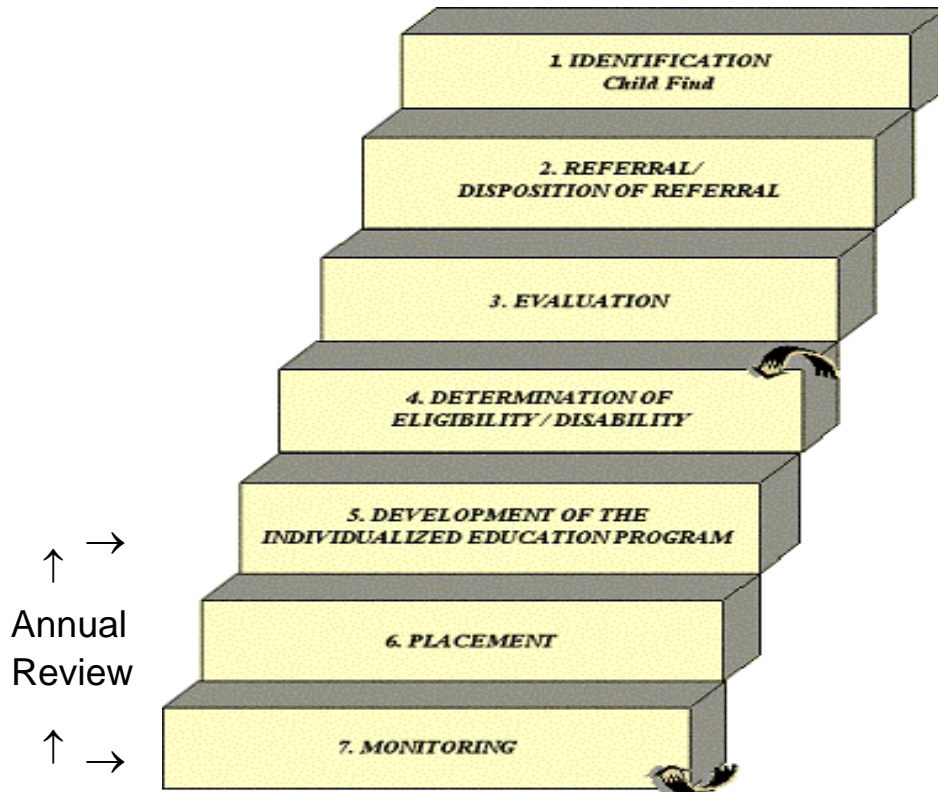


Steps in the NH Special Education Process



©1982 Parent Information Center, Rev 6/07

PO Box 2405

Concord, NH 03302-2405

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

800-232-0986

e-mail: picinfo@parentinformationcenter.org

website: www.parentinformationcenter.org

Overview of the NH Special Education Process

The special education process includes 7 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 IEP and placement, which is based on information such as formal and informal evaluations, observations and progress on the current IEP goals and objectives.

1. Identification. Anyone may suspect that a child may have a disability and need special education. Additionally, school districts are required to have formal “Child Find” procedures to locate, evaluate and count children who may have disabilities. This is to ensure that eligible children are found, classified and provided needed services. Child Find must be conducted for children:

- In public schools
- In private schools within the school district
- Homeless children
- Children in state custody.



2. Referral. When a parent, teacher or other person suspects a child may have a disability and need special education, he/she may make a referral to the school or LEA (local education agency, which is another term for the “school district”). It is best if the referral is made in writing, and it explains why you believe the child may have an educational disability. If the referral comes from someone other than the parent, including from the child’s teacher, the parent is immediately notified in writing that a referral has been made.

Within 15 calendar days of receiving the referral, a team of people (the IEP Team) must meet to make a disposition of referral and notify the parents, in writing, of their decision. The Team may decide that there is no reason to suspect that the child may have a disability and need special education, and that the school can meet the child’s needs through regular educational services. Otherwise, they would determine that there is reason to suspect the child may have a disability and should be evaluated.

3. Evaluation. A child who is being considered for special education must be given a full and individualized evaluation to determine eligibility for special education, as well as to identify his/her educational needs (such as academic, communication, developmental, motor, social/emotional, and vocational needs). Written consent from the child’s parent is required before this testing may be conducted. A team of people, including the parents, will consider any information they already have about the child to determine what additional testing is needed.

The testing will then be conducted by trained and knowledgeable, certified or licensed evaluators, and completed within 45 calendar days after the school has received written parental consent for the evaluations (unless the parent and LEA have agreed to an extension). Once the testing is completed, the parents will be given a report of the results. If the parents disagree with the evaluation conducted by the school district, the parents may request an independent educational evaluation be provided at public expense.

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

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



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

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

Introduction

The special education process can be complicated and may seem overwhelming to parents. The law and regulations can sometimes be difficult to understand. This is especially true when a parent has just learned that their child may have an educational disability. The Parent Information Center (PIC) 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 and 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 them.

This booklet is based primarily on the state regulations, the New Hampshire Rules for the Education of Children with Disabilities, 7/1/02, and the Individuals with Disabilities Education Improvement Act (IDEA 2004). This booklet is an overview of parents' rights and responsibilities. It is not meant to be a complete listing of rights or a legal opinion. Individuals wanting a copy of the New Hampshire Rules should access the N.H. Department of Education's website www.ed.state.nh.us or contact them at (603) 271-3741. Persons wanting more information may attend one of the Parent Information Center's free workshops. Contact PIC for more information.



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 the:

- o identification,
- o evaluation, and
- o educational placement of their child; and
- o provision of a free and appropriate public education (FAPE), including development of the IEP.

Parents must be given written notice of these meetings at least 10 days before the meeting is to be held, except for manifestation determination meetings, which require only a 5-day notice. Parents may agree to waive their right to 10-day notice and meet sooner if they would like. The notice must include the time and place of the meeting, purpose and a list of participants who will be in attendance. Parents have the right to invite other individuals who have knowledge or special expertise about their child. The meeting is to be held at a mutually convenient time and place, but if a parent cannot attend, they may still participate by using alternative means, such as a telephone conference call.

The LEA must ensure that parents understand the proceedings at the IEP meeting, including arranging for an interpreter for parents who are deaf, or whose native language is not English.

NH requires written parental consent for evaluation, determining or changing the disability classification, each IEP and placement decision, changing the nature or extent of the child's special education or related services and release of confidential information about the child.

However, if the parents do not respond to a request for consent for any activity

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. Team members may represent more than one role at the meeting. IEP Team members are:

- The child's parent(s), guardian, or surrogate parent
- The child, when appropriate, or if he/she is an adult student (A child becomes an adult student with all of the rights previously held by the parents on his/her 18th birthday, unless determined incompetent by a court)
- At least one regular education teacher of the child if the child is or may be participating in the regular education environment (for preschoolers, an individual qualified to teach a child of that age)
- At least one special education teacher or one special education provider of the child
- A vocational education representative, when appropriate
- A representative of the local education agency (LEA) who is qualified to provide or supervise specially designed instruction, and is knowledgeable about the general curriculum and the resources of the LEA
- An individual who can interpret the instructional implications of evaluation results
- Other individuals who have knowledge or special expertise regarding the child, invited by the parent or school (may include a paraprofessional)
- The student and representatives from any adult agencies who would be either paying for or providing transition services, if transition needs or services are considered.

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



IEP Team (continued)

When eligibility is being determined, the IEP team must include:

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

And if the student is suspected of having a learning disability:

- If the child 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 jointly agree to excuse an IEP Team member from all or part of an IEP meeting if:

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



Disability Suspected - (Child Find)

All school districts are required to identify, locate, evaluate and count all children who may have educational disabilities, ages birth to 22 (and name the category of disability for ages 3-21). This includes children in public and private schools, and other settings, as well as homeless and migrant children. Districts must ensure that children who are known or suspected to have disabilities are referred to the IEP team. Anyone who suspects that a child may have a disability may make a referral for evaluations.

Referral

If parents suspect or know that their child has an educational disability, they may make a request to the superintendent, special education director, classroom teacher, building principal, or other appropriate individual to have their child evaluated for special education consideration. A referral may be made for reasons that include: failing grades, discipline issues, unsatisfactory performance on group achievement tests, extreme and ongoing anxiety about school, difficulty getting along with others, or a medical diagnosis of a disability.

The referral should be in writing, including the child's name and the reasons why you suspect the child may have an educational disability. Parents should keep a copy of this letter for their files. If anyone besides the parent makes a referral, the parent is immediately notified in writing that a referral has been made.

A sample referral letter and other sample letters that may be used in the special education process may be found at: www.parentinformationcenter.org.

Disposition Of Referral

Once a referral is received by the school, a decision must be made within 15 calendar days to determine whether the school can meet the student's needs through regular educational services, such as reading support, guidance counseling, a change in group/classroom, or modified workload, or whether the student may have an educational disability and needs to be evaluated.

The team may recommend first trying to meet the child's needs using "early intervening" services, which are designed 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 a general education environment. Early intervening services cannot 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 must give parents written notice of the team decision regarding the disposition of the referral, including the reasons.

If the 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 a referral decision, they may consider using informal methods to resolve their differences, such as providing more information about their child at another meeting, or they may use the formal dispute resolution options described in this booklet. These formal options include: mediation, neutral conference, due process hearing and complaint. *Once the parent gives their written consent for the evaluations to be conducted, the testing is to be completed and the parents provided a report of the results within 45 calendar days. This timeframe may be extended, if the parent and the school district agree, but should be reasonable and the exception, to prevent unnecessary delays in providing services to children who need them.*

Evaluation

Each child being considered for special education and related services must be given a full and individualized evaluation. The purpose is to determine eligibility for special education and to identify the child's educational needs. Areas to be tested may include academic, communication, developmental, language, motor, self-help, social/behavioral, vocational, and others.

As part of the evaluation process the IEP team will review the child's educational history, including past opportunities to have acquired skills and information. The Team then considers the information they already have, including:

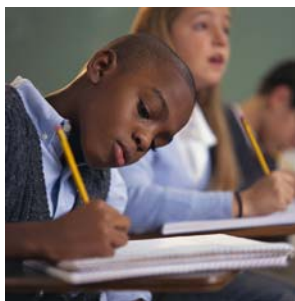
- Evaluations and other information from the parents,
- Current classroom-based assessments and observations,
- Observations and recommendations by teachers and related service providers,
- The results of the most recent local or statewide assessments, and
- Other information from team members, such as medical records, observations, or independent evaluations

The team then meets to determine what additional testing must be done.

Evaluation requirements include the following:

- Evaluations must be nondiscriminatory and generally in the child's native language or other mode of communication. They are to be provided and administered in the language and form most likely to yield accurate information on what the child knows and can do, academically and functionally, unless it is not feasible.
- Tests must 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.
- Children are to be assessed in all areas of suspected disabilities.
- A single procedure may not be used to determine eligibility or an appropriate educational program; a variety of assessment tools and strategies, including information from the parents, are to be used

- The child's present levels of academic achievement and related developmental needs are to be assessed.
- Evaluations must identify all of the child's special education and related service needs, whether or not commonly linked to the child's disabilities.
- Evaluation materials must assess specific areas of educational need and not merely provide a single general intelligence quotient.
- A vocational evaluator must assess students for whom vocational education is being considered.
- Technically sound instruments must be used to assess the relative contribution of cognitive, behavioral, physical or developmental factors, including intelligence tests.
- In NH, teachers or other specialists who are participating in the evaluation must be certified or licensed for each disability suspected.



- Tests are to be administered in accordance with the test instructions by trained and knowledgeable, and certified or licensed personnel.
- If an assessment is not conducted under standard conditions (ex: portions of the test were read aloud to the student), a description of how it varied must be included in the evaluation report.
- For students suspected of having specific learning disabilities, an observation of the student's academic performance in the regular classroom setting must be conducted and a written report developed
- In determining whether a child has a learning disability, a LEA may use either the "discrepancy" model (identifying whether a significant discrepancy exists between the student's ability and achievement), or they may use a process to determine if the child responds to scientific, research-based interventions.

The parents and LEA may agree that only some, or no, evaluations need be conducted. If the team determines that no additional information is needed, the school district must give parents written notice of their decision, the reasons for it, and the parent's right to request an assessment.

Determination of Eligibility

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

If the student is found eligible for special education, he/she is identified as having one or more categories of educational disability:

- mental retardation
- hearing impairment, including deafness
- speech or language impairment
- visual impairment, including blindness
- emotional disturbance
- orthopedic impairment
- autism
- traumatic brain injury
- other health impairment
This category may include ADD/ADHD, Tourette's syndrome and chronic health impairments
- specific learning disability
- deaf-blindness
- multiple disabilities
- developmental delay for children, ages 3-9

To be eligible for special education, the child must be between the ages of 3 and 21, but not yet have achieved a regular high school diploma.

If the child is found not to have a disability, he/she is not eligible to receive special education or related services under IDEA (the federal 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).

Section 504 and Students with Disabilities.

The NH Rules address the provision of special education to eligible incarcerated adult students with disabilities. If a person, ages 18-21 who is incarcerated in an adult prison, was not identified as being eligible for special education prior to their incarceration, he/she is not entitled to evaluation, determination of eligibility or special education services. Also, the special education services that an eligible incarcerated adult student with a disability may receive, as well as the placement, may be modified because of the individual's status as a convict.

Development of the Individualized Education Program (IEP)

If a child is found eligible for special education and related services, the IEP team meets to create an IEP within 30 days of the determination. 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.

IEP meetings are most effective when all members of the IEP team are well informed and prepared, understand their role and responsibilities, value each other's input, and are committed to using effective communication and collaboration. The Parent Information Center 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

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. Please refer to the section on discipline, suspension and expulsion.

Note: If anyone on the IEP team has concerns regarding the behavior of a child with a disability, a functional behavioral assessment should be requested as part of an initial or reevaluation, to ensure the team has appropriate information 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 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 are to be considered.

The Components of an Individualized Educational Program (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 are only required (in IDEA 2004) for students who take alternate assessments aligned to alternative achievement standards; but are still required by the 2002 *NH Rules for the Education of Children with Disabilities* for all children with disabilities;
- A statement of how the child's progress towards annual goals will be measured and when parents will be provided periodic reports of progress (such as through the quarterly or other periodic reports concurrent with report cards);
- An explanation of the extent, if any, the child will not participate with non-disabled children in the regular classroom;
- A statement of the special education and related services and other supports, based on peer-reviewed research to the extent practicable, including a statement of the program modifications or supports for school personnel that will be provided to the child, or on behalf of the student, to enable him/her to advance towards his/her annual goals, progress in the general curriculum, participate in extracurricular and nonacademic activities, and be educated with non-disabled students;



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

- 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 required to implement the IEP;



The school district must provide extended school year (ESY) services to any child with disabilities for whom the IEP Team determines it necessary in order for the child to receive a FAPE.

- Appropriate accommodations necessary to measure the academic and functional performance of the child in state or district-wide assessments. If the Team determines that the child cannot participate in the state or district-wide assessments, a statement of why the child cannot participate and why the alternate assessment selected is appropriate for the child;
- A list 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 student (when appropriate) stating approval of the IEP.



The NH Rules address the provision of special education to eligible incarcerated adult students with disabilities. If a person, ages 18-21 who is incarcerated in an adult prison, was not identified as being eligible for special education prior to their incarceration, he/she is not entitled to evaluation, determination of eligibility or special education services. Also, the special education services that an eligible incarcerated adult student with a disability may receive, as well as the placement, may be modified because of the individual's status as a convict.

Transition And The IEP

Transition services are required to better enable students with disabilities to move from school to post-school activities. It is helpful for parents and students to begin thinking about transition, as early as possible.

For older (generally middle/high school age) students, the following additional components are required in the IEP:

- A vocational education component, if appropriate
- At least one year before the student reaches the age of majority (18 in New Hampshire), a statement that he/she has been informed of the rights that will transfer to him/her at age 18;

The rights of parents in the special education process automatically transfer to children with disabilities at the age of 18, unless they have been declared incompetent by a court. Notices required in the special education process will continue to be provided to the parent, as well as to the adult student with a disability, and a student may make a written request to the IEP team to enable his/her parents to continue to be involved in all educational decisions.

- Beginning at age 14 (or younger, if determined appropriate by the IEP team), each student's IEP must include a statement of transition service needs, which focus on the student's courses of study (example: participation in college preparatory or vocational education classes).
- Beginning at age 16 (or younger, if determined appropriate by the IEP team), the IEP must include a statement of needed transition services, including, if appropriate, a statement of the interagency responsibilities or any needed linkages.

Transition services are a coordinated set of activities for a disabled student that are:

- Designed within an outcome-oriented process, that promotes movement from school to post-school activities, including postsecondary education, vocational training, integrated employment (including supported employment), continuing/ adult education, adult services, independent living, or community participation.
- Based on the student's needs, taking into account preferences and interests.

Transition services include instruction, related services, community experiences, the development of employment and other post-school adult living objectives, and if appropriate, acquisition of daily living skills and functional vocational evaluation.

When transition services are being discussed, the student must be invited to the IEP meeting. If the student does not attend, the school district must take other steps to ensure that the student's preferences and interests are considered. Representatives from other agencies which may be providing or paying for transitions services are also to be invited. If they are unable to attend, the school district must take steps to ensure that the agency's information is available to the IEP team.

Completing the Development of the IEP

Parents have up to 14 days to review and sign the IEP. They may agree, disagree and request mediation, a neutral conference or a due process hearing, or agree with exceptions. All individuals responsible for implementing the IEP, as well as the parent and student (if of age of majority), must be given a complete copy of the IEP, and a copy placed in the student's file. Once the IEP is signed, the school district is responsible for providing the services in the IEP

Placement

Once the IEP has been approved and signed, the team decides where the student's individualized needs (IEP) can be met in the least restrictive environment (LRE). LRE means that students with disabilities are to be educated with students who do not have disabilities, and removal to other settings occurs only when, even with supplemental aids and services, the student cannot be educated satisfactorily in regular classes.

When a student cannot be educated in the regular classroom, alternative placements must be made available by the team. The range of educational settings includes:

- regular classroom
- regular classroom with consultative assistance
- regular classroom with assistance by itinerant specialists
- regular classroom plus resource room help (no more than 60% of the day)
- regular classroom plus part-time special class
- full-time special class
- full-time or part-time special day school
- full-time residential placement
- home-based programming (time-limited for students over age 5)

Note: When a child with a disability, ages 6-21, requires home instruction, he/she shall be provided a minimum of 10 hours per week. Related services are to be provided in addition to the ten hours per week of instruction.

- hospital or institution



When the team (including the parents) are considering placement, the parents may agree, disagree and ask for another meeting, disagree and ask for mediation, a neutral conference or an impartial due process hearing, or agree with exceptions. Once the parents agree with the placement, and give their written consent, services for the student begin.

If the team makes a placement to an approved public or private program, the district is responsible for the costs. If the placement is an out-of-state program, it must be one with special education approval by the host state.

Parentally-placed private school children with disabilities. If the district offered an appropriate program and the parents choose to place their child privately, the parents are generally responsible for those costs. Parentally-placed private school children with disabilities have no individual entitlement to special education services. They are only entitled to the special education services the district chooses to provide them, using the district's Federal special education funds, after the district has met with representatives from the private schools and of the parents whose children are privately placed. An Individual Services Plan (ISP) would be developed for any parentally-placed private school child who is provided with special education services. *The school district responsible for making decisions for such children is the district in which the private school is located.*



However, if the parents placed their child privately because they did not believe that the school district could provide a free appropriate public education (FAPE), they may access due process to attempt to obtain district payment for the private placement. There are specific requirements, including notice requirements that parents would need to follow to be able to pursue tuition reimbursement.

Monitoring

The IEP team must meet to review and revise the IEP at least once each year. The IEP also serves as a monitoring tool to make sure the student's progress, program and placement continues 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 through communication logs, forms or telephone calls

If a parent or teacher/service provider notices that a child is not on track to meet his/her annual goals, a meeting to strategize solutions, and revise the IEP or placement, as necessary, should be scheduled.

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

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



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

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

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

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 a manifestation if it was caused by, or had a direct and substantial relationship to, the child's disability; or it 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. If the behavior is a manifestation, positive behavioral interventions and other strategies/supports in the IEP should be developed.

Parents may want to obtain a copy of the school's discipline policies and consider if those policies should be modified by the IEP. 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.

A child with a disability may be suspended, without services, for a total of 10 days in a school year, unless the behavior is a manifestation of the student's disabilities. In that case, 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 non-disabled children who are suspended, they must also provide them to children with disabilities.



Services must be provided during any suspensions (removals) beyond 10 days in a school year. The services must enable the child to continue to participate in the general education curriculum and to progress toward meeting the goals in his/her IEP. A functional behavioral assessment would 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 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, representative of the school district and other relevant members of the child's IEP team must hold 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 team may 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, 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.

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 removal to an interim educational setting for up to 45 school days if he/she determines that the child would pose a significant danger to themselves/others if he/she remained in their current placement. An extension beyond 45 days may be given if the child continues to pose a danger to themselves 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 is needed once the child's stay at the interim alternative educational setting is completed.

Parents may access procedural safeguards, including an expedited due process hearing, at any time in this process.

The NH Rules for the Education of Children with Disabilities prohibit the use of humiliation, unsupervised confinement, abuse, neglect or aversives (denying nutrition, clothing, communication or contact with family).

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.

Procedural Safeguards

Procedural safeguards are rights provided to parents and school districts in the special education process. Some 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 student, or the provision of a free appropriate public education to the student
- Have the notice written in understandable language, and provided in the parents' native language or other mode of communication used by the parent, unless not feasible to do so
- Have the school district ensure the parent understands the proceedings of the IEP meeting, including providing an interpreter or translator for parents when needed
- Give or withhold consent for certain activities
- Examine educational records
- Obtain independent educational evaluations for the child (which may be presented at a team meeting or due process hearing)
- Utilize formal and informal dispute resolution mechanisms to resolve disagreements between the parents and school

Dispute Resolution: Options for Resolving Conflict

Often, disputes can be resolved by further meetings or 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) possible.

When disagreement still exists after informal strategies have been attempted, or the parents or school wish to enter formal dispute resolution, the NH Department of Education provides several formal dispute resolution options (information about each option may be found on the NH DOE website at <http://www.ed.state.nh.us/education/disabilities/index.htm>):

- **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. At the close of the hearing, the hearing officer will make a decision regarding the outcome. Both parties must abide by the ruling, unless they file an appeal to civil court.

- **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. These two 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.
- **Facilitated IEP Team Meeting:** The NH DOE provides team meeting facilitators to parents and school districts who wish to bring in a 3rd party to facilitate the team meeting so that the parents and school district personnel can focus on the meeting and attempt to reach agreement on their issues.
- **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.



The Parent Information Center (PIC) a private, nonprofit organization. PIC 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.

The mission of the Parent Information Center is to guide and encourage families in supporting the unique learning potential of their children.



For more information about membership or your rights, call the Parent Information Center. You may also register to attend one of PIC's FREE workshops on topics such as: the IEP, laws, special education process, effective communication, parent/professional collaboration, functional behavioral assessments, and positive behavioral interventions. PIC also has print materials available on special education law, parent rights, IEP, communication, transition.

Parent Information Center

PO Box 2405

Concord, NH 03302-2405

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

800-232-0986

e-mail: picinfo@parentinformationcenter.org

website: www.parentinformationcenter.org