

The following excerpts are from the NH Department of Education's initial proposal for revisions to Chapter Ed 1100, the NH Rules for the Education of Children with Disabilities. This document only includes parts where changes to the NH Rules are proposed.

CHAPTER Ed 1100 STANDARDS FOR THE EDUCATION OF CHILDREN WITH DISABILITIES

Readopt with amendment Part Ed 1101- 1103 effective 6-28-08 Document #9197 cited and to read as follows:

PART Ed 1101 PURPOSE AND SCOPE

Ed 1101.01 Purpose. The purpose of Ed 1100, adopted by the state board of education, is to ~~to~~ ensure that all children with disabilities have available to them a free, appropriate, public education pursuant to the Individuals with Disabilities Education Improvement Act of 2004, 20 U.S.C. 1400, **and the implementing regulations found beginning at 34 CFR 300.1 et seq.** ~~[and the final regulations of the U.S. Department of Education issued by the Secretary of Education on August 14, 2006; 34 CFR 300 et seq. The further purpose of Ed 1100 is to adopt rules that are consistent with 20 U.S.C. 400.]~~

PART Ed 1102 DEFINITIONS

Ed 1102.01 Definitions A-C.

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

- (1) A facilitated IEP **team** meeting;
- (2) LEA mediation;
- (3) State mediation; and
- (4) A neutral conference.

(m) "Aversive behavioral interventions" means those procedures that subject a child with a disability to physical or psychological harm or unsupervised confinement or that deprive the child of basic necessities such as nutrition, clothing, communication, or contact with parents, so as to endanger the child's physical, mental, or emotional health **consistent with Ed 1113.04(c) and Ed 1114.07(g).**

~~(r)~~ **(t)** "Child with a disability" means:

- (1) "Child with a disability" as defined in 34 CFR 300.8 who is 3 years of age or older but less than 21 years of age and who has not yet received a regular high school diploma as provided in 34 CFR 300.102. ~~;~~ **and (2) A child with a developmental delay as defined in RSA 186-C:2 I-a];**

(2) "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 and meets the definition of Ed 1102.01 (r); or

(3) "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 and meets the definition of Ed 1102.01 (s).

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

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

~~(w)~~ (y) “Core academic subjects” means “core academic subjects” as defined in 34 CFR 300.10 ~~and includes:~~

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

Ed 1102.03 Definitions H-M.

(f) “Homeless child with a disability” **means homeless child with a disability** ~~has the meaning~~ as detailed in 34 CFR 300.19.

(g) “Independent educational evaluation” means “independent educational evaluation” as defined in 34 CFR 300.502(a)(3)(i) **and Ed 1107.03.**

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

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

(k) “Individuals with Disabilities Education Improvement Act” (IDEA) means U.S.C. 1400 et seq. **and as implemented by 34 CFR 300 et seq.**

(n) “Interpreting services for a child with a disability” means “interpreting services for a child with a disability” as defined in 34 CFR 300.34(c)(4) **and 34 CFR 300.322(e).**

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

Ed 1102.04 Definitions N-R.

(b) “National Instructional Materials Accessibility Standard” (NIMAS) means the standards defined in 34 CFR 300.172. ~~[3]~~

(q) “Related services” means **either** “related services” as defined in 20 USC 1401 Sec. 602 (26)(A) **and 34 CFR 300.34(c) or related services as determined by IEP Team agreement that the related service(s) is all the child with a disability needs and therefore the related service functions as the child’s special education program as defined by the state.**

(t) **“Restrictive Behavioral Interventions” means those procedures detailed in Ed 1113.04(c) and Ed 1114.09(a) that may be used subject to the conditions detailed in Ed 1113.06(b) and Ed 1114.09(b) and are limited to:**

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

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

Ed 1102.05 Definitions S-Z.

(c) “Special education” means “special education” as defined in ~~[34 CFR 300.38]~~ **34 CFR 300.39.**

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

PART Ed 1103 PARTICIPANTS IN THE SPECIAL EDUCATION PROCESS

Ed 1103.01 IEP Team.

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

Ed 1103.02 Parent Participation.

(a) The LEA shall ensure that the parent or parents of the child with a disability receive a written invitation no fewer than 10 days before an IEP meeting, provided that for a manifestation determination review under 34 CFR 300.~~[532(e)]~~**530(e)**, the LEA shall ensure that the parent or parents receive a written invitation no fewer than 5 days before the review. The notice shall include the purpose, time, location ~~[and]~~ **of the meeting and the** identification of the participants.

PART Ed 1105 CHILD FIND

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:

(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.

Ed 1105.04 Child Find for Children Currently Receiving Family Centered Early Supports and Services. centered early supports and services system to assist with the smooth transition of services.

(f) The LEA shall report in NHSEIS whether a child referred by **[FCESS] family centered early supports and services** is a child determined to be a child with a disability or if the child is found not eligible as a child with a disability.

PART Ed 1107 EVALUATION

Ed 1107.01 Evaluation.

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

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

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

Ed 1107.04 Qualified Examiners.

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

[Table Begins on Next Page]

Table 1100.1 Required Assessments and Qualified Examiners by Type of Disability

Disability	Assessments		Qualified Examiners
	Required	Optional*	
AQUIRED BRAIN INJURY	Academic Performance		Associate School Psychologist Certified Educator Guidance Counselor Psychologist S.A.I.F. ** School Psychologist
	Health		Licensed Health Care professional within the scope of their licensure
<p>*A minimum of 2 of the following assessments must also be completed:</p> <ul style="list-style-type: none"> ▪ Adaptive Behavior ▪ Communicative Skills ▪ Intelligence ▪ Social/ Emotional Status 		Adaptive Behavior	Associate School Psychologist Certified Educator Guidance Counselor Psychiatrist Psychologist S.A.I.F. ** School Psychologist Licensed Social Worker
		Communicative Skills	Speech-Language Pathologist Speech-Language Specialist
		Intelligence	Associate School Psychologist Psychologist S.A.I.F. ** School Psychologist
		Social/Emotional Status	Associate School Psychologist Psychiatrist Psychologist School Psychologist
<p>NOTE – The revision in who is a qualified examiner to conduct the required health assessment applies to the categories of:</p> <p style="text-align: center;">AUTISM</p> <p style="text-align: center;">ORTHOPEDIC IMPAIRED</p> <p style="text-align: center;">OTHER HEALTH IMPAIRED</p> <p style="text-align: center;">TRAUMATIC BRAIN INJURY</p>			[Professional Licensed to provide a Health Evaluation] Licensed Health Care professional within the scope of their licensure.

<p>DEVELOPMENTAL DELAY</p> <p>[In order to identify a child as educationally disabled as the result of a developmental delay the IEP Team must determine that there are clear indicators present that the child may have on of the other educationally disabling conditions. Therefore, the required assessments and qualified examiners are the same as for the suspected disabling condition. Examiners must be qualified to evaluate the specific disabilities suspected of causing the developmental delay.]</p>	<p>[Varies based on the suspected disability]</p> <p>Academic Performance</p>		<p>[Varies based on the suspected disability]</p> <p>Associate School Psychologist</p> <p>Certified Educator</p> <p>Guidance Counselor</p> <p>Psychologist</p> <p>S.A.I.F. **</p> <p>School Psychologist</p>
	<p>Hearing or Hearing Screening</p>		<p>Audiologist</p> <p>Otolaryngologist</p> <p>Otologist</p> <p>Licensed Health Care professional within the scope of their licensure</p>
	<p>Vision or Vision Screening</p>		<p>Ophthalmologist</p> <p>Optometrist</p> <p>Licensed Health Care professional within the scope of their licensure</p>
<p>*A minimum of 2 of the following assessments must also be completed:</p> <ul style="list-style-type: none"> ▪ Adaptive Behavior ▪ Communicative Skills ▪ Intelligence ▪ Motor Ability ▪ Social/ Emotional Status 		<p>Adaptive Behavior</p>	<p>Licensed Physician</p> <p>Occupational Therapist</p> <p>Physical Therapist</p>
		<p>Communicative Skills</p>	<p>Speech-Language Pathologist</p> <p>Speech-Language Specialist</p>
		<p>Intelligence</p>	<p>Associate School Psychologist</p> <p>Psychologist</p> <p>S.A.I.F. **</p> <p>School Psychologist</p>
		<p>Motor Ability</p>	<p>Licensed Physician</p> <p>Neurologist</p> <p>Occupational Therapist</p> <p>Physical Therapist</p>
		<p>Social/Emotional Status</p>	<p>Associate School Psychologist</p> <p>Psychiatrist</p> <p>Psychologist</p> <p>School Psychologist</p>
<p>[VOCATIONAL ASSESSMENTS]</p> <p>Any disability category as determined by the team</p>	<p>Vocational</p>		<p>Certified Educator</p> <p>Guidance Counselor</p> <p>Vocational Educator</p> <p>Rehabilitation Counselor</p>

Ed 1107.06 Reevaluation

(a) A reevaluation shall be conducted in accordance with 34 CFR 300.303 when the public agency and the parent determine that a reevaluation shall be conducted.

(b) In the case of a child with a developmental delay, a reevaluation must be conducted in accordance with 34 CFR §300.303 to determine eligibility for special education and related services as a child with a disability prior to the age of 10 when the child will no longer be eligible as a child with a developmental delay.

PART Ed 1109 THE INDIVIDUALIZED EDUCATION PROGRAM

Ed 1109.01 Elements of an Individualized Education Program.

(a) Each IEP shall include:

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

PART Ed 1111 PLACEMENT OF CHILDREN WITH DISABILITIES

Ed 1111.02 Placement Decisions.

(b) Preschool children with disabilities shall be educated in a [setting] **learning environment** that is appropriate to implement the IEP or IFSP **and is the least restrictive environment consistent with 34 CFR 300.116 Placements.**

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

Table 1100.02 Continuum of Learning Settings for Preschool

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

Ed 1111.03 Continuum of Alternative Placements.

(b) School districts shall, at a minimum, give evidence that the continuum of alternative learning [settings] **environment** from least restrictive to most restrictive set forth in [Table 1100.2, “Continuum of Alternative Learning Settings for Preschool” and as set forth in] Table 1100.[3]2, “Continuum of Alternative Learning Environments **for Preschool**” **and as set forth in Table 1100.3, “Continuum of Alternative Learning Environment –Ages 6-21 ”** is available or would be made available as placements for children with disabilities, including children of preschool age.

(d) Preschool children with disabilities may receive their special education program in any of the environments listed in Table 1100.[3]2 as follows:

Table 1100.[3]2 Continuum of Alternative Learning Environments – Preschool

Preschool Educational Environments	Description
Early childhood program	A preschool child with a disability attends an early childhood program that includes at least 50 percent nondisabled children.
Home	A preschool child with a disability receives some or all of his/her supports and services in the child's home.
Early Childhood Special education program	A preschool child with a disability attends an early childhood special education program which can include any of the classrooms described in Ed 1113.10(c)(5).
Service Provider Location	A preschool child with a disability receives supports and services from a service provider.
Separate school	A preschool child with a disability attends a publicly or privately operated separate day school facility designed specifically for children with disabilities.
Residential facility	A preschool child with a disability attends a publicly or privately operated residential school or residential medical facility on an inpatient basis.

(e) Children age 6-21 may receive their special education program at any of the environments listed in Table 1100.[4]3 as follows:

Ed 1111.05 Home Instruction for School-Aged Children.

(c) When a child is physically or mentally unable to attend school and the IEP team recommends that a school week of less than the required hours detailed in Ed 1111.05 (b)(3) be provided:

~~[(1) The superintendent shall provide written consent prior to implementation of the shortened school week;]~~

~~(1) [(2)]~~ The parent shall provide written consent prior to implementation of the shortened school week;

~~[(3) The LEA shall send a copy of the written consent to the state director of special education;]~~

~~(2) [(4)]~~ The LEA shall send a copy of the written consent to the child's parent; **and**

~~(3) [(5)]~~ The LEA shall place a copy of the consent in the child's school records.

~~[(d) Consent shall not be granted by the superintendent if it would cause a serious adverse effect upon the child's educational progress pursuant to RSA 193:1, I(c); and]~~

PART Ed 1113 REQUIREMENTS FOR THE DEVELOPMENT AND OPERATION OF PROGRAMS FOR CHILDREN WITH DISABILITIES ADMINISTERED BY LOCAL EDUCATION AGENCIES

Ed 1113.04 Behavioral Interventions.

(a) Positive behavioral interventions based on the results of a behavioral assessment shall serve as the foundation of any program used to address the behavioral needs of students.

(b) An LEA, other public agency, private provider of special education or other non-LEA program shall not employ any aversive behavioral interventions;

(c) Aversive and deprivation behavioral interventions shall include:

(1) Any procedure intended to cause physical pain;

(2) Aversive mists, noxious odors, and unpleasant tastes applied by spray or other means to cause an aversive physical sensation;

~~[(3) Any non-medical mechanical restraint that physically restricts a student's movement;]~~

~~[(4)]~~ (3) Contingent food/drink programs;

~~[(5)]~~ (4) Electrical stimulation;

~~[(6)]~~ (5) Placement of a child in an unsupervised or unobserved room from which the child can not exit without assistance; and

~~[(7) Physical restraint, unless in response to a threat of imminent, serious, physical harm.]~~

Ed 1113.05 Emergency Intervention Procedures. All crisis or emergency intervention procedures that include ~~[aversive]~~ **restrictive** behavioral interventions shall be included in the student's IEP and shall comply with Ed 1113.04 except as detailed in Ed 1113.06 ~~[however nothing in these rules shall preclude the use of intervention in response to the threat of imminent, serious physical harm].~~

Ed 1113.06 Use of ~~[Aversive]~~ **Restrictive** Behavioral Interventions.

(b) ~~[Aversive]~~ **Restrictive** behavioral interventions may only be used when:

Ed 1113.10 Class Size and Age Range.

~~[(a) Children with disabilities in preschool programs shall be 3 and 5 years of age or a 2 year old who turns 3 during the school year or a 5 year old who turns 6 after September 30 of the school year grouped by developmental and achievement levels with an age and developmental level of not more than 3 years.]~~

~~[(a)]~~ (b) The ~~[preschool community outreach]~~ **early childhood** program shall:

(4) Utilize early childhood settings set forth in Table 1100.0~~[3]~~2 for placements that meet the RSA 170-E.

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

(1) An early childhood special education ~~[program]~~ **class** shall be considered a special education ~~[program]~~ **class** when it includes ~~[less]~~ **more** than 50% children ~~[without]~~ **with** disabilities;

~~[(2) The minimum teacher to student ratio in all early childhood special education programs shall be:~~

a. One qualified teacher for one to 8 preschool students;

b. One qualified teacher and one qualified paraprofessional for 8-12 preschool students unless the needs presented by the severity of the disabilities warrants the assignment of additional staff; or

c. Two qualified teachers for 8-12 preschool students;

~~[(3) The maximum number of preschool children in an early childhood special education programs shall be 12;~~

(4) Preschool children in an early childhood special education programs shall be between the ages of 3 and 5 years of age or a 2 year old who turns 3 during the school year or a 5 year old who turns 6 after September 30 of the school year;

(2) *There may be more than one early childhood special education class in an early childhood special education program;*

(3) *The LEA will ensure the individual needs of the children with disabilities can be met when determining the number of children to be enrolled and staffing in the early childhood special education class;*

(4) *Preschool children with disabilities will be placed in an early childhood special education program consistent with Ed 1111.01(a) and CFR 300.114;*

(5) *Preschool children in an early childhood special education program shall be between the ages of 3 and 5 years of age or a 2 year old who turns 3 during the school year or a 5 year old who turns 6 after September 30 of the school year;*

(6)~~(5)~~ Early childhood special education ~~programs~~ *classes* shall, to the greatest extent possible, include students of comparable developmental and/or functional levels; and

(7) *An early childhood special education class shall have a maximum of:*

a. 15 students enrolled if more than 50% but less than 75% children with disabilities;

b. 12 students enrolled if 75% to 90% of the children are children with disabilities;

c. 10 students enrolled if 100% of the children enrolled in the class are children with disabilities

(8)~~(6)~~ Regardless of the specific teacher-student ratio, each program shall provide personnel who are endorsed in the area of disability consistent with the student population of the program.

(9) *Unless the needs presented by the severity of disabilities warrants the assignment of additional staff a minimum teacher to student ratio in all early childhood special education classes shall be:*

a. For a class with a maximum of 15 students, one qualified teacher and

1. one additional qualified paraprofessional,

2. one additional teacher, or

3. one additional related service provider;

b. For a class with a maximum of 12 students,

1. one qualified teacher and

(i) one additional qualified paraprofessional,

(ii) one additional teacher, or

(iii) one additional related service provider for up to 8 students; or,

2. one qualified teacher and

(i) two additional qualified paraprofessional(s),

(ii) two additional teacher(s) or

(iii) two additional related service provider(s) for more than 8 students; and

c. For a class with a maximum class size of 10 students,

1. one qualified teacher and

(i) one additional qualified paraprofessional,

(ii) one additional teacher or

(iii) one additional related service provider for up to and including 6 students; or,

2. one qualified teacher and

(i) two additional qualified paraprofessional(s),

(ii) two additional teacher(s), or

(iii) two additional related service provider(s) for more than 6 students.

Ed 1113.11 Facilities and Location.

(c) A private office shall be provided for the special education coordinator if there is a position on the school staff.

Ed 1113.13 Diplomas.

~~[(c) LEAs shall provide all children with disabilities an equal opportunity to complete a course of studies leading to a regular high school diploma. Awarding of any document other than a regular high school diploma shall not end a child with a disability's eligibility for FAPE pursuant to 34 CFR 300.102.] [Note: This deleted section duplicates Ed 1113.13]~~

PART Ed 1114 STANDARDS FOR APPROVAL OF PRIVATE PROVIDERS OF SPECIAL EDUCATION AND NON-LEA PROGRAMS

Ed 1114.07 Behavioral Interventions.

(c) A private facility or other non-district program shall not employ any measure which is aversive or depriving in nature or which subjects a child with a disability enrolled in that program to humiliation or unsupervised confinement or to abuse or neglect as defined in RSA 169-C, the Child Protection Act, or which deprives the child of basic necessities such as nutrition, clothing, communication, or contact with parents, so as to endanger the child's mental, emotional, or physical health consistent with ~~[Ed. 1114.07]~~ **this section.**

Ed 1114.08 Emergency Intervention Procedures. All crisis or emergency intervention procedures that include ~~[aversive]~~ **restrictive** behavioral interventions shall be included in the student's IEP and shall comply with Ed 1114.07 except as detailed in Ed 1114.09.

Ed 1114.09 Use of ~~[Aversive]~~ **Restrictive** Behavioral Interventions.

(b) ~~[Aversive]~~ **Restrictive** behavioral interventions may only be used when:

PART Ed 1115 SURROGATE PARENTS

Ed 1115.05 Appointment.

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

(3) The surrogate parent resigns, dies, or is removed pursuant to Ed 1115.05(d) **and RSA 186:14-a,II.**

(d) The commissioner of education, within 30 days of the receipt of a written complaint requesting the removal of a surrogate parent shall:

- (1) Investigate the allegation(s) made in the written complaint;
- (2) Render a decision that shall indicate whether:
 - a. The surrogate is meeting the requirements for being a surrogate parent;
 - b. The surrogate parent shall receive additional training;
 - c. The surrogate parent has not fulfilled the responsibilities of a surrogate parent and is removed; **[or]**
 - d. The surrogate parent has a conflict of interest with the child's interests and is removed; **or**

e. The surrogate parent resigns, dies, or is removed pursuant to this section).

PART Ed 1116 ALTERNATIVE METHODS FOR THE APPOINTMENT OF SURROGATE PARENTS

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

(b) In addition to the appointment of a foster parent as a surrogate parent through the department and by court order, a director of a child placing agency licensed under RSA 170-E that has placed a child with a foster parent may also assign a surrogate parent to make educational decisions on behalf of a foster child for the duration of the foster placement provided that:

- (1) The **[natural] biological or adoptive** parents' parental rights have been terminated by a court of law or by death;

PART Ed 1117 EDUCATION OF CHILDREN PLACED IN HOMES FOR CHILDREN, HEALTH CARE FACILITIES, OR STATE INSTITUTIONS

Ed 1117.01 Purpose and Scope.

(a) The purpose of this part is to assure the provision of a FAPE as defined in Ed 1102.**[44]02(s)** to children with or who might have **[educational]** disabilities who are in residential placement or placements awaiting disposition of the courts and committed juvenile students with or who might have **[educational]** disabilities to the extent that such students are not covered under Ed 1127.

Ed 1117.02 Definitions.

(a) Definitions provided in Ed 1102 shall apply, except that the following definitions shall apply for the purpose of Ed 1117 only:

- (1) "Child," means "child with a disability" as defined in Ed 1102.**[48]02(t)**. The term also includes "student" or "youth";
- (7) "Facility" means the **[to be school,]** philbrook center, the youth services detention unit of the youth services center, or the youth development center **or any other state operated program approved by the department;**

Ed 1117.04 Preplacement and Placement Review Procedures For Children Previously Determined to Have Disabilities.

(o) In any instance where a state **or** district court issues an order authorizing or making a **residential** placement, ~~[program or service]~~ which differs from or conflicts with the placement, program or services recommended by the team, special education and special education and related services shall be provided in a manner consistent with the **residential** placement decision made by the state court in conformity with an IEP developed by the team for use during such placement.

Ed 1117.05 Emergency Placement Review Procedures For Children Previously Determined to Have Disabilities. When DCYF or DJJS notifies the liable school district of an emergency that requires a change in residential placement the school district shall:

(b) Convene an IEP team meeting in accordance with the requirements of Ed 1117.04(d) no later than 10 days after notice to parents for the purpose of:

(1) Reviewing the nature of the emergency and its relation to the child's **educational** disability;

Ed 1117.06 Preplacement and Placement Review Procedures for Children Not Previously Determined to Have Disabilities.

(a) Upon receipt of notice according to Ed 1106 by DCYF or by DJJS or upon order of the state court having jurisdiction for whom there is reason to believe a disability might exist, the liable school district shall initiate ~~[full evaluation procedures]~~ **a referral** pursuant to Ed 1107.01.

(c) Once the evaluation is complete, an IEP team meeting shall be convened by the liable school district pursuant to Ed 1107 to determine the existence and/or nature of any **educational** disability the child might have.

Ed 1117.09 Dispute Resolution Procedures.

(h) When DCYF or DJJS notifies the school district of an emergency ~~[(1) T]the issues in dispute shall be submitted to the state district court having jurisdiction pursuant to RSA 169-B, RSA 169-C and RSA 169-D [and~~

~~(2) In any instance where a district court issues an order authorizing the provision of a special education assignment, program, or service which differs from or conflicts with the educational assignment, program or service recommended by the IEP team, special education and related services shall be provided at no charge to the parents and in conformity with an IEP developed by the IEP team for use during such placement.]~~

PART Ed 1118 INCARCERATED CHILDREN WITH DISABILITIES

Ed 1118.01 Definitions. Except where the context makes another meaning clear, the following words have the meaning indicated when used in Ed 1118:

(a) "Eligible offender with a disability" means an incarcerated person who:

- (1) Is age 18 through 21, who;
- (2) Had been identified as a child with a disability prior to incarceration; **and** or
- (3) Had an IEP prior to incarceration.

PART Ed 1120 PROCEDURAL SAFEGUARDS

Ed 1120.04 Parental Consent.

(a) An LEA shall obtain informed, written consent from the parent of a child with a disability prior to:

- (1) Conducting an initial evaluation;
- (2) Initial provision of special education and related services to a child with a disability;
- (3) Annual renewal of the IEP and placement of a child with a disability;
- (4) Determining or changing the disability classification;
- (5) Changing the nature or extent of the special education or special education and related services;
- (6) Conducting a reevaluation;
- (7) Annual access to public insurance ~~or~~ **and** when changes in services paid by public insurance are made; and
- (8) Each time the public agency proposes to access private insurance.

(b) If a parent fails to respond to a request for informed, written consent to any of the actions described in Ed 1120.04(a)(3), (4), (5), or (6), the LEA shall proceed in accordance with Ed 1120.06.

Ed 1120.05 Parental Refusal of Consent; Initiation of Due Process Hearing by LEA.

(d) If a parent refuses consent **or fails to respond** for the initial provision of special education services, the LEA shall not pursue the initial provision of special education services by initiating a due process hearing under Ed 1123. ~~[The LEA shall have the authority to initiate court proceedings to authorize the initial provision of special education services.]~~

(e) If parent subsequent to the initial provision of special education revokes consent in writing for the continued provision of a special education program and related services the LEA:

(1) May not continue to provide special education and related services to the child;

(2) Must provide a prior written notice to the parents in accordance with 34 CFR 300.320 and 300.324;

(3) May not use the mediation or due process to obtain an agreement or ruling that the services may be provided to the child;

(4) Will not be considered in violation of the requirement to make FAPE available to the child; and

(5) Is not required to convene the IEP Team or develop an IEP for the child;

~~(f)(e)~~ If a parent refuses consent to any proposal included in Ed 1120.04(a)(3), (4), (5), or (6), the LEA, in order to assure FAPE to a child, shall initiate a due process hearing as specified in Ed 1123.

(g) A public agency shall not use a parent's refusal to consent to one service or activity to deny the child services, benefits, or activities that the parent has agreed to.

Ed 1120.06 Parental Failure to Respond; Implementation of Changes by LEA.

(a) If a parent fails to respond within 14 days after the sending of written prior notice pursuant to Ed 1120.04(b), the LEA shall implement its proposed changes if the LEA has taken reasonable measures to obtain informed written consent.

(b) Reasonable measures shall include:

- (1) Documentation of telephone calls to the parent made or attempted and the results of those calls; and
- (2) Copies of correspondence sent to the parent and any responses received, which correspondence shall be sent certified mail, return receipt requested.

~~[(e) The processes provided for in Ed 1123 can be requested by either party at any time.]~~

PART Ed 1123 ADMINISTRATIVE DUE PROCESS HEARING PROCEDURE

Ed 1123.02 Sequence of an Administrative Due Process Hearing. The sequence of an administrative due process hearing shall be as follows:

(b) A due process complaint shall be considered sufficient if it meets the requirements in 34 CFR 300.508 **(b)**.

(c) The ~~[LEA and the other]~~ party receiving a due process complaint shall respond to the complaint as required in 34 CFR 300.508(e) – (f) within 10 days of receiving the due process complaint.

(d) The LEA shall convene a resolution meeting with the parent or parents and with the relevant member or members of the IEP team within 15 days of receiving notice of the parent's due process complaint as required in 34 CFR 300.510. The parties shall also have the option of convening a mediation session. **A resolution session is not required when the LEA files a due process complaint.**

(e) A mediation session shall be scheduled no sooner than 16 days after the request for a hearing has been received by the office of legislation and hearings, unless:

- (1) the party filing the request for a hearing is the school district;**
- (2) the parties agree to an earlier date; or,**
- (3) one of the parties declines mediation.**

~~[(e)](f)~~ A prehearing conference governed by Ed 1123.15 shall be held no later than 17 **scheduled no sooner than 31** days after the resolution meeting or the date that the parties agree, in writing, that no agreement is possible or the date the parties waive, in writing, the resolution meeting **request for hearing has been received by the office of legislation and hearings, unless:**

- (1) the parties agree to an earlier date; or**
- (2) no alternative dispute resolution is agreed to by the parties.**

(g)~~[(f)]~~ An administrative due process hearing under Ed 1123.17 shall be **scheduled no held** no **[Note: "held no" s/b deleted]** later than 14 days after the conclusion of the prehearing conference. Except for good cause shown, an administrative due process hearing shall be limited to 2 days.

(h)~~[(g)]~~ A hearing officer's decision under Ed 1123.18 shall be issued no later than 45 days after the 30 day period under 34 CFR 300.510(b) or 34 CFR 300.510(c) **unless the hearing officer has granted an extension under 34 CFR 300.515 (c).**

Ed 1123.06 Commencement of Hearing Process.

(a) The administrative due process hearing process shall commence on the date the LEA or the parent or parents receive **originate with the filing by a parent or an LEA of a** notice of **request for** a due process hearing ("**notice**") complaint in accordance with Ed 1123.04 **filed concurrently with the office of legislation and hearings and the opposing party**, unless the request is withdrawn as provided in Ed 1123.10.

(b) The statutory timeline shall commence upon receipt of the notice by the office of legislation and hearings unless the moving party fails to file notice as set forth in (a), above. The party filing a due process hearing complaint, within 2 business days of the date that party received the notice of the due process hearing complaint to the other party, shall forward a copy of the due process hearing complaint to the office of legislation and hearings, department of education.

(c) If the moving party fails to file notice as set forth in (a), above, the timeline shall commence when the opposing party receives notice.

(1) Opposing party may file a motion with the hearing officer to compel moving party to provide notice.

(2) Upon receipt of motion to compel Hearing Officer shall, within two business days, order moving party to file notice with opposing party and shall suspend the hearing process until such time as the opposing party receives notice.

(3) Upon receipt of notice from moving party opposing party shall immediately notify the Hearing Officer with a copy of the notice to the moving part. The Hearing Officer shall then determine recommencement of timeline to be date of receipt of notice and send a notice of timeline to the parties setting out dates for the pre-hearing conference, the hearing dates and the new end date, as necessary.

(4) Hearing Officer shall then notify the Office of Legislation and Hearings of the date changes and place a copy of the order to compel and a copy of the notice of timeline in the case file.

Ed 1123.07 Scheduling of Alternative Dispute Resolution, Prehearing Conference, and Due Process Hearing.

(a) At the time of the filing notice of a due process hearing complaint under Ed 1123.04, the parties shall notify ~~the~~ the office of legislation and hearings **shall schedule dates for mediation, prehearing conference and a hearing unless notified by the parties** of mutually agreeable dates, on which the parties would be available for an optional alternative dispute resolution under Ed 1122, and for a prehearing conference and a hearing.

~~(b)(c)~~ The scheduling shall, **at a minimum** allow for the following:

- (1) One day for an alternative dispute resolution, **mediation** if the parties so decide;
- (2) A half day for a prehearing conference; and
- (3) Two days for a hearing.

Ed 1123.09 Time of Hearing. ~~The hearing shall be conducted no later than 31 days after:~~

- ~~(a) The parties agree in writing to waive the alternative dispute resolution session;~~
- ~~(b) The parties conduct an alternative dispute resolution session and do not reach a settlement agreement;~~

(c) The parties agree not to use alternative dispute resolution in Ed 1122;

(d) The complaint is not resolved during the 30-day resolution period provided in 34 CFR 300.510 or;

(e) The due process complaint that meets the requirements of 34 CFR 300.507(c)-(f) has been filed by a public agency.]

(a) When a parent initiates a due process hearing, the initial prehearing conference shall be scheduled no sooner than 31 days after the commencement of the statutory timeline, unless the parties agree to an earlier date. The first day of the hearing shall be scheduled no sooner than 14 days after the initial prehearing conference, unless the parties agree to an earlier date.

(b) When an LEA initiates a due process hearing, the initial prehearing conference shall be scheduled no sooner than 14 days after the commencement of the statutory timeline, unless the parties agree to an earlier date. The first day of the hearing shall be scheduled no sooner than 12 days after the initial prehearing conference, unless the parties agree to an earlier date.

Ed 1123.10 Parental Withdrawal of Due Process Hearing Complaint.

(a) A parent may withdraw an administrative due process hearing complaint, **prior to the hearing**, without prejudice until such time as the parent retains legal counsel.

(b) The moving party may withdraw a complaint with prejudice at any time after the hearing and prior to the decision issued by the hearing officer.

Ed 1123.11 Local Education Agency Responsibilities when an Administrative Due Process Hearing Complaint is Filed. Each LEA shall:

(a) Inform each parent that the parent has the right to request an administrative due process hearing to appeal the matters described in **[Ed 1123.03(a)] 34 CFR 300.503(a)(1) and (2)**.

Ed 1123.12 Department Administrative Due Process Hearing Responsibilities.

(a) The office of legislation and hearings shall schedule **mediation, unless either party declines mediation**, optional alternative dispute resolution if requested, a prehearing conference, and an administrative due process hearing as follows:

(1) Immediately upon receipt of mutually agreeable dates from the parties as provided in Ed 1123.07(a); or

(2) If the parties fail to supply mutually agreeable dates, the office of legislation and hearings shall schedule the **mediation**, alternative dispute resolution, if requested, a prehearing conference, and an administrative due process hearing **consistent with the provisions of Ed 1123.09**.

(c) The office of legislation and hearings shall notify the parties in writing of:

(1) The time and place of the **mediation** requested optional alternative dispute resolution,

(8) The name **and contact information** of the hearing officer who shall conduct the mediation; and

(9) The name **and contact information** of the hearing officer who shall review the sufficiency statement and conduct the due process hearing.

Ed 1123.13 Voluntary Production of Information.

(b) When a dispute between parties arises concerning a request for the voluntary production of information, releases or documents, any party may file a motion, **with the hearing officer**, to compel the production of the requested information under Ed 1123.14.

Ed 1123.16 Notification Concerning Agreement. If the parent and the LEA reach an agreement prior to the hearing, the LEA superintendent or the superintendent's designee shall, within 5 business days after the signing of the agreement, provide written notice to the office of legislation and hearings requesting the cancellation of the hearing because an agreement has been reached. **The written notice shall include a copy of the written agreement, which is signed by both parties or a written statement, signed by both parties that states that a written agreement has been executed by the parties, which covers all issues that were part of the request for a due process hearing.**

Ed 1123.17 Hearing Procedures. The hearing shall be conducted by a hearing officer, governed by the following:

(b) All **prehearing conferences and** hearings shall be electronically recorded by the hearing officer or the hearing officer's designee. The hearing officer recording shall be the official record of the hearing unless a party requests and pays for stenographic recording of such hearing. **Such stenographers shall be qualified pursuant to RSA 310-A:161 thru RSA 310-A:181.** If a party requests and pays for a stenographic recording of the hearing, the stenographic record shall be under the control of the hearing officer and shall be the official record.

(c) Any party to a hearing shall have the right to:

(4) Obtain an electronic verbatim record of the hearing, at any point during the hearing or afterwards. **Recordings provided before the end of the hearing shall be provided by the office of legislation and hearings at a charge equal to the cost to produce the recording;**

(d) At the conclusion of the hearing a parent may request one copy of the verbatim record of the hearing and/or one copy of the **hearing officer's written** decision at no cost. These documents shall be provided in either electronic or written format at the discretion of the parent.

(e) If the parent requests more than one copy the department shall charge the parent as follows:

(1) In the case of a parental request for information **set forth above**, detailed in Ed 1123.17(c), the first format requested shall be the one provided at no cost;

(2) In the case of a parental request for information set forth above, in both electronic and written/stenographic formats the Department shall provide the electronic format at no cost to the parent and the written/stenographic format at the department's cost to have the electronic format transcribed;

~~{(2)}~~ (3) Subsequent requests for the same information in an alternative format shall be provided and the **The** department shall charge only its cost for providing **the same information in response to a subsequent request, regardless of which format is requested;** the information in the alternative format; and

~~{(3)}~~ (4) Parental requests for additional copies shall be provided at the department's cost **to provide the copies; and**

(5) The department shall charge its costs for any information set forth above that is requested by the LEA.

(k) The department shall **not** enforce the elements of settlement agreements or alternative dispute resolution agreements **[only if] unless** they are adopted as amendments to an IEP and only if the **elements of the** agreement meets the requirements of **federal and state statutes** **[the IDEA, New Hampshire RSAs,]** and their implementing regulations **[of those laws]**.

Ed 1123.18 Hearing Officer Decision.

(b) Requests for rulings of law shall be limited to those central issues of law, if any, which are contested or essential **to support the decision.**

Ed 1123.20.

(e) **Unless an extension, pursuant to 34 CFR 300.515 (c) is granted by the hearing officer,** ~~[F]~~the department shall ensure that not later than 45 days after the time for conducting an administrative due process hearing in Ed 1123.09:

Ed 1123.20 Appeal of Decision of Hearing Officer. ~~[(a)]~~ Any party aggrieved by a final decision of the hearing officer in a hearing may appeal that decision to a court of competent jurisdiction in accordance with 34 CFR 300.516 **and RSA 186-C: 16-b, IV.**

~~[(b) Parties aggrieved by the findings and final decision of the hearing officer in a due process hearing may bring a civil action under 34 CFR 300.516(a).]~~

Ed 1123.22 Posthearing Matters.

(a) The decision of a hearing officer shall be implemented immediately, **and in any case within 30 days of the decision** except as provided in Ed 1123.23, unless a delay is agreed to in writing by both parties. ~~[or one party files a timely appeal under 34 CFR 300.516(a) to a court of competent jurisdiction. Unless an appeal to court is filed by either party, or a delay is agreed to, the hearing officer's decision shall be fully implemented within 30 days.]~~

(b) ~~[If neither party appeals the decision of the hearing officer to court, t]~~The LEA shall, within ~~[90]~~**15** days following the date of ~~[the decision]~~, **implementation of the hearing officer's** provide to the ~~[office of legislation and hearings]~~ **the department bureau of special education** a written report describing the implementation of the hearing officer's decision and provide a copy of this report to the opposing party. If the opposing party does not concur with the LEA's report, he or she shall submit his or her own report to the ~~[office of legislation and hearings]~~ **the department bureau of special education.**

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

Ed 1123.24 Hearing Officers.

(b) Hearing officers appointed by the department under RSA 186-C:16-a shall be attorneys **[who have been admitted to the practice of law in at least one jurisdiction]** or other individuals with knowledge of state and federal special education law.

(e) An attorney or other individuals with knowledge of state and federal special education law under contract to serve as a hearing officer pursuant to 34 CFR 300.511(c) for purposes of this rule shall not be considered ~~[to come under (d)(1) above.]~~ **to be an employee of a state agency.**

(i) No person shall serve as a hearing officer who has served as a state or local school board official or a school administrator, including a special education administrator, or as an advocate for students with educational disabilities or their parents, in New Hampshire **[or in any other state]** within the immediately preceding 12-month period.

(j) No ~~[attorney or other individuals with knowledge of state and federal special education law]~~ **hearing officer** shall ~~[preside as a hearing officer]~~ **participate** in any hearing in which there is a party:

- (1) Whom the ~~[attorney or other individuals with knowledge of state and federal special education law]~~ **hearing officer** has represented in any matter within the immediately preceding 12-month period; or

Ed 1123.25 Expedited Due Process Hearings.

(i) The following procedures shall apply to hearings:

- (6) Requests for rulings of law shall be limited to those central issues of law, if any, which are contested **or essential to support the decision;**

- (10) The ~~[hearing officer]~~ **office of legislation and hearings** shall mail a written decision to the parties by certified mail within 10 days of the conclusion of the hearing;

PART Ed 1124 DISCIPLINARY PROCEDURES FOR CHILDREN WITH DISABILITIES

Ed 1124.01 Disciplinary Procedures. Each LEA shall develop disciplinary procedures, including, but not limited to, suspension, expulsion, manifestation determination review, appeals, placement, protection, and referral for children with disabilities, consistent with the provisions of 34 CFR 300.530 - 300.536 **and Ed 1124.02.**

PART Ed 1125 STATE DEPARTMENT OF EDUCATION ENFORCEMENT

Ed 1125.01 Department Enforcement of These Regulations.

(b) In the event an LEA, other public agency, private provider of special education or other non-LEA program fails or refuses to comply with the regulations specified in Ed 1100, the department shall invoke the enforcement procedures described in Ed ~~[1125.02 below]~~ **1126.**

~~[Ed 1125.02 Enforcement Procedures.]~~

~~(c)(a)~~ The commissioner of education or the commissioner's designee shall appoint personnel from the bureau of special education to monitor the execution of the orders of compliance issued to an LEA, other public agency, private provider of special education or other non-LEA program as a result of a complaint investigated in accordance with Ed 1121, a due process hearing conducted in accordance with Ed 1123, or a monitoring activity conducted in accordance with Ed 1126.

~~(b)~~ At the conclusion of the time limit specified for the LEA, other public agency, private provider of special education or other non-LEA program to have completed the corrective action specified in the orders of compliance, the administrator of the bureau of special education of the department shall forward to the commissioner of education a written report indicating whether the issues have been resolved, and if not the extent to which the agency had taken corrective action to achieve compliance with the IDEA and Ed 1100.

~~(e)~~ In the event the written report shows that the LEA, other public agency, private provider of special education, or other non-LEA program has not complied with orders issued by the department, the commissioner of education shall give the written notice of the further enforcement action to be taken.

~~(d)~~ When taking enforcement action, the commissioner shall consider:

- ~~(1)~~ Severity, length and/or the repetitive nature of the same or other noncompliance;
- ~~(2)~~ Whether good faith effort was made to correct the problem;
- ~~(3)~~ The impact on children who are entitled to FAPE; and

~~(4) Whether the nature of the noncompliance is individual or systemic.]~~

~~(d)~~~~(e)~~ Enforcement action shall include but not be limited to:

~~[(1) Corrective action plan development, implementation, and monitoring;~~

~~(2) Voluntary and mandatory technical assistance as determined by the department;~~

~~(3) Mandatory, targeted professional development as determined by the department;~~

~~(4) Directives ordering specific corrective or remedial actions, including but not limited to withdrawing program approval, pending an appeal;~~

~~(5) Targeting or redirecting the use of federal special education funds in the areas of concern;~~

~~(6) Formal referral to the bureau of credentialing for review in accordance with Ed. 511.02.;~~

Ed 1125.0~~3~~² Opportunity for a Hearing.

(c) During the pendency of any administrative or judicial proceeding regarding the enforcement procedures ordered in Ed 1125 the commissioner of education shall **have the discretion to** determine whether students ~~[might]~~ remains in the **current** program.

Ed 1125.0~~4~~³ Financial Audits. The department's ~~[office of business management]~~**internal auditor**, within available resources, shall audit all state and federal special education monies allocated to any public or private agency by the department.

PART Ed 1126 STATE DEPARTMENT OF EDUCATION MONITORING OF EDUCATIONAL SERVICES AND PROGRAMS FOR CHILDREN WITH DISABILITIES

Ed 1126.01 Local Education Agency Request for Special Education Funds.

(c) With respect to children with disabilities placed by their parents in private schools, whether or not FAPE is an issue, an LEA's application as required by Ed 1126.01 shall contain:

(6) The manner and extent to which the LEA consulted with parents of children with disabilities.

Ed 1126.02 Criteria for Approval of Public and Non-Public Programs.

(a) The department shall use the requirements in Ed 1126 **and RSA 186-C:5** as the basis for determining program approval.

Ed 1126.03 Program Approval of Public and Non-Public Programs.

(a) All programs operated by LEAs, public academies, private providers of special education, public agencies, and other non-LEA programs shall be approved, utilizing the New Hampshire special education approval process in Ed 1126.02 **and RSA 186-C:5** ~~[as determined by the bureau of special education in the department]~~. The bureau of special education in the department shall issue a written report of findings to the monitored program, indicating compliance or non-compliance with statutes and rules relative to all programmatic components and issues monitored by the reviewing team.

(e) The bureau of special education in the department shall issue an approval of the program as follows:

(3) The private provider of special education, public academy or other non-LEA program shall receive ~~[provisional]~~ **conditional** approval if:

(4) Private providers of special education, public academies or other non-LEA programs who are ~~provisionally~~ **conditionally** approved shall not accept any additional students with disabilities until fully approved;

Ed 1126.07 New Hampshire Special Education Information System (NHSEIS).

(a) After parental consent is obtained as required under Ed 1120.04, the LEA shall transmit the following information electronically to the department using NHSEIS:

(4) Identification of the child's specific special education program and if necessary, related services, the extent to which the child will not participate with nondisabled children in regular educational programs as required by 34 CFR 300.~~[347]~~**320(a)(5)**, and the projected date for initiation and anticipated duration of the special education or special education and related services;

PART Ed 1127 CHILDREN WITH DISABILITIES IN PLACEMENTS FOR WHICH DCYF HAS FINANCIAL RESPONSIBILITY

Ed 1127.03 Limitations and Financial Liability.

(e) A responsible school district shall:

(1) Be eligible for reimbursement only for those direct costs which are included in the IEP of a child with a disability, and which qualify as special education and related services.

(2) Not be reimbursed for:

a. Costs which exceed rates established by Ed 1129 for tuition, instruction, room and board, and related services; or

b. Indirect costs.

PART Ed 1128 SPECIAL EDUCATION CATASTROPHIC AID

Ed 1128.01 Definitions. The following definitions shall apply for the purposes of Ed 1128.

(g) "Statewide Special Education Programs" means any program funded pursuant to RSA186-C:18, IV in accordance with the criteria set forth in Ed 1128.08.

Ed 1128.08 Statewide Special Education Programs. Pursuant to RSA 186-C:18, IV the administrator of the bureau of special education shall, annually, recommend to the commissioner the programs, which meet the criteria of this section, to be funded.

(a) Priority for the use of these funds shall be given to intra department needs including but not limited to curriculum development, student assessment and professional development that meet the criteria set out in Ed 1128.08 (c).

(b) Any funds available after the priority needs are met shall be distributed through a competitive grant process that shall commence with a request for proposal from the bureau of special education and be administered by the bureau in accordance with applicable state law.

(c) In order to qualify a program, whether intra department or external, shall meet the following criteria:

(1) Proposal shall be statewide in scope;

(2) Fulfill an unmet need identified by the bureau of special education; and

(3) Demonstrate a direct and positive outcome in the performance of students with IEPs.

PART Ed 1129 RATE SETTING

Ed 1129.01 Definitions. Except where the context makes another meaning clear, the following words have the meaning indicated when used in Ed 1129:

(j) “Program capacity” means the maximum number of children with disabilities that can be enrolled in a school, class or program as specified in Ed 1100 **and shall be established consistent with Ed 1129.09(c) - (d) and Ed 1129.17(a).**