportionally based on entitlement among the districts entitled to a grant. If there are unexpended funds appropriated under this paragraph at the end of any fiscal year, such funds shall be distributed for court-ordered placements and episodes of treatment under RSA 186-C:19-b. The state may designate up to $250,000 of the funds which are appropriated as required by this paragraph, for each fiscal year, to assist those school districts which, under guidelines established by rules of the state board of education, may qualify for emergency assistance to mitigate the impact of special education costs. The state may designate up to an additional $250,000 of the funds which are appropriated under this paragraph for each fiscal year for any community of 1,000 or fewer residents to mitigate the impact of special education costs when emergency assistance is necessary to prevent significant financial harm to such district or community. Upon application to the commissioner of education, and approval by the commissioner, such funds may be accepted and expended by school districts in accordance with this chapter; provided, however, that if a school district has received emergency assistance funds for certain children with disabilities, it shall not receive special education aid for those same children with disabilities. If any of the funds designated for emergency assistance under this paragraph are not used for such emergency assistance purposes, the funds shall be used to assist school districts in meeting special education cost increases in their special education programs as provided by this paragraph. [Note: “and episodes of treatment” was added effective 7/1/2023]

(b) The school district shall be liable for 3-1/2 times the estimated state average expenditure per pupil for the school year preceding the year of distribution, plus 20 percent of the additional cost, up to 10 times the estimated state average expenditure per pupil for the school year preceding the year of distribution.

(c) The department of education shall be liable for 80 percent of the cost above the 3-1/2 times the estimated state average expenditure per pupil for the school year preceding the year of distribution, up to 10 times the estimated state average expenditure per pupil for the school year preceding the year of distribution. The department of education shall be liable for all costs in excess of 10 times the estimated state average expenditure per pupil for the school year preceding the year of distribution.
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) - (a-) below. **[Note: “(a-)” is a typo; it should read, “(ap)”.]**