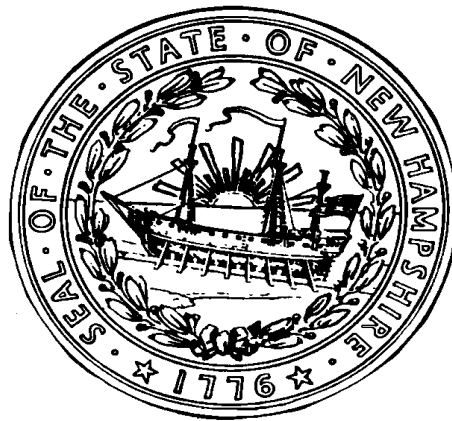


New Hampshire Special Education Procedural Safeguards Handbook



This handbook is based on the *Individuals with Disabilities Education Act of 2004* and the *NH Rules for the Education of Children with Disabilities* effective June 30, 2008

December 2008

*Developed by
The N.H. State Department of Education, Bureau of Special Education
in collaboration with the Parent Information Center, NH Association of Special
Education Administrators, and the NH School Administrators Association*

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Introduction

Children are more likely to succeed when parents and educators work together to develop and achieve educational goals for children with disabilities. Federal and State law provide many opportunities for parents to be involved in the planning and decision making concerning their child's special education needs.

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." Parents are integral members of the IEP Team. The IEP Team is the group that makes most of the major decisions about a child's special education needs and services. Parents are full members of the IEP Team.

The IEP team determines evaluation, eligibility, the Individualized Education Program (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 IEP 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 established to offer opportunities for parents to participate in the special education process and promote 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.

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 in order to fully access a free appropriate education at public expense (FAPE).

The Individuals with Disabilities Education Act (IDEA 2004) requires that school districts provide parents a copy of the procedural safeguards (parental rights) only one time a school year. There are additional times when a copy must be given to you: (1) upon initial referral or parent request for evaluation; (2) upon receipt of the first State complaint or the first due process complaint in a school year; (3) when a decision is made to take a disciplinary action that constitutes a change of placement; and (4) upon parent request.

Please note that while this handbook meets the requirement under the *Individuals with Disabilities Education Act of 2004* (IDEA 2004) 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.

A complete text of the NH Rules for the Education of Children with Disabilities may be found on the NH Department of Education website:

www.ed.state.nh.us/education/doe/organization/instruction/documents/NHRulesBoxesJuly172008.pdf

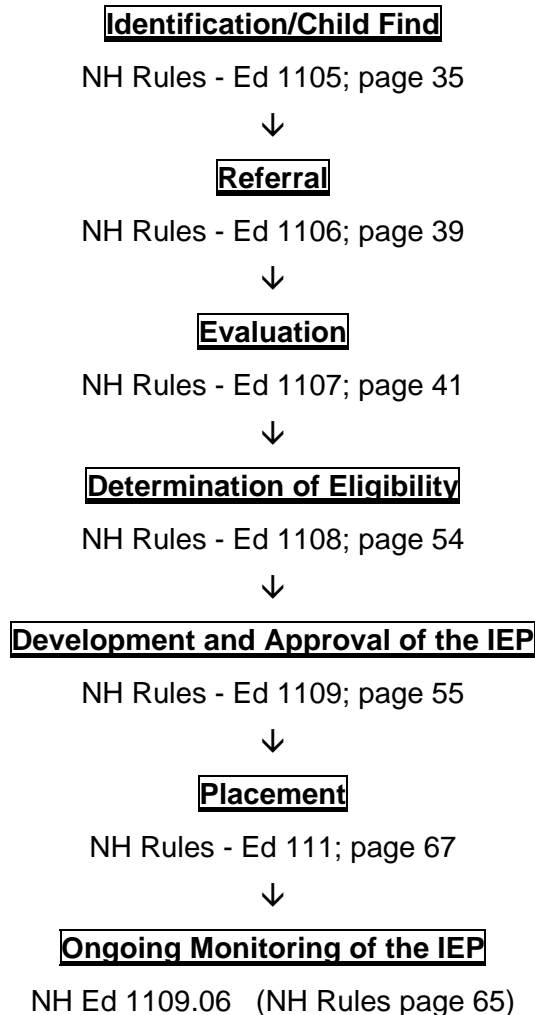
For a free bound copy of the N.H. Rules for the Education of Children with Disabilities (NH Rules) please call the N.H. State Department of Education at 271-3741.

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Overview of the NH Special Education Process

The intent is to give you a concise overview of the special education process as a reference when reading the New Hampshire Procedural Safeguards. There are additional resources in the appendix to help you develop a comprehensive understanding of special education.

The special education process includes specific steps, each with their own requirements. Each step in the special education process includes procedures for you and school districts to work together. The sequence of the special education process is:



Note: Some of these required meetings may be combined.

The special education 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.

Identification/Child Find Anyone may refer a child if they suspect that he/she may have a disability and need special education. Additionally, all school districts using the special education process, shall find, identify, and evaluate all children suspected to be children with disabilities who are 2.5 years of age or older but less than 21 years of age to ensure that eligible children are found, identified, and provided needed services.

Referral and Disposition of Referral When you, a teacher or other person suspects a child may have a disability and need special education, a referral to the school district may be made. If the referral comes from someone other than you, including from the child's teacher, you are immediately notified, in writing, that a referral has been made. A disposition of referral meeting, to which you will be invited, must be held within 15 calendar days of receiving the referral. This meeting (like all IEP Team meetings) must be held at a date, time, and place mutually agreeable to you and the school. The IEP Team may decide that there is no indication that your child has a disability and needs special education or special education and related services and that at this time the school can meet your 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.

The school must give you written notice of the IEP Team's decision. This notice is the "Written Prior Notice" described on page 6 in this booklet. If the IEP Team decides that additional testing is necessary, then the written prior notice will also include a request for parental consent to conduct any individual evaluations needed to determine if your child is a child with a disability.

Evaluation When your child is being considered for special education, your written consent is required before testing may occur. Your school district will arrange testing, at no cost to you, to be conducted by trained and knowledgeable, certified or licensed evaluators. After the school district has received your written consent for the evaluations, testing must be completed within 45 calendar days (unless you and the school district have agreed to a one time extension of not more than 15 days. Once the testing is completed, you will be given a written summary. Upon your written request, the school district must provide access to test results and other relevant educational records 5 days prior to the IEP Team meeting. If you disagree with the evaluation conducted by the school district, you may request the school district provide an independent educational evaluation at no cost to you.

Determination of Eligibility and Disability Category When the evaluations are complete, the IEP Team uses that information to determine whether or not your child is eligible for special education. To be eligible, your child must have a disability and require special education or special education and related services to benefit from education. Your child will then be identified with one or more of specific disability classifications listed in the NH Rules Ed 1102.01(f).

Development of the IEP Within 30 days after your child is found eligible for special education, the IEP Team meets to develop an individualized education program (IEP) for your child. The initial IEP does not become effective until it is agreed upon and signed by you. The IEP Team includes specific required components listed in the NH Rules Ed 1109.01 and 1109.03.

Once your child has an IEP, it is reviewed/revised in an IEP Team meeting at least annually. Your child must have an agreed upon IEP in place at the start of each school year. Written notice of IEP team meetings must be given to you 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 you of your right to invite another person or persons who have special knowledge or expertise about your child to the meeting. 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.

Determination of Educational Placement After the IEP has been developed, the IEP Team meets to determine placement in the least restrictive environment (LRE) in which your child can receive the special education and related services described in his/her IEP. The continuum of educational environments for preschool and school age children with disabilities are listed in NH Rules Ed 1103.

Implementation and Monitoring Parents, educators and others involved with your child monitor progress on an ongoing basis to ensure his/her educational needs are met. If concerns about your child's progress arise, a meeting of the IEP Team may be requested and scheduled without unnecessary delay.

Once your child begins receiving special education, the IEP Team will meet to discuss eligibility at least once every three years to ensure the IEP Team continues to have current information on which to base their decisions.

Parental Consent

New Hampshire Rules for the Education of Children with Disabilities ~ Ed 1120.04

School districts must request parental consent, in writing, for special education and related 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.

Consent means:

- (a) You have been fully informed of all information relevant to the activity for which consent is sought in your native language or other mode of communication;
- (b) You understand and agree, in writing, to the carrying out of the activity for which your consent is sought, and that the consent describes the activity and lists the records (if any) that will be released and to whom; and
- (c) (1) You understand that the granting of consent is voluntary and you may withdraw consent at any time;
(2) Your withdrawal of consent does not negate (undo) an action that has occurred after you gave your consent and before you withdrew it.

You have 14 days from the date of the school district's request to respond in writing. The 14 day time limit shall be extended if you and the school district mutually agree to an extension.

Parental consent must be in writing and it must be "informed" that is, you must understand what is being proposed, what the consequences (pros and cons) are of the action the school is proposing, and why the IEP Team is proposing the changes for which your consent is requested.

School districts must obtain your informed, written consent before:

- Conducting an initial evaluation;
- Initial provision of special education and related services to a child with a disability;
- Annual renewal of the IEP and placement of a child with a disability;
- Determining or changing the disability classification;
- Changing the nature or extent of the special education or special education and related services;
- Conducting a reevaluation;
- Annual access to public insurance or when changes in services paid by public insurance are made; and
- Each time the school district proposes to access private insurance.

Consent is also required for:

- A one time extension to the evaluation timeline of up to 15 days (Ed 1107.01(d)).
- Excusal of the IEP Team members under certain conditions (Ed 1103.01(a)).

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

School districts are not required to obtain your consent before:

- Reviewing existing data as part of your child's evaluation or reevaluation; or
- Administering a test or other evaluation that is given to all children, unless consent is required of parents of all children.

Special circumstance: If the school district does not receive your written consent within 14 days and it can demonstrate that it has taken reasonable measures to obtain your consent, the school district can implement the following:

- Annual renewal of the IEP and placement of a child with a disability;
- Determining or changing the disability classification;
- Changing the nature or extent of the special education or special education and related services;
- Conducting a reevaluation.

“Reasonable measures” include detailed records of telephone calls attempted and the results of those calls, copies of correspondence sent to you (by certified mail, return receipt requested) and any responses received, and/or detailed records of visits made to your home or workplace and the results of those visits.

For children who are wards of the State, the school district 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. If the child is a ward of the State the appointment of a surrogate parent must be explored.

When you are considering consent, it is very important that you ask questions about any aspect of the activity for which you are being asked to consent.

It is important that you **return** the consent form to the **school district within the 14 days or agreed upon timeframe**. The timeframe begins on the date the school district **sent** the consent form to you. Please consider that if the consent form comes to you in the mail, a few days of the 14 days may already have passed by the time you receive the request for your consent. **It is your responsibility to respond.**

There are four ways you may respond to a school's request for your consent. The **outcomes** for each response that you may choose are:

1. If you give consent, the proposed changes will happen.
2. If you refuse consent, the school district **cannot** implement the proposed changes. The school district has several options for trying to obtain your consent:
 - a. The school district may hold another IEP Team meeting to discuss your concerns;
 - b. The school district may ask you to participate in a voluntary Alternative Dispute Resolution process, such as facilitated IEP Team meeting, mediation or a neutral conference in order to reach agreement.
 - c. The school district is required for specific proposals to request a due process hearing. Please see due process section (pages 14 - 18).

The school district may not use its consent override procedures if you refuse consent or fail to respond:

- to a request for consent to provide special education and related services for the first time;
- if you have enrolled your child in a private school at your own expense;
- if you are home schooling (home education) your child in accordance with RSA 193-A.

Note: If you refuse consent for your child to receive special education and related services for the first time the school district is not required to provide those services and is not in violation of the requirement to provide a free appropriate public education (FAPE) to your child and is not required to have an IEP meeting or develop an IEP for your child for those services.

3. If you consent to part of any proposal, the school district will do the agreed-upon actions. For the actions for which you have not given consent; your refusal to consent to one service, benefit, or activity cannot be used to deny you or your child any other service, benefit, or activity to which they are entitled under special education laws/regulations.
4. If you fail to respond within 14 days or within the mutually agreed upon time extension and the school district *can demonstrate that it has taken reasonable measures to obtain your consent, the school district can proceed as follows:*
 - a. Conducting an initial evaluation;
The school may pursue the evaluation by using alternative dispute resolution (pages 13-14 and 18-21), or request a due process hearing.
 - b. Initial provision of special education and related services to a child with a disability;
The school district may not use the alternative dispute resolution or request a due process hearing.
 - c. Annual renewal of the IEP and placement of a child with a disability, including:
 - Determining or changing the disability classification;
 - Changing the nature or extent of the special education or special education and related services; and
 - Conducting a reevaluation.
The school district shall implement its proposal.
 - Annual access to public insurance or when changes in services paid by public insurance are made; and
 - Each time the public agency proposes to access private insurance.
The school district may not pursue further actions.

Written Prior Notice

New Hampshire Rules for the Education of Children with Disabilities ~ Ed 1120.03

“Written Prior Notice” must be given to you in writing after a decision is made to recommend a change, but before actually making the change. The information contained in a Written Prior Notice (WPN) is the important what and why of an IEP Team’s recommendation to make a change. If you have requested a change in your child’s program and the IEP Team’s decision is to refuse to make the change then WPN must be given to you to explain the reasons for the refusal.

Your school district must give you WPN, whenever it:

- proposes to initiate or to change the eligibility/identification, evaluation, or educational placement of your child, or the provision of special education and related services (Free Appropriate Public Education (FAPE)) to your child; or
- refuses to initiate or to change the eligibility/identification, evaluation, or educational placement of your child or the provision of FAPE to your child.

WPN tells exactly what the changes are that the IEP Team is proposing and tells why the IEP Team is proposing this change. You must be notified, in writing, at least 14 calendar days before the IEP Team proposes to make the recommended change.

The Written Prior Notice (WPN) must:

- describe the action that your school district proposes or refuses to take;
- explain why your school district is proposing or refusing to take the action;
- describe each evaluation procedure, assessment, record, or report your school district used in deciding to propose or refuse the action;
- include a statement that you have protections under the procedural safeguards provisions in IDEA 2004;
- tell you how you can obtain a description of the procedural safeguards if the action that your school district is proposing or refusing is not an initial referral for evaluation;
- include resources for you to contact for help in understanding IDEA 2004;
- describe any other choices that your child’s individualized education program (IEP) Team considered and the reasons why those choices were rejected; and
- provide a description of other reasons why your school district proposed or refused the action.

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 ensure 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 understanding of the content.

Independent Educational Evaluations

New Hampshire Rules for the Education of Children with Disabilities ~ Ed 1107.03, 1120.07

As the parent of a child with a disability (or a child who has been evaluated for special education consideration) you have a right to get an independent educational evaluation of your 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.

The school district may provide an independent educational evaluation at public expense if you disagree 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 ensures that the evaluation is otherwise provided at no cost to the parent.) You are entitled to only one independent educational evaluation at public expense each time the school district conducts an evaluation with which you disagree. If you request an independent educational evaluation, the school district may ask you why you object to the school district’s evaluation. However, you are 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 you request an independent educational evaluation at public 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 you request an independent educational evaluation, the school district must inform you about:

- where an independent educational evaluation may be obtained; and
- the applicable school district criteria for an independent educational evaluation, including
 - a. the location of the evaluation; and
 - b. 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.

You always have the right to obtain an independent educational evaluation at your own expense. You also have the right to bring these parent-funded independent evaluations to the IEP Team for use in determining your child’s educational needs. You are not obligated to share parent-funded evaluations with the IEP Team. However, the school 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 IEP Team must consider the results of any independent educational evaluation, if the evaluation meets the school district’s criteria (explained above) in any decisions about the provision of a free appropriate public education for your 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.

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 you.

Electronic Mail

New Hampshire Rules for the Education of Children with Disabilities ~ Ed 1102.02

If your school district offers you the choice of receiving documents by e-mail, you may choose to receive the following by e-mail:

1. Written Prior Notice;
2. Procedural safeguards notice; **and**
3. Notices related to a due process complaint.

Educational Surrogate Parents

New Hampshire Rules for the Education of Children with Disabilities ~ Ed 1115

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 parent in the educational decision-making process.” Additional information about the rights and responsibilities of Educational Surrogate Parents may be found in the NH Rules Ed 1115.

Confidentiality of Information

New Hampshire Rules for the Education of Children with Disabilities ~ Ed 1119.02

School districts have many types of education records about children for whom they are responsible. **Education records** means the type of records covered under the definition of “education records” in 34 CFR Part 99 (the regulations implementing the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. 1232g (FERPA)). They may include report cards, progress reports, attendance and health records, videotapes, discipline reports and electronic copies of documents.

Education records that include “**personally identifiable**” information must be protected.

Personally identifiable means information that has:

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

Notice to Parents The NH State Department of Education or other state agencies may also obtain, 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. (See 34 CFR 300.612 for more information).

Access Rights School districts and other agencies collecting information, maintaining, or using personally identifiable education records must treat personal information as confidential and must provide access for you to inspect and/or review your child’s records. The school district must comply with your request to inspect and review any education records on your child without unnecessary delay and before any meeting regarding an IEP or any impartial due process hearing (including a resolution meeting or a hearing regarding discipline), and in no case more than 45 calendar days after you have made a request. According to Ed 1107.04(d), if your child is being evaluated or reevaluated, the school district must provide you with access to test results and other relevant educational records 5 days prior to the IEP team meeting if you request to inspect and/or review them.

Record of Access School districts must keep a record of who has access to education records collected, maintained, or used under IDEA 2004 except access by you and authorized employees of the school district. The record of access must include the name of the party, the date access was given and the purpose for which the party is authorized to use the records.

Records on More Than One Child If any educational record includes information on more than one child, you have the right to inspect and review only the information relating to your child or to be informed of that specific information.

List of Types of Location of Information The school district must provide you, on request, a list of the types and locations of educational records collected, maintained, or used by the school district.

Your right to inspect and review education records includes:

- your right to receive a response from the school district to your reasonable requests for explanation and interpretation of information in your child's records;
- your right to request that the school district provide copies of your child's records, if circumstances effectively prevent you from inspecting and reviewing the records unless you receive those copies; and
- your right to have a representative inspect and review the records.

The school district may presume that the parent has authority to inspect and review records relating to their child unless the school district has been advised that the parent does not have the authority under applicable State law governing such matters as guardianship, separation, and divorce.

Fees The school district may charge a fee for copies of records that are made for you if the fee does not effectively prevent you from exercising your right to inspect and review those records. The school district may not charge a fee to search for or to retrieve records under IDEA 2004.

Amendment of Records at Parent's Request If you believe that information in the education records regarding your child collected, maintained, or used under Part B of the IDEA 2004 is inaccurate, misleading, or violates the privacy or other rights of your child, you may request the school district that maintains the information to amend the information. The school district must decide whether to change the information in accordance with your request, and inform you of their decision, within a reasonable period of time of receipt of your request.

Opportunity for a Hearing If the school district refuses to change the information in accordance with your request, it must inform you of the refusal and advise you of the right to a hearing for this purpose within a reasonable time.

Hearing Procedures The person conducting the hearing must be someone with no direct interest in the outcome of the hearing. You are 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 school district decides that the information is inaccurate, misleading, or otherwise in violation of the privacy or other rights of your child, it must then amend the information and inform you in writing.

Result of Hearing If, as a result of the hearing, the school district decides that the information is not inaccurate, misleading or otherwise in violation of the privacy or other rights of your child, it must inform you of your right to place, in the records that it maintains on your child, a statement commenting on the information or providing any reasons you disagree with the decision of the school district. That statement must be maintained as part of your child's records as long as the record (or contested portion) is maintained by the school district. If the school district discloses the records (or contested portion) to any party, the explanation must also be disclosed to that party.

Consent for Disclosure of Personally Identifiable Information Unless the information is contained in education records and the disclosure is authorized without parental consent under FERPA, your consent must be obtained before personally identifiable information is disclosed to parties other than officials of participating agencies. Except under the circumstances specified below, your consent is not required before personally identifiable information is released to officials of participating agencies for purposes of meeting a requirement of IDEA 2004.

Your consent, or consent of an eligible child who has reached the age of 18, must be obtained before personally identifiable information is released to officials of participating agencies providing or paying for transition services.

If your child is in, or is going to go to a private school that is not located in the same school district you reside in, your consent must be obtained before any personally identifiable information about your child is released between officials in the school district where the private school is located and officials in the school district where you reside.

Safeguarding Information Your school district must protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages. One official at each school district must assume responsibility for ensuring the confidentiality of any personally identifiable information. All persons collecting or using personally identifiable information must receive training or instruction regarding State policies and procedures regarding confidentiality under IDEA 2004 and FERPA. Each school district must maintain, for public inspection, a current listing of the names and positions of those employees within the agency who may have access to personally identifiable information.

Destruction of Information Your school district must inform you when personally identifiable information collected, maintained, or used, is no longer needed to provide educational services to your child. The information must be destroyed at your request. **Destruction** means physical destruction or removal of personal identifiers from information so that the information is no longer personally identifiable. However, the school 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 regulations for FERPA in 34 CFR 99.5(a), the rights of parents regarding education records are transferred to the student at age 18.

Complaint Procedures

New Hampshire Rules for the Education of Children with Disabilities ~ Ed 1121

While staff of the State Educational Agency generally must resolve a State complaint within a 60 calendar day timeline, unless the timeline is properly extended, an impartial due process hearing officer must hear a due process complaint (if not resolved through a resolution meeting or through mediation) and issue a written decision within 45 calendar days after the end of the resolution period, as described in this document under the heading *Resolution Process*, unless the hearing officer grants a specific extension of the timeline at your request or the school district's request. The State complaint and due process complaint, resolution and hearing procedures are described more fully below.

Difference between Due Process Hearing and Complaint There are separate procedures for complaints and for due process hearings. You, or an organization or individual, may file a written complaint alleging that the school district has violated your child's special education rights. Only you or a school district may file a due process hearing on any matter relating to a proposal or a refusal to initiate or change the identification, evaluation or educational placement of a child with a disability, or the provision of a free appropriate public education (FAPE) to the child.

Filing a Complaint The complaint must include:

1. a statement that a school district has violated a requirement of IDEA 2004;
2. the facts on which the statement is based;
3. the signature and contact information for the person filing the complaint; and
4. if alleging violations with respect to a specific child:
 - a. the name and address of the residence of the child;
 - b. the name of the school the child is attending;
 - c. in the case of a homeless child or youth, available contact information for the child, and the name of the school the child is attending;
 - d. a description of the nature of the problem of the child, including facts relating to the problem; **and**
 - e. a proposed resolution of the problem to the extent known and available to the party at the time the complaint is filed

The complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received.

Complaints are mailed to: Commissioner of Education
 New Hampshire State Department of Education
 101 Pleasant Street
 Concord, New Hampshire 03301

The person who files the complaint must forward a copy of the complaint to the school district at the same time the party files the complaint with the New Hampshire State Department of Education. There are exceptions to this rule. If you would like more information about the exceptions, contact the New Hampshire State 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 N.H. State Department of Education must inform the complainant to that effect. A complaint alleging a school district's failure to implement a due process decision must be resolved by the N.H. State Department of Education.

Complaint Procedures

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 State 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; and
 - 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 you and school district officials and staff to determine the facts. When the investigation is complete the investigator will submit a written report to the N.H. State Department of Education.
5. The NH State Department of Education 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 IDEA 2004. 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 State Department of Education. The timeline may be extended if the Department determines that exceptional circumstances exist that delay the decision.
7. The NH State 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/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 State Department of Education must disseminate information on complaint procedures to you 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 State 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.

Alternative Dispute Resolution

New Hampshire Rules for the Education of Children with Disabilities ~ Ed 1122

Parents and school districts strive to resolve disagreements in the least adversarial manner possible. When you have a concern or disagreement with the school district the attempts to resolve these should start at the lowest administrative level possible. When those attempts are not possible or successful, formal alternative dispute resolution methods such as mediation or neutral conference may be a viable option. School districts may develop procedures that offer you, and schools that choose not to use the mediation process, an opportunity to meet, at a time and location convenient to you with someone who has no personal or professional interest. If those alternatives are not appropriate or successful a due process complaint can be filed by either party leading to a due process hearing.

IEP Facilitator To help teams that may be unable to reach an agreement, the NH State Department of Education offers a trained IEP facilitator to the IEP team. Both school districts and parents have to mutually agree to have an IEP facilitator. IEP Facilitators are a free service provided by the NH State Department of Education.

Neutral Conference A neutral conference is an option that is open to both you 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 State Department of Education. Neutral conferences are a free service provided by the NH State Department of Education. If you would like more information, please call the Office of Legislation and Hearings at (603) 271-2299.

The school district must make mediation available to allow you and the school district to resolve disagreements involving any matter under IDEA 2004 which outlines the special education process including matters arising prior to the filing of a due process complaint. Thus, mediation is available to resolve disputes under IDEA 2004, whether or not you have filed a due process complaint to request a due process hearing.

The procedures must ensure that the mediation process:

- is voluntary on your part and the school district's part;
- is not used to deny or delay your right to a due process hearing, or to deny any other rights you have under IDEA 2004; **and**
- is conducted by a qualified and impartial mediator who is trained in effective mediation techniques.

School District The school district may develop dispute resolution procedures that could be offered to you and your school if the mediation process is not chosen. The school district may offer you an opportunity to meet, at a time and location convenient to you, with someone who has no personal or professional interest in the outcome of a dispute which they help to resolve:

- who is under contract with an appropriate alternative dispute resolution entity, or Parent Information Center or community parent resource center in New Hampshire; **and**
- who would explain the benefits and encourage the use of the mediation process to you.

New Hampshire State Department of Education The NH State Department of Education maintains a list of people who are qualified mediators and know the laws and regulations relating to the provision of special education and related services. The NH State Department of Education must select mediators on a random, rotational, or other impartial basis.

The NH State Department of Education is responsible for the cost of the mediation process, including the costs of meetings. Each meeting in the mediation process must be scheduled in a timely manner and held at a place that is convenient for you and the school district.

If you and the school district resolve a dispute through the mediation process, both parties must enter into a legally binding agreement that sets forth the resolution and that:

- states that all discussions that happened during the mediation process will remain confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding; **and**
- is signed by both you and a representative of the school district who has the authority to bind the school district.

The written, signed mediation agreement is enforceable in any State court of competent jurisdiction (a court that has the authority under State law to hear this type of case) or in a district court of the United States. Discussions that happened during the mediation process must be confidential. They cannot be used as evidence in any future due process hearing or civil proceeding of any Federal court or State court of a State receiving assistance IDEA 2004.

Impartiality of Mediator The mediator:

- may not be an employee of the State Educational Agency or the school district that is involved in the education or care of your child; **and**
- must not have a personal or professional interest which conflicts with the mediator's objectivity.

A person who otherwise qualifies as a mediator is not an employee of a school district or State agency solely because he or she is paid by the agency or school district to serve as a mediator.

Due Process Complaint Procedures

New Hampshire Rules for the Education of Children with Disabilities ~ Ed 1123

General Information regarding Due Process You or the school district may file a due process hearing complaint on any matter relating to a proposal or a refusal to initiate or change the identification, evaluation, or educational placement of your child, or the provision of a free appropriate public education (FAPE) to your child. The time period for the hearing procedures is 45 calendar days not including a 30 day resolution period. A school district must offer a resolution meeting if a parent has requested the due process hearing.

The due process complaint must allege a violation that happened not more than two years before you or the school district knew or should have known about the alleged action that forms the basis of the due process complaint. If you are requesting a due process hearing to recover the cost of a unilateral placement you must file the request within 90 days of the unilateral placement.

The above timeline does not apply to you if you could not file a due process complaint within the timeline because the school district:

- specifically misrepresented that it had resolved the issues identified in the complaint; **or**
- withheld information from you that it was required to provide you under IDEA 2004.

The school district must inform you of any free or low-cost legal and other relevant services available in the area if you request the information, **or** if you or the school district file a due process complaint.

Filing a Due Process Complaint In order to request a hearing, you or the school district (or your attorney or the school district's attorney) must submit a due process complaint to the other party. That complaint must contain all of the content listed below and must be kept confidential.

You or the school district, whichever one filed the complaint, must also provide the NH State Department of Education with a copy of the complaint. A due process hearing may not be held until the due process complaint is filed.

The due process complaint must include:

1. the name of the child;
2. the address of the child's residence;
3. the name of the child's school;
4. if the child is a homeless child or youth, the child's contact information, and the name of the child's school;
5. a description of the nature of the problem of the child relating to the proposed or refused action, including facts relating to the problem; **and**
6. a proposed resolution of the problem to the extent known and available to you or the school district at the time.

Due Process Complaint In order for a due process complaint to go forward it must be considered sufficient. The due process complaint will be considered sufficient (to have met the content requirements above) unless the party receiving the due process complaint (you or the school district) notifies the hearing officer and the other party, in writing, within 15 calendar days of receiving the complaint, that the receiving party believes that the due process complaint does not meet the requirements listed above.

Within 5 calendar days of receiving the notification the receiving party (you or the school district) considers a due process complaint insufficient, the hearing officer must decide if the due process complaint meets the requirements listed above, and notify you and the school district in writing immediately.

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

Changes to the Complaint You or the school district may make changes to the due process complaint only if:

- the other party approves of the changes in writing and is given the chance to resolve the due process hearing complaint through a resolution meeting, described below; **or**
- by no later than five days before the due process hearing begins, the hearing officer grants permission for the changes.

If the complaining party (you or the school district) makes changes to the due process complaint, the timelines for the resolution meeting (within 15 calendar days of receiving the complaint) and the time period for resolution (within 30 calendar days of receiving the complaint) start again on the date the amended complaint is filed.

School District Response to a Due Process Complaint If the school district has not sent a Written Prior Notice (WPN) to you regarding the subject matter contained in your due process complaint, the school district must, within 10 calendar days of receiving the due process complaint, send to you a response that includes:

- an explanation of why the school district proposed or refused to take the action raised in the due process complaint;
- a description of other options that your child's individualized education program (IEP) Team considered and the reasons why those options were rejected;
- a description of each evaluation procedure, assessment, record, or report the school district

- used as the basis for the proposed or refused action; **and**
- a description of the other factors that are relevant to the school district's proposed or refused action.

Providing the information in the items above does not prevent the school district from asserting that your due process complaint was insufficient.

Parent Response to a Due Process Complaint When the school district, and the other party, has filed the due process complaint, you, as the receiving party, must, within 10 calendar days of receiving the complaint, send a response that specifically addresses the issues in the complaint to the school district and the other party.

Separate Request for a Due Process Hearing Nothing in the procedural safeguards section of the Federal regulations under Part B of the IDEA 2004 (34 CFR §§300.500 through 300.536) can be interpreted to prevent you from filing a separate due process complaint on an issue separate from a due process complaint already filed.

Model Forms The NH State Department of Education has developed model forms to help you file a due process complaint and a State complaint. These can be obtained by contacting your child's school, the NH State Department of Education, 101 Pleasant Street Concord, N.H. 03301 or on the Department website: www.ed.state.nh.us/education/laws/documents/UserGuidewithIndex.pdf. You are not required to use these model forms. You can use this form or another appropriate model form, so long as it contains the required information for filing a due process complaint or a State complaint.

Mediation The school district must make mediation available to allow you and the school district to resolve disagreements involving any matter under IDEA 2004, including matters arising prior to the filing of a due process complaint. Thus, mediation is available to resolve disputes under IDEA 2004, whether or not you have filed a due process complaint to request a due process hearing.

Mediation Requirements

- is voluntary on your part and the school district's part;
- is not used to deny or delay your right to a due process hearing, or to deny any other rights you have under IDEA 2004; **and**
- is conducted by a qualified and impartial mediator who is trained in effective mediation techniques.

The N.H. State Department of Education has a list of people who are qualified mediators and are knowledgeable of laws and regulations relating to the provision of special education and related services. Mediators are selected on a random, rotational, or other impartial basis. The cost of mediation is assumed by the N.H. State Department of Education.

Impartiality of Mediator The mediator:

- may not be an employee of the State Educational Agency or the school district that is involved in the education or care of your child; **and**
- must not have a personal or professional interest which conflicts with the mediator's objectivity.

A person who otherwise qualifies as a mediator is not an employee of a school district or State agency solely because he or she is paid by the agency or school district to serve as a mediator.

Each meeting in the mediation process must be scheduled in a timely manner and held at a place that is convenient for you and the school district.

If you and the school district resolve a dispute through the mediation process, both parties must enter into a legally binding agreement that sets forth the resolution and that:

- states that all discussions that happened during the mediation process will remain confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding; **and**
- is signed by both you and a representative of the school district who has the authority to bind the school district.

A written, signed mediation agreement is enforceable in any State court of competent jurisdiction (a court that has the authority under State law to hear this type of case) or in a district court of the United States.

The Child's Placement While the Due Process Complaint and Hearing are Pending Your child must remain in his or her current educational placement during the due process timeline except under the provisions of "interim alternative placement due to a disciplinary removal." If the due process complaint involves an application for initial admission to public school, your child, with your consent, must be placed in the regular public school program until the completion of all such proceedings.

If the due process complaint involves an application for initial services for your child transitioning from Early Supports and Services under Part C of IDEA 2004 or because your child has turned three, the school district is not required to provide the early supports and services that your child has been receiving. If your child is found eligible under IDEA 2004 and you consent for your child to receive special education and related services for the first time, then, pending the outcome of the proceedings, the school district must provide those special education and related services that are not in dispute (those which you and the school district both agree upon).

Resolution Meeting Within 15 calendar days of receiving notice of your due process complaint, and before the due process hearing begins, the school district must convene a resolution meeting with you and the relevant member or members of the individualized education program (IEP) team who have specific knowledge of the facts identified in your due process complaint. The meeting:

- must include a representative of the school district who has decision making authority on behalf of the school district; **and**
- may not include an attorney of the school district unless you are accompanied by an attorney.

The purpose of the meeting is for you to discuss your due process complaint, and the facts that form the basis of the complaint, so that the school district has the opportunity to resolve the dispute. The resolution meeting is not necessary if:

- you and the school district agree in writing to waive the meeting; **or**
- you and the school district agree to use the mediation process.

Resolution Period If the school district has not resolved the due process complaint to your satisfaction within 30 calendar days of the receipt of the due process hearing complaint (during the time period for the resolution process), the due process hearing may occur.

The 45 calendar day timeline for issuing a final decision begins at the expiration of the 30 calendar day resolution period, with certain exceptions for adjustments made to the 30 calendar day resolution period, as described below. Except where you and the school district have both agreed to waive the resolution process or to use mediation, your failure to participate in the resolution meeting will delay the timelines for the resolution process and due process hearing until you agree to participate in a meeting.

If after making reasonable efforts and documenting such efforts, the school district is not able to obtain your participation in the resolution meeting, the school district may, at the end of the 30 calendar day resolution period, request that a hearing officer dismiss your due process complaint.

Documentation of such efforts must include a record of the school district's attempts to arrange a mutually agreed upon time and place, such as:

- detailed records of telephone calls made or attempted and the results of those calls;
- copies of correspondence sent to you and any responses received; and
- detailed records of visits made to your home or place of employment and the results of those visits.

If the school district fails to hold the resolution meeting within 15 calendar days of receiving notice of your due process complaint **or** fails to participate in the resolution meeting, you may ask a hearing officer to order that the 45 calendar day due process hearing timeline begin.

Adjustments to the 30 Calendar Day Resolution Period If you and the school district agree, in writing, to waive the resolution meeting, then the 45 calendar day timeline for the due process hearing starts the next day.

After the start of mediation or the resolution meeting and before the end of the 30 calendar day resolution period, if you and the school district agree, in writing, that no agreement is possible, then the 45 calendar day timeline for the due process hearing starts the next day.

If you and the school district agree to use the mediation process, at the end of the 30 calendar day resolution period, both parties can agree, in writing, to continue the mediation until an agreement is reached. However, if either you or the school district withdraws from the mediation process, then the 45 calendar day timeline for the due process hearing starts the next day.

Written Settlement Agreement If a resolution to the dispute is reached at the resolution meeting, you and the school district must enter into a legally binding agreement that is:

- signed by you and a representative of the school district who has the authority to bind the school district; **and**
- enforceable in any State court of competent jurisdiction (a State court that has authority to hear this type of case) or in a district court of the United States or by the State Educational Agency, if your State has another mechanism or procedures that permit parties to seek enforcement of resolution agreements.

Agreement Review Period If you and the school district enter into an agreement as a result of a resolution meeting, either party (you or the school district) may void the agreement within 3 business days of the time that both you and the school district signed the agreement

Impartial Due Process Hearing

New Hampshire Rules for the Education of Children with Disabilities ~ Ed 1123

In New Hampshire, the NH State Department is responsible for convening due process hearings and an appeal from a due process hearing decision is directly to a court.

The NH State Department of Education will schedule dates for both a pre-hearing conference and a hearing. The Hearing Officer, for the purpose of clarifying issues to be addressed at the hearing, conducts the pre-hearing conference. The pre-hearing conference is also an opportunity to discuss offers of settlement.

The due process hearing is held no later than 14 days after the conclusion of the prehearing conference. Except for good cause shown, an administrative due process hearing shall be limited to 2 days.

Hearing Rights Any party to a due process hearing (including a hearing relating to disciplinary procedures) has the right to:

- be accompanied and advised by a lawyer and/or persons with special knowledge or training regarding the problems of children with disabilities;
- present evidence and confront, cross-examine, and require the attendance of witnesses;
- prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five business days before the hearing;
- obtain a written, or, at your option, electronic, word-for-word record of the hearing; **and**
- obtain written, or, at your option, electronic findings of fact and decisions.

Additional Parental Rights at Hearings You must be given the right to:

- have your child present;
- open the hearing to the public; **and**
- have the record of the hearing, the findings of fact, and decisions provided to you at no cost.

Additional disclosure of information At least five business days prior to a due process hearing, you and the school district must disclose to each other all documentary evidence, list of witnesses, and evaluations, including independent evaluations, completed by that date and recommendations based on those evaluations that you or the school district intend to use at the hearing.

A hearing officer may prevent any party that fails to comply with this requirement from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.

Subject Matter of Due Process Hearing The party (you or the school district) that requests the due process hearing may not raise issues at the due process hearing that were not addressed in the due process complaint, unless the other party agrees.

Impartial Hearing Officer At a minimum, a hearing officer:

- must not be an employee of the State Educational Agency or the school district that is involved in the education or care of the child. However, a person is not an employee of the agency solely because he/she is paid by the agency to serve as a hearing officer;
- must not have a personal or professional interest that conflicts with the hearing officer's objectivity in the hearing;
- must be knowledgeable and understand the provisions of the IDEA 2004, and Federal and State regulations pertaining to the IDEA 2004, and legal interpretations of the IDEA 2004 by Federal and State courts; **and**
- must have the knowledge and ability to conduct hearings, and to make and write decisions, consistent with appropriate, standard legal practice.

Hearing Decisions A hearing officer's decision on whether your child received a free appropriate public education (FAPE) must be based on substantive grounds. In matters alleging a procedural violation, a hearing officer may find that your child did not receive FAPE only if the procedural inadequacies:

- interfered with your child's right to a free appropriate public education (FAPE);
- significantly interfered with your opportunity to participate in the decision-making process regarding the provision of a free appropriate public education (FAPE) to your child; **or**
- caused a deprivation of an educational benefit.

If either you or the school district disagrees with the decision of the Hearing Officer, the parties may file an appeal in N.H. Superior Court or federal court within 120 days from the time they receive the final decision.

Construction Clause None of the provisions described above can be interpreted to prevent a hearing officer from ordering a school district to comply with the requirements in the procedural safeguards section of the Federal regulations under IDEA 2004 (34 CFR §§300.500 through 300.536).

Findings and Decision to Advisory Panel and General Public The NH State Department of Education, after deleting any personally identifiable information, must:

- provide the findings and decisions in the due process hearing or appeal to the State special education advisory panel; **and**
- make those findings and decisions available to the public.

Expedited Hearings: Due Process Hearings within 45 Days with No Extensions The NH State 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:

1. 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;
2. 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;
 - a) the parent does not agree with the school placing the child in an interim alternative educational setting; or
 - b) 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.

Finality of Decision, Appeal, Impartial Review 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.

Timelines and Convenience of Hearings and Reviews NH State Department of Education must ensure that not later than 45 calendar days after the expiration of the 30 calendar day period for resolution meetings **or**, as described under the sub-heading ***Adjustments to the 30 calendar day resolution period***, not later than 45 calendar days after the expiration of the adjusted time period:

- a final decision is reached in the hearing; **and**
- a copy of the decision is mailed to each of the parties.

A hearing officer may grant specific extensions of time beyond the 45 calendar day time period described above at the request of either party.

Each hearing must be conducted at a time and place that is reasonably convenient to you and your child.

Civil Actions, Including the Time Period in Which to File Any party (you or the school district) who does not agree with the findings and decision in the due process hearing (including a hearing relating to disciplinary procedures) has the right to bring a civil action with respect to the matter that was the subject of the due process hearing. An 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 N.H. State Department of Education to both parties certified mail, return receipt requested.

Reimbursement for Attorneys' and Expert Witness Fees Effective January 1, 2009; According to NH RSA 186- C:16(b)(V) An action pursuant to 20 U.S.C. section 1415(i)(3) seeking reimbursement for attorney's fees or seeking reimbursement for expert witness fees shall be commenced within 120 days from receipt of the final decision in accordance with RSA 186-C:16-b, IV. All such decisions shall be sent certified mail, return receipt requested.

1. the court may award reimbursement to a parent of a child with a disability for expert witness fees incurred as part of a due process complaint at which the parent was the prevailing party and when the court determines that a school has not acted in good faith in developing or implementing a child's individualized education program, including appropriate placement.
2. the court may deny or reduce reimbursement of expert witness fees if the hearing officer determines:
 - a) the expert witness was not a necessary component to the parent's complaint;
 - b) the expert witness fee exceeds an amount that is reasonable, given the type and location of the service provided and the skill, reputation, and experience of the expert witness;
 - c) the parent, or the parent's attorney, did not provide notice to the school district of their intent to have the expert witness participate in the due process hearing.

Attorneys' Fees

New Hampshire Rules for the Education of Children with Disabilities ~ Ed 1123.01

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. According to RSA 186 – C:16 (b) (IV) 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 reasonable attorneys' fees that can be awarded are based on rates prevailing in the community in which the action or hearing arose for the kind of quality of services furnished. No bonus or multiplier may be used in calculating the fees awarded.

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:

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

The court may order reimbursement for your 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:

- you or your attorney, 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 community who provide the same type of services and who have similar skills, reputation, and experience;
- 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 did not provide to the LEA the appropriate information in the due process request notice.

However, the court may not reduce fees if the court finds that the State or school district unreasonably delayed the final resolution of the action or proceeding or there was a violation under the procedural safeguards provisions of IDEA 2004.

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.

Procedures When Disciplining Children with Disabilities

New Hampshire Rules for the Education of Children with Disabilities ~ Ed 1124

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, you must receive a copy of the procedural safeguards notice. An IEP Team meeting must then be held, within ten days of the decision, to remove your child for what amounts to a change in placement, and the IEP Team *must* determine *if* the behavior was a "manifestation" of your child's disability. A

manifestation determination is the IEP Team's decision that your child's behavior is or is not related to his/her disability. In order to do this, the IEP Team must look at two possibilities:

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

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

- either conduct a functional behavioral assessment (FBA) unless the school 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 your child is given a suspension that is a change in placement, as soon as the decision is made to take that action, you 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, on school premises, or at a school function;
- knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, 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."

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 IEP Team to:

- remove the student from the current placement;

- consider the appropriateness of the current IEP and propose changes, if appropriate; and
- 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 you 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 you 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:

- must be conducted by a due process hearings officer who meets the criteria set for Hearing Officers by the State Department of Education;
- must be held within 20 school days, and reach a decision within 10 school days;
- may be appealed, as would any other due process hearing decision, as outlined by the NH State 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 school 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 school district believed that the child’s return would pose a threat to the safety of the child or others. In that case, the school 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 school 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 school district has knowledge that the child is a child with a disability because:

- the parent has expressed concern, in writing, to school personnel that their child needs special education and related services;
- the parent of the child has requested an evaluation of their 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 school district's Child Find or referral system.

Evaluation During the Disciplinary Process If you request an evaluation for your child during the disciplinary process, the evaluation must be conducted as soon as possible (expedited), AND your 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 your 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).

Referral to and Action by Law Enforcement and Judicial Authorities IDEA 2004 does not prohibit an agency from reporting a crime committed by a child with a disability to appropriate authorities or prevent the State law enforcement and judicial authorities from exercising their responsibilities to the application of State and Federal law.

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 you 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;
- 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.

Requirements for Unilateral Placement by Parents of Children in Private Schools at Public Expense

New Hampshire Rules for the Education of Children with Disabilities ~ Ed 1112

If the school district made a free appropriate public education (FAPE) available to your child and you choose to place your child in a private school then the school district is not required to pay for the cost of education, including special education and related services. However, the school district where the private school is located must include your child in the population of students whose needs are addressed under the IDEA 2004 provisions regarding children who have been placed by their parents in a private school. These children have no individual entitlement to special education at school district expense. Under IDEA 2004, the responsibility for determining services now falls to the school district in which the private school is located, and not the school district where you and your child 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 2004 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 the 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 2004 requirements, and could enter the public system in the child's school district of residence at any time and would then be entitled to receive full services with an IEP through the school district of residence.

Placements when FAPE IS an Issue If you do not believe that the school district in which you and your child live made FAPE available to your child, you may file for an impartial due process hearing to attempt to obtain school district (the school 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 where they live (even if the placement was a private program chosen by the Team). If a Hearing Officer or court finds that the school 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 school district of residence to reimburse you 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.

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

- at the most recent IEP Team meeting in the school district of residence that you attended prior to removal of your child from the public school placement, you did not inform the IEP Team that you were rejecting the placement proposed by the public agency to provide FAPE to your child, including stating your concerns and your intent to enroll your 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 your child from the public school placement, you did not give written notice of your intent to remove your child;
- prior to your removal of your child from the public school placement, the school district provided written prior notice to you of its intent to evaluate your child, but you did not make your child available for the evaluation; or
- upon a court's finding that your actions were unreasonable.

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

- the school prevented you from providing the notice;
- you had not received notice of these notice requirements; or
- compliance with the notice requirements would likely result in physical harm to the child; and may, in the discretion of the court or a hearing officer, not be reduced or denied for your failure to provide the required notice
- you are 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, you may not seek reimbursement until the school district is given an opportunity to evaluate the child and develop an IEP.

Appendix A: Free or Low Cost Assistance / Resources

There are free and low cost services available to help you 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)

Bureau of Special Education
New Hampshire State Department of Education
101 Pleasant Street
Concord, New Hampshire 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, New Hampshire 03301
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, New Hampshire 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, New Hampshire 03302-2405
(603) 224-7005 or 1-800-232-0986
Fax: (603) 224-4365
Web Site (connects to staff e-mail): www.parentinformationcenter.org
Parent Information Center offers a free booklet called "Steps in the Special Education Process" which provides details about the special education process and the laws.

Note: Additional information may be obtained by contacting your local school district, the N.H. State Department of Education at (603) 271-3741 or on the NH Department of Education's website: <http://www.ed.state.nh.us/SpecialEd>

Appendix B: 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 holidays are specifically included in the designation of business day, as in Section 300.403(d)(1)(ii); and
- (c) (1) **School day** means any day, including a partial day that children are in attendance at school for instructional purposes

CALENDAR DAYS	
DAYS	
15	Disposition of referral meeting held after receipt of referral – Ed 1106.01(d)-(e)
45	Testing / Evaluation completed – Ed 1107.01(c)-(d)
30	Meeting is held to develop an initial IEP within 30 days of determination of eligibility – 34 CFR 300.323(c) (1)-(2)
10	Written notice of IEP Team meeting given by LEA to parents – Ed 1103.02(a)
5	Written notice of meeting given by LEA to parents – Manifestation Determination Meeting – Ed 1103.02(a)
45	Duration of temporary home instruction programs – Ed 1111.05(g)
45+	More than 45 days or home instruction programs – Ed 1111.05(h)
10	Prior to the 46 th day – LEA submits to the Director of Special Education documentation to support continuation of home – instruction – Ed 1111.05(h)
45	Duration of change to placement to IAES by LEA for drugs and weapons – Ed 1124.01
45	Duration of change of placement to IAES by hearing officer for safety reasons – Ed 1124.01
45	Decision mailed to parties within 45 days in expedited hearing – Ed 1123.25
14	Notification by parent of his or her availability to the superintendent after receipt of certified letter investigated the need for the appointment of a surrogate parent – Ed 1115.03(c)
30	Determination by LEA of need for surrogate within 30 days of referral – Ed 1115.03(g)
30	Termination of appointment of surrogate parent after an investigation by the Commissioner of Education – Ed 1115.05(d)
30	Written notice by DoE to LEA and surrogate parent ending surrogate parent relationship – Ed 1115.05(d)
55	If parent objects to surrogate appointment, decision is made within 55 days – Ed 1115.09(b)(2)
45	Parent review of education record no more than 45 days after request received – Ed 1119.02(a)
14	Days parent has to respond to a request for consent from date WPN mailed by LEA – Ed 1120.03(a)
14	Days parent has to refuse consent from date WPN mailed by LEA receipt of WPN from LEA – Ed 1120.04(c)
14	Days after which LEA may implement proposed change if parent fails to respond to request for consent – Ed 1120.06(a)
60	Complaint resolution time limit – Ed 1121.02(e)
90	Complaint resolution if reconsideration requested – Ed 1121.04
10	Request Commissioner reconsideration complaint findings within 10 days – Ed 1121.04(a)
20	Commissioner completes reconsideration of complaint – Ed 1121.04(b)
5	Notice of who is coming to a mediation – RSA 186-C:24 I(b)
30	Mediation conducted within 30 days request – RSA 186-C:24 II(b)
10	Prior to mediation parties submit summary of significant aspects of their case – ED 205.03(h)
30	Mediator reports to the office of legislation and hearings the status of the mediation within 30 days of the initial medication session – ED 205.03(m)
5	Prior to neutral conference mediation parties submit summary of significant aspect of their case – RSA 186:C:23-b II(a)

120	Appeal of Due Process Hearing made within 120 days – RSA 186-C:16-b IV – V
5	Proposed statement of facts exchanged by parties prior to Due Process Hearing – Ed 1123.15(b)
30	Full implementation of Due Process hearing decision within 30 days – Ed 1123.22(a)
90	Written report to the Office of Legislation and Hearings describing implementation of hearing officer decision – Ed 1123.22(b)
20	First day of expedited hearing takes place within 14 days of request – Ed 1123.25(c)(2)
20	LEA responsible for entering information into NHSEIS within 20 days of action required to be entered – Ed 1126.07
SCHOOL DAYS	
10	No services for 1 st 10 days of disciplinary removal (If no services provide for non-disabled students) – Ed 1124.01
10	Consecutive days of removal for discipline = change of placement – Ed 1124.01 – Ed 1124.02
180	Days in school year = School Year – RSA 189:1
10+	Cumulative days of removal for discipline – Ed 1124.01
10	Days from decision to change placement within 10 school days the district must conduct a manifestation determination review – Ed 1124.01 (34 CFR 300.530(e))
45	Days decision reached and mailed to parties in DPH (Absent and extension granted) – Ed 1123.18(e)
No set # of days	During suspension/expulsion beyond 10 days – FAPE provided – Ed 1123.01 – Ed 1123.02
BUSINESS DAYS	
10	Prior notice of removal of child to private school at public expense (includes holidays that occurs on business days) – Ed 112.02 (34 CFR 2000.148(d)(l)(iii))
2	Expedited hearing – Limit introduction of new evidence in DPH case that was not disclosed to other party – Ed 1123.25(g)
2	Exchange of evidence prior to the first day in an expedited DPH – Ed 1123.25(g)
5	Exchange of evidence prior to the first day in a regular DPH – Ed 1123.15(b)
5	Limit introduction of new evident in DPH case that was not disclosed to other party – Ed 1123.17(c)(3)
10	Not later than 10 days after a disciplinary removal from placement IEP team meets – Ed 1124.01
5	Marked – up proposed statement of facts prior to 1 st day of ADP hearing – Ed 1123.15(b)

Appendix C: 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.

<u>Acronym</u>	<u>Topic</u>
ABA	Applied Behavior Analysis
ADA	Americans with Disabilities Act
ADD/ADHD	Attention Deficit Disorder/ Hyperactivity Disorder
APE	Adapted Physical Education
ASL	American Sign Language
AT(S)	Assistive Technology (Services)
CAPD	Central Auditory Processing Disorder
CASA	Court Appointed Special Advocate
CEC	Council for Exceptional Children
CF	Cystic Fibrosis
CFR	Code of Federal Regulations
CHINS	Children in Need of Services
CMHC	Community Mental Health Centers
CP	Cerebral Palsy
DD	Developmental Delay (birth through 9)/ Developmental Disabilities
DDC	Developmental Disabilities Council
DHHS	Department of Health and Human Services
DOE	Department of Education
DRC	Disabilities Rights Center
DCYF	Division of Children, Youth and Families
DS	Down syndrome
DP	Due Process
ED	Emotional Disturbance
EI	Early Intervention
EIN	Early Intervention Network
ELL	English Language Learner
ESL	English as a Second Language
ESY/EYP	Extended School Year/ 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
HI	Hearing Impairment
IDEA 2004	Individuals with Disabilities Education Act 2004
IEE	Independent Educational Evaluation
IEP	Individualized Education Program
IFSP	Individualized Family Support Plan
ISP	Individualized Service Plan
IQ	Intelligence Quotient
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

NCLB	No Child Left Behind
NF	Neuro Fibrosis
NHSEIS	New Hampshire Special Education Information System
NVLD/NLD	Nonverbal Learning Disability
OCD	Obsessive Compulsive Disorder
OCR	Office of Civil Rights
ODD	Oppositional Defiant Disorder
OHI	Other Health Impairment
OSEP	Office of Special Education Programs
OT	Occupational Therapy
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
RSA	Revised Statutes Annotated
SEA	State Education Agency
SAC	State Advisory Committee
SAIF	Specialist in the Assessment of Intellectual Functioning
SAU	School Administrative Unit
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
SS	Scaled Score
SS	Standard Score
SSI	Supplemental Security Income
SSDI	Social Security Disability Income
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 D: 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

