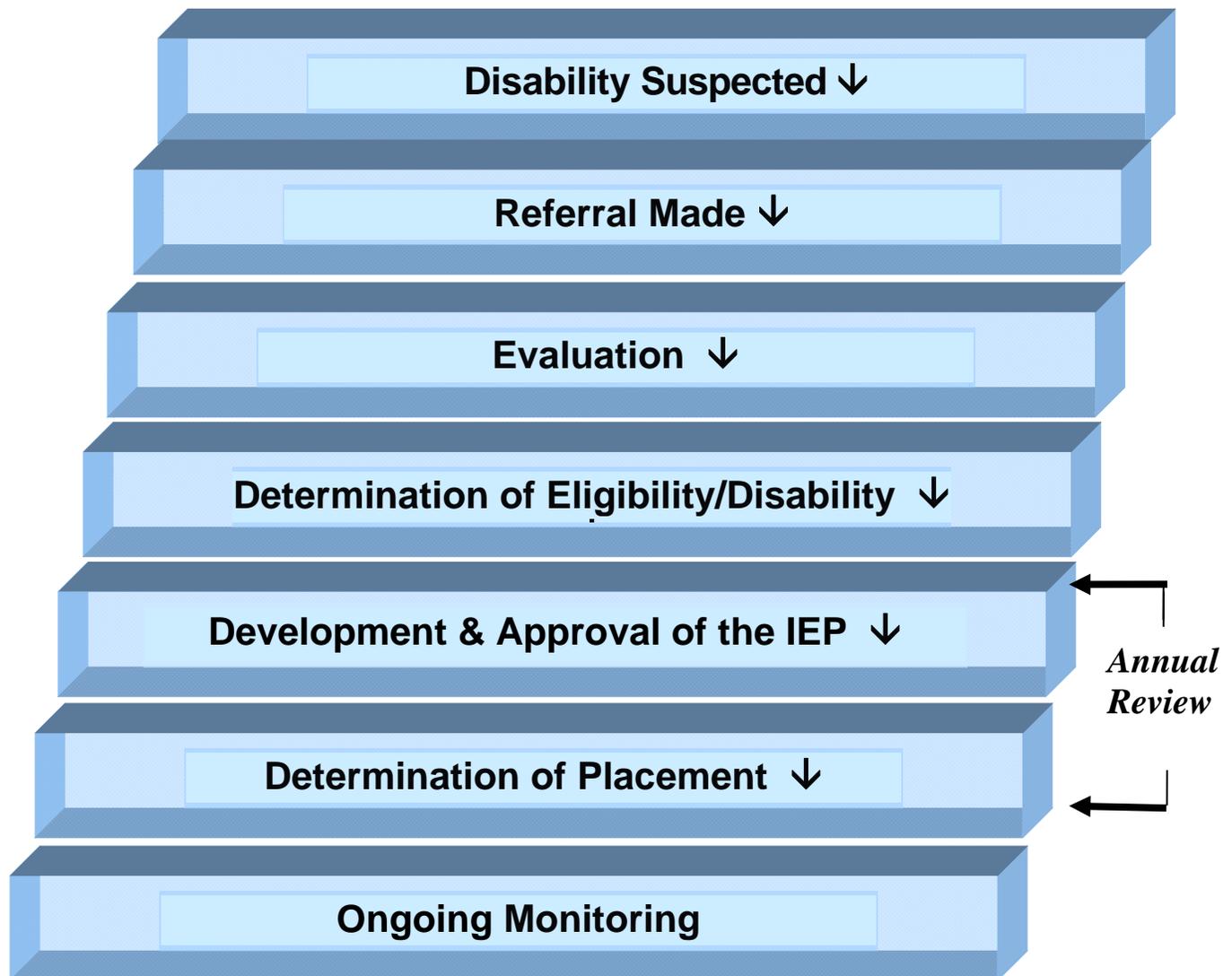


Steps in the NH Special Education Process



Parent Information Center on Special Education

54 Old Suncook Road

Concord, NH 03301

Telephone: 603-224-7005 /

800-232-0986 (in NH)

e-mail: info@nhsped.org

websites: www.nhsped.org

© 1982, revised 3/2017



Table of Contents

Some Common Acronyms Used in the Special Education Process -----	Page 1
Introduction -----	Page 2
Overview of the Steps in the NH Special Education Process -----	Pages 2 – 3
Parent Involvement -----	Page 4
Members of the Individualized Education Program (IEP) Team -----	Page 5
Excusals of IEP Team Members -----	Page 5
Disability Suspected -----	Page 5
Child Find Requirements -----	Page 5
Referral -----	Page 6
Disposition of Referral -----	Pages 6 – 7
Initial Evaluation -----	Page 7
Evaluation Requirements -----	Page 8
Independent Educational Evaluation -----	Page 8
Reevaluation -----	Page 8
Children Who Move During the Evaluation -----	Page 9
Determination of Eligibility -----	Page 9
Disability Categories -----	Page 9
Incarcerated Children with Disabilities -----	Page 9
Developing the Individualized Education Program (IEP) -----	Page 10
Special Factors and the IEP -----	Page 10
Components of an IEP -----	Page 11
Transition Services and the IEP -----	Page 12
Extended School Year Services -----	Page 12
Completing the IEP -----	Page 13
Determination of Educational Placement -----	Page 13 – 14
Parentally-placed Children with Disabilities -----	Page 14
Monitoring -----	Page 14
Children Who Transfer from One School District to Another -----	Page 15
Discipline (Suspension/Expulsion) Requirements -----	Pages 16 – 17
Procedural Safeguards -----	Page 18
Dispute Resolution: Options for Resolving Conflict -----	Page 19

Some Common Acronyms Used in the Special Education Process

ADD or ADHD: Attention Deficit Disorder or Attention Deficit Hyperactivity Disorder

ADR: Alternative Dispute Resolution.

BIP: Behavior Intervention Plan – positive behavior interventions & supports incorporated in an IEP.

DOE/ NH DOE: Department of Education / New Hampshire Department of Education

ESY or ESYP: Extended School Year / Extended School Year Programming – special education and related services provided to a child with a disability in addition to their school year program.

FBA: Functional Behavior Assessment – an assessment of a child’s behavior; serves as a foundation for the positive behavioral interventions and supports in a child’s IEP.

FAPE: Free Appropriate Public Education – special education in the least restrictive environment for children with disabilities, at public expense and under public supervision, through an IEP.

IDEA: Individuals with Disabilities Education Improvement Act – the Federal special education law

IEE: Independent Educational Evaluation – an evaluation conducted by a qualified examiner not employed by the school district.

IEP: Individualized Educational Program – the document, developed by the IEP team, which describes the child’s special education program.

ISP: Individualized Services Plan - document describing services that an LEA has agreed to provide to a parentally-placed private school child with disabilities (also called a “services plan”)

LEA: Local Education Agency – the local school district

LRE: Least Restrictive Environment.

PBIS: Positive Behavioral Interventions and Supports

RTI: Response to scientific, research-based intervention – a general education initiative that may also be used as part of an assessment to determine if a child has a specific learning disability.

STO: Short-term objective – a component of the IEP (part of a child’s annual goals)

WPN: Written Prior Notice – The document that must be given to parents when the IEP team proposes to initiate or change, or refuses to initiate or change, the identification, evaluation or placement of a child. The WPN is to be given after the decision is made, but before the change is put into effect. It must include:

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

Introduction

The special education process can be complicated and may seem overwhelming to parents. This is especially true when a parent has just learned that their child may have a disability. The Parent Information Center on Special Education has developed this booklet so that parents of children with disabilities, young adults with disabilities and educators can be better informed about the special education process, and the steps to ensure that children with disabilities receive a free appropriate public education (FAPE) in the least restrictive environment (LRE). We hope that parents and school personnel are able to use this information to work together as partners in the process. If problems occur that cannot be settled easily, however, procedures are available to resolve disputes between parents and school districts (see pg. 19).

Steps in the NH Special Education Process is based on the state special education law, RSA 186-C and regulations, the *New Hampshire Rules for the Education of Children with Disabilities*. The NH Rules implement Federal and State law. A statement in the policy and purpose of RSA 186-C says: “It is the policy of the state that “all children in New Hampshire be provided with equal educational opportunities. It is the purpose of this chapter to ensure that all children with disabilities have available to them a free appropriate public education in the least restrictive environment that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living.”

This booklet is an overview of parents’ rights and responsibilities. It is not intended to be a complete listing of rights or a legal opinion. Individuals wanting a copy of the *NH Rules* may contact the NH Department of Education at (603) 271-3741 or visit their website www.ed.state.nh.us. If you would like more information on the NH special education process, you may attend one of the Parent Information Center's free workshops (see contact information on back page).

Overview of the NH Special Education Process

This booklet provides a description of parents’ rights, roles and responsibilities in the NH special education process. The special education process includes specific steps, each with its own requirements. Each step in the special education process includes procedures for parents and schools to work together and to resolve any disagreements they may have. The process includes an annual review of the child’s individualized education program (IEP) and placement, which is based on information such as formal and informal evaluations, observations and the child’s progress towards the current goals and objectives in his/her IEP. A brief overview of the steps in the NH special education process follows:

Disability Suspected and School District Child Find Requirements.

Anyone who suspects that a child may have a disability and need special education may refer the child for special education consideration. School districts are required to have formal “Child Find” procedures to locate, evaluate and count children who may have disabilities to ensure that eligible children are provided needed services. More information on child find may be found on page 5.



Referral. When a parent, teacher or other person suspects a child may have a disability and need special education, he/she may make a referral to the school or LEA (local education agency, which is another term for the school district). If a parent makes the referral, a best practice is to make the referral in writing, and explain why the parent believes the child may have a disability and needs special education. Parents should date all letters to the school and keep a copy for their records. If the referral comes from someone other than the parent, including from the child’s teacher, the parent must immediately be notified in writing that a referral has been made.

Within 15 business days after receiving the referral, the school must schedule an IEP Team meeting, which includes the parents. This meeting is called the disposition of referral meeting. At this meeting the IEP Team determines whether the child's needs can be met through regular education services (including the use of general education interventions). Otherwise, they would determine that there is reason to suspect the child may have a disability and recommend what further testing is needed. The IEP Team must notify the parents, in writing, of their decision. Written parental consent is needed before the school can evaluate the child. More information on referral and disposition of referral may be found on pages 6 & 7.

Parents must be given 10 days written notice of any IEP team meeting (5 days for a manifestation determination meeting), but they may agree to waive the 10 days notice if they wish to meet sooner.

Evaluation. When the IEP Team, including the parents, determines that a child needs to be evaluated for special education, they also decide what testing is needed. To determine what additional testing is needed, the IEP Team first considers any information they already have about the child. After the school district receives written parental consent, the child is given a full and individualized evaluation that will provide information the IEP Team can use to determine if the child is eligible for special education, as well as to identify the child's educational needs (such as academic, communication, developmental, motor, social/emotional, and vocational needs).

The testing will be done by trained and knowledgeable, certified or licensed evaluators, and completed within 60 calendar days after the school has received written parental consent for the evaluations. During this timeframe, the parents are sent a copy of the results, unless they waive this right. If the parents disagree with the school's evaluation, they may request an independent educational evaluation be provided at public expense or they may obtain an independent evaluation at their own expense. More information on evaluation may be found on pages 7 – 8.

Determination of Eligibility and Disability Category. Based on the evaluation results, the IEP Team will decide whether the child is eligible for special education services. To be eligible, the child must have a disability, and require special education and any needed related services to receive a FAPE. The child will then be identified with one or more of 14 disability categories defined in the *NH Rules*. Once a child begins receiving special education, he/she is reevaluated at least once every three years to ensure the IEP Team continues to have current information on which to base their decisions. More information on determination of eligibility may be found on page 9.

Development and Approval of the IEP. Within 30 days after the child is found eligible for special education, the IEP Team meets to develop an Individualized Educational Program (IEP) for the child. Once a child has an IEP, it is reviewed and revised at least annually, and it must be in place at the start of each school year. The IEP does not go into effect until it is signed by the parent and school district representative. More information on the IEP may be found on pages 10–13.

Determination of Educational Placement. After the IEP has been signed (approved) by the parent and the school district, IEP Team meets to determine the least restrictive environment in which the child can receive the special education and related services described in his/her IEP. If the parent agrees, meetings may be consolidated to cover more than one step in the process. More information on determination of educational placement may be found on pages 13 – 14.

Implementation and Ongoing Monitoring. The child begins receiving services as soon as possible after the parents and school district consent in writing to the IEP and placement. Then the child's parents, educators and others involved with the child's special education program monitor the child's progress on an ongoing basis to ensure his/her educational needs are met. The IEP Team will meet at least once each year to review and revise the IEP or more frequently if any member of the IEP Team has concerns about the child's progress. More information on monitoring may be found on page 14.

Parental Involvement

Parental involvement is a critical component of the special education process. Parents have a right to participate in all meetings with respect to their child's evaluation, eligibility determination educational placement and provision of a free and appropriate public education (FAPE), including developing the IEP.

Parents must be given written notice of IEP team meetings at least 10 days before the meeting is to be held, except for manifestation determination meetings (more information on manifestation determination may be found on page 16), which require only a 5-day notice. A notice that has been sent by US mail 12 days prior to the meeting will be deemed to have been received 10 days prior to the meeting. Parents may agree to waive their right to 10-day notice if they wish to meet sooner, and may agree to receive notices by email. The written notice must include the time and place of the meeting, purpose and a list of participants who will be in attendance. Parents and the school district may invite other people who have special knowledge or expertise about the child to attend the meeting. The meeting is to be held at a mutually convenient time and place. If a parent cannot attend, he/she may ask for the meeting to be rescheduled. If a parent cannot attend (e.g. they may be in the hospital, or without transportation or child care), but still wishes to participate, alternate means such as a telephone conference call may be used.

If a parent makes a written request to have an IEP team meeting, within 21 days after receiving the request, the school district must either schedule and hold the meeting, or provide the parent with a written prior notice explaining why they will not hold the meeting.

The school district must ensure that parents understand the proceedings at IEP team meetings, including arranging for interpreters for parents who are deaf, or whose native language is not English.

NH demonstrates that it values parental involvement by requiring written parental consent at each step in the special education process, including for:

- a. Initial evaluation,
- b. Re-evaluations,
- c. Determining or changing eligibility,
- d. Annual review of the IEP & placement,
- e. Changing the nature or extent of the child's special education or related services,
- f. Releasing education records, including to a private school for a parentally-placed child,
- g. Extensions to the evaluation timeline,
- h. IEP team meeting excusals,
- i. Before inviting representatives from adult service agencies to IEP team meetings to discuss transition planning or services, and
- j. Before accessing a child's public or private insurance

Exceptions – If parents refuse or fail to respond to a request for consent for the initial evaluation, or refuse consent for a reevaluation, the school district may, but is not required to use due process procedures to pursue the evaluation. If parents refuse or fail to respond to a request for consent for the initial provision of services, or revoke their consent for the continued provision of services, the school district may not use due process procedures to compel the provision of services. The school district is then not liable for failing to provide FAPE or for developing an IEP.

If the parents do not respond to a request for activities b–e in the list above, the school district may implement its proposed action after taking reasonable measures to obtain parental consent.

WPN (see page 1) supports parental involvement by providing parents with information to help them make informed decisions. Parents have 14 calendar days to respond to any proposal by the IEP Team. The parents may agree with the IEP Team's decision by providing consent, they may refuse consent, or they may provide partial consent. If a parent provides partial consent, it is important to specify the issues to which the parent does not agree, and schedule an IEP team meeting to attempt to resolve the areas with which the parent does not agree.

IEP Team

The IEP Team is responsible for making decisions throughout the special education process, including evaluation, eligibility, IEP development, determination of placement and monitoring. IEP Team members may serve in more than one role at the meeting. IEP Team members are:

- The child's parent(s), legal guardian, or surrogate parent.
- The child, whenever appropriate, or if he/she is an adult child (at age 18, unless determined incompetent by a court, all parental rights transfer to the now adult child),
- Not less than one regular education teacher of the child if the child is or may be participating in the regular education environment (for preschoolers, an individual qualified to teach a child of that age),
- Not less than one special education teacher or service provider of the child
- A representative of the local education agency (representative of the school district) who is qualified to provide or supervise the provision of specially designed instruction, and who is knowledgeable about the general education curriculum and the resources of the school district,
- An individual who can interpret the instructional implications of evaluation results, and
- Other individuals who have knowledge or special expertise regarding the child, invited by the parent or school (may include the child's related services providers, paraprofessional or a representative from DCYF or a child's Guardian ad Litem for court-involved children)
- When vocational and/or career and technical education (CTE) programs are being considered, an individual knowledgeable about the programs being considered.

When transition from high school is being discussed, the child must be invited, and representatives from any adult agencies who are likely to be responsible for paying for or providing transition services may be invited (with the written consent of the parent or adult child)

For a child transitioning from Early Supports and Services, the services coordinator or other representative must be invited upon the parent's request.

If the child is suspected of having a learning disability:

- The child's regular education teacher, but if he/she does not have a regular education teacher, a regular classroom teacher or individual qualified to teach someone of that age, and
- At least one person qualified to conduct individual diagnostic examinations

Excusal from Meetings

The parent and school district may excuse an IEP Team member from all or part of an IEP team meeting if they agree in writing. If the meeting involves the IEP team member's area of expertise, in addition to the parent and school district agreeing in writing to the excusal, the member must submit written input into the development of the IEP to the parent and the IEP Team prior to the meeting. NH requires that the LEA or parent notify the other party of the expected absence of a team member at least 72 hours before a scheduled meeting or upon learning of the expected absence of a team member, whichever occurs first.

Disability Suspected & School District Child Find Requirements

School districts are required to identify, locate, evaluate and count all children (ages 2½ to 21) who may have disabilities. This is to ensure that children who may have disabilities are referred to the IEP Team, and if determined eligible, provided with special education and any needed related services.

Referral

Anyone, including the child's parents, who knows or suspects that a child may have a disability and need special education, may refer the child for evaluations. When parents make a referral, it is recommended that the referral be in writing, dated and include the child's name and the reasons why they suspect their child may have a disability and need special education. The referral letter should be sent to the superintendent, special education director, classroom teacher, building principal, or other appropriate individual. Parents should keep a copy of this letter for their files. Well-organized records are an important resource for parents. One system, "Organization 101" may be found at: <http://nhsped.org/resources-overview/brochures-toolkits/>.

For school-age (6-21) public school children, children who are not enrolled in school, or children who are enrolled in for-profit private schools, the referral would be made to the school district in which the child lives. If parents have enrolled their child in a non-profit private school, the referral would be made to the school district in which the private school is located.



Some reasons for making a referral include:

- (1) Failing to pass a hearing or vision screening;
- (2) Unsatisfactory performance on group achievement tests or accountability measures;
- (3) Receiving multiple academic and/or behavioral warnings or suspension or expulsion from a childcare or after school program;
- (4) Repeatedly failing one or more subjects (although a child may be found eligible for special education because of needs related to his/her disability, even if the child has not failed or been retained in a course or grade, and is advancing from grade to grade);
- (5) Inability to progress or participate in developmentally appropriate preschool activities; and
- (6) Receiving service from family centered early support and services.

Other reasons may include difficulty getting along with others or a medical diagnosis of a disability.

Sample letters, including a sample referral letter that may be helpful to parents who are entering or involved in the special education process can be found at:
<http://nhsped.org/resources-overview/sample-letters/>.

If anyone besides the parent makes a referral, the parent must immediately be notified in writing that a referral has been made.

Disposition of Referral

Once a referral is received by the school district, the IEP Team, which includes the parents, must meet within 15 business days to determine whether the school can meet the child's needs through general educational services, such as reading support, guidance counseling, a change in group/classroom or modified workload, or whether the child may have a disability and need to be evaluated. This 15-day process includes the IEP team determining which evaluations are needed.

The IEP Team may recommend trying to meet the child's needs using general education strategies or "early intervening" services. These services are intended to meet the needs of children who are not currently identified as needing special education or related services, but who need additional academic and behavioral support to succeed in the general education environment. Early intervening services cannot be used to deny or delay a parent's right to have their child evaluated if there is reason to suspect the child may have a disability and need special education.

Within the 15-day disposition of referral period, the school district must give parents written notice of the IEP Team decision regarding the disposition of the referral, including the reasons.

If the IEP Team determines that additional testing is necessary, they must notify the parent and obtain their written consent to conduct any needed individual evaluations. If the parents refuse consent, the school district may, but is not required to, file for a due process hearing.

If the parents disagree with the disposition of referral decision, they may consider using informal methods to resolve their differences, such as providing more information about their child at another meeting. Parents may request that the meeting be a facilitated IEP Team meeting or parents may use the formal dispute resolution options described in this booklet (see page 19). These formal options include: mediation, neutral conference, due process hearing and complaint.

Initial Evaluation

Written parental consent is required before for any special education evaluations can be conducted. Once the parent gives written consent for the testing, the evaluation process begins, and the child is given a full and individualized evaluation to determine eligibility for special education and to identify his/her educational needs (may include academic, developmental, general intelligence, health, vision, hearing, motor, communication, self-help, social/emotional/behavioral and vocational).

In deciding what testing is needed, the IEP Team first reviews the child's educational history, including past opportunities to have acquired skills and information. They then consider the information they already have, including:

- Evaluations previously done by the school, as well as any independent evaluations,
- Current classroom-based assessments and observations,
- Observations and recommendations by teachers and related service providers,
- The results of the most recent local or statewide assessments, and
- Other information from IEP Team members, including the parents, such as medical records.

The IEP Team then determines what additional testing must be done.

The "evaluation process" means "the completion of evaluations, reevaluations and assessments, a written summary report, and a meeting of the IEP team to review the results of the evaluations and assessments. When the purpose of the meeting is to determine eligibility, the evaluation process also includes the determination of eligibility". It also includes the requirement that the school district must provide the parents (by mail unless the parent and school district agree on another method) copies of each examiner's evaluation and assessment report(s) at least 5 days prior to the meeting at which the reports will be discussed.

For initial evaluations, the evaluation process must be completed within 60 calendar days after the school district receives the parent's written consent for testing. No extensions are allowed for initial evaluations. For reevaluations, the evaluation process must be completed within 60 days, but the parents and school district may agree to an extension of a specific number of days, not to exceed 30 days.

Evaluation Requirements

Evaluations must:

- Assess the child's present levels of academic achievement & related developmental needs,
- Be nondiscriminatory on a racial or cultural basis,
- Be administered in child's native language or other mode of communication and in the form most likely to yield accurate information on what the child knows and can do academically, developmentally and functionally, unless it is not feasible to do so,
- Be validated, selected and administered to accurately reflect what the test measures, not the child's impaired skills, unless that is the purpose of the test,
- Assess all areas of suspected disability, including health, vision, hearing, social and emotional status (may include a functional behavioral assessment), general intelligence, academic performance, communication status, and motor abilities, and identify all of the child's special education and related service needs, whether or not commonly linked to the child's disabilities,
- Use a variety of assessment tools and strategies, including information from the parents,
- Not use a single procedure to determine eligibility or an appropriate educational program,
- Assess specific areas of educational need and not just provide an intelligence quotient (IQ),
- Use technically sound instruments to assess the relative contribution of cognitive, behavioral, physical or developmental factors,
- Be used for the purposes for which the assessments or measures are valid and reliable,
- Be administered in accordance with the test instructions by trained & knowledgeable, and certified or licensed personnel (teachers conducting evaluations must be certified educators), and
- If an assessment is not conducted under standard conditions (ex: portions of the test were read aloud to the child), a description of how it varied must be included in the evaluation report.

When considering high school transition, evaluations must include age-appropriate transition assessments related to training, education, employment, and where appropriate independent living skills.

To determine if a child has a specific learning disability (LD), each school district must have a written policy for how they will evaluate the child and determine eligibility. The district may use the "discrepancy" model, which identifies whether a significant discrepancy exists between the child's ability and achievement, a process to determine if the child responds to scientific, research-based interventions (RtI), or other alternate research-based procedures. Regardless of which evaluation method is used, an observation must be part of the assessment.

Independent Evaluations: Parents always have the right to obtain an independent educational evaluation (IEE) at their own expense. If a parent disagrees with the school district's evaluation, the parent may request the school district provide an IEE at public expense. This request should be made in writing; a sample letter may be found at <http://nhspecial.org/resources-overview/sample-letters/>. The school district must respond by either agreeing to provide the IEE at public expense or by filing for a due process hearing to show that the school district's evaluation was appropriate. While the school district may set criteria for independent evaluations, to the extent that such criteria exceed the qualified examiner criteria in the NH Rules or establish geographic limitations, shall not be so restrictive that the parent does not have a choice of independent evaluators. Regardless of who pays for the IEE, the IEP Team must consider the results.

Reevaluations: A child must be reevaluated at least once every 3 years, but more frequently if:

- The parent or other Team member requests a reevaluation,
- The LEA determines that conditions warrant a reevaluation, or
- The IEP Team is considering removing the child's eligibility for special education.

The parents and school district may agree that some or all of the reevaluations are unnecessary.



Children Who Move to a New District During the Evaluation

If a child moves from one school district to another before the evaluation is complete, the two school districts must coordinate the evaluation, as necessary to ensure prompt completion of the full evaluation. See page 15 for more information on transfer students.

Determination of Eligibility

Once all the evaluations are completed, the IEP Team develops a written summary of the test results. Next, the IEP Team, including the parents, meets to consider all available information and determine if the child has a disability for which he/she requires special education, or special education and related services.

For children with disabilities who are transitioning from Early Supports and Services (ESS), the IEP Team must determine eligibility before the child turns 3 years old, and have a signed IEP in place by the child's 3rd birthday.

To be eligible for special education, the child must be between the ages of 3 and 21, and not yet earned a regular high school diploma. Once a child is found eligible for special education, he/she is identified as meeting the definition for one or more of the following disability categories:

1. Developmental Delay for children, ages 3 to 10
2. Intellectual Disability
3. Hearing Impairment,
4. Deafness
5. Speech or Language Impairment
6. Visual Impairment, including Blindness
7. Emotional Disturbance
8. Orthopedic Impairment
9. Autism
10. Traumatic Brain Injury or Acquired Brain Injury
11. Other Health Impairment (*may include ADD/ADHD and Tourette's syndrome*)
12. Specific Learning Disability
13. Deaf-blindness
14. Multiple Disabilities

If the child is found not eligible for special education, he/she is not entitled to receive special education or related services under Federal or State special education law. However, if the child has a disability, he/she may be eligible for services, supports, or accommodations under Section 504 of the Rehabilitation Act (a Federal civil rights law). More information on Section 504 may be obtained from the Parent Information Center on Special Education.

Incarcerated children with disabilities – an individual, age 18-21 who is incarcerated in an adult prison is only eligible for special education (which may be modified for bona fide security purposes) if they were identified as being eligible for special education or had an IEP prior to their incarceration.

Development of the Individualized Education Program (IEP)

If a child is found eligible for special education and related services, the IEP Team must meet to begin developing an IEP within 30 days of the eligibility determination. IEP team meetings may have more than one purpose (for example, eligibility and IEP development or IEP development and determination of placement may happen in the same meeting). Once a child has an IEP, it must be reviewed and revised at least annually, and must be in place by the beginning of each school year.

***Effective IEP team meetings** – IEP team meetings are most successful when all members of the IEP Team are well informed and prepared, understand their roles and responsibilities, value each member's input, and are committed to using effective communication and collaboration. The Parent Information Center on Special Education offers free workshops on Parent / School Partnerships, Effective Communication and Collaboration, Group Dynamics and other related topics. Contact the Parent Information Center for more information, or to learn how you can host a workshop in your area.*



Special Factors and the IEP

When developing the IEP, the IEP Team must consider the child's strengths, the parents' concerns for their child's education, and the following "special factors" when developing the IEP.

- If a child's behavior impedes his/her learning, or that of others, appropriate strategies, including positive behavioral interventions, strategies, and supports to address the behavior need to be implemented. (**Important Tip:** If anyone on the IEP Team has concerns regarding the behavior of a child with a disability, they should request a functional behavioral assessment as part of an initial or reevaluation, to ensure the IEP Team has the information they need to develop/revise the IEP.)
- If a child has limited English proficiency, the language needs of the child, as they relate to the IEP, are to be considered.
- If a child is blind or visually impaired, instruction in Braille must be provided, unless the IEP Team determines that it would be inappropriate.
- The communication needs of the child must be considered. For a child who is deaf or hearing impaired, that includes the opportunity for direct communication with peers and staff and for instruction in the child's mode of communication and at the child's academic level.
- The child's need for assistive technology devices and services is to be considered.

The Components of an Individualized Educational Program (IEP)

The LEA shall provide special education, related services, supplementary aids and services, accommodations, and modifications to a child with a disability in accordance with the child's IEP.

Each child's IEP must include the following components:

- A statement of the child's present levels of academic achievement and functional performance in the general **education** curriculum, and how the disability affects the child's involvement and progress in the general curriculum, or in appropriate activities for preschoolers
- Measurable annual goals which meet the child's educational needs and enable the child to be involved and progress in the general curriculum, or in appropriate activities for preschoolers
- Benchmarks or short-term objectives, unless the parent determines them unnecessary for one or more of the child's annual goals, but always for children who take alternate assessments
- A statement of how the child's progress towards his/her annual goals IEP will be measured and how and when parents will be provided periodic reports of their child's progress, including whether the progress is sufficient to meet the annual goal by the end of the school year
- An explanation of the extent, if any, the child will not participate with non-disabled children in the regular classroom or program
- A statement of the special education and related services and other supports, based on peer-reviewed research to the extent practicable, including a statement of the program modifications or supports for school personnel that will be provided to the child, or on behalf of the child, to enable him/her to advance towards his/her annual goals, progress in the general curriculum, participate in extracurricular and nonacademic activities, and be educated with children who do not have disabilities
 - ★ Related services are services that are needed to assist children with disabilities to benefit from special education. They include: transportation, speech-language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, early identification and assessment of a child's disabilities, counseling services, including rehabilitation counseling, orientation and mobility services, school nursing services, school health services, social work services in schools, parent counseling and training, and medical services for diagnostic or evaluation purposes.
- The projected date for services to begin, and the anticipated frequency, location & duration of the services
- The length of the school year and school day necessary to implement the IEP
- Any appropriate accommodations necessary to measure the academic and functional performance of the child in state or district-wide assessments (NECAP). If the IEP Team determines that the child cannot participate in the state or district-wide assessments, a statement of why the child cannot participate and why the alternate assessment selected is appropriate for the child
- The type of individuals or service providers responsible for implementing the IEP
- A statement of the party/parties financially responsible for implementing the IEP and
- Signatures of the representative of the school district and of the parent(s), legal guardian, surrogate parent or adult child (when appropriate) stating approval of the IEP.
- Additional IEP components apply for older students (see next page).

Planning for Transition

Transition Services and the IEP

Additional components are required to be included in the IEP to help prepare children with disabilities for the transition from high school to post-school activities, including post-secondary education, employment, independent living and community participation.



Transition services are designed to be a coordinated set of activities that take into account the child's strengths, preferences and interests and prepare the child to meet his/her post-secondary goals. The child must be invited to the IEP team meeting any time transition is being discussed. While there is no requirement that the child attend, the IEP Team must ensure that the child's preferences and interests are taken into account in transition planning. Representatives from any adult service provider that may provide or pay for transition services may also be invited to the IEP team meeting, if the parent or adult student has given written consent.

IEP components include:

- Beginning at age 14 (or younger if determined appropriate by the IEP Team –
 - A statement of transition service needs that focuses on the child's courses of study such as participation in advanced-placement courses, vocational program or career and technical education.
- Beginning with the first IEP to be in place when the child is 16 (or younger if determined appropriate by the IEP Team) –
 - Appropriate measurable post-secondary goals, based upon age appropriate transition assessments, in the areas of education/training, employment, and, if appropriate, independent living skills, and
 - The transition services needed to assist the child in reaching those goals. Transition services may include instruction, related services, community experiences, the development of employment and other post-school living objectives, and if appropriate, the acquisition of daily living skills and a functional vocational evaluation.
- By age 17, a statement that the child has been informed of the rights that will transfer to him/her at age 18 (the age of majority in NH)

Prior to a child graduating with a regular high school diploma or leaving high school at age 21, the school district must provide the child with a summary of the child's academic achievement and functional performance, including recommendations on how to assist the child to reach his/her post-secondary goals.

Extended School Year Services

The school district must provide extended school year (ESY) services to any child for whom the IEP Team determines it necessary in order for the child to receive a FAPE. ESY services are not limited to the summer months or to a predetermined program design.

Completing the IEP

Parents have up to 14 days to review and decide how to respond to a proposed IEP and any other proposal that requires their written consent. They may agree (consent), disagree (deny consent), or give partial consent. If the parent does not want a particular service or activity, or wants an additional or different service or activity than what is proposed, the parent can give partial consent, but must specify in writing the items they are refusing or requesting. If the parent denies (refuses) consent for a particular service or activity, all other agreed-to services/activities will be provided.

If the parent wants an additional or different service or activity, the parent may request an IEP team meeting to attempt to resolve the areas with which the parent does not agree. All other services or activities to which the parent has consented will be implemented without delay. Parents may use PIC's sample letter to request an IEP team meeting (see <http://nhsped.org/resources-overview/sample-letters/>). The LEA may only refuse to convene the IEP team meeting if it determines that the requested changes and/or additions to the IEP have been addressed at a prior IEP team meeting (meaning that they determine that there is no point in meeting further), in which case, the LEA must issue a WPN explaining why they refuse to convene the meeting. The parent's disagreement with the service or activity would still be reflected in the WPN, and the parent could then decide whether to utilize formal dispute resolution options. The parent and the LEA retain the right to file for a due process hearing at any time.

If a parent refuses consent for a proposed IEP or placement, the child's most recent agreed upon IEP and/or placement shall remain in effect unless the LEA and parent agree otherwise, until the matters are resolved unless and until a party files for due process.

Every person responsible for implementing the IEP, as well as the parent and child (if of age of majority), must be given a complete copy of the IEP, and a copy placed in the child's file. Once the IEP is signed, the school district is responsible for providing the services in the IEP.

Determination of Educational Placement

Once the IEP has been approved (signed), the IEP Team determines the least restrictive environment (LRE) in which the child's IEP can be implemented. LRE means that children with disabilities are educated with children who do not have disabilities, and removed to other settings only when, even with supplemental aids and services, the child cannot be educated satisfactorily in regular classes. When a child's needs require a setting other than the regular classroom, the IEP Team must make alternative placements available. If parents enroll their child in a chartered public school, the child's LEA is responsible for providing special education and related services.

The continuum of alternate learning environments for preschoolers includes:

- Early childhood program (at least 50% nondisabled children)
- Home
- Early childhood special education program
- Service provider location
- Separate school
- Residential facility

The continuum of alternate learning environments for children, ages 6 to 21 includes:

- Regular education setting (with supports and services as required in the IEP)
- Resource room (for no more than 60% of the school day)
- Self-contained special education class (for more than 60% of the school day)
- Separate approved special education program/school
- Residential placement
- Home instruction (with the exception of children who have been excused from full-day attendance by the superintendent because the child is physically or mentally unable to attend school, or for other limited exceptions covered in RSA 193:1, I or RSA 193:5, a child who is receiving home instruction will receive a full day of instruction)
- Hospital or institution

When the IEP Team (including the parents) proposes a placement, the parents may agree (consent), disagree (deny consent) or provide partial consent. If the parents and school district cannot agree on the placement, they may utilize formal or informal dispute resolution options to resolve their dispute. Once the parents agree with the placement, and give their written consent, services for the child must begin as soon as possible.

If the IEP Team places a child in an approved public or private program, the LEA is responsible for the costs. Out-of-state programs must have special education approval by the host state.

Parentally-placed private school children with disabilities

If the school district offered an appropriate program (one that could provide the child with a FAPE), and the parents choose to place their child in a nonprofit private school at their own expense, the child no longer has an individual right to special education services. The child is only entitled to the special education services the school district where the private school is located chooses to provide them using designated IDEA funds. To make this decision, the school district consults with representatives of the private schools located in their district and of the parents whose children are privately placed. An Individual Services Plan (ISP) is developed for any parentally-placed private school child who is provided with special education services.

Children who are being homeschooled or who are placed by their parents in a for-profit private school have no right to special education services. The child retains the same right to participate in curricular and extracurricular programs and activities as any child who is being homeschooled or who is attending a private school, and has a right to reasonable accommodations to ensure an equal opportunity to participate and benefit in those programs and activities. Those rights are provided through NH education laws/rules, as well as Section 504 of the Rehabilitation Act.

If the parents place their child privately because they believe the school district cannot provide an appropriate program, the parent may file for a due process hearing to attempt to obtain district reimbursement for the private placement after providing required notice to the LEA.

Monitoring

Monitoring a child's progress in his/her special education program is an ongoing process relying on parents, teachers, service providers and the child to track progress, identify problem areas and new or emerging issues, and bring the issues to the attention of the IEP Team.

The IEP must include a statement of how the child's progress towards his/her annual goals in the IEP will be measured and how and when parents will be given reports of their child's progress toward meeting the annual goals, including whether the progress is sufficient to meet the annual goals by the end of the school year. These reports must be provided to the parents periodically, such as concurrent with quarterly report cards.

The IEP Team must meet to review and revise the IEP at least once each year. The IEP serves as a monitoring tool to make sure that the child's progress, program and placement continue to be appropriate. Other types of monitoring include:

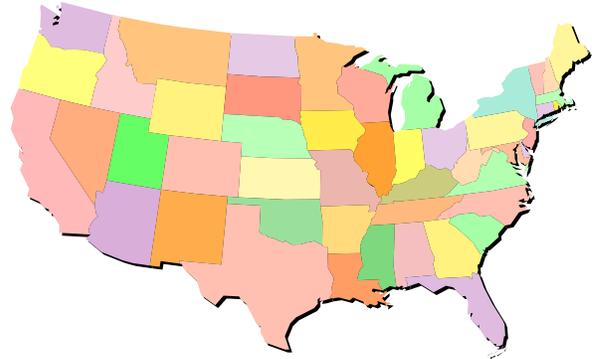
- reviewing the child's schoolwork
- tracking progress towards annual goals through report cards and other documentation, as required in the IEP
- considering any new testing, or new information, available about the child
- sharing information at parent/teacher conferences
- maintaining home-school communication with communication logs, forms or telephone calls

If a parent, teacher or service provider notices that a child is not making expected progress, they should schedule a meeting to discuss the area of concern, strategize solutions, and revise the IEP or placement, as necessary. If a parent makes a written request for an IEP team meeting to be held, within 21 days the LEA must either schedule and hold the meeting or provide the parents with a WPN explaining why they will not meet. ***Remember, all requests should be made in writing!***

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

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

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



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

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

Discipline (Suspension/Expulsion) Requirements

When a child with a disability acts out in school, it is important to determine whether or not the behavior is a manifestation of his/her disability. A behavior is considered to be a manifestation if it:

- Was caused by the child's disability,
- Had a direct and substantial relationship to, the child's disability, or
- Was the direct result of the school district failing to implement the IEP,

If it is not clear whether the child's behaviors are a manifestation of the disability, or if the IEP Team is trying to figure out how to respond to a child's behaviors, a functional behavioral assessment (FBA) may be conducted. The FBA will provide the IEP Team with the information they need to revise the IEP or placement, including developing positive behavior interventions and other strategies and supports in the IEP.

If parents have concerns about their child's behavior, they should obtain a copy of the school's discipline policies and consider if those policies need to be modified by the IEP, or if their child needs additional supports to comply with the policies.

When a child with a disability violates a code of student conduct, and is subject to suspension, school personnel may consider, on a case-by-case basis, any unique circumstances of the situation and decide not to remove the child.

For children with disabilities who are suspended for 10 days or less in a school year:

A child with a disability may be suspended, without services, for no more than 10 days in a school year for behavior that is not a manifestation of the child's disabilities. If the behavior is a manifestation, the behavior would be addressed through a review of the IEP and/or placement, instead of by suspension. If the school district provides services to children without disabilities who are suspended, they must also provide them to children with disabilities.

After a child with a disability has been suspended for 10 cumulative days in a school year:

If a child is suspended again after he/she has already been suspended for a total of 10 days in a school year, the child must be provided with services for any additional days of removal. Those services must be sufficient to enable the child to continue to participate and progress in the general education curriculum and to progress toward meeting the goals in his/her IEP. They must consist of a minimum of 10 hours of instruction plus any related services in the child's IEP. A functional behavioral assessment should also be conducted (unless one was already done), and the results used to develop positive behavioral interventions and supports in the child's IEP.

Suspensions that are considered to be a change in placement: Suspensions for more than 10 days at a time, or for a pattern of suspensions (for similar behaviors, numbers of days, etc.), totaling more than 10 days in a school year are considered to be a change in placement. In those instances, in addition to conducting a functional behavioral assessment and developing a behavior intervention plan, the parents, a representative of the school district and other relevant members of the child's IEP Team must meet to determine if the behavior is a manifestation of the child's disability. This requirement does not apply if the child's suspension is the result of the child bringing a gun, dangerous weapon or illegal drugs to school or a school function or inflicting serious bodily injury on another person. Parents must be given 5 days notice of a manifestation determination meeting. If the behavior is found to be a manifestation of the child's disability, there would be no further punishment, but the IEP Team may decide to revise the IEP or placement to meet the child's needs and prevent a reoccurrence of the behavior. If the behavior is not a manifestation of the child's disability, the child may be suspended, but would continue to receive services during the suspension. The parents must also be given a copy of the procedural safeguards notice at that time.

Situations when a child may be subjected to a long-term suspension or expulsion:

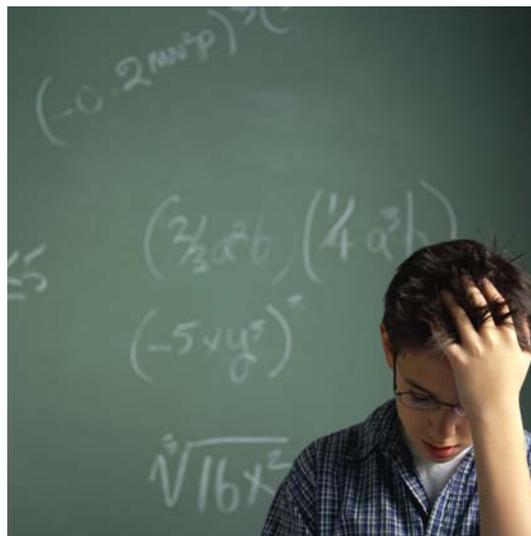
Children with disabilities may be removed to an interim alternative educational setting for up to 45 school days, without regard to manifestation, for any the following behaviors that take place at school or at a school function:

- Possessing a gun or dangerous weapon,
- Knowingly possessing, using or selling illegal drugs, or
- Inflicting serious bodily injury to another person.

A hearing officer can also order a child's removal to an interim educational setting for up to 45 school days if the hearing officer determines that the child would pose a significant danger to him/herself or others if the child remained in his/her current placement. A hearing officer may impose an extension beyond 45 days if the child continues to pose a danger to the child or others. While the child is in the interim alternative educational setting, the IEP Team should determine if a change in the child's IEP or placement will be needed once the child's removal to the interim alternative educational setting is completed.

Parents may access procedural safeguards, including an expedited due process hearing, at any time in this process. This includes if the parents disagree with the manifestation determination or the removal to an interim alternative educational setting.

Children who have not yet been determined eligible for special education who violate a code of student conduct are only entitled to the protections in IDEA if the district had prior knowledge that the child is a child with a disability.

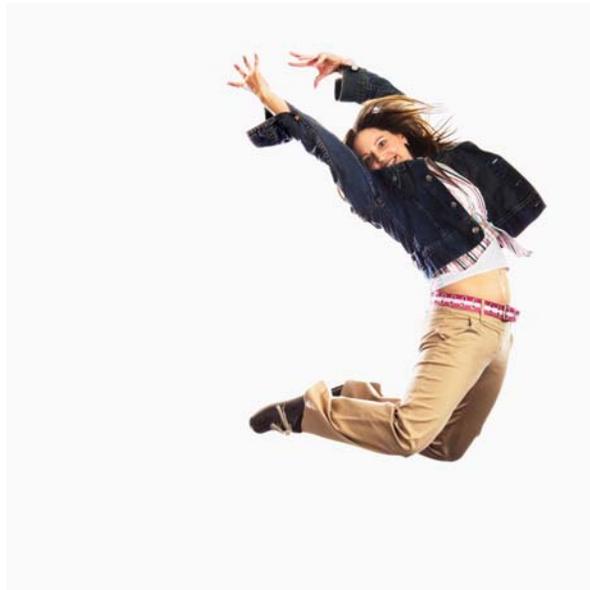


The NH Rules for the Education of Children with Disabilities emphasize a positive and proactive approach to behavior. The NH Rules prohibit the use of aversive behavioral interventions, including procedures intended to cause pain, humiliation, unsupervised confinement, abuse, or neglect. Aversive behavioral interventions mean those procedures that subject a child with a disability to physical or psychological harm or unsupervised confinement or that deprive the child of basic necessities such as nutrition, clothing, communication, or contact with parents, so as to endanger the child's physical, mental, or emotional health.

Procedural Safeguards

Procedural safeguards are rights provided to parents and school districts in the special education process. At least once each year, the school district gives parents a copy of their procedural safeguards, which may also be called the parent's rights handbook. Some of the procedural safeguards for parents include the right to:

- Written prior notice before the school district proposes to initiate or change, or refuses to initiate or change, the identification, evaluation, placement of the child, or the provision of a free appropriate public education to the child
- Have the notice written in language that is understandable to the general public, and provided in the parents' native language or other mode of communication used by the parent, unless it is clearly not feasible to do so
- Have the school district ensure the parent understands the proceedings of the IEP team meeting, including providing an interpreter or translator for parents when needed
- Give or withhold consent for certain activities
- Examine their child's educational records
The Family Educational Rights and Privacy Act (FERPA) gives parents the right to see their child's school records and provides a process for parents to have inaccurate records corrected.
- Obtain independent educational evaluations for the child (which may be presented at an IEP Team meeting or due process hearing), at parental expense, or in some situations, at public expense.
- Utilize formal and informal dispute resolution mechanisms to resolve disagreements between the parents and school, including:
 - Appeal any decision of the school district regarding the referral, evaluation, eligibility determination, IEP, placement or provision of the child's free appropriate public education, and
 - File a complaint to report any alleged violations of their or their child's rights in the special education process.



Dispute Resolution: Options for Resolving Conflict

Often, disputes can be resolved by further meetings (included facilitated IEP team meetings) or by sharing of information between parents and the school district. Providing new information, such as evaluations or observations, to consider can also be helpful. Parents and schools may want to try to resolve their disputes using the least adversarial approach (including informal means) appropriate to the situation.

When informal strategies have not been successful in resolving the dispute, or the parents or school wish to enter formal dispute resolution, the NH Department of Education provides several formal dispute resolution options: state administrative complaint, alternative dispute resolution, which includes mediation and neutral conference, and due process hearings. A brief overview of each of these procedures is provided below. Additional information about each dispute resolution option may be found on the NH Department of Education's website at: <http://www.ed.state.nh.us/education/disabilities/index.htm>.

- **State Administrative Complaint:** When there is a belief that the school or other public agency has violated State or Federal law/requirements (example: not following the IEP), a complaint may be filed with the NH DOE. The complaint will then be investigated and appropriate steps ordered to remedy any violations found.
- **Alternative Dispute Resolution:** The NH DOE offers **neutral conference and mediation** as alternatives to due process for resolving disputes regarding the identification, evaluation, placement and provision of a FAPE.

The NH DOE also provides the informal dispute resolution option of IEP Team meeting facilitators to parents and school districts wanting to use a **facilitated IEP Team meeting** to bring in a neutral and trained third party to facilitate the IEP Team meeting. This can change the tone of the meeting by allowing the parents and school district personnel to focus on the meeting and work to reach agreement on their issues. These options offer both parents and school districts an opportunity to present their concerns and reach an agreement that both feel is appropriate for the child.

- **Due Process Hearing:** Parents or the school district may file for a due process hearing if they cannot reach agreement regarding the identification, evaluation, placement and provision of a free appropriate public education (FAPE) for the child. The person filing for the hearing must meet specific notice requirements. If the parents have filed for the hearing, the school district will schedule a resolution session within 15 days to attempt to resolve the issue to the satisfaction of the parents. If the resolution session is not successful, or if both parties agree to waive the session or to use mediation instead, the hearing will continue in accordance with the timelines set for the process.



At the hearing, both parties have the right to be represented by counsel (at their own expense) and to present their case, including evidence that has been shared with the other party prior to the hearing. The hearing officer will then make a decision regarding the outcome. Both parties must abide by the ruling, unless they file an appeal to civil court.

The Parent Information Center (PIC), a New Hampshire statewide family organization, as its mission, strives to achieve positive outcomes for children and youth, with a focus on those with disabilities and special healthcare needs. This is achieved through its partnerships with families, educators, youth, professionals and organizations. PIC is committed to the belief that:

- Families make the difference.
- When families, professionals and other partners are well-informed and have a shared commitment to work together, everyone benefits.
- As youth move toward adulthood, they have increasing ownership of their future.
- Every child can succeed and contribute as valued members of society.

PIC is a private, nonprofit agency that is a recognized leader in building strong family/school/community partnerships. PIC provides information, support and educational programs for parents, family members, educators and the community. PIC is a pioneer in promoting effective parent involvement in the special education process.



**Parent Information Center
ON SPECIAL EDUCATION**

The Parent Information Center on Special Education is a project of PIC, providing training, information and resources on special education issues to families, educators and others.

For more information about your rights or to learn how you can support the Parent Information Center (PIC), please call PIC. You may also register to attend one of PIC's FREE workshops on topics such as: the IEP, special education laws and process, effective parent/professional communication and collaboration, secondary transition, and positive behavioral interventions. PIC also has print materials available on these and other topics.

Note: This document is not intended to serve as a complete overview of either Federal or NH special education law. It is for informational purposes only.

Parent Information Center on Special Education

54 Old Suncook Road

Concord, NH 03301

Telephone: 603-224-7005 (v/TDD)

800-232-0986

e-mail: info@nhspecialled.org

websites: www.nhspecialled.org