

Recommended Technical Corrections
To HEAC's recommendations for changes to Ed 315 dated 3-10-09

This document refers to a document containing the recommendations of the Home Education Advisory Council for changes to Ed 315. The council's proposal has technical errors that need to be corrected.

The following are needed technical corrections discovered during a review of the council's recommendations.

- Internal references to all rules following the newly inserted Ed315.09 should be replaced with the correct internal references.
- Ed315.02(a) - **193:1 I(e)(2)** should be changed to **193:1 I(f)(2)**.
- Ed315.03(a) - the wording of the definition in 186-C:2, I has changed. 186-C:2, I-a also has a new applicable definition. The text should be updated to include the new and changed definitions.
- Ed315.04(c) has a reference to Ed315.08(f) - this should be changed to Ed315.04(e)
- Ed315.09(a) - **193:1 I(e)(2)** should be changed to **193:1 I(f)(2)**.

The following are technical corrections suggested by JLCAR staff when reviewing the Initial Proposal that applied to the council's recommendations as well.

- Ed315.02(a) - Insert space. Insert "RSA".
- Ed315.02(d) - Insert comma.
- Ed315.03(c) - Insert "at least".
- Ed315.04(a) - Insert ", I(b)" (not ",I(a)", as suggested).
- Ed315.05**(b)**(c) - change "non-public" to "nonpublic"
- Ed315.05**(d)**(e)(2), (5), (6) - Insert comma.
- Ed315.08(b) - replace "return by certified mail with return receipt the evaluation" with "send the evaluation by certified mail, return receipt requested"
- Ed315.08(d) - insert comma
- Ed315.09(a) - break this paragraph into two paragraphs
- Ed315.09(a) - replace "meets" with "shall be deemed to meet"
- Ed315.09(a) - delete the word "information"
- Ed315.**17**(e) - insert comma.
- Ed315.**18**(e) - change "made" to "given"
- Ed315.**18**(e) - add "or other circumstances beyond the control of the party".

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Some of the recommendations made by JLCAR staff would require changes that go beyond the intent of the council's recommendations, and their incorporation would create a document that no longer represents the work of the council. Below is a list of the outstanding issues, a brief discussion, and possible actions for consideration.

#1 – Comment by JLCAR staff:

Objection to Ed315.04(g): within 15 [calendar] business days - Unclear. Appears contrary to RSA 193-A:5, III, which just says "15 days". Compare with RSA 193-A:5, I(a), which refers to "5 <u>business</u> days" for notification of commencement of home schooling.
Response: The language in RSA 193-A:5, III specifying "days" was adopted in 1990. The language in RSA 193-A:5, I(a) specifying "business days" was adopted in 2008. The legislature has in recent years tended to draft more precise language. The rule was changed to make deadlines within the notification process consistent, using as a guideline the most recent actions by the legislature.
Possible action: Adopt the language in the final proposal.
Possible action: Amend Ed315.04 in the final proposal to revert to the language in the existing rule, "calendar days."

#2 – Comment by JLCAR staff:

Objection to Ed315.05(b): <i>A non-public school principal may charge a fee for this service.</i> - Unclear. This sentence indicates that an option is being given to the principal to charge a fee. Under what RSA may the Board authorize a fee?
Response: The statement is true. There is no statute prohibiting nonpublic schools from charging a fee for acting as participating agency, just as there is no statute prohibiting non-public schools from charging tuition for regular attendance. Interpretation of current law is that superintendents and the commissioner of education may not charge a fee for acting as participating agency. The question therefore becomes whether it is appropriate to include this statement in the rules. Clarifying that it is permissible may encourage nonpublic schools to offer this service, making this option more widely available to families.
Possible action: Adopt the language in the final proposal.
Possible action: Amend Ed315.315.05(b) in the final proposal to delete the sentence, "A non-public school may charge a fee for this service."

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#3 – Comment by JLCAR staff

Objection: <i>is responsible to</i> - replace with "shall"
Response: There is nothing in the statute requiring the parent to maintain proof of delivery. The council included this sentence in deference to the limited resources within the department, indicating to parents that it would be a burden for the department to provide acknowledgement of receipt, and not to expect one. Department practice to date has been to acknowledge receipt.
Possible action: Amend Ed315.09(c) in the final proposal to read, " <i>The department of education shall acknowledge receipt of the such certification within 5 business days.</i> "
Possible action: Amend Ed315.09(c) in the final proposal to read, " <i>The department of education is not required to acknowledge receipt of the such certification.</i> "
Possible action: Amend the final proposal to delete Ed315.09(c).

#4 – Comment by JLCAR staff

Objection to Ed315.18(d): "20 business days" may conflict with RSA 193-A:7, I. Notice of a hearing must be provided within 10 calendar days of a request. The hearing shall occur within 30 calendar days of the notice.
Response: The requirement in the rules that the order of notice be sent no later than 20 business days prior to the first day of the hearings, which was proposed by the department in 1995 and subsequently adopted by the board, is a self-imposed restriction that goes above and beyond the law. While the department is permitted to impose restrictions on itself, it is not always desirable to do so. This particular requirement greatly narrows the window during which the notice can be sent, and could make it impossible to comply with both the law and the rule.
Possible action: Amend Ed315.18(d) in the final proposal to read, "The order of notice shall be sent to the parties to the hearing by certified mail, return receipt requested, within 10 calendar days of a request for a hearing. The first oral hearing shall occur no later than 30 calendar days after the order of notice is sent."

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#5 – Comment by Chris Hamilton, based on language in the Initial Proposal

Objection to Ed315.03(b): The council's language in could be interpreted as recommending districts allow any student over 18 to fulfill the requirements for any other student over 18.
Response: Since this option is available only by mutual consent of the two parties, the ability of someone other than the parent to act on behalf of the student is somewhat better expressed within the phrase at the end of the sentence, " <i>or a third party as provided in RSA 193-A:4, I.</i> " However, a student acting on his own behalf is not a "third party."
Possible action: Amend Ed315.03(b), second sentence, in the final proposal to read, " <i>For a student who is 18 or more years of age, the requirements placed on the parent or guardian by RSA 193-A and Ed 315 may be fulfilled by the student, or the parent or guardian of the student prior to his or her 18th birthday, or a third party as provided in RSA 193-A:4, I.</i> "
Possible action: Amend Ed315.03, second sentence in the final proposal to read, " <i>For a student who is 18 or more years of age, the requirements placed on the parent or guardian by RSA 193-A and Ed 315 may be fulfilled by the parent or guardian of the student prior to his or her 18th birthday, or another party as provided in RSA 193-A:4, I.</i> "