

New Hampshire Procedural Safeguards Handbook for Special Education



This handbook is based on the *Individuals with Disabilities Education Improvement Act of 2004* and the 2002 *NH Rules for the Education of Children with Disabilities*. Please be aware that the Federal regulations to IDEA should be finalized by December 3, 2005. New Hampshire's special education law and regulations, and this handbook, will then be revised to ensure compliance with the Federal regulations and posted on the NH Department of Education's website.

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Developed by the NH Department of Education, Bureau of Special Education, in collaboration with the Parent Information Center and the NH Association of Special Education Administrators

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Note to the reader ~ limitations of this document:

Please note that while this handbook meets the requirement under the Federal Individuals with Disabilities Education Act (IDEA) that parents be provided a written document that describes the procedural safeguards to which they are entitled, it does not include the entire text of either the Federal or the State special education laws or regulations. The handbook was intended to be a user-friendly document; however, the exact statutory language of the laws and regulations referenced here may be found on the NH Department of Education website: <http://www.ed.state.nh.us/SpecialEd/specialaws.htm> or at the Family Resource Connection at the NH State Library, telephone (603) 271-7931.

Whenever a reference is made in this document citing the Federal regulations, it refers to the 3/99 regulations to IDEA. Please be aware that the Federal regulations to IDEA are expected by December 3, 2005. New Hampshire's special education law and regulations will then be revised to ensure compliance with the Federal regulations. Changes to this document will be published at that time, and posted on the NH Department of Education's website.

It is particularly important that parents and others involved in the special education process understand their rights and be aware of the statutes of limitations and other restrictions that, if not carefully followed, may limit the parent's right to further recourse.



Input regarding corrections for this document may be given to the
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The NH Department of Education provides policies and procedures, including the sanctions that NH uses, to ensure that its policies and procedures are followed and that the requirements of the IDEA are met.

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Dear Parents, Educators and Others Interested in the Rights of Children with Disabilities,

This handbook has been developed to provide parents, adult students with disabilities, educators and others with information about parent/child rights in the special education process. These rights are called “procedural safeguards”.

When parents and educators work together to develop and achieve educational goals for children with disabilities, children are more likely to succeed. Federal and State law provide many opportunities for parents to be involved in planning and making decisions concerning their child’s special education needs. Parents are integral members of the Team that determines evaluation, eligibility, the IEP and educational placement of the child. The formal name of the Team is the IEP Team, but it may be referred to by other names depending on the function or activity being addressed. You are an important member of the Team; your voice needs to be included. The special education process offers parents an opportunity to share their knowledge and expertise about their child with others on their child’s Team. The law was not established to burden families, but instead it offers opportunities for parents to participate and promotes communication between schools and parents on behalf of their child.

The special education process is most effective when parents and school personnel are well informed and able to work together. When families understand their rights and responsibilities in the special education process, they can partner with their school district (also known as the local educational agency or LEA) to develop an educational plan that meets their children’s unique needs. There may be times when parents and schools disagree. That is a natural part of any group decision-making process. Most conflicts can be resolved through discussion and information sharing, particularly when all members of the Team commit to using respectful and effective communication. If issues arise that cannot be settled informally, Federal and State law makes formal dispute resolution procedures available. A resource list of organizations/agencies that help parents understand the special education process and resolve disputes is included on page 42. You may wish to contact one or more of these resources if you have questions.

This handbook is based primarily on the state regulations, the *New Hampshire Rules for the Education of Children with Disabilities* (7/1/02). While the *New Hampshire Rules* comply with federal requirements mandated by the *Individuals with Disabilities Education Improvement Act of 2004* (IDEA) and the *Family Educational Rights and Privacy Act* (FERPA), New Hampshire has some additional provisions or clarifications to the basic requirements of IDEA.

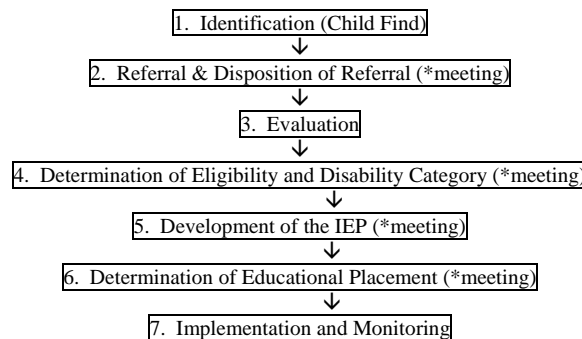
This handbook has been developed through a collaborative effort between the NH Department of Education, the Parent Information Center and the NH Association of Special Education Administrators. Our partnership in developing this handbook reflects our belief that parents, educators and administrators, working together, can ensure that New Hampshire’s children with disabilities receive a free and appropriate public education in the least restrictive environment. We hope that you are able to use this handbook as a tool to assist you in taking an active role in your child’s education.

Sincerely,

The NH Department of Education, Bureau of Special Education
Parent Information Center
NH Association of Special Education Administrators

Overview of the NH Special Education Process

The special education process includes specific steps, each with their own requirements. These requirements are discussed in more detail in the applicable sections of this handbook. Each step in the special education process includes procedures for parents and schools to work together and to resolve any disagreements they may have. The sequence of the special education process is:



**Note: Some of these required meetings may be combined.*

The process includes an annual review of the IEP and placement, which is based on information such as formal and informal evaluations, observations and progress on the current IEP goals and objectives.

1. Identification. Anyone may suspect that a child may have a disability and need special education. Additionally, school districts are required to have formal “Child Find” procedures to locate, evaluate and count children who may have disabilities to ensure that eligible children are found, classified and provided needed services. This includes children in public schools, in private schools located within each school district, children who are wards of the state and homeless children.

2. Referral. When a parent, teacher or other person suspects a child may have a disability and need special education, he/she may make a referral to the school or LEA. It is best if the referral is made in writing, and it explains why you believe the child may have an educational disability. If the referral comes

from someone other than the parent, including from the child's teacher, the parent is immediately notified in writing that a referral has been made. Some children may be referred through the school district's Child Find efforts.

Within 15 calendar days of receiving the referral, the Team must meet to make a disposition of referral and notify the parents, in writing, of their decision. The Team may decide that there is no indication that the child has a disability and needs special education or special education and related services and that at this time the school can meet the child's needs through regular educational services. Otherwise, they would determine that there is reason to suspect the child may have a disability and should be evaluated.

3. Evaluation. A child who is being considered for special education must be given a full and individualized evaluation to determine eligibility for special education, as well as to identify educational needs (such as academic, communication, developmental, motor, social/emotional, and vocational needs). Written consent from the child's parent is required before this testing may be conducted. A team of people, including the parents, will consider any information they already have about the child to determine what additional testing is needed. The testing will then be conducted by trained and knowledgeable, certified or licensed evaluators, and completed within 45 calendar days after the school has received written parental consent for the evaluations (unless the parent and LEA have agreed to an extension). Once the testing is completed, the parents will be given a report of the results. If the parents disagree with the evaluation conducted by the school district, the parents may request the district provide an independent educational evaluation at no cost to the parent.

4. Determination of Eligibility and Disability Category. When the evaluations are complete, the Team uses that information to determine whether the child is eligible for special education services. To be eligible, the child must have a disability, and require special education or special education and related services to benefit from education. The child will then be identified ("coded") with one or more of 14 specific disability classifications listed on page 16. Once a child begins receiving special education, he/she is reevaluated at least once every three years to ensure the Team continues to have current information on which to base their decisions.

5. Development of the IEP. Within 30 days after the child is found eligible for special education, the Team meets to develop an individualized educational program (IEP) for the child. Once a child has an IEP, it is reviewed/revised at least annually, and it must be in place at the start of each school year. The IEP does not become effective until it is agreed upon and signed by the parent(s).

6. Determination of Educational Placement. After the IEP has been developed, the Team meets to determine the least restrictive environment in which the child can receive the educational services described in his/her IEP.

7. Implementation and Monitoring. The child begins receiving services once the parents consent in writing to the IEP and placement. Then parents, educators and others involved with the child monitor the child's progress on an ongoing basis to ensure his/her educational needs are met. If concerns about the child's progress arise, a meeting of the Team may be requested and scheduled without unnecessary delay.

Incarcerated Students with Disabilities in Adult Prisons

Students with disabilities who are incarcerated in adult prisons are only eligible for special education if the student was determined eligible for special education, and had an IEP prior to incarceration in the adult prison. Additional information about special education for students with disabilities in adult prisons may be found in the Appendices.

Incarcerated Children (under age 18) with Disabilities

When a child (not an adult student) with a disability is incarcerated at a county correctional facility, the liable school district must:

- *evaluate the child,*
- *determine eligibility for special education services and*
- *develop an IEP for those students who are found eligible.*

Special education services will then be provided to the incarcerated child at state expense, at no cost to the school district.

Summary of Procedural Safeguards

Parents of children with disabilities are entitled to all of the following procedural safeguards. A more complete description of each is included in this handbook. Parents have the right to:

- Receive all notices in language understandable to the parents
- An independent educational evaluation
- Written Prior Notice
- Give or withhold parental consent
- Access their child's educational records
- File a complaint under the procedures set out by the state and to be given a description of how to file a complaint, including timelines (the state has a model form for this)
- Resolve disagreements by taking part in:
 - Alternative dispute resolution, including mediation or a neutral conference, or
 - A due process hearing (which includes a resolution session)

- Opt to receive notices required under procedural safeguards by e-mail, if the school district makes such an option available
- Specific rights in due process hearings, which include:
 - Requirements for disclosure of evaluation results and recommendations
 - Have their child's placement maintained during a due process hearing, except for those students who have been placed in an interim alternative educational setting in response to a discipline issue (but procedures must be in place for such students)
 - Pursue civil actions (take their child's case to court)
 - Attorney's fees reimbursement in certain situations, and
 - Specific rights if they make a unilateral placement of their child in a private school and wish to seek public reimbursement for that placement

Parents of children with disabilities must be given copies of these procedural safeguards only once per year, but at a minimum, upon:

- Initial referral for evaluation or parental request for an evaluation
- The first time, in a school year, that a request for a due process hearing is filed, and
- Upon the request of the parent

Parental Rights to Participate

Parental involvement is an important right in the special education process. Parents have information about their child's strengths, needs and interests. They know about their child's hopes, dreams and fears, and what motivates their child. Parents know how their child learns. They are also a constant in their child's life; they have been there from the beginning, and can serve as historians for the Team. When parents are able to share information about their child, the Team is better able to make informed decisions that will benefit that child.

"Parents" include natural or adoptive parents, legal guardians or surrogate parents, including foster parents who have fulfilled certain requirements. Parents have many rights and responsibilities in the special education process that facilitate their involvement as members of the IEP Team, including the right to:

- Be notified about important decision regarding their child's education;
- Participate in meetings with respect to the identification, evaluation, educational placement, and provision of their child's free and appropriate public education (FAPE), including the development of their child's IEP.
- Give or withhold written consent:
 - before their child is evaluated or reevaluated;
 - before determining or changing the child's eligibility or disability classification;
 - for the child's individualized educational program (IEP);
 - for the child's educational placement;
 - before the nature or extent of a child's special education or related services may be changed; or
 - before confidential information about their child may be released.

However, if the parents do not respond to a request for consent for any activity besides the initial evaluation, initial IEP, initial placement, or release of confidential information about the child, the school district may implement its proposed action after taking reasonable measures to obtain parental consent. Additionally, if parents refuse consent for an initial evaluation, the LEA may use due process procedures to pursue the evaluation. If parents refuse consent for, or fail to respond to a request for consent for, the initial provision of services, the LEA may not use the due process procedures to provide services. The LEA would then not be liable for failing to provide FAPE or for developing an IEP.

For children who are wards of the State, the LEA must make reasonable efforts to obtain informed consent from the parents for an initial evaluation, except when: the parents cannot be located, the parents' rights have been terminated, or the rights of the parents to make educational decisions have been removed and an individual appointed by a judge to represent the child has given consent for the initial evaluation.

- Be given a 10-day notice for IEP Team meetings, unless the meeting has to do with manifestation determination (for suspended/expelled children), in which case a 5-day notice is required
- Have meetings held at times and places that are mutually agreed upon (with some limitations)
- Participate, through other means such as conference calls, in the development of the IEP if the parent is unable to attend a meeting
- Invite their child to some or all of the meeting if the parent believes it is appropriate (children will be invited to attend meetings when transition services are being discussed)
- Invite other individuals to the IEP meeting

- Have the school district ensure the parent understands the proceedings of the IEP meeting, including providing an interpreter or translator for parents when needed

IEP Meeting Notice

In New Hampshire, when a school receives a referral on a child from someone other than the child's parent, the school must immediately notify the parent in writing that a referral has been received. This allows the parent to be involved in the process from the very beginning. From that point on, the school must send the parent written notice of any meeting of the IEP Team, inviting them to attend, including meetings for disposition of referral and planning for evaluations, determination of eligibility including disability classification, development of the IEP and determination of educational placement.

Parents must be given written notice of these meetings at least 10 days before the meeting is to be held. The notice must include the time and place of the meeting, purpose and a list of participants who will be in attendance. The notice will also inform the parents of their right to invite another person or persons who have special knowledge or expertise about the child to the meeting. The person extending the invitation, in this case the parent, is the person who decides if the individual being invited has special knowledge or expertise about the child. While it is not required, it is a courtesy for the parent to notify the school in advance if they have invited an additional person or people to the meeting.

If the parent agrees that it is necessary, they may agree to have an IEP meeting held sooner than 10 days. For example, they may agree to meet the next day to discuss a serious issue that the child is experiencing. When that type of situation occurs, the school may ask the parents to sign a document agreeing to waive the 10-day meeting notice requirement.

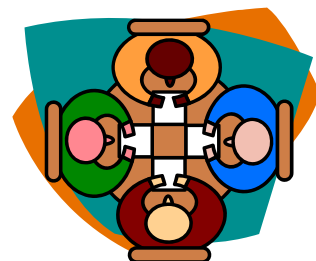
IEP Team meetings are to be held at a mutually agreeable time and place. If the parent is unable to attend a meeting, they may ask for it to be rescheduled or held in a different location. If a parent is unable to physically be at a meeting, the school must consider other, alternative ways for them to participate, such as through a telephone conference call.

Excusal from Meetings (new under IDEA 2004)

The parent and school district may jointly agree to excuse an IEP Team member from all or part of an IEP meeting if:

- They agree that the individual's attendance is not necessary because that person's area of expertise is not being discussed at the meeting; or
- The meeting does involve that person's area of expertise, but the parent and LEA consent to the excusal and the member submits input into the development of the IEP in writing to the parent and the IEP Team prior to the meeting.

In either case, the parent must agree to the excusal in writing.



The Individualized Educational Program (IEP) Team/Special Education Team

The IEP Team, which may also be called the **Special Education Team**, is responsible for making all major decisions in the special education process. Once the Team agrees upon a decision, that decision becomes the school district's official proposal. A higher administrative authority within the district does not have the ability to review or reconsider that decision. Parents are important members of the IEP Team. The role of the parent may be fulfilled by the child's parent(s), legal guardian or surrogate parent. Once the child turns 18, unless a court has determined otherwise, he/she becomes an adult student with all of the rights of the parents in the special education process. The other members of the IEP Team are:

- ◆ The student if he/she is an adult student or when otherwise appropriate
- ◆ At least one regular education teacher of the child, if the child is or may be participating in the regular education environment (For preschoolers, an individual qualified to teach a child of that child's age)
- ◆ At least one special education teacher or one special education provider of the child
- ◆ A vocational education representative, when appropriate
- ◆ A representative of the local education agency (LEA) who is:
 - ✧ qualified to provide or supervise specially designed instruction and
 - ✧ is knowledgeable about the general curriculum and the availability of LEA resources
- ◆ An individual who can interpret the instructional implications of evaluation results (this may be someone who already serves on the Team in another capacity)
- ◆ Other individuals who have knowledge or special expertise regarding the child (may be invited by the parent or school)
- ◆ The student and representatives from adult agencies who would be either paying for or providing transition services, whenever transition needs or services are being considered

When **eligibility** for special education is being determined, the IEP Team must also include:

- ◆ A teacher certified in each area of suspected disability and
- ◆ A person knowledgeable about the child from having had contact with the child in school, or for preschoolers, in an appropriate setting

For a **child who was previously served under Part C**, at the request of the parent, the Part C coordinator or other representative of the Part C system is to be invited to the initial IEP meeting.

When the Team is making the determination of eligibility for a child suspected of having a **learning disability**, additional membership must include:

- ◆ The child's regular teacher, or if the child does not have a regular teacher, a regular classroom teacher (for school age children) or individual (for preschoolers) qualified to teach a child of his/her age and
- ◆ At least one person qualified to conduct individual diagnostic examinations of children (such as a school psychologist or reading specialist)

At times, other people, including individuals with expertise in a specific area, may be included in the decision-making process, as well. The chart in Appendix F lists the specific types of Team meetings and the minimum participants required.

Educational Surrogate Parents - Sometimes there is no parent to represent a child in the special education process. In those instances, an Educational Surrogate Parent may be appointed to "act as a child's advocate in place of the child's natural parents or guardian in the educational decision-making process". Additional information about the rights and responsibilities of Educational Surrogate Parents, as well as how persons may volunteer to serve as a Surrogate Parent for a child in need, may be found in the Appendices.

Parent Consent

School districts must request parental permission (written consent) for special education services to be provided to a child with a disability, as well as for other activities that are part of the special education process. Except in certain circumstances (see numbers 4 and 5 on page 10), the district must obtain parent consent before it can take any proposed action.

"Consent" means that the parent has agreed in writing to a school district proposal after having been fully informed of all information regarding the activity for which consent is sought by the school district. The information must be in the parent's native language or other mode of communication.

A very important part of "consent" is that the parent understands and agrees in writing to the carrying out of the activity for which consent is sought and the consent describes that activity. If the consent is for the release of the child's educational records, the consent must list the records that will be released and to whom.

"Consent" also means that the parent understands that the granting of the consent is voluntary on the part of the parent and may be revoked at any time. The activity for which consent has been revoked must stop once consent is revoked. The LEA would then convene a meeting. It is important to note that if a parent revokes consent, the revoking of consent is not retroactive; that is, it does not negate any action which was taken between the time the consent was given and when it was removed, but stops the activity from that point forward.

As described on other pages of this booklet, parent consent is required at the end of each step in the special education process, before the school and the Special Education Team is permitted to move on to the next step in the process (see special education process chart on page 2).

The Special Education Team is the group that makes most of the major decisions about a child's special education needs and services. When the Team as a group decides that something different would be "appropriate" for the student, the Team proposes that change to the parent. The parent must then decide whether or not to consent to the proposed change.

The school district must obtain the parent's permission **BEFORE** it makes any changes in the child's program. If the parent refuses to give consent, the school district is not allowed to make changes in the child's program.

Briefly, parent consent is requested by the school district for special education testing, eligibility, IEP content, including targets for achievement, services, placement, graduation, and releasing school records. In general, school districts must request parental consent for actions including, but not limited to:

- ◆ Testing the student for special education,
- ◆ Finding the child eligible for special education,
- ◆ Determining the category of educational disability under which the child will be eligible,
- ◆ The particular services the child will receive, including how much and how often,
- ◆ The target achievement levels for the child as a result of the services provided,
- ◆ Any change in the length of the child's school day or school year,
- ◆ Graduation from high school,
- ◆ Changing the child's eligibility, and
- ◆ Sharing the child's school records with people outside the school.

Specifically, parent consent is required **BEFORE**:

1. Conducting an initial evaluation or a reevaluation,
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 the nature or extent of the special education or special education and related services,

Note: Consent for the initial evaluation cannot be construed as consent for initial placement.

Parental consent is not required before:

1. Reviewing existing data as part of an evaluation or reevaluation; or
2. Administering a test or other evaluation that is given to all children, unless consent is required of parents of all children.
3. Special circumstance: The school district does not have to obtain informed parental consent for a reevaluation if the district can demonstrate that it has taken reasonable measures to obtain parent consent and the child's parent has failed to respond. "Reasonable measures" include detailed records of telephone calls attempted and the results of those calls, copies of correspondence sent to the parents (by certified mail, return receipt requested) and any responses received, and/or detailed records of visits made to the parent's home or workplace and the results of those visits.

Parental consent must be in writing and it must be "informed;" that is, the parent must know what is being proposed, what the consequences (pros and cons) are of the action the school is proposing, and why the Team is proposing the changes for which parent consent is sought. The parent must know and understand what he/she is consenting to, or the written signature of the parent is meaningless. The parent signature must represent informed consent.

It is very important for a parent to ask questions about any aspect of the activity for which the parent is being asked to consent. The parent should not feel rushed or obliged to sign any document until the parent completely understands what the Team is offering (proposing).

It is important for the parent to **return** the consent form to the school **district within 14 calendar days** of the date the school district **sent** the consent form to the parent. This means that if the consent form comes to the parent in the mail, a few days of the 14 may already have passed by the time the parent receives the request for their consent. A parent must be careful not to go over the 14-day limit. It is important to respond one way or the other – by signing either “agree” or “disagree”. If the parent truly does not know whether to agree or not, the parent may sign “disagree”, or “agree with exceptions” in order to prevent the new change in the child’s program until more discussions are held with the Team and/or school staff. This 14-day timeline may be extended by mutual agreement of the parents and school district.

It’s important for parents to know that they may **refuse** to give their consent to a proposed change in their child’s program proposed by the Special Education Team or the school district. Actually, there are four ways parents may respond to a school’s request for their consent to proposed change. Each carries different consequences, which are described on the next page. The parent may:

1. Grant consent (“yes, I agree to the proposed change”)
2. Refuse consent (“no, I do not agree to the proposed change”)
3. Grant partial consent (“I agree to pages 1 and 2, but I refuse consent to pages 3 and 4” or “I agree with the increase in occupational therapy services from once/week to twice/week, but not with changing the provision of specialized instruction in reading to the resource room instead of in the regular classroom”.)
4. Fail to respond in any way to the school’s request for the parent’s consent.

There are very different consequences to each of these options, so parents need to consider them carefully.

The **consequences** for each response the parent may choose are:

1. If parent consent is given, the proposed changes will happen.
2. If consent is refused, the school district **cannot** implement the proposed changes, but the school district has several options for trying to obtain parent consent:
 - a. The district may hold another Team meeting to discuss the parent’s concerns and try to
 - i. convince the parent that the proposed change is a good thing for the child, or
 - ii. change what the Team is offering to something the parent agrees to consent to.
 - b. The school district may ask the parent to participate in a voluntary “Alternative Dispute Resolution” process, such as mediation or a neutral conference in order to work out the differences between the parent’s point of view and the Team’s point of view.
 - c. The school district may request that a higher authority overrule the parent by requesting the Department of Education hold an Impartial Due Process Hearing at which both the school district and the parent present their points of view and their reasons to a Hearing Officer, who will decide whether the Team’s proposal to the parent about the child’s program is appropriate.
Note: New Hampshire has a law, NH RSA 186-C: 17, which says that the Hearing Officer cannot overrule a parent’s refusal of consent. If a situation gets to this point, a parent may ask for an explanation of this law.
 - d. If either the parent or the school district disagrees with the decision of the Hearing Officer, either one may appeal to a court to get a judge’s decision on whether the Team’s proposal to the parent was appropriate.
3. If partial consent is given, the school district will do the agreed-upon actions. For the actions the parent has refused, the School district will do one or more of the activities in a-d above. A parent’s refusal to consent to one service or activity cannot be used to deny the parent or child any other service/activity to which they are entitled under special education laws/regulations.
4. If the parent **fails to respond** within 14 days to the schools’ request for consent for any activity **except** an initial evaluation, initial placement or release of records, the district is allowed to make the proposed changes after the 14th day, as long as the district has taken “reasonable measures” (see page 9) to obtain consent, including by sending the parent a letter by certified mail. That is why it is important for the parent to respond in writing within 14 days whenever the school requests the parent’s consent for a proposed change.

Remember, parents may revoke their consent at any time. However, the revoking of consent is **not** retroactive; that is, it does not undo an action that has already occurred after the consent **was** given, but before the consent was revoked. But, parents may request a meeting to change something that was previously agreed to.

5. If the parent does not consent, or fails to respond to a request for consent for an initial evaluation, the district **may** utilize the due process procedures to compel the evaluation.
6. If the parent refuses to consent to the district’s proposal to begin services (initial provision of services), the district must make “reasonable efforts” to contact the parent, but they **may not** begin services without parent consent. Under IDEA 2004, the district is then not responsible for providing a free and appropriate public education to the child.

For children who are wards of the State, the LEA is to make reasonable efforts to obtain informed consent from the parent for an initial evaluation, with exceptions when they cannot locate the parent or the parent’s rights (or right to make educational decisions) have been terminated.

Written Prior Notice

When the Team decides that it wants to make a change related to any aspect of the special education process for a child, the Team must propose this change to the parents in **writing** BEFORE making the change. This written notice is called “Written Prior Notice” and is given to the parent **after** the decision is made to recommend a change but **prior** to actually making the change.

When a Team decides it wants to make a change in some aspect of special education about a child, the change does not happen until parental consent is obtained.

Note: Sometimes the invitation to a child's IEP meeting is also called a written prior notice. This is not the same as the Written Prior Notice discussed on this page. IDEA refers to WPN as Prior Written Notice.

The information contained in a Written Prior Notice (WPN) is the important **WHAT** and **WHY** of a Team recommendation to change a child's program. WPN is also given to a parent when the parent has requested a change in the child's program and the Team's decision is to refuse to make the change. The WPN must explain the Team's reasons for refusing to make the change requested by the parent.

Written Prior Notice must be given to the parents **BEFORE** their consent is requested. The WPN provides the information upon which a parent may base their decision to give or refuse consent. WPN tells exactly **WHAT** the changes are that the Team is proposing and tells **WHY** the Team is proposing this change.

Parent(s) of a child with a disability must be notified in writing at least 14 calendar days before the Team proposes to initiate or change, or refuses to initiate or change, the evaluation, determination of eligibility (identification), IEP, or educational placement of the child or the provision of a free and appropriate public education (FAPE) to the child.

The WPN may be a single page or it may be made up of several documents. What is important is the information it contains. A Written Prior Notice must include:

1. A description of the action (what) proposed or refused by the Team;
2. An explanation of why the Team proposes or refuses to take the action;
3. A description of any other options that the Team considered and the reasons why those options were rejected;
4. A description of each evaluation procedure, test, record, or report (document) the Team used as a basis for the proposed or refused action;
5. A description of any other factors that are relevant to the Team's proposal or refusal;
6. A statement that the parents of a child with a disability have protection under the procedural safeguards of this part of the regulations and, if this notice is not an initial referral for evaluation, how a copy of a description of the procedural safeguards can be obtained; and
7. Resources parents may contact to get assistance in understanding these procedural safeguards.

The WPN must be written in language understandable to the general public; that is, easy to read and understand. WPN must be provided in the native language or other mode of communication (such as sign language) used by the parent (unless it is clearly not possible to do).

If the native language or other mode of communication of the parent is not a written language, the school district must insure that the notice is translated orally or by other means of communication, that the parent understands the content of the notice, and that there is written evidence of both the translation and the parent's understanding of the content.

Referral Process

Anyone who is concerned that a child may need special education services may make a referral to a school district. Most referrals come from parents or school staff.

When it is not clear to whom to give the referral, the referral may be given to the principal of the school the child attends, or would attend if the child were in school. Parents may call the office of their Superintendent of Schools for additional information.

It is best to make a referral in writing. Because there are time limits for a school to respond to a referral, it is good practice for parents to date the referral and to keep a copy of the referral and any other paperwork or correspondence regarding the child.

There is no specific paper or format that must be used by a parent or other non-school person to make a referral. When a school staff member makes a referral, many school districts require their own staff members to use a specific "in-house" referral form. There is no specific information required in a parent or other non-school person referral. However, it is helpful to give the school a description of the concerns the person making the referral has about the child's possible need for special education.

If the parent is not the person who made the referral, the school must immediately send a written notice to the parent telling him/her that a referral has been received for their child.

When the school receives a referral for special education, it must schedule and hold a Special Education Team meeting (officially called the "Disposition of Referral" meeting) within 15 calendar days of receiving the referral to decide how to respond to the concerns raised in the referral. **Parents** are members of this Team. The school sends a notice to the parent that a Team meeting has been scheduled to discuss the referral and inviting the parent to attend the meeting.

This meeting (like all Team meetings) must be held at a date, time and place mutually agreeable to the parent and the school. If the proposed date, time, and place are not convenient for the parent to attend, the parent may request that the meeting be changed.

When a school receives a referral on a child, the school is required to have a process for obtaining information to use in deciding if the child needs special education. In preparation for the Team's "Disposition of Referral" meeting, someone on the school staff will gather together all the information the school already has about the child, such as records on attendance, grades, test scores, and discipline to bring to the meeting. The parent may also provide information to the Team.

At the "Disposition of Referral" meeting, the Team must determine:

- ◆ Whether the concerns raised by the referral can be addressed using existing pupil support services available to all children in the district,
- ◆ What, if any, additional information is required for the Team to understand the child's needs, and
- ◆ What testing, if any, is needed to address any unresolved concerns raised by the referral.

Within those same 15 calendar days following their receipt of the referral, the school must give the parents written notice of the disposition of the referral; that is, the Team's decision regarding what to do in response to the referral. This notice is the "Written Prior Notice" described on page 11 in this booklet.

When additional testing has been determined to be necessary, the notice shall also include a request for written parental consent to conduct any individual evaluations needed to determine the child's disabilities.

Evaluation Process

A child is determined to have an educational disability and need special education based on a review of information about the child, as well as results of formal evaluations. The information needed includes academic, health, social information and information from the parent. Evaluation procedures are used to determine whether the child has a disability and the nature and extent of the special education and related services needed by the child.

All the information, including medical evaluation information, the Team needs for making this determination must be obtained at no cost to the parent. The school district may request the parent to use part of the parent's insurance to pay for one or more of the evaluations, but the parent is under no obligation to use family insurance and may refuse to use family insurance without consequences.

At the time the child is referred for special education consideration, some of this needed information may already exist. For example, if the child is already in school, the school will have information such as grades, test scores, achievement, attendance, discipline, and some social information such as the child's relationships with other students and with adults. There may be some health information on file with the school nurse. Parents are not required, but may wish to share existing information with the school from their child's doctor or other service providers who have evaluated the child at parent expense.

At the Disposition of Referral meeting, the Team will have looked at all the information the school already has on the child. The Team must decide what additional information the Team needs in order to determine whether the child needs special education. The Team will then need to obtain written parental consent to obtain information from private providers (such as the child's doctors) and prior to conducting any individual evaluations on the child.

When the parents are asked in writing (with a Written Prior Notice) for their consent to have the school test the child and/or get copies of existing information, the parents have 14 days to respond to the school in writing.

It is important for a parent to remember that each time he/she is asked for consent, the parent may agree or deny consent for the proposed activity, but the parent must respond within the applicable timelines.

The school district has 45 calendar days from the date the school receives the parent's written consent to do the testing, provide a written summary of the results AND have another Team meeting at which the Team must decide whether the child is eligible for special education. Parents may agree to an extension of this 45-day time limit. This time limit may also be extended if the parent repeatedly fails to produce the child for an evaluation or if the child moves from one district to another during the evaluation. In that instance, the assessments are to be coordinated between the two schools as necessary to enable them to be completed as soon as possible.

As part of the evaluation process, the Team reviews the child's educational history, including past opportunities to have acquired skills and information. In order to determine what evaluations are necessary, the Team is to consider what information is already available about the child. They would review existing evaluation data on the child, including:

- Evaluations and information provided by the parents,
- Current classroom-based assessments and observations,
- Observations by teachers and related service providers, and
- Current local or statewide assessments.

Evaluation requirements include the following:

- Evaluations must be nondiscriminatory and generally in the child's native language or other mode of communication. They are to be provided and administered in the language and form most likely to yield accurate information on what the child knows and can do, academically and functionally, unless it is not feasible.
- Standardized tests are to be used for purposes for which the assessments or measures are valid and reliable. They are to be validated, selected and administered to accurately reflect what the test measures, not the child's impaired skills, unless that is the purpose of the test.
- Students are to be assessed in all areas of suspected disabilities.
- A single procedure may not be used to determine eligibility or an appropriate educational program. Evaluations must include a variety of assessment tools and strategies to be used to provide relevant information that directly assists in determining the child's educational needs, including information from the parents.
- The student's present levels of academic achievement and related developmental needs are to be assessed.
- Evaluations must identify all of the child's special education and related service needs, whether or not commonly linked to the child's disabilities.
- Evaluation materials must assess specific areas of educational need and not merely provide a single general intelligence quotient.
- A vocational evaluator must assess students for whom vocational education is being considered.
- Technically sound instruments must be used to assess the relative contribution of cognitive, behavioral, physical or developmental factors, including intelligence tests.

- In New Hampshire, teachers or other specialists who are participating in the evaluation must be certified or licensed for each disability suspected.
- Tests are to be administered in accordance with the test instructions by trained and knowledgeable, certified or licensed personnel. **Note:** Qualified examiners by type of disability may be found in the 2002 *NH Rules for the Education of Children with Disabilities*.
- If an assessment is not conducted under standard conditions (ex: portions of the test were read aloud to the student), a description of how it varied must be included in the evaluation report.
- For students suspected of having specific learning disabilities:
 - the Team must include at least one person qualified to conduct individual diagnostic examinations.
 - An observation of the student's academic performance in the regular classroom setting must be conducted and a written report developed.
 - In determining whether a child has a learning disability, a LEA need no longer use the "discrepancy" model (identifying whether a significant discrepancy exists between the student's ability and achievement), but may instead determine if the child responds to scientific, research-based interventions.

Independent Educational Evaluations at Parent or School District Expense

The parents of a child with a disability (or a child who has been referred for special education consideration) have a right to get an independent educational evaluation of their child.

An **independent educational evaluation** is an evaluation conducted by a person who is not employed by the school district and who is qualified to do the evaluation. For an independent educational evaluation, the parent, not the school district, chooses the person who will do the evaluation.

There are two ways an independent evaluation may be funded: by the parent or by the school district.

The school district may provide an independent educational evaluation at school district expense if the parent disagrees with the evaluation done by the school district. (The formal term is "at public expense," meaning that the school district either pays the full cost of the evaluation or insures that the evaluation is otherwise provided at no cost to the parent.)

If a parent requests an independent educational evaluation at school district expense, the school district must, without unnecessary delay, either:

- ◆ agree to provide the independent educational evaluation at public expense, or
- ◆ initiate a due process hearing to show that the school district's evaluation is appropriate.

If the Hearing Officer decides that the school district's evaluations were appropriate, the school district is not required to pay for the independent educational evaluation or reimburse the parent for it.

If a parent requests an independent educational evaluation, the school district may ask the parent why he/she objects to the district's evaluation. However, the parent is not required to explain, and this may not result in any delay in the school's decision about whether to pay for the independent evaluation.

If a parent requests an independent educational evaluation, the school district must inform them about:

1. Where an independent educational evaluation may be obtained, and
2. The applicable school district criteria for an independent educational evaluation, including
 - the location of the evaluation, and
 - the qualifications of the examiner (person doing the testing).

The criteria must be the same as the school district uses when the school district conducts an evaluation. A school district may not have any other restrictions, conditions or timelines related to a parent getting an independent educational evaluation other than the location and examiner's qualifications.

The parent always has the right to obtain an independent educational evaluation at parent expense. The parent also has the right to bring these parent-funded independent evaluations to the Team for the Team to use in determining the child's educational needs. The parent is not obligated to share parent-funded evaluations with the Team. However, the district may seek to obtain the results of parent-funded evaluations through the discovery process as part of a due process hearing.

Regardless of who pays for the evaluation, the Team must consider the results of any independent educational evaluation, if the evaluation meets the district's criteria (explained above) in any decisions about the provision of a free and appropriate public education for the child. Also, the results of any independent educational evaluation may be presented as evidence at an impartial due process hearing.

If a Hearing Officer requests an independent educational evaluation as part of a hearing, the school district must pay for the evaluation.

Determination of Eligibility

After the evaluations, testing, observations and other information gathering, the Team must meet within the overall 45-day time limit to review and discuss the results of the various evaluations, and decide if the child is eligible to receive special education. Parents must be given complete copies of any of the evaluation reports if they request them. Based on these reports and the Team's discussion, the Team decides whether the child needs special education. This is the "Determination of Eligibility". The Team will give the parents a Written Prior Notice describing the Team's decision about the child's eligibility and asking for parent consent/agreement to the decision.

If the parents do not agree with the results of the testing and evaluations, they may obtain an independent educational evaluation on their own or request one be conducted at school district expense (see page 15).

The Team will also select the educational **disability category** or categories (classifications) under which the child is eligible. Each disability category has its own definition, and to be found eligible, the child must meet the criteria in the definition for the particular disability under which they are classified. Most physical, emotional and medical diagnoses are not educational disability categories themselves, but may be determined by the Team to fall under one or more of the 14 special education categories of disability below:

- Child with a developmental delay (for children, ages 3-9 only)
- Autism
- Deaf-blindness
- Emotional disturbance
- Hearing impairment
- Deafness
- Mental retardation
- Multiple disabilities
- Orthopedic impairment
- Other health impairment
- Specific learning disability
- Speech or language impairment
- Traumatic brain injury
- Visual impairment, including blindness

Note: A child may not be determined to be a child with a disability because the child has not received appropriate instruction in reading or math, or because of the child's limited English proficiency.



Reevaluation

Children grow, change and learn as the years go by. As a child grows and learns, the evaluations of the child's health, skills, and knowledge become outdated and inaccurate. Because of these changes, there is a requirement for reevaluations to be done at least every three years (unless the parent and LEA agree it is unnecessary). It is the responsibility of the school district, not the parent, to conduct any testing necessary to get the information the Team needs to make its decisions about eligibility and services for the child.

Reevaluations are limited to no more than once/year unless the parent and LEA agree otherwise. A reevaluation must be conducted by the school district more than often than once every three years:

1. If the child's parent or teacher requests a reevaluation,
 2. If the LEA determines that conditions warrant a reevaluation, or
 3. Before the Team may determine a child no longer eligible for special education.
- However, if the child's eligibility is ending because he/she is graduating with a regular diploma or turning 21, the LEA must provide the child with a written summary of his/her academic achievement and functional performance, including recommendations on how to assist him/her in meeting his/her post-secondary goals.*

As part of a reevaluation, the Team must review existing evaluation information on the child, including:

- Evaluations and information provided by the parents,
- Current classroom-based assessments and observations,
- Observations by teachers and related service providers, and
- Current local or statewide assessments.

On the basis of that review, and input from the parent, the Team must identify what additional information, if any, is needed to determine:

- Whether the child continues to have a disability;
- The present levels of performance and educational needs of the child;
- Whether the child continues to need special education and related services; and
- Whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals in the IEP and to participate in the general curriculum.

Note: Parental written consent is required for reevaluations, as well as for the initial evaluation. However, parental consent is not required for the Team to review existing evaluation information.

Sometimes a Team decides that it has enough up-to-date information about the child's condition and educational status and that it does not need to conduct any new testing. If the Team proposes to the parent that existing current information is sufficient to avoid additional testing and if the parent consents, then no new

testing needs to be done. Both the Team's proposal that no additional testing needs to be done, and the parent's agreement that no additional testing needs to be done, should be documented in writing.

If the Team decides that it doesn't need any additional information to decide if the child continues to need special education, the school district must notify the parent –

1. of the decision that no additional information is needed and the reasons why not,
2. of the parent's right to request an evaluation to determine whether the child continues to have a disability and need special education services.
In this case, the school district then does not have to do the updated testing unless requested to do so by the parent.

If a child's parent or teacher or anyone else believes that a child who is already eligible for special education may have another, additional disability, that person may refer the child to the school district for evaluation of the additional disability. This is considered to be an initial evaluation, not a reevaluation.

Individualized Educational Program (IEP)

When a child is determined eligible for special education and related services, the IEP Team must meet within 30 calendar days to create the child's IEP. Once a child has an IEP, it must be reviewed/revised at least annually and be in place by the beginning of each school year. The required components of an IEP are:

1. A statement of the child's present levels of academic achievement and functional performance including how the disability affects the child's involvement and progress in the general education curriculum, or in appropriate activities for preschoolers;
2. Measurable annual goals which meet the child's educational needs and enable the child to be involved and progress in the general curriculum, or in appropriate activities for preschoolers;
3. Benchmarks or short-term objectives are only required (in IDEA 2004) for students who take alternate assessments aligned to alternative achievement standards; but are still included in the 2002 *NH Rules for the Education of Children with Disabilities* for all children with disabilities;
4. A statement of how the child's progress towards annual goals will be measured and when parents be provided periodic reports of progress (such as through the quarterly or other periodic reports concurrent with report cards);
5. An explanation of the extent, if any, the child will not participate with nondisabled children in the regular classroom;
6. A statement of the special education and related services and other supports, based on peer-reviewed research to the extent practicable, including a statement of the program modifications or supports for school personnel that will be provided to the child, or on behalf of the student, to enable him/her to: advance towards his/her annual goals, progress in the general curriculum, participate in extra-curricular and nonacademic activities, and be educated with non-disabled students;

Related services are services that are needed to assist children with disabilities to benefit from special education. They include: transportation; speech-language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, early identification and assessment of a child's disabilities, counseling services, including rehabilitation counseling, orientation and mobility services, school nursing services, school health services, social work services in schools, parent counseling and training, and medical services for diagnostic or evaluation purposes.

7. The projected date for services to begin, and the anticipated frequency, location & duration of the services;
8. The length of the school year and school day required to implement the IEP;
9. Appropriate accommodations necessary to measure the academic and functional performance of the child in state or district-wide assessments. If the Team determines that the child cannot participate in the state or district-wide assessments, a statement of why the child cannot participate and why the alternate assessment selected is appropriate for the child;
10. A list of individuals or service providers responsible for implementing the IEP;
11. A statement of the party/parties financially responsible for implementing the IEP; and
12. Signatures of the representative of the school district and of the parent(s), legal guardian, surrogate parent or adult student (when appropriate) stating approval of the IEP.

For older (generally middle/high school age) students, the following additional IEP requirements apply:

1. A vocational education component, if appropriate;
2. Beginning at age 14, and younger if appropriate, a statement of transition service needs focusing on courses of study for the child;
3. Beginning at age 16, and younger if appropriate, a statement of needed transition services, including any interagency responsibilities or linkages; and

Secondary transition services are coordinated activities, designed within an outcome-oriented process, that promotes movement from school to post-school activities, including postsecondary education, vocational training, integrated employment, continuing and adult education, adult services, independent living, or community participation; and that are based on the student's needs, taking into account his/her preferences and interests. Transition services may include instruction, related services, community experiences, the development of employment and other post-school adult living objectives, and if appropriate, acquisition of daily living skills and functional vocational evaluation.

4. At least one year before the student reaches the age of majority (18 in New Hampshire), a statement that he/she has been informed of the rights that will transfer to him/her at age 18;

Note: The rights of parents in the special education process automatically transfer to children with disabilities at the age of 18, unless they have been declared incompetent by a court. The IEP Team must notify the student by age 17 of the rights that will transfer to the student on his/her 18th birthday (the age of majority in NH is 18). Notices required in the special education process will continue to be provided to the parent, as well as to the adult student with a disability.

When the IEP Team is developing the child's IEP, it must consider the child's strengths, the parents' concerns for their child's education, and the following special factors:

- If a child's behavior impedes his/her learning, or that of others, appropriate strategies, including positive behavioral interventions, strategies, and supports to address the behavior need to be implemented;
- If a child has limited English proficiency, the language needs of the child, as they relate to the IEP are to be considered;
- If a child is blind or visually impaired, instruction in Braille must be provided, unless the Team determines it would be inappropriate;
- The communication needs of the child must be considered. For a child who is deaf or hearing impaired, that includes the opportunity for direct communication with peers and staff, for instruction in the child's mode of communication and at the child's academic level; and
- The child's need for assistive technology devices and services must be considered.

Parents have up to 14 calendar days to review and sign the IEP. If parents disagree with the IEP, they may agree with exceptions, or ask for another meeting, request mediation, a neutral conference or a due process hearing. If they believe their/their child's rights have been violated, they may file a complaint with the State Department of Education. The 14-day timeline may be extended by mutual agreement.

Once the parents and school district agree to the IEP, they both sign it. Next, everyone responsible for implementing the IEP, as well as the parent and student (if he/she is an adult student), is given a complete copy of the IEP. A copy is also placed in the student's file. Further, the school district must inform everyone responsible for implementing the IEP of his or her responsibilities.

Extended School Year (ESY) Services

In New Hampshire, the required school year for school-age children is 180 days for a specific minimum number of hours. Some children require more days and/or hours each day in order to receive the services they need and maintain their skills, or to receive a free and appropriate public education.

The IEP Team must identify, in each child's IEP, the length of the school year and school day necessary to implement the IEP. When the IEP Team determines that a specific student needs more than 180 days of school, those extra days are called an "extended school year". Extended school year is an extension of time. Extended school year covers services provided when school is not in session.

Note: For preschool children the length of the child's program is determined based on the individual child's needs. For any breaks in the child's individual schedule of programming, the Team must consider the need for continued services during those breaks.

The school district must provide extended school year (ESY) services to any student with disabilities for whom the IEP Team determines it necessary; however most students are able to receive a free and appropriate public education (FAPE) during the typical school year without ESY services. If the parent and school disagree, procedural safeguards, including mediation and due process may be utilized. ESY services may involve a change in the services, where the program is provided, the number of hours, days and/or weeks of the program, and the IEP goals/objectives.

When the Team is considering a child's need for an extended school year, Team members consider what the child needs in terms of program, services and time in order to participate and progress in the general curriculum and receive a free and appropriate public education. The services must be provided in accordance with the child's IEP, at no cost to the child's parents and they must meet the standards of the State Education Agency (SEA).

The Federal special education law, IDEA, as well as the 2002 *NH Rules for the Education of Children with Disabilities* (Ed 1111.01), requires ESY services if they are necessary to provide FAPE. The language in NH law, RSA 186-C:15 provides additional standards for the IEP Team's consideration. Specifically, the State law addresses ESY services for a child with disabilities when a disruption in the child's program would result in severe and substantial harm and regression and would have the effect of negating the benefits of the child's school year program. If the Team determines that a child needs ESY to benefit from FAPE, it does not also have to meet the State standard of harm and regression.

It is important to note that ESY is not only for summer. Examples of ESY include services during any of the school vacations, such as summer vacation, winter or spring break or even long weekends.

The Team **must consider** the possible need for extended school year for every student with disabilities at least once a year at a Team meeting. The decision must be individualized, considering the needs of that particular student. A school district may not limit ESY services to particular categories of disability or unilaterally limit the type, amount or duration of those services.

At any time during the school year, a parent or any other person may request that the Team consider a child's need for an extended school year. When a parent requests an ESY, the Team's decision (either agreeing or refusing) must be presented to the parent in writing in a Written Prior Notice. Parents have the right to appeal the Team's decision. As explained beginning on page 33, there are several options for parents to appeal the Team's decision.

Placement in the Least Restrictive Environment (LRE) by the Team

After the IEP has been developed, the Team decides where the student can receive the services in the IEP. That setting is to be the least restrictive environment. That means that the student is to be educated with students who do not have disabilities, and removed to other settings only when, even with supplemental aids and services, the student cannot be educated satisfactorily in the regular classroom. When a student needs a more restrictive placement, the IEP Team must make the following range of educational environments available for consideration:

- ◆ regular classroom,
- ◆ regular classroom with consultative assistance,
- ◆ regular classroom with assistance by itinerant specialists,
- ◆ regular classroom plus resource room help (for no more than 60% of the day),
- ◆ regular classroom plus part-time special class,
- ◆ full-time special class,
- ◆ full/part-time special day school,
- ◆ full-time residential placement,
- ◆ home instruction, or
For children ages 6-21, this is limited to 45 days. Home instruction must consist of a minimum of 10 hours of instruction per week provided by the school district. Related services in the student's IEP must be provided to the student in addition to the 10 hours of instruction per week. In certain circumstances, the school district may apply to the state Director of Special Education for an extension of the 45-day time limit. Home instruction is not the same as home schooling.
- ◆ hospital or institution.

For preschool-age children, the educational environments are reflective of traditional early childhood settings, and may include:

- ◆ home,
- ◆ school, or
- ◆ community settings.

The Team proposes an educational placement to the parents and asks for the parent's consent. The parent(s) may consent, refuse consent and ask for another meeting, refuse consent and ask for an impartial due process hearing, or consent with exceptions. If the parents consent to the placement, it will take place.



Note: A public charter school in the local education agency (school district) is considered to be a public school, just like any other public school in that school district.

Placement in Private Programs

Private School Placements Made by the Team: If the Team *in the school district in which the child resides* proposes and makes a placement in an approved public or private program, the district is responsible for the costs of that placement. If the IEP Team places a child in an out-of-state program, that program must have special education approval by the host state.

Parentally-Placed Private School Children with Disabilities: If a school district **in which the child resides** offers a free and appropriate public education (FAPE), the parents may still decide to place their child in a private program at the parents' expense. When the parent places the child in a private school, the parent has technically "refused services" proposed by the school district in which the child and parent live. When this happens, the responsibility for following the special education process including Child Find transfers to the school district in which the private school is located, *no matter where it is located in the United States*.

IDEA provides Federal funds to school districts for children who are eligible for special education, including the group of students who are unilaterally placed by their parents into private schools. However, these children have no individual entitlement to special education at school district expense. Under IDEA '04, the responsibility for determining services now falls to the district in which the private school is located, and not the district where the child and his/her family reside.

Several procedures about this for the public school district are now required by the federal law. IDEA 2004 requires a school district which has any private school(s) within its geographic boundaries to consult with those private school officials and parent representatives of children with disabilities attending those private schools. The school district in which the private school(s) is located must make a plan for how it will spend the IDEA funds allocated for this group of children, meaning that one, some, or all of the students placed by their parents may receive some special education services while attending private school. The services provided to a parentally-placed private school child with disabilities must be described in an Individual Services Plan (ISP). The student would still retain eligibility for FAPE in the LRE consistent with IDEA requirements, and could enter the public system in the child's district of residence at any time and would then be entitled to receive full services with an IEP through the district of residence.

Parental Placements When FAPE IS an Issue: If the parents do not believe that the school district in which they and the child live made FAPE available to their child, the parents may file for an impartial due process hearing to attempt to obtain school district (the district of residence) payment for the program. This option is only available to parents of a child who previously received special education and related services **through** the public school district where they live (even if the placement was a private program chosen by the Team). If a Hearing Officer or court finds that the district in which the child resides had not made FAPE available to the child in a timely manner prior to the child's enrollment in the private program, the Hearing Officer or court may require the district of residence to reimburse the parents for all or some of the cost of that enrollment.

A parental placement may be found to be appropriate by a Hearing Officer or a court even if it does not meet the State standards that apply to education provided by the state or local education agency.

The cost of reimbursement for this "unilateral" parent placement may be reduced or denied under certain conditions (described on the next page).

The cost of reimbursement for this "unilateral" parent placement may be reduced or denied if:

- ◆ At the most recent IEP meeting in the district of residence that the parents attended prior to removal of the child from the public school placement, the parents did not inform the IEP Team that they were rejecting the placement proposed by the public agency to provide FAPE to their child, including stating their concerns and their intent to enroll their child in a private school at public expense; or
- ◆ At least 10 business days (including any holidays that occur on a business day) prior to the removal of the child from the public school placement, the parents did not give written notice of their intent to remove the child.
- ◆ Prior to the parents removal of the child from the public school placement, the school district informed the parents of its intent to evaluate the child, but the parents did not make the child available for the evaluation; or
- ◆ There is a judicial finding of unreasonableness regarding actions taken by the parents.

However, the cost of the reimbursement may not be reduced or denied for failure to provide the notice if:

- ◆ The school prevented the parent from providing the notice;
- ◆ The parents had not received notice as required under IDEA, of these notice requirements; or
- ◆ Compliance with the notice requirements would likely result in physical harm to the child;

A Hearing Officer or a court has the discretion of not reducing or denying reimbursement costs if

- ◆ The parent is illiterate and cannot write in English; and/or
- ◆ Compliance with the notice requirements would likely result in serious emotional harm to the child.

In the case of a unilateral placement, when the school district was not given a reasonable opportunity to evaluate the child and develop an IEP, the parents may not seek reimbursement until the district is given an opportunity to evaluate the child and develop an IEP.

Home schooled students with disabilities

Parents of children with disabilities have the same right to choose to home school their child, as do parents of children without disabilities. Any home-schooled child has some rights under NH law to participate in the programs and services available to the public school students in the district. Additional information may be found in the Appendices.

Student Discharge from Special Education

When a student is discharged from special education, the school district is no longer responsible to provide special education services to the student.

"Discharge" is different from a child's name being placed in "Child Find". In Child Find, the student is still eligible to receive special education services, but will not receive those services for a period of time. After "discharge", the student is no longer eligible for special education services from the school district.

There are four reasons why a child may be discharged from special education in New Hampshire:

1. The Team determines that the student no longer has an educational disability and does not need special education, and the parent consents to this determination. If the parent denies consent, a due process hearing may be held to resolve the issue.
Note: Before a child may be determined no longer eligible for special education, a reevaluation must be conducted (see page 17 for reevaluation requirements).
2. The student graduates from high school with a regular high school diploma, or
3. The student turns 21, whichever occurs first

Note: If the child's eligibility is ending because he/she is graduating with a regular diploma or turning 21, the LEA must provide the child with a written summary of his/her academic achievement and functional performance, including recommendations on how to assist him/her in meeting his/her post-secondary goals.

4. The student moves out of state (The parents would work with the Team at their child's new school in the new state to ensure the child receives FAPE.)
5. The student passes away.

Students Who Transfer From One District to Another within the Same Academic Year

When a student with disabilities moves from one school district to another, the student remains eligible for special education services. When the student moves, the former school district is no longer responsible for his/her special education and the new school district becomes responsible when the student enrolls in the new district. It's very important for the parents to enroll the child immediately in the new school district.

Within the same state: When a child with a disability transfers from one school district to another within the same academic year, enrolls in a new school and has an IEP that was in effect in the previous district, the new school district must provide the child with FAPE, including services comparable to those in the previous IEP, in consultation with the parents, until the new district adopts the previous IEP or develops, adopts and implements a new IEP.

Transferring from one state to another state: The requirement for prompt provision of services applies to students who transfer from one district to another within a state and from one state to another within the same academic year. Additionally, when students transfer from one state to another, and while services are being provided by the new district, the new district in the new state may, propose an evaluation of the student if it decides it is necessary and may develop a new IEP if it is appropriate. The new district in the new state may not delay the prompt provision of services during the time it proposes and conducts an evaluation or proposes a revision of the IEP.

Transfer of records from one district to another when a child moves: When a child moves from one district to another, the new school in which the child enrolls must take reasonable steps to promptly obtain the child's records, including the IEP and supporting documents and any other records relating to the provision of special education or related services to the child, from the child's previous school. Similarly, the child's previous school must take reasonable steps to promptly respond to such a request from the new school.

School Records: Access and Confidentiality

School districts have many types of records about children for whom they are responsible. Records include report cards, progress reports, attendance records, health records and others. Videotapes, photographs and electronic copies of documents are also considered to be "educational records".

Those records that include "personally identifiable" information must be protected. Personally identifiable means information that includes:

- The name of the child, the child's parent, or other family member;
- The address of the child;
- A personal identifier, such as the child's social security number or student number; or
- A list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty.

The Individuals with Disabilities Education Act contains provisions to insure that records are:

1. Kept confidential,
2. Accessible to parents and
3. Handled in compliance with the Family Educational Rights and Privacy Act of 1974 (FERPA), a separate federal law with its own regulations.

Confidentiality and Access Requirements: School districts and other agencies collecting, maintaining or using personally identifiable educational records must treat personal information as confidential, and must provide access for parents who want to inspect and/or review their child's records. The district must grant access without delay and before any meeting regarding an IEP or due process hearing, (but never more than 45 days after the request has been made), and parents have the following rights:

1. To get a response from the district for explanation and interpretation of information in the child's records;
2. To copies of information in the child's records, if circumstances effectively prevent the parent from inspecting and reviewing their child's educational records. The district may charge parents a reasonable copying fee, which cannot include the cost of staff time to get and make the copies, UNLESS the fee would prevent the parent from exercising their rights;
3. To have a representative of the parent inspect and review the records;
4. To be informed as to the location and types of records collected, maintained or used by the district; and
5. To make a request to amend any information in the child's record that the parent feels is inaccurate or misleading, or violates the privacy or other rights of the child.

Note: An agency is to presume that a parent has the right to inspect and review records relating to his/her child unless the agency has been advised that the parent does not have the right under applicable State law governing such matters as guardianship, separation and divorce.

The NH Department of Education or other state agencies may also collect, maintain or use some school records. These agencies must follow requirements to protect the confidentiality of any personally identifiable information they have about a child.

Request to amend records: If a parent believes that information in their child's educational records is inaccurate or misleading, or violates the privacy or other rights of the child, the parent may request the agency that maintains the records to amend the information. The district has the right to decide if it will amend the records, and must inform the parent of its decisions within a reasonable period.

If the district is NOT willing to amend the record(s), the parent has the right to a hearing in the district within a reasonable time. The person conducting the hearing must be someone with no direct interest in the outcome of the hearing. The parent is entitled to notice of the hearing, to present evidence relevant to the issues, and to be assisted or represented by one or more persons, including an attorney. The hearing decision must be made within a reasonable time and based on the evidence presented at the hearing. The decision must include a summary of the evidence, and the reasons for the decision. If, as a result of the hearing, the district decides that the information is inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child, it must then amend the information and inform the parent in writing.

If the decision is to NOT amend the record, the district must inform the parent of their right to place a statement in the record, indicating the parent's disagreement or concern about the information in the file, along with the parent's clarification of that information. That statement must be maintained as part of the records as long as the record (or contested portion) is maintained by the district. If the district discloses the records (or contested portion) to any party, the explanation must also be disclosed to that party.

Parents must give consent before the district may transmit or release personally identifiable information to another agency, except for situations involving law enforcement officials (when there has been a report of a crime committed by the child), or in the case of a family moving to another school district. If the parent refuses to give consent for the release of confidential information, the district has the right to initiate a court proceeding to obtain a court order for the release of the information.

Records that contain information about more than one child: If an educational record includes information on more than one child, the parents of those children have the right to be informed and to inspect and review only the information related to their child.

Safeguarding Information: The district must protect the confidentiality of information at the collection, storage, disclosure and destruction stages. Furthermore, all persons who collect or use personally identifiable information must receive training or instruction of the State's policies regarding the handling of confidential student information. Furthermore, one person in the district must assume responsibility for ensuring the confidentiality of information. Each district must maintain, for public inspection, a current list of the names and positions of employees who have access to confidential information. A list of individuals accessing the records, their positions and the dates must also be maintained.

Disciplinary Information: To the same extent as for children without disabilities, the district must include in the child's record, a statement of current or previous disciplinary action taken against the child. This statement may include a description of any behavior engaged in by the child that required disciplinary action, a description of the disciplinary action taken, and any other information that is relevant to the safety of the child and other individuals involved with the child. Information about disciplinary actions will be included in records that are transmitted to other schools, to the same extent that this information would be transferred with the records of a child without a disability.

A school district reporting a crime that was committed by a child with a disability shall forward copies of the child's special education records to the appropriate authorities to whom the crime was reported.

Destruction of Records: The school district must inform parents when information on their child is no longer needed to provide educational services to the child. At the request of the parent, personally identifiable information MUST be destroyed or personally identifiable information removed from the records so that others accessing this information cannot identify the child. However, the district MUST maintain a permanent record of the student's name, address, and phone number, his or her grades, attendance record, classes attended, grade level completed, and year completed.

Transfer of Rights: Under the Family Educational and Privacy Act of 1974, the same rights outlined above will transfer to the student on his/her 18th birthday, or upon entry into an institution of post-secondary education, whichever occurs first.

Violations of Student Codes of Conduct: Discipline Issues and Consequences

<i>Suspension</i>	<i>Removal to an Interim Alternative Educational Setting</i>	<i>Functional Behavioral Assessment</i>	<i>Positive Behavioral Interventions</i>	<i>Manifestation Determination</i>
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Introduction: When a student with a disability breaks a school rule, it is important to determine whether or not the behavior is related to his/her disability. Assessments, including a functional behavioral assessment, may be useful in making this determination. If the behavior is caused by the disability or if the disability impairs the ability of the child to control the behavior for which the child is being disciplined, the child may not be disciplined for those behaviors. Instead, the child's program and/or placement should be reviewed and revised to address the behavior.

Violations of Student Codes of Conduct: Schools may suspend remove students with disabilities, with no services, for up to 10 days for behaviors, such as truancy, that would result in a suspension for any student. The student may be treated the same as a student without a disability during those removals, including receiving services if the district provides services to students without disabilities who are suspended. Under IDEA 2004, "school personnel may consider any circumstances on a case-by-case basis when determining whether to order a removal to an interim alternative educational setting for a violation of a code of student conduct."

Once a student with a disability has been removed from his/her current placement (suspended) for more than 10 days in a school year, during any additional removals, the student is entitled to receive services that enable the student to appropriately progress in the general curriculum and advance towards achieving the goals set out in his/her IEP. The actual services provided are to be determined by school personnel in consultation with the child's special education teacher.

Functional Behavioral Assessment (FBA) and Positive Behavioral Interventions: Either before or not later than 10 business days after the child is removed for a period that will include the 10th day (cumulative) of removal in that school year, the IEP Team must meet to plan an FBA (if one has not already been done). The Team would then develop a positive behavior intervention plan for the student, as soon as practicable after completing the behavioral assessment. If the IEP already includes a positive behavior intervention plan, the Team would review it and its implementation to address the behavior, and make any needed revisions. The Team may also propose any other revisions they believe are necessary to ensure the IEP and placement are appropriate to meet the student's needs. Following any future removals the behavior intervention plan would be reviewed and revised at the request of any member of the Team.

Note: The FBA is a written summary of behaviors that are problematic, noting where they occur, and what the staff needs to be aware of as they work with that student to help manage the behavior(s). Part of such a plan should include positive behavioral interventions that can be carried out by teachers and others working with the student. School discipline policies (which generally may be found in the school district's student handbook) may also be modified in the IEP, as appropriate for the student.

Removals that Constitute a Change in Placement: Removal of a student based on discipline issues, *if* it is for more than 10 consecutive school days or a pattern of short-term removals that total 10 school days, constitutes a "change in placement". When this happens, parents must receive a copy of their procedural safeguards. A Team meeting must then be held within ten days of the decision to remove the child for what amounts to a change in placement, and the Team *must* determine *if* the behavior was a "manifestation" of the child's disability. A manifestation determination is the Team's decision that the child's behavior is or is not related to his/her disability. In order to do this, the Team must look at two possibilities:

1. The conduct (behavior "was caused by, or had a direct and substantial relationship to the child's disability", or
2. "If the conduct in question was the direct result of the LEA's failure to implement the IEP".

If the Team determines that the behavior *was* a manifestation of the child's disability, *then* the Team must do one of the following:

- either conduct a functional behavioral assessment (FBA) unless the district has already done an FBA and developed a behavioral intervention plan; or
- review the behavioral intervention plan and modify it as necessary.

Manifestation Determination: When a child is given a suspension that is a change in placement, as soon as the decision is made to take that action, the parents must be notified and provided the procedural safeguards notice. Immediately, but not later than 10 school days after the decision is made, the IEP Team and other qualified professionals, such as the school psychologist, must hold a meeting, to make a manifestation determination. If one has not already been done, a FBA would also be conducted and a behavioral intervention plan developed. This may occur at the same meeting as the one in which the manifestation determination is made.

A manifestation determination meeting would be held except when the behavior involved the following "special circumstances". The child:

- carries a weapon to, or possessed a weapon, at school or at a school function;
- knowingly possesses or uses illegal drugs, or is selling or using controlled substances at school or at a school function; OR
- has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function."

In making a manifestation determination, the Team must first consider, in terms of the behavior for which the student is being disciplined, all relevant information, including:

1. Evaluation and diagnostic results, including such results and other information supplied by the child's parents;
2. Observations of the child; and
3. The child's IEP or placement

The Team must then determine, if relative to the behavior being considered:

- the conduct was caused by, or had a direct and substantial relationship to, the child's disability, or
- was the direct result of the LEA's failure to implement the IEP.

Additional considerations, still in the 2002 NH Rules for the Education of Children with Disabilities, are if:

- the IEP, services and placement were appropriate and implemented;
- the disability impaired the child's ability to understand the impact and consequences of the behavior; and
- the disability impaired the child's ability to control the behavior.

When the behavior is a manifestation of the child's disability: If the IEP Team and other qualified personnel determine that any of the standards listed above were not met; the behavior must be considered to be a manifestation of the child's disability. The student would be returned to his/her program and placement, and not be further disciplined for behaviors that were a manifestation of his/her disability. Instead, the IEP Team would revise the IEP or placement to address any deficiencies found in the IEP, placement, or their implementation, and to meet the child's needs and prevent a reoccurrence of the behavior.

When the behavior is NOT a manifestation of a child's disability: If the results of the review indicate the behavior is **not** a manifestation of the child's disability then the same disciplinary procedures can be applied to the child that would be applied to any student without a disability. However, the child would be provided with special education services for any days of removal beyond 10 in a school year.

Removal to an Interim Alternative Educational Setting (IAES): Under "special circumstances", (remember that the IDEA 2004 allows for a "case-by-case" approach to discipline issues), school personnel may remove a student to an IAES for not more than 45 school days "without regard to whether the behavior was a manifestation of the child's disability, if the child:

- carries a weapon to, or possessed a weapon, at school or at a school function;
- knowingly possesses or uses illegal drugs, or is selling or using controlled substances at school or at a school function; OR
- "has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function."

Additionally, a Hearing Officer may place a student, for the reason of the student posing a significant danger to himself/herself or others in the student's current placement, in an IAES for **up to 45 school days** by conducting an expedited due process hearing.

The IAES is determined by the IEP Team, regardless of who decided to remove the child. The IAES must enable the child to continue to progress in the general curriculum and towards the goals in the child's IEP, although in another setting. Services designed to prevent the behavior from recurring are also to be provided.

During the child's placement in the IAES, the IEP Team must (if one has not already been done) conduct a FBA and develop a positive behavioral intervention plan. A manifestation determination meeting will also need to be conducted. The time that the student is in the IAES allows the Team to:

1. Remove the student from the current placement,
2. Consider the appropriateness of the current IEP and propose changes, if appropriate, and
3. Consider the appropriateness of the placement where the incident occurred and propose changes, if appropriate.

Definitions: A controlled substance means a drug or other substance identified under schedules I, II, III, IV or V in section 202(c) of the controlled Substances Act (21 USC 812(c)). An illegal drug means a controlled substance, but does not include a substance that is legally possessed or used under any other authority under that Act or under any other provision of Federal law. Weapon has the meaning given the term "dangerous weapon" under paragraph (2) of the first subsection (g) of section 94/30 of title 18, USC. Serious bodily injury has the meaning given that term under paragraph (3) of subsection (h) of section 1365 of title 18, USC.

Right to Appeal: Either the parent or the school district may appeal any decision regarding manifestation determination or placement in an interim alternative educational setting by requesting a due process hearing. Either the parent or the school district may request an "expedited hearing" to resolve these issues as quickly as possible.

Expedited Due Process Hearings For Discipline-Related Issues: When discipline issues are involved, expedited (quick) due process hearings:

1. Must be conducted by a due process hearings officer who meets the criteria set for Hearing Officers by the State Department of Education
2. Must be held within 20 school days, and reach a decision within 10 school days
3. May be appealed, as would any other due process hearing decision, as outlined by the NH Department of Education.

During the appeal process, a child placed in an IAES remains in that setting, until the Hearing Officer makes his/her ruling or until the 45-school day period has ended. This placement would be considered the child's "stay put" placement during this time period.

If a district still feels that the child is a threat to the safety of others, it may request that the child remain in the "interim" placement, or that he/she be placed into another educational setting as proposed by the IEP Team. The child would return to his/her original placement during the hearing unless the district believed that the child's return would pose a threat to the safety of the child or others. In that case, the district may request an expedited hearing. This process may be repeated as necessary. For disagreements regarding moving a child with a disability to an IAES or other placement chosen by the Hearing Officer, the Hearing Officer must follow the same requirements he/she would use in making a placement in an IAES.

If a school district disciplines a child with a disability, with a procedure that is applicable to all children, then the district must send the special education and disciplinary records to the person or persons making the final decision about the disciplinary action.

Students Who Have Not Yet Been Determined Eligible for Special Education: For students who have not yet been identified, but who are involved in disciplinary proceedings, the protections described in this section apply only if the district has knowledge that the child is a child with a disability because:

- The parent has expressed concern, in writing, to school personnel that the child needs special education and related services
- The parent of the child has requested an evaluation of the child
- A teacher (or other school district personnel) has expressed concern about a pattern of behavior or performance of the child to the director of special education or other supervisory personnel in accordance with the district's Child Find or referral system.
- The 2002 NH Rules for the Education of Children with Disabilities allow for a parent to express concerns orally if the parent does not know how to write or has a disability that prevents a written statement.

The school would NOT be found to “have knowledge of” a child’s disability if:

- there had been an evaluation conducted with the determination made by the Team that the child did **not** have an educational disability;
- the Team had determined that an evaluation was not necessary and provided the parents with the required notice of that decision; or
- the parent has refused consent, or failed to provide consent for the evaluation or initial provision of services.

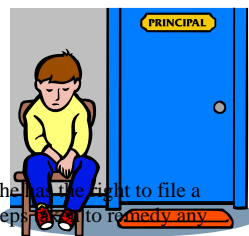
If the district did not have knowledge that the child was a child with a disability prior to taking disciplinary measures against the child, the child may be subjected to the same disciplinary measures as any other child without a disability. However, if the child is then referred, evaluated and determined eligible for special education, the child would be entitled to all of the same protections as any other child with a disability.

Evaluation During the Disciplinary Process: If parents request an evaluation for their child during the disciplinary process, the evaluation must be conducted as soon as possible (expedited), AND the child will remain in the educational placement determined by educational authorities for the period of the original suspension, which can include suspension or expulsion without educational services. If the child is found to be a child with a disability, the school district must provide special education and related services, including during the period of appeals and/or placement into an Interim Alternative Educational Setting (IAES).

Protecting the child: NH Rules state that in no case may humiliation, unsupervised confinement, abuse, neglect or aversives (i.e. denying nutrition, clothing, communication or contact with family) be used.

Complaint Procedures

When parents, or an organization or individual, believe that the school district has violated a child’s special education rights, he/she has the right to file a written complaint with the New Hampshire Department of Education. The complaint will then be investigated and appropriate steps taken to remedy any violations found.

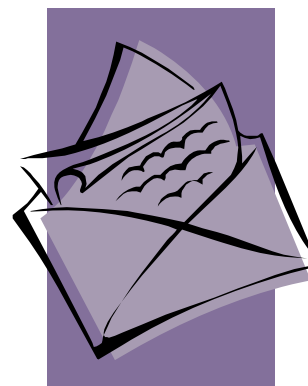


What are the requirements for a written complaint?

The following information is required for a complaint to be processed. The notice must include:

1. Your name, address and daytime telephone number
2. The name of the child
3. The address of the residence of the child, if different than yours
4. The name of the school the child is attending
5. A statement that the school district has violated a State or Federal special education requirement
6. The facts upon which the statement is made
7. Statement that the violation occurred not more than one year prior to the complaint being received by the Department of Education (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 the date the complaint is received by Department of Education).
8. The complaint must be signed.
9. Complaints are mailed to: Commissioner of Education
101 Pleasant Street
Concord, NH 03301

Written complaints must be received by the Department no longer than 1 year after the alleged violation took place. There are exceptions to this rule. If you would like more information about the exceptions, contact the NH Department of Education, Special Education Bureau.



Note: If a written complaint is received in which the topic is also the subject of a due process hearing, or contains multiple issues, of which one or more are a part of that hearing, the State must set aside any part of the complaint that is being addressed in the due process hearing, until the hearing is completed. However, any issue in the complaint that is not a part of the due process action must be resolved using the State’s complaint time limits and procedures. If an issue raised in a complaint has previously been decided in a due process hearing, the hearing decision is binding; and the State Department of Education must inform the complainant to that effect. A complaint alleging a district’s failure to implement a due process decision must be resolved by the NH Department of Education.

What are the steps to resolving a complaint?

1. After receiving a complaint filed by a parent, an organization or an individual from another state, the complaint will be reviewed by the Complaints Office of the Bureau of Special Education at the NH Department of Education.

2. If the issues are appropriate for the complaint procedures, then:
 - a. An independent investigator is assigned to the case to perform an independent investigation, part of which may be conducted in the school district.
 - b. A courtesy telephone call is made to the school district's director of special education stating that a complaint has been filed, telling him/her who filed the complaint, what it is about and what federal and/or state regulations are involved.
 - c. A letter is sent to both the parent and the school district giving them the name of the investigator, a copy of the complaint letter and identifying what federal and/or state regulations are involved.
3. The person filing the complaint will be given the opportunity to correct any errors made in summarizing the issues and may submit additional information either orally or in writing.
4. The investigator will review all relevant information including appropriate educational records and interview both the parents and school district officials and staff to determine the facts. When the investigation is complete, the investigator will submit a written report to the NH Department of Education.
5. The NH Department of Education's Complaints Officer will review the report to determine if any violations occurred. The Complaints Officer will then issue a decision based upon the investigator's findings of fact and the relevant state and federal rules and regulations, including Part B of IDEA. The report will outline the reasons for the State's final decision.
6. The Commissioner of Education reviews the decisions and makes a determination of what corrective action, if any, is warranted. The Commissioner signs the decision. The decision will be issued no later than 60 days after the complaint was received by the NH Department of Education. The timeline may be extended if the Department determines that exceptional circumstances exist that delay the decision.
7. The NH Department of Education must include procedures for effective implementation of the final decision, including technical assistance activities, negotiation and corrective actions to achieve compliance.
8. If any party is aggrieved by the decision, he or she has 10 days from the date the decision was received to request reconsideration. Within 20 days of receiving a request for reconsideration, the Commissioner will determine whether reconsideration is merited, conduct a reconsideration if appropriate and issue a final determination. Any party still aggrieved may request a due process hearing or file an appeal in accordance with Ed 200.
9. The NH Department of Education must disseminate information on complaint procedures to parents and other interested individuals, including Parent Training and Information Centers, Protection and Advocacy agencies, Independent Living Centers, and other appropriate entities.
10. When the NH Department of Education determines there was a failure to provide appropriate services it can award monetary reimbursement or other corrective action appropriate to the needs of the child and to ensure appropriate services are provided to all children with disabilities in the future.

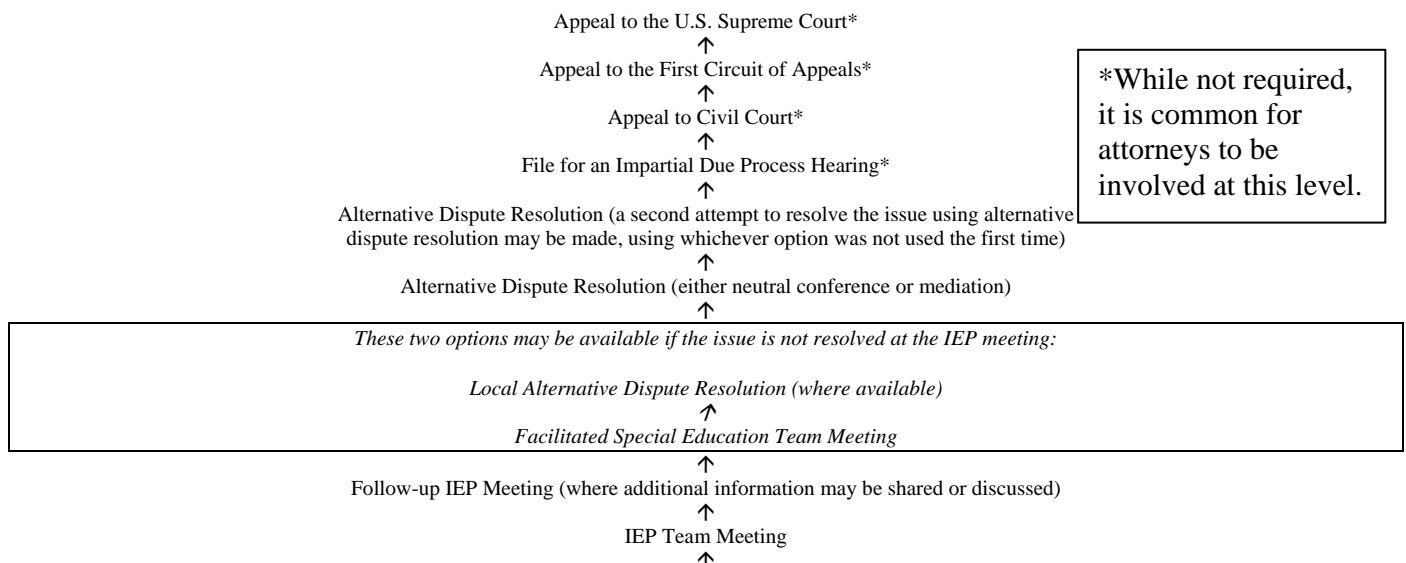
When Disagreements Arise...

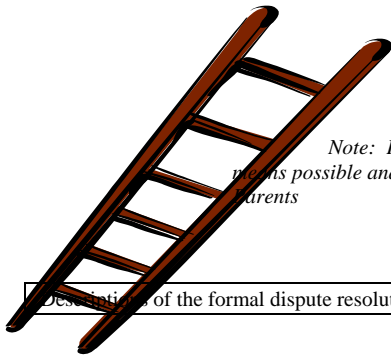
Disagreements between a parent and their child's school, teacher, administrator or program can be resolved through a variety of formal and informal mechanisms. Generally, it is best to resolve disputes using the least adversarial means possible, beginning at the lowest administrative level. The following diagrams provide a hierarchy of procedures available to resolve most of these disputes. Your school's parent handbook may provide other steps recommended by your school district to resolve disagreements.

For Special Education Issues

Begin at the bottom and move upward only as necessary.

An appropriate (satisfactory) resolution may occur at any level of this dispute resolution hierarchy.





Parent or School Initiates a Meeting

↑ START HERE ↑

Note: Parents and schools should also strive to resolve non-special education issues using the least adversarial means possible and beginning at the lowest administrative level appropriate (often starting with the child's teacher). Parents should refer to their school's Parent Handbook for more information.

Descriptions of the formal dispute resolution procedures available in New Hampshire are provided on the following pages.

Alternative Dispute Resolution: Mediation and Neutral Conference

The formal dispute resolution option of a due process hearing can be very adversarial. To enable parents and schools to avoid due process hearings, New Hampshire offers alternative dispute resolution options. In the majority of cases, Teams can come to an agreement by listening, gathering and sharing additional information, and when appropriate making compromises. Occasionally however, parents and school districts are not able to resolve their differences in the regular Team meeting setting. In these cases, there are two formal options available to assist parents and schools to resolve their differences without having a due process hearing. These options are:

1. Mediation
2. Neutral conference

Mediation

Mediation is a voluntary option available to help parents and schools in reaching an agreement about any part of the special education process. The process involves the help of a trained, impartial person known as a mediator. The NH Department of Education (NHDOE) maintains a list of qualified and impartial mediators and funds the cost of the mediation process including meetings. All parties must agree to mediation and attend meetings at times and locations that are convenient to participants. The process must be timely; it cannot be used to deny or delay a parent's rights including to have a due process hearing. To protect confidentiality, discussions that occur during mediation may not be used in any subsequent due process hearings or civil proceedings. Parties may be required to sign a pledge before beginning the mediation process. If an agreement is reached a mediation agreement, setting forth the resolution reached, will be written and signed by all parties. If an agreement is not reached, only the date and names of people who attended will be recorded. If the mediation is held after filing for a due process hearing, the written agreement must be enforceable in any State or district court.

Who are the mediators?

A mediator must be trained in effective mediation techniques, be knowledgeable in special education laws and regulations, and be impartial. A mediator may not have a personal or professional conflict of interest. A mediator is chosen at random from the list maintained by the NH Department of Education. All parties must be in agreement of the mediator chosen. A mediator cannot be an employee of any Local Education Agency (LEA) or State Agency providing direct services to a child who is the subject of the mediation process. A person who otherwise qualifies as a mediator is not considered to be an employee of the State Department of Education solely because the Department of Education pays them for their service as a mediator.

What happens when parents do not agree to participate in mediation?

When parents do not agree to mediation, a school district may require parents to meet with a disinterested person, such as someone from a parent training and information center, a community parent resource center or an appropriate alternative dispute resolution organization who can explain the benefits of mediation and encourage the parent to use the process. If the parent does not attend the meeting to discuss the benefits of mediation, the local education agency cannot deny or delay the parent's rights to a due process hearing.



Neutral Conference

A neutral conference is an option that is open to both parents and the school district. It is a voluntary, confidential process facilitated by a trained professional (neutral) who listens to both sides of a dispute and makes a recommendation that both sides may either adopt or refuse.

A parent can request that their child's school district file a request with the NH Department of Education. Some topics that can be heard may include: Eligibility determination, disability classification (coding), evaluations, identification, IEP, independent evaluations, other related services, placement and transportation.

The neutral's recommendations can assist parents and school districts in determining whether to proceed with a due process hearing. It is non-binding unless both parties agree to the recommendation.

How does a neutral conference work?

A neutral professional, chosen by the state, conducts a neutral conference on one of the dates suggested by the parties. No less than 5 days before the neutral conference, the parties submit to the neutral and exchange a summary of the significant aspects of their case. The parties attach to the summary copies of all documents on which they will rely. These summaries shall be no more than 4 pages in length. The parties attend the neutral conference and must have authority to authorize settlement.

At the conference, the neutral may ask the parties questions and allows each party no more than 30 minutes to add to their written summaries with a brief oral statement. The conference is limited to not more than 2 hours.

At the end of the oral arguments, the neutral issues an oral opinion to the parties. The opinion contains a suggestion settlement or disposition along with the reasons why he/she came to his/her conclusion.

What if the parent and school accept the neutral professional's opinion?

If the parties agree, the neutral professional's opinions are incorporated into a written binding agreement signed by each party.

What if the parent or school does not accept the neutral professional's opinion?

If the neutral conference does not result in agreement, the neutral will document only the date and the participants at the meeting. The neutral will not be called as a witness at any additional proceedings in the specific case in which such neutral participated.

What does a neutral conference cost?

Neutral conferences are a free service provided by the Department of Education.

What does the neutral professional do?

All neutrals are trained to listen. By actively listening and helping the parties clarify and define their own issues, needs, and goals, a neutral can provide structure and get straight to the issues and thus a conclusion. The neutral respects and honors both the process and participants.

Administrative Due Process Hearing Procedures

When the parent and the school district cannot agree on a special education issue (except for the initial provision of services, see page 10), either one has the option of appealing to a higher authority (Hearing Officer) who will decide the outcome. They appeal by requesting a hearing with an impartial Hearing Officer. This way, they receive "due process of law" with many protections of their rights and the child's rights. An impartial administrative due process hearing, conducted by the State Department of Education, is used to resolve disputes between the school district and the parents. Either the school district or the parent can request a due process hearing on any matters relating to the identification, evaluation, or educational placement of a child with a disability, or the provision of a free and appropriate public education.

When a due process hearing is requested by either parent or school, several things happen right away:

- The requesting party sends the request ("notice") for a hearing to the other party and to the State Department of Education.
- The school district informs the parent of free or low cost legal and other relevant services.
- The school district schedules a "resolution session."
- The school district offers mediation to the parents.
- The party receiving the notice that a hearing is being requested notifies the Hearing Officer if they believe the notice is not complete.
- The State Department of Education assigns a Hearing Officer to the case.

Time Limits on Requesting a Due Process Hearing

Requests for a due process hearing must be made within specific time limits called Statutes of Limitations (see page 41). A parent must request a due process hearing within 2 years from the date on which the alleged violation was known or reasonably should have been known.

If the parent requests a due process hearing in order to recover the costs of a unilateral placement, the parent must file the request with the NH Department of Education within 90 days of the unilateral placement.

The time period for the hearing procedures is 45 calendar days. Once the required notice has been made, IDEA 2004 inserts a resolution period of up to 30 days before the 45 days starts for the parent and school district to resolve their differences. Parents may withdraw their request for a hearing until they have retained an attorney or legal counsel.

Requesting a Due Process Hearing

Either a parent or the school district may request an administrative due process hearing from the NH Department of Education.

Request for a hearing must be in writing. The written request for a hearing is called the "due process complaint notice." When either the parent or the school or an attorney representing any involved party requests a hearing, the requesting party must provide a written notice to the other side and to the NH Department of Education. A copy of the model form requesting a due process hearing can be obtained by contacting the child's school or the NH Department of Education, 101 Pleasant Street, Concord, NH 03301-3860, or at <http://www.ed.state.nh.us/SpecialEd>.

The notice must include:

- The child's name and address of residence;
- The name of the child's school;
- A description of the problem, relating to the proposed initiation or change, including facts about the problem; and
- What will solve the problem (proposed resolution), if known and available at the time

If either the parent or the school is requesting an expedited hearing, the notice must also state the disciplinary grounds for the request.

The party receiving the notice must review it and decide if it contains the required information. If they believe it is incomplete or insufficient, they notify the Hearing Officer within 15 days of receiving the notice. The Hearing Officer has 5 days to review the notice and determine if it is complete and must immediately inform both parties of that decision regarding completeness.

The school district must provide information to the parent about any free or low-cost legal or other services. The school district must also give the parent information about any free or low-cost legal and other services that are available when either the parent or school district requests a due process hearing. The school also must provide this information at any time when the parent asks for this information.

The school district must offer a “resolution session.” Under IDEA 2004, when a hearing has been requested by either the parent or the school district, the school district must hold a meeting with the parent(s) and the relevant members of the Special Education Team within 15 days of receiving the request for a hearing (formally called the “notice of the due process complaint”). However, if both the parent and the school agree in writing not to hold the resolution session, it does not need to be held. Parents and school may decide to use mediation instead.

The school district must inform the parents of the availability of mediation. When a parent asks for a hearing, the school district must tell the parent about mediation as an option available to settle the issues. Mediation is voluntary for both sides and both the parent and the school district must agree to participate, in order for the mediation session to be held.

Who Will Conduct the Pre-Hearing Conference and the Hearing?

A Hearing Officer appointed by the NH Department of Education will conduct the hearing. Hearing Officers are not employees of either the NH Department of Education or the school district, even though they are paid by the State, and will be attorneys or other individuals who are knowledgeable about federal and state special education law. The Hearing Officer cannot have a personal or professional interest in the hearing and must be impartial.

Pre-Hearing Procedures

Scheduling the Pre-Hearing Conference. At the end of the 30-day resolution period, the 45-day “clock” for the hearing starts. First, the NH Department of Education schedules a pre-hearing conference at which the parties define the issues of the dispute and agree on dates. The Department usually schedules the pre-hearing conference to be held within the first week of the 45 days.

Once the NH Department of Education receives the request for a hearing, it will schedule dates for both a pre-hearing conference and the hearing. The pre-hearing conference is scheduled for a half-day and is conducted by the Hearing Officer. Both the parent and the school district should be prepared to talk about offers of settlement at the pre-hearing conference. The conference will also be used to simplify and clarify the issues to be addressed at the hearing.

The Child’s Placement During the 45-day Hearing Procedures. Once a hearing has been requested, the child stays in the school program with the same services he/she was receiving at the time the hearing was requested, except for children who have been removed to an interim alternative educational setting (see page 29). This is the “stay put” placement until the matter is settled, unless the school district and parent agree to change the placement. If the matter involves an application for initial admission to public school, the student, with parental consent, shall be placed in the public school until the completion of the proceedings.

The Hearing

The due process hearing is scheduled within 35 days of the 45-day period, unless it is an expedited hearing. An expedited hearing is scheduled within 20 days of receipt of the request for an expedited hearing.

The hearing must be held at a time and place that is reasonably convenient for the parent and child. The parent has the right to have the child present for the hearing and to open the hearing to the public. Hearings are usually scheduled for 2 days, with the parent and school district each having one day to present their case. Additional time can be scheduled if it is necessary for a full and fair disclosure of the facts necessary for the Hearing Officer to make a decision.

The parent and the school must exchange a list of witnesses, including a brief description of each witness’s testimony, and copies of all documentary evidence, at least 5 business days before the hearing begins, not including the first day of the hearing. The parent and school district must disclose the results of any evaluations, including any independent educational evaluation that is to be introduced at the hearing at least 5 business days before the hearing. This includes any recommendations based on the evaluations that the offering party intends to use at the hearing. The Hearing Officer may keep the parent or the school district from presenting any evidence at the hearing without the permission of the other party if they fail to meet these timelines. The Hearing Officer may order an independent education evaluation, which will be paid for by the school district.

At the hearing, the parent and the school have the right to:

- Be advised and accompanied by an attorney and other individuals with special knowledge or training about students with disabilities;
- Offer evidence, question and cross-examine any witness, and compel the attendance of witnesses;
- Not allow any evidence to be given at the hearing that had not been given to that party at least 5 business days before the hearing, unless that evidence is the results of an educational evaluation;
- Not allow the results of an independent educational evaluation to be introduced at the hearing that had not been disclosed to that party at least 5 business days before the hearing;
- Be provided a written, or at the choice of the parent, electronic word-for-word (verbatim) record of the hearing, at no cost to the parents; and
- Be provided a written, or at the choice of the parent, electronic copy of the decisions, including findings of fact, at no cost to the parents.

Once the Hearing Officer reaches a final decision, based on whether the child received a FAPE, he/she will mail a copy of the decision to each of the parties. The Hearing Officer may allow extra time beyond the 45 days when asked by the parent or the school district as long as:

- The delay would not jeopardize the child’s educational progress or well-being;
- The party requesting the delay would not otherwise have enough time to prepare and present their position in the hearing; and
- The need for the delay outweighs any consequences likely to be suffered because of the delay.

The decision of the Hearing Officer is final unless the parent or the school district appeals the decision to the state superior court or the federal district court.

If either party appeals the Hearing Officer's decision to a court, the decision of the Hearing Officer is the child's "stay put" placement during the court appeal process. If the hearing was about the child's initial admission to public school, the child, with the consent of the parents, must be placed in the public school until the completion of all the proceedings. If Hearing Officer's decision agrees with the child's parents that a change of placement is appropriate, that placement would be considered the "stay put" placement.

Expedited Hearings: Due Process Hearings within 45 Days with No Extensions

The NH Department of Education will schedule an expedited hearing within 20 school days of receiving the request for such a hearing. A resolution session must be held within 7 days and the decision provided within 10 school days. An expedited hearing will be scheduled when requested if:

- The school district thinks that keeping the child in the current school program is likely to result in injury to the child or others and therefore the school district wants to place the child in an interim alternative educational setting for 45 days or less, and the parent does not agree;
- The parent believes that the child has been kept out of school for more than 10 days in a row or 10 days in a school year without the school following the proper procedures;
- The parent does not agree with the school placing the child in an interim alternative educational setting; or
- The parent does not agree with the manifestation determination decision.

When a child is placed in a 45-day Interim Alternative Educational Setting (IAES), the child remains in the placement until (1) the Hearing Officer decides differently, (2) the 45 days end, or (3) the parties agree to a different placement. In the case of a dispute, the interim alternative educational setting becomes the child's "stay put" placement for the remainder of the 45 IAES days. When the 45 IAES days are finished, the child returns to the school program in which the child was placed before the 45-day interim placement, unless the Hearing Officer orders another 45-day Interim Alternative Educational Setting.

Appealing the Decision of the Hearing Officer

If either the parent or the school district disagrees with the decision of the Hearing Officer, they may file an appeal in state superior court or federal court within 120 days from the time they receive the final decision of the Hearing Officer.

The court *handling* the appeal will receive the records from the *due process* hearing, and will hear additional evidence if asked by either the parent or the school district. The court will make a decision on the appeal and grant the relief that the court determines to be appropriate, if any, based upon a preponderance (51% or more) of the evidence.

Nothing in this part restricts or limits the rights, procedures, and remedies available under the Constitution, the Americans with Disabilities Act of 1990, title V of the Rehabilitation Act of 1973, or other Federal laws protecting the rights of children with disabilities, except that before the filing of a civil action under these laws seeking relief that is also available under section 615, the procedures under 300.507 and 300.510 (3/99) must be exhausted to the same extent as would be required had the action been brought under section 615 of the Act.

Reimbursement for Attorneys' Fees

Attorneys' Fees Reimbursement to Parents: A parent who is the prevailing party (obtains a favorable ruling, or in some cases, a ruling that is primarily favorable) at either the due process hearing or a court appeal of the Hearing Officer's decision, may be entitled to reimbursement of reasonable attorneys' fees and court costs. Funds from IDEA-Part B may not be used to pay attorney's fees or court costs. A parent must file the request for reimbursement of attorneys' fees in state or federal court within 120 days of receiving the Hearing Officer's decision.

The amount of attorneys' fees that can be awarded are based on rates common in New Hampshire, taking into consideration the experience and skill of the attorney.

Parents' attorneys' fees will not be reimbursed for attendance at an IEP meeting unless the meeting is held by order of the Hearing Officer or a court order. Attorneys' fees will not be reimbursed for attendance at a resolution session or mediation.

A parent may not be entitled for reimbursement of parent's attorneys' fees and related costs that are earned after a school district has made a written offer to settle the matter. Parent's attorneys' fees are eligible for consideration of reimbursement when:

1. the written offer is made by the school district more than 10 days before the start of the hearing,
2. the written offer is not accepted by the parent within 10 days, and
3. the relief finally given to the parent is not more than the earlier offer to settle the matter.

The court may order reimbursement for parents' attorneys' fees if it finds that the parent succeeded at the hearing or in the court appeal and had good reason for not accepting the school district's offer to settle the matter.

The court may reduce the amount of parent's attorneys' fees to be reimbursed if it finds that:

- The parent, during the hearing or court appeal, unreasonably delayed the final resolution of the dispute;
- The amount of attorneys' fees is greater than the hourly rate for attorneys in the area who provide the same type of services and who have similar skills, reputation, and training;
- The time spent and legal services were excessive considering the type of hearing or court appeal, and the issues addressed; or
- The parent's attorney failed to give the required written notice to the school when filing for the due process hearing.

The parent's attorneys' fees will not be reduced if the court finds that the school district took more time than necessary to reach a final resolution of the hearing or court appeal or procedural safeguards were violated.

Reasonable attorneys' fees may be awarded to a prevailing State Educational Agency or school district::

- Against the parent's attorney if the due process complaint filed or subsequent cause of action is frivolous, unreasonable, or without foundation; or
- Against the attorney of a parent who continued to litigate after it clearly became frivolous, unreasonable or without foundation; or
- Against the parent's attorney *or the parent*, if the parent's due process complaint or subsequent cause of action was presented for any improper purpose, such as to harass, or to cause unnecessary delay or to needlessly increase the cost of litigation.

Statute of Limitations

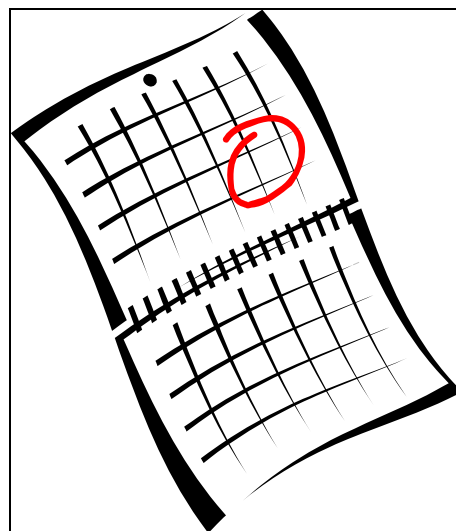
State law imposes certain time limits, called "statutes of limitations," on actions involving due process hearings, appeals to state and federal courts, and reimbursement for attorneys' fees and reimbursement for tuition parents paid for unilateral placements.

If the parent or school district fails to comply with the time limits, they may lose their right to a due process hearing or an appeal of a Hearing Officer's decision to a court.

The following is a brief *list* of the *important* time *limits*:

- A parent must request a due process hearing within 2 years of the date on which the alleged violation was discovered or reasonably should have been discovered.
- A parent must request a due process hearing within 90 days of a unilateral placement in order to recover the costs of the unilateral placement.
- Any appeal of a Hearing Officer's final decision must be filed in either state superior court or federal court within 120 days from the receipt of the final *Hearing Officer* decision. All such decisions must be sent *by the State Department of Education to both parties* certified mail, return receipt requested.
- A parent must file any action to recover their attorneys' fees and reasonable court costs in state superior court or federal court within 120 days from the receipt of the final *Hearing Officer* decision. All such decisions shall be sent *by the State Department of Education to both parties* certified mail, return receipt requested.

If a parent has not been given proper written notice of special education rights, including the notice of timelines, the timelines will not start until proper notice of these rights are given to the parents by the school district.



Free or Low Cost Assistance / Resources

There are free and low cost services available to help parents understand and access their rights under special education and the special education process. Listed below are some agencies that can provide this assistance.

Director of Special Education for the school district (*School districts must maintain a listing of free or low cost legal resources, which may include local resources*)

Special Education Bureau
New Hampshire Department of Education
101 Pleasant Street
Concord, NH 03301-3860
Telephone: (603) 271-3741
Fax: (603) 271-1099
E-mail: braymond@ed.state.nh.us

Disabilities Right Center, Inc.
P.O. Box 3660
Concord, NH
Telephone: (603) 228-0432 or 1-800-834-1721
Fax: (603) 225-2077
E-mail: advocacy@drcnh.org

New Hampshire Bar Association/Pro Bono
112 Pleasant Street
Concord, NH 03301
Telephone: (603) 224-6942 or 1-800-852-3799
(Intake is through the Disabilities Rights Center)

Parent Information Center (PIC)
P.O. Box 2405
Concord, NH 03302-2405
(603) 224-7005 or 1-800-232-0986
Fax: (603) 224-4365
Web Site (connects to staff e-mail): www.parentinformationcenter.org

Note: Additional information that may not be of interest to every parent may be found in the Appendices. Appendices may be obtained by contacting your local school district, by calling the NH Department of Education at (603) 271-3741 or on the NH Department of Education's website: <http://www.ed.state.nh.us/SpecialEd>

Topics covered in the Appendices include:

- A - Definition and type of "days" used in the NH Rules*
- B - Acronyms*
- C - Incarcerated students with disabilities*
- D - Educational Surrogate Parents*
- E - Rights of home-schooled students with disabilities*
- F - Special Education Team members required for specific Team functions*

Appendix A: Definition of Days and Type of "Days"

Types of Days Used in the New Hampshire Rules For The Education of Children With Disabilities

"Day" is defined in Section 300.9 of IDEA as:

- (a) **Day** means calendar day unless otherwise indicated as business day or school day;
- (b) **Business day** means Monday through Friday, except for Federal and State holidays (unless included in the designation of business day, as in Section 300.403(d)(1)(ii); and holidays are specifically
- (c)(1) **School day** means any day, including a partial day that children are in attendance at school for instructional purposes

School Days	
Days	
10	No services for first 10 days of disciplinary removal (If no services provided for non-disabled students)
10	Consecutive days of removal for discipline is considered to be a change of placement
10	Days from decision to change placement within 10 school days the district must conduct a manifestation determination review
10	First day of expedited hearing takes place within 10 days of request
10+	Cumulative days of removal for discipline before specific LEA obligations begin
11	Services must be provided beginning on the 11 th day of removal for disciplinary reasons, in a school year, for a child with disabilities
30	Decision mailed to parties in expedited hearing
45	Duration of change of placement to IAES by LEA for drugs, weapons and serious bodily injury
45	Duration of change of placement to IAES by Hearing Officer for safety reasons
45	Days decision reached and mailed to parties in a Due Process (DP) hearing (Absent an extension granted)
No set # of days	During suspension/expulsion beyond 10 days – FAPE provided

Business Days	
Days	
2	Expedited hearing - Limit introduction of new evidence in DP hearing that was not disclosed to other party
2	Exchange of evidence prior to the first day in a expedited DP hearing
5	Exchange of evidence prior to the first day in a regular DP hearing
5	Limit introduction of new evidence in DP Hearing case that was not disclosed to other party
5	Marked – up proposed statement of facts prior to 1 st day of a DP hearing
10	Not later than 10 consecutive days after a disciplinary removal from placement IEP Team meets

10	Prior notice of removal of child to private school at public expense (includes holidays that occur on business day)
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Calendar Days	
Days	
5	Written notice of meeting given by LEA to parents for a Manifestation Determination Meeting
5	Notice of who is coming to a mediation
5	Prior to neutral conference, parties submit summary of significant aspect of their case
5	Of notification that the party is contesting the sufficiency of the complaint notice, the Hearing Officer must rule on the sufficiency of the contested complaint notice
7	Resolution session held from the date an expedited due process hearing is requested
10	Written notice of IEP Team meeting given by LEA to parents
10	For a student receiving home instruction, 10 days prior to the 46th day – LEA submits to the Director of Special Education documentation to support continuation of home instruction
10	Request Commissioner reconsideration complaint findings within 10 days
10	Prior to mediation, parties submit summary of significant aspects of their case
10	Party that receives a due process complaint must within 10 days specifically respond to the issues raised in the complaint
10	Written Prior Notice is provided to parents on issues raised in the due process complaint
12	Proposed statement of facts exchanged by parties prior to Due Process Hearing
14	Notification by parent of his or her availability to the superintendent after receipt of certified letter investigating the need for the appointment of a surrogate parent
14	Days parent has to respond to a request for consent from date WPN mailed by LEA
14	Days parent has to refuse consent from date WPN mailed by LEA
14	Days after which LEA may implement proposed change if parent fails to respond to request for consent
15	Resolution session convened from notice from party filing for due process hearing
15	From receipt of complaint, party notifies Hearing Officer in writing if they believe the complaint does not meet notice requirements
15	Disposition of referral meeting held after receipt of referral
20	Commissioner completes reconsideration of complaint
20	LEA responsible for entering information into SPEDIS within 20 days of action required to be entered
30	IEP meeting held after determination of disability/eligibility
30	Determination by LEA of need for surrogate within 30 days of referral
30	Termination of appointment of surrogate parent after surrogate parent gives notice of intent to resign
30	Written notice by Department of Education to LEA and surrogate parent ending surrogate parent relationship
30	Mediation conducted within 30 days of request
30	Mediator reports results of mediation to the State Board
30	Full implementation of Due Process hearing decision within 30 days
30	Completion of the resolution session from date of due process complaint notice
45	Testing / Evaluation completed
45	Duration of temporary home instruction programs
45	Parent review of education record no more than 45 days after request received
45+	More than 45 days for home instruction programs
55	If parent objects to surrogate appointment, decision is made within 55 days
60	Complaint resolution time limit
90	Complaint resolution if reconsideration requested
90	Written report to Commissioner describing implementation of Hearing Officer decision
120	Appeal of Due Process Hearing made within 120 days

Brune – 7/05

Appendix B: Acronyms

The following is a list of common acronyms used in relation to the special education process and special education laws/rights. Not all of the acronyms listed are included in this booklet. This is not meant to be a complete list, but rather a tool to assist you in better understanding special education materials.

Acronym

AA	Area Agency (for Developmental Services)
ABA	Applied Behavior Analysis
ADA	Americans with Disabilities Act
ADD	Attention Deficit Disorder
ADHD	Attention Deficit Hyperactivity Disorder
ADL	Activities of Daily Living
AE	Age Equivalent
AIDS	Acquired Immune Deficiency Syndrome
APE	Adapted Physical Education
APR	Annual Performance Report (for the State)
ARC	Association for Retarded Citizens
ASL	American Sign Language
AT	Assistive Technology
ATS	Assistive Technology Services
AYP	Adequate Yearly Progress
BSMS	Bureau of Special Medical Services

CA	Chronological Age
CAPD	Central Auditory Processing Disorder
CASA	Court Appointed Special Advocate
CEC	Council for Exceptional Children
CF	Cystic Fibrosis
CFR	Code of Federal Regulations
CHADD	Children with Attention Deficit Disorders
CHINS	Children in Need of Services
CMHC	Community Mental Health Centers
CP	Cerebral Palsy
DAS	Differential Abilities Scales
DD	Developmental Delay (in NH, ages birth through 9)
DD	Developmental Disabilities (all ages)
DDC	Developmental Disabilities Council
DHHS	Department of Health and Human Services
DOC	Department of Corrections
DOE	Department of Education
DRC	Disabilities Rights Center
DCYF	Division of Children, Youth and Families
DDS	Division of Developmental Services
DS	Down syndrome
DP	Due Process
EDGAR	Education Department General Administration Regulations
ED	Emotional Disturbance
EH	Emotional Handicap
EI	Early Intervention
EIN	Early Intervention Network
ELL	English Language Learner
ESL	English as a Second Language
ESY	Extended School Year
EYP	Extended Year Program
FAPE	Free and Appropriate Public Education
FAS	Fetal Alcohol Syndrome
FBA	Functional Behavior Analysis or Functional Behavioral Assessment
FCESS	Family Centered Early Supports and Services
FERPA	Family Educational Rights and Privacy Act
FRC	Family Resource Connection
GAL	Guardian ad Litem
GSILF	Granite State Independent Living Foundation
HI	Hearing Impairment
IDEA	Individuals with Disabilities Education Act
IDEIA 2004	Individuals with Disabilities Education Improvement Act of 2004 (may be referred to as IDEA)
IEE	Independent Educational Evaluation
IEP	Individualized Education Plan
IFSP	Individualized Family Support Plan
IOD	Institute on Disability
ISP	Individualized Service Plan
ITP	Individualized Transition Plan
IQ	Intelligence Quotient
IWRP	Individualized Written Rehabilitation Plan
JPPO	Juvenile Probation and Parole Officer
LDA	Learning Disabilities Association of America
LD	Learning Disability
LEA	Local Education Agency
LEP	Limited English Proficiency
LRE	Least Restrictive Environment
MA	Mental Age
MD	Muscular Dystrophy
MICE	Multi-sensory Intervention through Consultation and Education
MR	Mental Retardation
NAMI	National Alliance for the Mentally Ill
NCLB	No Child Left Behind
NERRC	North Eastern Regional Resource Center
NF	Neuro Fibrosis
NVLD/NLD	Nonverbal Learning Disability

NORD	National Organization for Rare Disorders
OCD	Obsessive Compulsive Disorder
OCR	Office of Civil Rights
ODD	Oppositional Defiant Disorder
OHI	Other Health Impairment
OSEP	Office of Special Education Programs
OPG	Office of Public Guardian
OT	Occupational Therapy
PASS	Plan for Achieving Self Support (Sufficiency)
PBIS	Positive Behavioral Interventions and Supports
PDD	Pervasive Developmental Disorder
PDD/NOS	Pervasive Developmental Disorder, not Otherwise Specified
PIC	Parent Information Center
PTI	Parent Training and Information Center
PL	Public Law
PT	Physical Therapy
PTAN	Pre School Technical Assistance Network
PTSD	Post-Traumatic Stress Disorder
RAD	Reactive Attachment Disorder
REI	Regular Education Initiative
RSA	Revised Statutes Annotated
SEA	State Education Agency
SAC	State Advisory Committee
SAIF	Specialist in the Assessment of Intellectual Functioning
SAU	School Administrative Unit
SED	Seriously Emotionally Disturbed (no longer in common use)
SI	Sensory Integration
SIS	Shaken Infant Syndrome
SLD	Specific Learning Disability
SLP	Speech and Language Pathologist
SLS	Speech and Language Specialist
SPP	Surrogate Parent Program
SPEDIS	Special Education Information System
SS	Scaled Score
SS	Standard Score
SSI	Supplemental Security Income
SSDI	Social Security Disability Income
TANF	Temporary Assistance to Needy Families
TBI	Traumatic Brain Injury
TTD/TTY	Tele-typewriting device
VA	Volunteer Advocate (Trained & certified by PIC)
VR	Vocational Rehabilitation
WAIS	Wechsler Adult Intelligence Scale
WISC	Wechsler Intelligence Scale for Children
WPN	Written Prior Notice
WPPSI	Wechsler Pre School and Primary Scale of Intelligence
YDC	Youth Development Center
YSDU	Youth Services Detention Unit

Appendix C: Incarcerated Students with Disabilities

Incarcerated Adult Students with Disabilities

The following rights apply to eligible students who are incarcerated (and adjudicated) as adults in a state or county prison. An adult student with disabilities who is incarcerated in an adult prison has a right to special education services if he/she:

- is between the ages of 17 and 21 (or is less than age 17, but adjudicated as an adult) and has not yet earned a regular high school diploma, and
- was identified as eligible for special education and had an IEP prior to incarceration.

A student (ages 18-21) who is incarcerated in an adult prison is **not** entitled to special education programs and services if:

- the student was not determined eligible for special education prior to incarceration or
- did not have an IEP in the educational placement prior to his/her incarceration in an adult correctional facility.

In prison “Child Find” becomes “service eligibility verification” based on prior records.

The special education program for an incarcerated student with disabilities is subject to the following limitations:

- incarcerated students with disabilities are eligible for transition services only if the student will leave prison prior to his/her 21st birthday, and
- prison officials have a right to change a student’s IEP or placement **if** there is a legitimate and compelling penological reason to do so.

Incarcerated Children (under age 18) with Disabilities

When a child (not an adult student) with a disability is incarcerated at a county correctional facility, the liable school district must:

- evaluate the child,
- determine eligibility for special education services and
- develop an IEP for those students who are found eligible.

Appendix D: Educational Surrogate Parents

Sometimes there is not a parent to represent a child’s interests in the special education process. In those instances, an Educational Surrogate Parent may be appointed to “act as a child’s advocate in place of the child’s natural parents or guardian in the educational decision making process”.

Educational Surrogate Parents must be appointed in accordance with the NH Rules for the Education of Children with Disabilities. There is a specific process for the appointment of Educational Surrogate Parents. Educational Surrogate Parents are volunteers who are trained and appointed by the New Hampshire Department of Education or their designee.

The situations that would lead to the appointment of a Surrogate Parent include:

1. When the child’s parent is not known or cannot be located after a reasonable effort;
2. When the child is under the legal guardianship of the State (Division of Children, Youth and Families or DCYF); or
3. When a court has issued a written order for a Surrogate Parent.

Request for a Surrogate Parent:

The Commissioner of Education or his/her designee generally appoints Surrogate Parents. The request for an appointment of a Surrogate Parent can be made by:

- Any employee of a local school district;
- The State Department of Education;
- A residential school or hospital
- Any physician, judicial officer, or any other person who believes that one of the three conditions above applies to this child’s situation.

For a child who is a ward of the State, a judge overseeing the child’s care may appoint a Surrogate Parent, provided the Surrogate Parent meets certain requirements.

The LEA shall appoint a Surrogate Parent for an unaccompanied homeless youth (as defined in the McKinney-Vento Homeless Assistance Act).

Once there is a determination that a child needs a Surrogate Parent, the State is to make reasonable efforts to ensure the assignment of a Surrogate Parent within 30 days.

Children Placed in Homes for Children, Health Care Facilities or State Institutions:

For children under the care of DCYF or DYDS (Department of Youth Development Services), the Department of Education must appoint a Surrogate Parent within 45 days of the request for appointment. IF the parent of the child objects, the decision to appoint a surrogate parent must be made within 55 days from the date on which the Superintendent received the referral. It is the responsibility of the local school district (the “LEA”) to provide all information necessary to make the determination as to whether or not a Surrogate Parent is necessary.



Persons who are interested in serving as a volunteer Educational Surrogate Parent, or learning more about the program, may contact the Parent Information

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Center (see page 42 for contact information).

Appendix E: Rights of Home-Schooled Students with Disabilities

Parents of children with disabilities have the same right to choose to home school their child, as do parents of children without disabilities. A home-schooled child, regardless of special education eligibility, has some rights under NH law (RSA 193 and 193-A) to participate in the programs and services available to the public school students in the district. Home-schooled students with disabilities do not, however, retain the right to receive the free and appropriate public education provided by the school district to public school students with disabilities.

RSA 193:1-c and RSA 193-A:9 provide additional information about the rights of parents who choose to home school their children.

RSA 193:1-c Access to Public School Programs by Nonpublic or Home Educated Pupils.

I. Nonpublic or home educated pupils shall have access to curricular courses and cocurricular programs offered by the school district in which the pupil resides. The local school board may adopt a policy regulating participation in curricular courses and cocurricular programs, provided that such policy shall not be more restrictive for non-public or home educated pupils than the policy governing the school district's resident pupils. In this section, "cocurricular" shall include those activities which are designed to supplement and enrich regular academic programs of study, provide opportunities for social development, and encourage participation in clubs, athletics, performing groups, and service to school and community. For purposes of allowing access as described in this section, a "home educated pupil" shall not include any pupil who has graduated from a high school level program of home education, or its equivalent, or has attained the age of 21.

II. Nothing in this section shall be construed to require a parent to establish a home education program which exceeds the requirements of RSA 193:1.

Source. 2002, 202:1, effective July 14, 2002.

RSA 193-A:9 Liability Limited.

The resident school district, the board of such district, and any employees 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 parent, or any other person as a 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 and appropriate or adequate public education.

Source. 1990, 279-3, effective July 1, 1991.



Appendix F: Special Education Team Members Required at Specific Function Team Meetings

These 7 roles are the basic IEP Team members listed in "34 CFR 300.344 IEP Team"

[Note: The federal regulations use the term "IEP Team" for most of the Team functions, whether IEP oriented or not. When the phrase "IEP Team" is used, these are the roles that must be present.]

1. The parents of a child with a disability.
2. At least one regular education teacher of such child (if the child is, or may be, participating in the regular education environment)
3. At least one special education teacher, or where appropriate, at least one special education provider of such child.
4. A representative of the local educational agency who:
 - (i) is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities;
 - (ii) is knowledgeable about the general curriculum; and
 - (iii) is knowledgeable about the availability of resources of the public agency
5. An individual who can interpret the instructional implications of evaluation results, who may be a member of the Team described in clauses (2) through (6)
6. At the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate.
[Note: In the NH Rules, "A paraprofessional shall be considered an other individual who has knowledge or special expertise (Ed 1109.03(b))]
7. Whenever appropriate, the child with a disability.

Disposition of Referral meeting	Ed 1107.01 (a) and (c)
"...a group that includes the individuals described in 300.344 and other qualified professionals as appropriate..."	300.533(a)
"...the IEP Team..."	Ed 1107.01(c)

Evaluation Planning meeting	Ed 1107.01 Determination of needed evaluation data
"...a group that includes the individuals described in 300.344 and other qualified professionals as appropriate..."	300.533(a)

Determination of Eligibility meeting	Ed 1107.01 (c)
"...a group of qualified professionals and the parent of the child must determine whether the child is a child with a disability"	300.534
A teacher certified in the area of the suspected disability	Ed 1107.01(c)(1)
An individual knowledgeable about the child as a result of having had personal contact with the child in the school or, if the child is below school age, at another setting	Ed 1107.01(c)(2)
If determining whether a child has a learning disability, must have these additional participants: Ed 1107.06 / 300.540(a) <input type="checkbox"/> the child's regular teacher. If the child does not have a regular teacher, a regular classroom teacher qualified to teach a child of his/her age; and <input type="checkbox"/> at least one person qualified to conduct individual diagnostic examinations of children; or <input type="checkbox"/> for a child of less than school age, an individual qualified by the SEA to teach a child of his or her age; and <input type="checkbox"/> at least one person qualified to conduct individual examinations of children, such as a school psychologist, speech-language pathologist, or remedial reading teacher.	

IEP Development, Review and Revision meeting	Ed 1109.03(a)(b)/300.344
The IEP Team shall be as provided in 34 CFR 300.344	Ed 1109.03
If considering secondary transition services , the district shall also include a representative of any other agency which is likely to be responsible for providing or paying for transition services.	
300.344	
When a vocational education component is being considered, the IEP Team shall include a vocational education representative.	Ed 113.02(a)

Placement Selection meeting	Ed 1115.02 and .03
The placement decision is made by a group of persons, including: the parents, and other persons knowledgeable about - the child, the meaning of the evaluation data, and the placement options	300.552
The IEP Team making placement decisions shall comply with 300.344 and 300.552	Ed 1115.03

Manifestation Determination meeting	Ed 1119.11
"...conducted by relevant members of the IEP Team [300.344] and other qualified personnel in a meeting"	New in IDEIA

New Hampshire Department of Education, Bureau of Special Education

Teague v 8 July, 2005 [d-HndbkII]