



Dr. Lyonel B. Tracy
Commissioner of Education
Tel. 603-271-3144

Dr. Paul F. Ezen
Deputy Commissioner
Tel. 603-271-7301

**STATE OF NEW HAMPSHIRE
DEPARTMENT OF EDUCATION
101 Pleasant Street
Concord, N.H. 03301
FAX 603-271-1953
Citizens Services Line 1-800-339-9900**

Bureau of Special Education FY'05 Memo #21

Date June 29, 2005

To: Superintendents of Schools
Directors of Special Education
Private Providers of Special Education in New Hampshire

From: Santina Thibedeau, Interim Administrator
Bureau of Special Education

Re: **IDEA '04**

1. Guidance from the US DOE Office of Special Education Programs (OSEP) regarding parentally-placed private school children with disabilities (OSEP 05-09)
2. School district action when IDEA '04 and NH Rules for the Education of Children with Disabilities conflict

Attached please find the latest guidance from OSEP, issued June 27, 2005, regarding state and local school district responsibilities for identifying and serving children with disabilities who have been placed by their parents in private schools.

We draw your attention to two important items on Page 2.

- ? Because IDEA '04 does not go into effect until July 1, 2005, many school districts have not yet conducted their required consultations with representatives of the private schools located within the district's geographic boundaries. Therefore, many districts do not yet have accurate information regarding the number and needs of parentally placed children with disabilities in these private schools located within the district. OSEP is permitting school districts to use what information they do have regarding the numbers and needs of these children, for this school year only (05-06), in determining the prorated amounts to expend on these children.
- ? Paragraph six on Page 2 states "The [US] Department wants to stress that States are bound by all other provisions of IDEA 2004, and until the final regulations are issued, the existing regulations that are not inconsistent with IDEA 2004."

This principle applies to the NH Rules for the Education of Children with Disabilities 2002 also; until the final special education rules for New Hampshire are issued, after the required public rule-making process is completed, school districts are bound by all existing provisions of the 2002 Rules which are not in direct conflict with IDEA '04. Where there is direct conflict, the federal law prevails. Where there is lack of clarity about which prevails, OSEP has advised states and local school districts to comply with the provision affording the child the greatest educational protection.

Please see FY '05 Special Education Memo #20, dated June 29, 2005, for a partial list of requirements which go into effect on July 1 under IDEA '04 and requirements in the NH Rules 2002 which remain in effect until the end of the NH rule-making process. Please contact the Bureau if you have any questions. Also, the Bureau has posted responses to many FAQs regarding IDEA '04 on its website.