

POLICY STATEMENT

New Hampshire RSA 186-C:1 states: “It is hereby declared to be the policy of the state that all children in New Hampshire be provided with equal educational opportunities. “

PROCEDURAL SAFEGUARDS FOR STUDENTS WITH DISABILITIES

As the parent¹ of a child who is receiving or may receive special education or special education and related services, you have certain rights, which are protected by state and federal laws and regulations. We want you to know about these rights. Your rights are listed below in a very short form. If you would like a more detailed explanation of these rights, you may call or write to the Special Education Administrator, c/o SAU 16, 30 Linden Street, Exeter, NH 03833 (Telephone 603-775-8646). Questions concerning your rights under Section 504 of the Rehabilitative Act of 1973 should be addressed to the Section 504 Coordinator, New Hampshire Department of Education, NH Vocational Rehabilitation, 21 South Fruit Street, Suite 20, Concord, NH 03301-2428 (Telephone # 603-271-3993) or to the Guidance Department of your child’s school.

For further information, please contact the main office at your child’s school:

<u>SAU #16 Schools</u>	<u>Telephone</u>	<u>SAU #16 Schools</u>	<u>Telephone</u>
Main Street School	603-775-8946	Newfields Elementary	603-772-5555
Lincoln Street School	603-775-8800	Stratham Memorial	603-772-5413
Swasey Central	603-642-3487	Cooperative Middle School	603-775-8700
East Kingston Elementary	603-642-3511	Exeter High School	603-395-2400
Kensington Elementary	603-772-5705	Seacoast School of Technology	603-775-8461

You may contact the following agencies to obtain free or low cost assistance in understanding the special education process and the procedural safeguards available to you:

1. New Hampshire Legal Assistance, 1361 Elm Street, Manchester NH (1-800-562-3174, 603-668-2900) www.nhla.org
2. New Hampshire. Legal Assistance, Simeone Smith House, PO Box 778, Portsmouth NH 03802-0778 www.nhla.org (1-800-334-3135, 603-431-7411)
3. New Hampshire Bar Association/Pro Bono, 112 Pleasant Street, Concord NH 03301 (603-224-6942, 1-800-852-3799) www.nhbar.org
4. Parent Information Center (PIC), 54 Old Suncook Road, Concord NH 03302 (603-224-7005, 800-947-7005) www.picnh.org
5. Disabilities Right Center, Inc., P.O. Box 3660, Concord NH 03302 (1-800-834-1721, 603-228-0432) www.drc.org
New Hampshire Department of Education Special Education Bureau & Special Education Mediation, 101 Pleasant Street, Concord NH 03301 (603-271-3741) www.education.nh.gov/instruction/special_ed/

¹ The term parent is defined in Ed 1102.35 of New Hampshire Rules for the Education of Students with Disabilities” as a “natural or adoptive parent, guardian, but not the state when the state has legal guardianship, or a surrogate parent who has been appointed in accordance with Ed 1121.02” of the Rules.

PARENT PARTICIPATION

As the parent of a child who is receiving or may receive special education or special education and related services, you are an important member of the IEP team. You have a right to actively participate in all educational decisions involving your child and to attend team meetings, including all evaluations, IEP, and placement team meetings.

You are considered a parent under special education law if you are:

- A natural or adoptive parent with legal custody;
- A guardian (not including the state),
- A person, acting in the place of a custodial parent or guardian provided no custodial parent or guardian is available and that the parent or guardian has designated in writing that this person may make educational decisions,
- A surrogate parent appointed by the New Hampshire Department of Education,
- A foster parent appointed by the New Hampshire Commissioner of Education or the director of a licensed child placing agency, to represent the foster child in the special education process.

A foster parent is eligible for appointment when the natural parents' rights have been terminated by a court or death, the foster parent and the child have an ongoing, long-term relationship, and the foster parent has the skills and knowledge necessary to represent the child.

RIGHT TO WRITTEN PRIOR NOTICE (WPN)

You have the right to be notified in writing within a reasonable time, but not less than 14 days, before the school district proposes to initiate or change, or refuses to initiate or change, the referral, evaluation, determination of eligibility, IEP, or educational placement, or the provision of a free, appropriate public education to your child.

Written Prior Notice (WPN) shall include the following information:

- A description of the action being proposed or refused, an explanation of why the school district is proposing or refusing to take this action, a description of any other options considered, and an explanation of why those options were rejected.
- A description of each evaluation procedure, test, record, or report the school district used as a basis for the proposed action or refusal of action.
- A description of other factors the school district used as a basis for the proposed action or refusal of action.
- A statement that the parents of a child with an educational disability have certain protections under the procedural safeguards of the Individuals with Disabilities Education Act (IDEA) and, if this notice is not an initial referral for evaluation, the means by which a copy of the procedural safeguards can be obtained.
- Sources for parents to contact to obtain assistance in understanding the provisions of the IDEA and the rights of parents.

You have the right to have the written notice provided in your native language, unless it is clearly not feasible to do so.

PROCEDURAL SAFEGUARDS FOR STUDENTS WITH DISABILITIES

You have the right to be given a copy of the procedural safeguards available to a parent of a child with a disability:

- Upon initial referral for evaluation;
- Upon each notification of an IEP meeting;
- Upon re-evaluation of your child;
- Upon request for a due process hearing.

This document is the Procedural Safeguards Notice.

PARENTAL CONSENT

The school district must obtain your informed written consent prior to:

- Conducting a pre-placement evaluation;
- Conducting individual evaluations administered for the purpose of further diagnosing your child;
- Conducting a re-evaluation of your child;
- Implementing the Individualized Educational Plan (IEP) developed for your child by the IEP team;
- Making an initial placement of your child in a program providing special education or special education and related services.
- Renewing annually your child's placement in a program providing special education or special education and related services.
- Determining or changing the disability classification.
- Changing the nature or extent of the special education or special education and related services.

You have 14 days after the sending of written prior notice to sign documents included with the notice to indicate consent, consent with conditions, or denial of consent. This 14-day time limit may be extended if mutually agreed to by the parent and the school district.

You have the right to revoke your consent at any time.

If you refuse consent, the school district, in order to ensure the timely provision of a free, appropriate public education for the student, shall initiate a due process hearing. You also have a right to request a due process hearing. Either the parent or school district may request alternative dispute resolutions, including mediation or neutral conference, at any time.

If you fail to respond within 14 days after the sending of the written prior notice, the school district shall implement its proposed changes, provided the school district has taken reasonable measures to obtain informed written consent. Reasonable measures include documentation of telephone calls and correspondence sent certified mail, return receipt requested.

New Hampshire RSA 186-C:17 states that "nothing in this chapter shall be construed as authorizing any public official, agent, or representative in carrying out any provisions of this chapter to take charge of any child over the objection of the either the parents of such child, or the person standing in *loco parentis* to such child except pursuant to a proper court order.

REFERRAL PROCESS

Upon receipt of a written referral from any source, the school district shall immediately notify the parent, in writing, of the referral.

Within 15 days of receiving a written referral, the school district's IEP team shall determine whether the concerns raised by the referral can be addressed using existing pupil support services available to all children, whether additional information is required, and what testing, if any, is needed to address any unresolved concerns raised by the referral.

Within 15 days of receiving the written referral, the school district shall give the parent written notice of its disposition of the referral, including a description of the special education procedures. If the parent disagrees with the disposition, the parent may request due process.

EVALUATION PROCEDURES

If your child is suspected of having an educational disability, you have a right to a full and individual evaluation of your child's needs. As part of the evaluation process, you have the right to:

- Attend and participate in all evaluation meetings, as a member of the IEP team.
- Attend and participate in the evaluation planning meeting, held before the evaluation is conducted, to determine the scope of the evaluation and to participate in the selection of the evaluations to be performed.
- Have more than one criterion used in determining your child's eligibility for special education or special education and related services and for determining an appropriate educational program for the child.
- Have a variety of assessment tools and strategies used to gather relevant functional and developmental information about the child, including information provided by you and information related to enabling the child to be involved in and progress in the general curriculum that may assist the team in determining whether the child is educationally disabled.
- Have your child evaluated in his/her native language or other mode of communication unless it is clearly not feasible to do so.²
- Have information from more than one source considered by the team determining your child's eligibility for special education or special education and related services.
- Have your child re-evaluated every three years or more frequently if conditions warrant or if requested by you or your child's teacher.
- Receive a copy of the evaluation report and documentation of the determination of eligibility.

INDEPENDENT EDUCATIONAL EVALUATIONS

- You have the right to obtain an independent educational evaluation of your child. An independent educational evaluation is an evaluation conducted by a qualified examiner who is not employed by the school district.
- Upon request, the school district shall provide you with information about where an independent educational evaluation may be obtained and the school district's criteria for independent

² Limited English Proficiency is not a disability. Separate special language services are available from local school districts for students who are determined to be Limited English Proficient.

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educational evaluations. Whenever an independent educational evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria used when an evaluation is initiated by the school district.

- You have the right to have the school district pay for the independent evaluation if you disagree with the school district's evaluation. However, the school district may, without unnecessary delay, initiate a hearing to show that its evaluation is appropriate or that the evaluation obtained by you does not meet the school district's criteria. If the decision of the hearing officer is that the school district's evaluation is appropriate, you still have the right to an independent educational evaluation, but not at public expense.
- If you obtain an independent educational evaluation at private expense, the results of the evaluation must be considered by the school district and may be presented as evidence at a due process hearing.
- If a due process hearing officer requests an independent educational evaluation as part of a hearing, the cost of the evaluation will be paid by the school district.

INDIVIDUALIZED EDUCATION PROGRAM (IEP)

- The Individualized Education Plan (IEP) is a written plan for the education of an educationally disabled child, which is developed by the school district's IEP Team and the parent, and which provides the special education or special education and educationally related services for the child within an approved program.
- The IEP Team includes;
 - The parents of the child;
 - The child's regular education teacher;
 - Special education teacher;
 - Special education provider, if appropriate;
 - Representative of the school district, referred to as an LEA;
 - An individual who can interpret the instructional implications of evaluation results;
 - Other individuals who have knowledge or special expertise regarding the child; and
 - The student, when appropriate.
- The IEP Team will meet annually, near or at the end of the term of each IEP, to assess the effectiveness of the current plan and to develop a new IEP.
- The IEP Team may meet at any time to review the provisions of the IEP and, if appropriate, to make changes to the IEP. Any modifications to the IEP require parental written consent.
- Each teacher and service provider listed as being responsible for implementing the IEP shall be provided with a copy of the complete IEP.

PLACEMENT IN THE LEAST RESTRICTIVE ENVIRONMENT

- You have the right to be the member of the IEP Team and to participate in all IEP and placement meetings. The placement team shall include an individual knowledgeable about placement options.
- You have the right to:
 - Have your child educated with students who do not have disabilities to the maximum extent appropriate for your child;

- Know that the school district must give evidence that a continuum of alternative learning environments from least restrictive to most restrictive is available or would be made available as placements for children with disabilities;
- Know that your child can be removed from the regular education classroom only when the nature or severity of the disability is such that education in regular classes, even with the use of supplementary aides and services, cannot be achieved satisfactorily;
- Have your child placed in the school he/she would attend if he/she did not have a disability unless the child's IEP requires another arrangement;
- Have your child participate with children who do not have disabilities in non-academic and extracurricular services, such as meals, recess, counseling, athletics and other activities or groups run by the school;
- Have your child transported to and from school, between schools, and in and around school buildings, including specialized equipment if necessary, provided such an educationally related service is required by the child's IEP;
- Have your child's IEP implemented by appropriately certified or licensed individuals;
- Have your child receive special education or special education and educationally related services to enable him/her to be involved in and progress in the general curriculum;
- Be regularly informed of your child's progress toward his/her annual IEP goals and the extent to which such progress is sufficient to achieve the goals by the end of the school year. You should receive this notice of progress at least as often as parents of nondisabled children are informed of progress.

PLACEMENT IN AN INTERIM ALTERNATIVE EDUCATIONAL SETTING

The school district may order a change in the placement of a child with a disability to an appropriate interim alternative educational setting, another setting, or suspension, for not more than 10 school days, to the extent such alternatives would be applied to children without disabilities.

The school district may order a change of placement to an appropriate interim alternative educational setting for the same amount of time that a child without a disability would be subject to discipline, but for not more than 45 days if:

- (1) the child carries a weapon to school or a school function, or
- (2) the child knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school or a school function.

The alternative interim educational setting shall be determined by the IEP Team, and:

- (1) shall be selected to enable the child to continue to participate in the general curriculum, although in another setting, and to continue to receive those services and modifications, including those contained in the IEP, that will enable the child to meet the goals in his/her IEP; and
- (2) include services and modifications designed to address the behavior so that it does not reoccur.

If the school district has not conducted a functional behavior assessment and implemented a behavioral intervention plan for the child before the behavior that resulted in the suspension, no later than 10 days after taking a disciplinary action, the IEP Team shall meet to develop an assessment plan to address the behavior. If the child already has a behavioral intervention plan, the IEP Team shall modify it, as necessary, to address the behavior.

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A Hearing Officer may order a change in the placement of a child with a disability to an appropriate interim alternative educational setting for not more than 45 days if the Hearing Officer:

- (1) determines that the school district has demonstrated by substantial evidence that maintaining the current placement of the child is substantially likely to result in injury to the child or others;
- (2) considers the appropriateness of the child's current placement;
- (3) considers whether the school district has made reasonable efforts to minimize the risk of harm in the child's current placement, including the use of supplementary aids and services; and
- (4) determines that the interim alternative educational setting meets the requirements specified in the preceding paragraph.

No later than 10 days after the date on which the decision to take the disciplinary action was made, or, if a disciplinary action involving a change of placement for more than 10 days is contemplated:

- (1) the parents shall be notified of the decision and of all procedural safeguards (this booklet) no later than the date of the decision; and
- (2) immediately, if possible, but in no case later than 10 school days, the IEP Team shall review the relationship between the child's disability and the behavior subject to the disciplinary action;
- (3) if the IEP Team determines that the behavior is not a manifestation of the child's disability, the school district may apply the same disciplinary procedures that apply to a child without a disability.
- (4) If the parent disagrees with a determination that the child's behavior was not a manifestation of the disability or with any decision regarding placement, the parent may request an Impartial Due Process Hearing, which shall be an expedited hearing;
- (5) If the parent requests a hearing regarding a disciplinary action as specified in this section or to challenge an interim alternative educational setting, or manifestation determination, the child shall remain in the interim placement pending the decision of the Hearing Officer or until the expiration of the 45 days, whichever occurs first.

A copy of this section of federal law is attached as Appendix A.

In carrying out the review, the IEP Team may determine that the child's behavior was not a manifestation of his/her disability if the IEP Team reviews all relevant information, including evaluation and diagnostic results, relevant information supplied by the parents, observations of the child, the child's IEP and placement, and determines that:

- (1) the IEP and placement were appropriate and the special education and related services, supplementary aids and services, and the behavior intervention strategies were provided consistent with the child's IEP and placement;
- (2) the child's disability did not impair the child's ability to understand the impact and consequences of the behavior subject to disciplinary action; and
- (3) the child's disability did not impair his/her ability to control the behavior subject to the disciplinary action.

EXTENDED SCHOOL YEAR SERVICES

- The school district shall provide extended school year services if the child's IEP Team determines, on an individual basis, that the services are necessary to provide the child with a free, appropriate public education.

- State law states that the school district shall provide an extended program, when it can be demonstrated by a preponderance of the evidence that “interruption of the program of an educationally disabled child would result in severe and substantial harm and regression and would have the effect of negating the benefits” of the child’s regular special education program. RSA 186-C:15, “Length of School Year.”

ACCESS TO RECORDS/CONFIDENTIALITY

- You have the right to:
 - Examine all records relating to your child or to be informed of the specific information that is contained in the file.
 - Have your authorized representative review and inspect your child’s records.
 - Obtain copies of your child’s records if failure to provide you with copies would effectively prevent you from exercising your right to inspect and review those records. You may be charged a fee for copies of the records, unless such fees would prevent you from inspecting or reviewing the records. You may not be charged for the cost of searching and retrieving those records.
 - Obtain a list of the types and locations of educational records collected, maintained, or used by the school district and the title and address of the school official responsible for those records.
 - Ask for an explanation and interpretation of your child’s records, and the school district must comply with any such reasonable request.
 - Ask that information contained in your child’s records be amended if you believe that the information is inaccurate, misleading, or violates privacy or other rights. The school district must decide within a reasonable time of receiving the request whether to amend the records, and to inform you if the request is refused and of your right to a local hearing regarding this refusal.
- If there is a hearing, you have a right to:
 - Know that if the findings of the hearing confirm that the information is inaccurate, misleading, or a violation of privacy or other rights, that the school district shall amend the records, and that you will be informed in writing of the amendment.
 - If the outcome of the local hearing is that the records are not inaccurate, misleading, or violate your child’s privacy or other rights, you may place in your child’s records a statement commenting on the information or explaining why you disagree with the decision of the school district. This statement must be maintained as part of the child’s records for as long as the records are maintained and must be disclosed to anyone to whom the child’s records are disclosed.
- The School District must comply with your request to inspect and review your child’s records without unnecessary delay and before any meeting regarding an IEP or any hearing, and, in no event more than 45 days after you have made the request.³
- The school district must keep a record of each request for and each disclosure of personally identifiable information from your child’s records, except for disclosure to you and to authorized school district employees. The record includes the name of the individual, date they were given

³ The school district must allow either parent the right to inspect and review their child’s records unless it has been provided with evidence that there is a legally binding instrument, state law, or court order that provides to the contrary.

access to the records, and the purpose for which they were authorized access. You have a right to inspect this record of disclosures.

- When records contain information on more than one child, you may inspect and review only the specific information on your child.
- You are to be notified when personally identifiable information that has been collected, maintained, or used to provide an appropriate educational program is no longer needed to provide educational services and to have that information destroyed at your request.
- Statements of any current or previous disciplinary action that has been taken against your child shall be included in the child's record to the same extent that such information is included in the student records of nondisabled students. This statement may include a description of the behavior, the disciplinary action taken, and any other information relevant to the safety of the child and other individuals involved with the child.

SURROGATE PARENTS

A surrogate parent is appointed by the New Hampshire Department of Education to protect the rights of a disabled child when the child's parents are unknown or unavailable, the child is under the legal guardianship of DCYF, or if a court has issued a written order for a surrogate parent. The surrogate parent will represent the child in all matters and proceedings related to the identification, evaluation, and educational placement of the student and the provision of a free, appropriate public education.

The person selected as a surrogate parent must have no interest that conflicts with the student's interest, have the knowledge and skills necessary to ensure adequate representation of the student, and may not be an employee of a public agency involved in the education or care of the student.

TRANSFER OF RIGHTS AT AGE OF MAJORITY

All parental rights shall be transferred to the adult student upon his/her 18th birthday, unless the student is determined to be incompetent under state law. All notices required by the IDEA will be given to both the adult student and the parents, but all other parental rights under the IDEA and described in this notice of procedural safeguards, shall transfer to the student. The school district shall notify the students and the parents of this transfer of rights, at least one year prior to the student's 18th birthday and will include in the student's IEP a statement that the student has been informed of his/her rights that will transfer upon reaching the age of majority.

Parental rights will not transfer to the adult student if the student has been determined to be incompetent under state law. If the student lacks the ability to provide informed consent regarding his/her educational program but has not been determined to be incompetent under state law, the state shall establish procedures to appoint the parent to represent the student in the special education process. If the parent is not available, the state shall appoint another appropriate individual to represent the educational interests of the student throughout the student's eligibility under the IDEA.

All rights accorded to parents under the IDEA (and which are described in this notice of procedural safeguards) transfer to adult students incarcerated in adult or juvenile correctional institutions.

DUE PROCESS HEARINGS

You have the right to request an Impartial Due Process Hearing to challenge the school district's identification, evaluation, determination of educational disability, IEP, or placement of your child or to question the district's provision of a free, appropriate public education. The school district also has the right to request an Impartial Due Process Hearing on these matters.

The school district shall provide written notice to you if it either proposes or refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of a free, appropriate public education (FAPE) to the child.

There are important time limits called Statutes of Limitations in which you must request an Impartial Due Process Hearing or you may lose your right to a hearing. These time limits are listed in the next section, entitled Statute of Limitations. A copy of the New Hampshire law on Statutes of Limitations is attached as Appendix B.

You have the right to be informed of any free or low cost legal and other relevant services available to assist you with the due process hearing. You must be given this information if you or the school district requests a due process hearing. In addition, this information is available at the front of this booklet of procedural safeguards.

If you request an Impartial Due Process Hearing, you or an attorney representing your child must provide notice to the school district when initiating the hearing. You may use a model form developed by the New Hampshire Department of Education, which may be obtained by contacting the Department of Special Education at your child's school district or the New Hampshire Department of Education, 101 Pleasant Street, Concord, NH 03301-3860.

If you prevail at the hearing but did not provide the school district with appropriate information in the notice, the court may reduce any award of attorneys' fees to the parents.

The notice must include the following information:

- The child's name and address;
- The name of the school the child is attending;
- A description of the nature of the problem of the child relating to the proposed or refused initiation or change, including facts relating to the problem; facts relating to the problem; and
- A proposed resolution of the problem to the extent known and available to the parents at the time; and
- If an expedited hearing is requested, a statement specifying the disciplinary grounds supporting the request.

If the school district requests an administrative due process hearing, it will provide the following written notice to the New Hampshire Department of Education, setting forth the same information as listed above in the parent notice. The school district may use a model form prepared by the Department of Education.

When a parent initiates a due process hearing, the New Hampshire Department of Education shall immediately notify the school district by fax, confirmed in writing by first class mail, of the request. The administrative due process hearing process commences on the date the Department of Education receives the request, unless the request is withdrawn.

If the parties decide to pursue alternative dispute resolution prior to the prehearing conference and a hearing, they will notify the office of legislation and hearings at the New Hampshire Department of Education of mutually agreeable dates on which the parties would be available for optional alternative dispute resolutions.

If the parties do not agree to the alternative dispute resolution, the department shall schedule a prehearing conference and hearing, based upon hearing officer availability. However, the due process hearing must be scheduled to begin no later than 35 days after receipt of the request for a due process hearing or no later than 20 days after the receipt of a request for an expedited hearing. The scheduling will allow for the following:

- A day for an alternative dispute resolution, if the parties so decide;
- A half day for a prehearing conference; and
- A minimum of 2 days for the hearing.

You may withdraw your request for a due process hearing until such time as you retain legal counsel.

Prehearing Procedures:

- The prehearing shall be conducted by a hearing officer;
- The parties shall be prepared to address offers of settlement, simplification of the issues, stipulations or admissions as to issues of fact or proof, by consent of the parties, consolidation of and limitations on the number of witnesses, changes to standard procedures desired during the hearing by the parties, and any other matters which aid in the disposition of the proceeding.
- Parties shall exchange and give to the hearing officer the following at least 5 business days before the hearing:
 - Witness lists, including a brief description of each witness's testimony;
 - Documentary evidence.
- Documentary evidence shall be legibly labeled in the upper right hand corner, with consecutive Arabic numerals (i.e. "Parent Exhibit 1, "School District Exhibit 1", etc.) and exchanged with an index, by title, of all exhibits submitted.
- The parties shall also submit a statement of facts, so that the hearing can be limited to testimony on factual matters remaining in dispute.
- Each party shall attempt in good faith to respond completely and as soon as practical to requests to voluntarily produce information.
- If there is a dispute concerning a request for information, releases, or the production of documents, either party may file a Motion to Compel the production of the requested information or documents.
- A Motion to Compel is a request that the hearing officer order the parties to comply with the requests for information or/and documents. It must be filed with the hearing officer at least 15 days before the scheduled date of the hearing. The other party must file any objection within 5 days of the date the Motion to Compel was received.
- The Motion to Compel must:
 - 1). State in detail those factors that the moving party believes justifies the request for information; and
 - 2). List the specific information requested.
- The hearing officer shall grant the Motion when the party has demonstrated that the requests are relevant to the issues and are necessary for a full and fair presentation of evidence at the hearing.

Hearing Procedures:

- Any party can request an extension following the completion of any witness's testimony or within 2 business days of the end of the hearing, if they can demonstrate that additional time is necessary for a full and fair disclosure of the facts upon which the decision will be based.
 - The hearing officer will respond to the request within 2 business days.
 - If the hearing officer grants the request, the other party has 2 business days to respond.
 - The hearing officer shall then have 2 business days to make a final ruling on any request or objection made in the other party's response.
 - Requests for findings of fact are limited to the facts necessary to support the decision.
 - Requests for rulings of law are limited to the central issues of law, which are contested.
 - No additional written memoranda shall be submitted unless requested by the hearing officer.
 - The hearing officer may waive any of the procedures in this paragraph, but only to the extent necessary to preserve a full and fair hearing.
 - The hearing officer shall mail a written decision, including findings of fact and rulings of law, to the parties by certified mail within 45 days of receipt of the written request for an administrative due process hearing. There will be no exceptions or extensions of the 45 day period.
 - Any party may appeal the decision of the hearing officer.

If you request an Impartial Due Process Hearing, you have the right to:

- Be advised and accompanied at the hearing by an attorney and by individuals with special knowledge or training with respect to the problems of students with disabilities. The school district also has this right.
- Have the hearing conducted by a person not employed by the public agency involved in the education or care of your child or otherwise having a personal or professional interest in the hearing.
- See a statement of the qualifications of each of the Hearing Officers. The New Hampshire Commissioner of Education keeps this information.
- Know that the Hearing Officers are appointed by the New Hampshire Department of Education and are attorneys or other individuals with knowledge of state and federal special education law.
- Know that a pre-hearing conference is required as part of the Impartial Due Process Hearing procedure. However, the pre-hearing conference will not be used to deny or delay your right to an Impartial Due Process Hearing.
- Know that the hearing must be held at a time and place reasonably convenient to you.
- Have your child present at the hearing.
- Have the hearing open to the public.
- Present evidence and to confront, cross-examine, and compel the attendance of witnesses. The school district also has the same right.
- Introduce the results of an independent educational evaluation, conducted at private expense, as evidence at a hearing. At least 5 business days prior to the hearing, each party shall disclose to all other parties all evaluations completed by that date and

recommendations based on those evaluations that the party intends to use at the hearing. The Hearing Officer may bar any party that fails to comply with the 5 business days disclosure requirement from introducing the relevant evaluations or recommendations at the hearing without the consent of the other party.

The Hearing Officer may request an independent educational evaluation to be paid for by the school district.

The following timelines apply to the Impartial Due Process Hearing procedures:

- The parties must exchange a list of witnesses, including a brief description of each witness's testimony, and copies of all documentary evidence at least 5 calendar days before the hearing begins, not including the day of the hearing.
- Either party may prohibit the introduction of any evidence at the hearing that has not been disclosed at least 5 calendar days before the hearing.
- Any party to the hearing has the right to a written, or at the parent's option, electronic verbatim record of the hearing, and the findings of fact and decisions of the Hearing Officer.
- Any party has the right to have a copy of the written or electronic decision sent to them no later than 45 days after the date on which the New Hampshire Department of Education received the request for a due process hearing. The Hearing Officer may grant specific extensions at the request of either party if:
 - 1). The delay would not jeopardize the child's educational progress or well being;
 - 2). The party would not have enough time to prepare and present their position at the hearing; and
 - 3). The need for delay outweighs any consequences likely to be suffered in the event of a delay.

You have the right to have your child remain in his/her present educational placement until the hearing is completed and you receive the decision of the Hearing Officer, unless you and the school district agree otherwise. You also have the right to have your child remain in his/her present educational during any appeal from the Hearing Officer's decision, unless you and the school district agree otherwise. If the matter involves an application for initial admission to the public school, you have the right to have your child placed in a public school program until all proceedings are completed.

The Hearing Officer's decision is final unless one of the parties appeals the decision. Any party has the right to appeal a decision from the Hearing Officer by bringing a civil action to the New Hampshire Superior Court or the United States District Court for the District of New Hampshire. There are time limits that govern when an appeal can be filed. Please refer to the section entitled "Statute of Limitations" for more information.

If you prevail at a hearing or court action, you have the right to recover reasonable attorney fees, subject to certain limitations. Please refer to the section entitled "Attorney's Fees" for timelines and additional information.

ALTERNATIVE DISPUTE RESOLUTION

Differences of opinion regarding the provision of special education can be resolved informally through alternative dispute resolution procedures, which include mediation and a neutral conference.

Mediation

The mediation process is voluntary, cannot be used to deny or delay a parent's right to a due process hearing or deny any other rights under the IDEA, and is conducted by a qualified and impartial mediator who is trained in effective mediation techniques. Either party may request mediation, and all discussions in mediation are confidential and may not be used as evidence at a due process hearing. The parties may be required to sign a confidentiality pledge prior to the mediation. Mediation shall be timely, at a location convenient to the parties, and at the state's expense. Mediated agreements must be in writing and signed by the parties.

Neutral Conference

A neutral evaluation is an informal, abbreviated presentation of case facts and issues by the parties to a neutral evaluator, who is an attorney appointed by the State Board of Education. The evaluator will review the strength and weaknesses of the case and issue an oral opinion at the end of the conference, with a written report mailed to the parties within 48 hours of the conference, excluding Saturday, Sunday, or a legal holiday. This report will contain suggested settlement or disposition and the reasons why.

There is no record made of the neutral evaluation except the date and names of the participants. If the neutral evaluation results in agreement, the conclusions shall be incorporated into a written binding agreement signed by the parties.

COMPLAINT PROCEDURES

You have the right to file a complaint with the New Hampshire Department of Education to report alleged violations of the school district that are contrary to the provisions of state and federal law regarding the education of children with disabilities.

The complaint must be in writing and signed, contain a statement that the school district has violated state or federal requirements regarding the education of a child with a disability, and the facts on which the statement is based, and allege a violation that occurred not more than 1 year prior to the date the complaint was received, unless a longer period is reasonable because the violation is continuing or the complainant is requesting compensatory services of a violation that occurred not more than 3 years prior to the date the complaint is received.

Complaints are directed to the New Hampshire Commissioner of Education, 101 Pleasant Street, Concord, NH 03301. The Commissioner will assign an employee of the Department to investigate the alleged complaint, including an onsite investigation if necessary and issue a written report with recommendations to the Commissioner, who will issue a written decision. The decision will address each allegation in the complaint, set forth findings of fact and conclusions, and the reason for the Department's decision.

All complaints shall be resolved within 60 days of receipt of the written complaint. The Commissioner may extend the time limit for up to 90 days if exceptional circumstances exist.

Any party to the complaint may make a written request to the Commissioner for reconsideration within 10 days of receipt of the Commissioner's written decision. Within 20 days of receiving the request for reconsideration, the Commissioner shall review the evidence presented in the investigation, including the investigator's report, and the decision, gather additional evidence if necessary, and issue a final written decision.

Any party may appeal the final written decision of the Commissioner in accordance to the provisions of state law.

If you believe your child has been discriminated against because of his/her disability, you may file a grievance with the school district's Section 504 Coordinator and/or file a complaint with the Office for Civil Rights, U.S. department of Education, Room 222 McCormack Post Office and Court House Building, Boston, MA 02109-4557.

STATUTE OF LIMITATIONS (TIMELINES)

State law, RSA 186-C:16-b imposes certain timelines or statutes of limitations on actions involving Due Process Hearings, the appeal of Due Process Hearing decisions, and the recovery of attorney fees. Failure to comply with the timelines could result in the loss of your right to bring these actions. Under both state and federal law, there are also timelines that need to be followed to recover the costs of a unilateral placement by you. A unilateral placement is the placement of your child **by** you as the parent in an educational program or private placement, such as a private school.

- To bring an action to enforce special education rights under state or federal law (including the identification, evaluation, determination of educational disability, Individualized Education Program [IEP], or placement of your child or the district's provision of a free, appropriate public education), you must request an administrative hearing (Impartial Due Process Hearing) within two (2) years of the date on which the alleged violation of rights you believe occurred was discovered or reasonably should have been discovered.
- To bring an action against the school district to recover the costs of a unilateral special placement must be started by requesting an administrative hearing (Impartial Due Process Hearing) within ninety (90) days of the unilateral placement.
- If you or the legal guardian or surrogate parent have not been given proper notice of special education rights, including notice of the time limitations, these limitations shall run from the time notice of those rights is properly given to you. This booklet constitutes notice of special education rights, including notice of time limitations.
- If you want to appeal the decision of a Hearing Officer to a state or federal court, you must file your appeal within 120 days from the receipt of the Hearing Officer's decision. All such decisions of the Hearing Officer shall be sent certified mail, return receipt requested.
- If you have made a unilateral placement without the school district being offered a reasonable opportunity to evaluate the child and to develop an individualized education plan, reimbursement may not be sought from the school district for costs incurred until the school district is given an opportunity to evaluate the child and develop an individualized education plan.
- If you want to seek reimbursement from the school district for attorney's fees related to a request for an administrative hearing (Impartial Due Process Hearing), you must commence the action in state or federal court within 120 days of receiving the Hearing Officer's decision.

A copy of RSA 186-C:16-b, Statute of Limitations is attached as Appendix B.

**NOTICE OF LIMITATION ON REIMBURSEMENT FOR PLACEMENTS
BY PARENTS IN PRIVATE SCHOOLS**

When parents of a child who previously received special education and related services from the school district enroll their child in a private school without the consent of or referral by the school district, a court or Hearing Officer may order the school district to reimburse the parents if the district did not make a free, appropriate public education available to the child in a timely manner prior to the enrollment. However, the cost of reimbursement may be reduced or denied pursuant to the following exceptions:

- Exception #1: At the last IEP meeting before the child was removed from the public school, the parent failed to tell the IEP Team that they were rejecting the proposed placement by the school district, stating their concerns, and notifying the school district of their intent to enroll their child in a private school at public expense.
- Exception #2: At least ten (10) days before the parent removed the child from the public school, the parent did not give written notice to the school district that they were rejecting the proposed placement by the school district, stating their concerns, and notifying the school district of their intent to enroll their child in a private school at public expense.

However, the parent may not be denied or receive reduced costs of reimbursement under the above two exceptions if:

- The parent is illiterate and cannot write in English;
- Parent compliance with either of the above exceptions would likely have resulted in physical or serious emotional harm to the child;
- The school prevented the parent from giving such notice; or
- The parent did not receive notice of these limitations on reimbursement for unilateral placements by students in private schools.
- Exception #3: Prior to the parents' removal of the child from public school, the school district informed the parent through written prior notice of its intent to evaluate the child (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parent did not make the child available for such evaluation.
- Exception #4: Upon a judicial finding of unreasonableness with respect to actions taken by the parents.

A copy of this section of federal law is attached as Appendix C.

ATTORNEY FEES

If you are a prevailing party in an administrative hearing (Impartial Due Process Hearing) or on an appeal to court from a Hearing Officer's decision, you may be entitled to reimbursement of reasonable attorney's fees. You must file your request for attorney's fees in state or federal court within 120 days of receiving the Hearing Officer's decision. (Refer to the previous section, Statute of Limitations.)

Attorney's fees may not be awarded relative to any meeting of the IEP Team unless that meeting is convened as the result of an administrative proceeding or judicial action.

The court may reduce attorney's fees if your attorney did not give the school district appropriate information in the notice initiating the Impartial Due Process Hearing. (Refer to the section under Due Process Hearings).

The Individual with Disabilities Education Act (IDEA) contains additional restrictions on your right to seek reimbursement for attorney's fees, which are published at 20 U.S.C. sect. 1415 (i)(2)(D)-(E).

HOME SCHOOLING

Home education, commonly referred to as home schooling, is permitted under New Hampshire RSA 193-A. A parent may provide home education for their child, subject to the provisions stated in RSA 193-A:5 and RSA 193-A:6. Information on home education can be obtained from the New Hampshire Department of Education.

RSA 193-A:9 states that:

“The resident school district, the board of such district, and any employee of the resident school district associated with a child who is receiving home education in accordance with this chapter, are not liable in damages in a civil action for any injury, death or loss to person or property allegedly sustained by that child, his parents, or any other person as the result of the child’s receipt of home education, including but not limited to, any liability allegedly based on the failure of the child to receive a free appropriate or adequate public education.”

APPENDIX A

PLACEMENT IN ALTERNATIVE EDUCATION SETTING
20 U.S.C. SECTION 1415 (k)

(1) AUTHORITY OF SCHOOL PERSONNEL

(A) School personnel under this section may order a change in the placement of a child with a disability

- (i) to an appropriate interim alternative educational setting , another setting, or suspension, for not more than 10 school days (to the extent such alternatives would be applied to children without disabilities); and
- (ii) to an appropriate interim alternative educational setting for the same amount of time that a child without a disability would be subject to discipline, but for not more than 45 days if
 - (I) the child carries a weapon to school or a school function under the jurisdiction of a State or local educational agency; or
 - (II) the child knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school or a school function under the jurisdiction of a State or local educational agency.

(B) Either before or not later than 10 days after taking a disciplinary action described in subparagraph

(A)--

- (i) if the local educational agency did not conduct a functional behavioral assessment and implement a behavior intervention plan for such child before the behavior that resulted in the suspension that described in subparagraph (A), the agency shall convene an IEP meeting to develop an assessment plan to address that behavior; or
- (ii) if the child already has a behavior intervention plan, the IEP Team shall review the plan and modify it, as necessary, to address the behavior.

(2) AUTHORITY OF HEARING OFFICER- A hearing officer under this section may order a change in the placement of a child with a disability to an appropriate interim alternative educational setting for not more than 45 days if the hearing officer—

- (A) determines that the public agency has demonstrated by substantial evidence that maintaining the current placement of such child is substantially likely to result in injury to the child or to others;
- (B) considers the appropriateness of the child's current placement;
- (C) considers whether the public agency has made reasonable efforts to minimize the risk of harm in the child's current placement, including the use of supplementary aids and services; and
- (D) determines that the interim alternative educational setting meets the requirements of paragraph (3)(B).

(3) DETERMINATION OF SETTING-

(A) IN GENERAL- The alternative educational setting described in paragraph (1) (A) (ii) shall be determined by the IEP Team.

(B) ADDITIONAL REQUIREMENTS- Any interim alternative educational setting in which a child is placed under paragraph (1) or (2) shall-

- (i) be selected so as to enable the child to continue to participate in the general curriculum, although in another setting, and to continue to receive those services and modifications, including those described in the child's current IEP, that will enable the child to meet the goals set out in that IEP; and
- (ii) include services and modifications designed to address the behavior described in paragraph (1) or paragraph (2) so that it does not recur.

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(4) MANIFESTATION DETERMINATION REVIEW-

(A) IN GENERAL- If a disciplinary action is contemplated as described in paragraph (1) or paragraph (2) for a behavior of a child with a disability described in either of those paragraphs, or if a disciplinary action involving a change of placement for more than 10 days is contemplated for a child with a disability who has engaged in other behavior that violated any rule or code of conduct of the local educational agency that applies to all children—

- (i) not later than the date on which the decision to take that action is made, the parents shall be notified of that decision and of all procedural safeguards accorded under this section; and
- (ii) immediately, if possible, but in no way later than 10 school days after the date on which the decision to take that action is made, a review shall be conducted of the relationship between the child's disability and the behavior subject to the disciplinary action.

(B) INDIVIDUALS TO CARRY OUT REVIEW- A review described in subparagraph (A) shall be conducted by the IEP Team and other qualified personnel.

(C) CONDUCT OF REVIEW- In carrying out a review described in subparagraph (A), the IEP Team may determine that the behavior of the child was not a manifestation of such child's disability only if the IEP Team—

- (i) first considers, in terms of the behavior subject to disciplinary action, all relevant information, including—
 - (I) evaluation and diagnostic results, including such results or other relevant information supplied by the parents of the child;
 - (II) observations of the child; and
 - (III) the child's IEP and placement; and
- (ii) then determines that-
 - (I) in relationship to the behavior subject to the disciplinary action, the child's IEP and placement were appropriate and the special education services, supplementary aids and services, and behavior intervention strategies were provided consistent with the child's IEP and placement;
 - (II) the child's disability did not impair the ability of the child to understand the impact and consequences of the behavior subject to disciplinary action; and
 - (III) the child's disability did not impair the ability of the child to control the behavior subject to disciplinary action.

(5) DETERMINATION THAT BEHAVIOR WAS NOT MANIFESTATION OF DISABILITY-

(A) IN GENERAL- If the result of the review described in paragraph (4) is a determination, consistent with paragraph (4)(C), that the behavior of the child with a disability was not a manifestation of the child's disability, the relevant disciplinary procedures applicable to children without disabilities may be applied to the child in the same manner in which they would be applied to children without disabilities, except as provided in section 612(a)(1).

(B) ADDITIONAL REQUIREMENT- If the public agency initiates disciplinary procedures applicable to all children, the agency shall ensure that the special education and disciplinary records of the child with a disability are transmitted for consideration by the person or persons making the final determination regarding the disciplinary action.

(6) PARENT APPEAL-

(A) IN GENERAL-

- (i) If the child's parent disagrees with a determination that the child's behavior was not a manifestation of the child's disability or with any decision regarding placement, the parent may request a hearing.
- (ii) The State or local educational agency shall arrange for an expedited hearing in any case described in this subsection when requested by a parent.

PROCEDURAL SAFEGUARDS FOR STUDENTS WITH DISABILITIES**(B) REVIEW OF DECISION-**

- (i) In reviewing a decision with respect to the manifestation determination, the hearing officer shall determine whether the public agency has demonstrated that the child's behavior was not a manifestation of such child's disability consistent with the requirements of paragraph (4)(C)
- (ii) In reviewing a decision under paragraph (1) (A) (ii) to place the child in an interim alternative educational setting, the hearing officer shall apply the standards set out in paragraph (2).

(7) PLACEMENT DURING APPEALS-

(A) IN GENERAL- When a parent requests a hearing regarding a disciplinary action described in paragraph (1)(A)(ii) or paragraph (2) to challenge the interim alternative educational setting or the manifestation determination, the child shall remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the time period provided for in paragraph (1)(A)(ii) or paragraph (2), whichever occurs first, unless the parent and the State or local education agency agree otherwise.

(B) CURRENT PLACEMENT- If a child is placed in an interim alternative educational setting pursuant to paragraph (1)(A)(ii) or paragraph (2) and school personnel propose to change the child's placement after expiration of the interim alternative educational placement, during the pendency of any proceeding to challenge the proposed change of placement, the child shall remain in the current placement (the child's placement prior to the interim alternative educational setting), except as provided in subparagraph (C).

(C) EXPEDITED HEARING-

- (i) If school personnel maintain that it is dangerous for the child to be in the current placement (placement prior to removal to the interim alternative education setting) during the pendency of the due process proceedings, the local education agency may request an expedited hearing.
- (ii) In determining whether the child may be placed in the alternative educational setting or in another appropriate program ordered by the hearing officer, the hearing officer shall apply the standards set out in paragraph(2).

APPENDIX B
DUE PROCESS HEARING; APPEAL
RSA 186-C:16-b

- I. Any action against a local school district seeking to enforce special education rights under state or federal law shall be commenced by requesting an administrative due process hearing from the department of education within 2 years of the date on which the alleged violation was or reasonably should have been discovered.
- II. Notwithstanding the provisions of paragraph I, any action against a local school district to recover the costs of a unilateral special education placement shall be commenced by requesting an administrative due process hearing within 90 days of the unilateral placement.
- III. Where the parent, legal guardian or surrogate parent has not been given proper written notice of special education rights pursuant to 20 U.S.C. section 1415(b), including notice of the time limitations established in this section, such limitations shall run from the time notice of those rights is properly given. The department of education shall make available a model notice of rights which school districts may use as a means of complying with this paragraph.
- IV. An appeal from a final administrative decision in a special education due process hearing to a court of competent jurisdiction pursuant to 20 U.S.C. section 1415(e) shall be commenced within 120 days from receipt of the final decision. All such decisions shall be sent certified mail, return receipt requested.
- V. An action pursuant to 20 U.S.C. section 1415(e) seeking reimbursement for attorney's fees shall be commenced within 120 days from receipt of the final decision, in accordance with RSA 186-C:16-b, IV. All such decisions shall be sent by certified mail, return receipt requested.
- VI. Where a unilateral placement has been made, without the school district of residence being offered a reasonable opportunity to evaluate the child and to develop an individualized education plan, reimbursement may not be sought for any costs incurred until the school district is given an opportunity to evaluate the child and develop an individualized education plan.

APPENDIX C
REIMBURSEMENT FOR PRIVATE SCHOOL PLACEMENT

(ii) Reimbursement for private school placement.

If the parents of a child with a disability, who previously received special education and related services under the authority of a public agency, enroll the child in a private elementary or secondary school without the consent of and referral by the public agency, a court or hearing officer may require the agency to reimburse the parents for the cost of that enrollment if the court or hearing officer finds that the agency has not made a free appropriate public education available to the child in a timely manner prior to that enrollment.

(iii) Limitations on Reimbursement

The cost of reimbursement described in clause (ii) may be reduced or denied—

- (I) if—
 - (aa) at the most recent IEP meeting that the parents attended prior to removal of the child from the public school, the parents did not inform the IEP Team that they were rejecting the placement proposed by the public agency to provide a free appropriate public education to their child, including stating their concerns and their intent to enroll their child in a private school at public expense; or
 - (bb) 10 business days (including any holidays that occur on a business day) prior to the removal of the child from the public school, the parents did not give written notice to the public agency of the information described in division (aa);
- (II) if, prior to the parent's removal of the child from the public school, the public agency informed the parents, through the notice requirement described in Sec. 1415(b)(7), of its intent to evaluate the child (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parents did not make the child available for such evaluation; or
- (III) upon a judicial finding of unreasonableness with respect to actions taken by the parents.

(iv) Exception

Notwithstanding the notice requirement in clause (iii) (I), the cost of reimbursement may not be reduced or denied for failure to provide such notice if—

- (I) the parent is illiterate and cannot write in English;
 - (II) compliance with clause (ii)(I) would likely result in physical or serious emotional harm to the child;
 - (III) the school prevented the parent from providing such notice;
- or
- (IV) the parents had not received notice, pursuant to Sec. 1415, of the notice requirement in clause (iii)(I).

See Policy: IHBA Programs for Pupils with Disabilities

Law Reference: 20 USCA (1401 et seq.), RSA 186-6

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