

APPENDIX II-C

RULEMAKING NOTICE FORM

NOTE: ADDITIONAL NOTICE
See page one of the instructions regarding additional notice.

Notice Number _____ Rule Number Ed 320

<p>1. Agency Name & Address:</p> <p>State Board of Education c/o Department of Education 101 Pleasant Street Concord, NH 03301</p>	<p>2. RSA Authority: <u>RSA 193:3, II</u></p> <p>3. Federal Authority: _____</p> <p>4. Type of Action:</p> <p style="padding-left: 20px;">Adoption <u> x </u></p> <p style="padding-left: 20px;">Amendment _____</p> <p style="padding-left: 20px;">Repeal _____</p> <p style="padding-left: 20px;">Readoption _____</p> <p style="padding-left: 20px;">Readoption w/amendment _____</p>
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5. Short Title: **Manifest Educational Hardship**

6. (a) Summary of what the rule says and of any proposed amendments:

The intended action of this proposed rule is to adopt a rule pursuant to RSA 193:3 relative to manifest educational hardship and related issues which affect a child's attendance at school. This rule outlines how each school district shall establish a policy consistent with this rule, which shall allow a school board, with the recommendation of the superintendent, to take appropriate action including, but not limited to, assignment to a public school in another district when manifest educational hardship is shown.

The prior rule was an interim rule which expired 1-12-17. The language of the rule has been updated from the expired rule to reflect current practices. An annotated copy showing changes from the expired rule is available.

6. (b) Brief description of the groups affected:

Students, school districts and families are affected by this rule.

6. (c) Specific section or sections of state statute or federal statute or regulation which the rule is intended to implement:

Rule	Statute
Ed 320	RSA 193:3, II

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7. Contact person for copies and questions including requests to accommodate persons with disabilities:

Name:	Diana Fenton	Title:	Attorney II
Address:	Department of Education 101 Pleasant Street Concord, NH 03301	Phone #:	(603) 271-3189
		Fax#:	(603) 271-4134
		E-mail:	Diana.fenton@doe.nh.gov
		TTY/TDD Access:	Relay NH 1-800-735-2964 or dial 711 (in NH)

8. Deadline for submission of materials in writing or, if practicable for the agency, in the electronic format specified: **December 21, 2017**

Fax E-mail Other format (specify):

9. Public hearing scheduled for:

Date and Time: **December 14, 2017 at 1:00 p.m.**
Place: **State Board Room, Department of Education, 101 Pleasant Street,
Concord, NH 03301**

10. Fiscal Impact Statement (Prepared by Legislative Budget Assistant)

FIS # 17:162 , dated 11/08/2017

11. Statement Relative to Part I, Article 28-a of the N.H. Constitution:

Relative to Part I, Article 28-a of the N.H. Constitution, there are no added costs for this proposed rule to the state or to political subdivisions. This rule provides the requirements for resolving issues which affect a child's attendance at school. This rule outlines how each school district shall establish a policy consistent with this rule, which shall allow a school board, with the recommendation of the superintendent, to take appropriate action including, but not limited to, assignment to a public school in another district when manifest educational hardship is shown. Tuition is paid by the town in which the student lives, therefore, there is no violation of Part I, Article 28-a.

INSTRUCTIONS FOR THE RULEMAKING NOTICE FORM

NOTE:

Completion of this notice is required pursuant to RSA 541-A:6, I for publication by the Administrative Rules office in the New Hampshire Rulemaking Register pursuant to RSA 541-A:9, I(a). Other notice may also be required to be sent by the agency to other persons pursuant to RSA 541-A:6, III and RSA 541-A:39. See Section 2.6 of Chapter 3 of the Drafting and Procedure Manual for Administrative Rules (Manual) about these other notices.

The first unnumbered item to the left of the form is labeled "Notice Number" and shall be left blank. The number of each notice will be assigned by the Administrative Rules office.

The second unnumbered item to the right of the form is the rule number of the proposed rule(s) in the codification scheme described in Part 1 of Chapter 4 in the Manual. The number shall be correctly identified, such as Agr 501.03(e) and not Agr 501.03 if only paragraph (e) is being filed. A summary may be used, such as "Agr 502, various sections," if there is not enough space to list all the rules.

Item 1 is the name and address of the agency with rulemaking authority. This is the individual or group named in the RSA passage delegating authority, which is cited in Item 2. However, where an individual rulemaker is involved, such as a Commissioner, Division Director, or Bureau Chief, the name of the office may be used, such as "Department of," "Division of," or "Bureau of."

Item 2 shall be a citation to the specific statutory passage indicating RSA chapter, section, and paragraph delegating the agency rulemaking authority, for example: RSA 309-A:2, III, not RSA 309-A.

Item 3 shall cite the Federal authority, if applicable.

Item 4 shall be checked to indicate the type(s) of rulemaking action proposed. Five types are listed, as described below:

(a) "Adoption" means that a new section, part, or chapter is being inserted or an expired one is being reinstated. The term only applies to the insertion of whole sections, parts, and chapters, but does not apply to insertions of text less than an entire section.

(b) "Amendment" means that a subdivision in a section of an existing rule (that is, a currently effective text) is being changed, either by insertion or deletion of text, but the text of that entire section is not intended to be readopted and has not been included for readoption. The term applies only to insertion or deletion of text at the level of a paragraph or lower, and does not apply to insertions of whole sections, parts, and chapters.

(c) "Repeal" means to eliminate an entire section or sections of an existing rule with no rule in its place or with a rule on a different subject area instead.

(d) "Readoption" means that an existing rule is being adopted again without change.

(e) "Readoption with amendment" means that a section or a larger unit of an existing rule is being changed, and the entire text of that section, or larger unit, of the existing rule is being included for purposes of readoption.

Item 5 is a "short title", and shall be a brief description of the subject matter in key words and not merely repeat the rule number affected. The rule's "short title" is a quick way of identifying what the rule is about.

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Item 6 is the summary and analysis required by RSA 541-A:6, I(f) and (g) and the identification required by RSA 541-A:3-a, which shall include at least the following:

- (a) A summary of what the rule says and of any amendments, clarifying any ambiguity due to multiple rulemaking actions in one proposal;
- (b) A brief description of groups affected; and
- (c) The specific section or sections of state statute or federal statute or regulation which the rule is intended to implement.

The agency shall number the paragraphs in its analysis of Items 6(a), 6(b), and 6(c) to correspond to the above.

It shall also be clear from the context in the summary and analysis in Item 6(a) what the consequences would be if the rule were not adopted.

See Section 2.4 of Chapter 3 in the Manual. Item 6(c) is not the rulemaking authority under Item 2 or Item 3. Item 6(c) contains the specific section(s) or provisions of the RSA or federal statute or regulation, that the rule is meant to implement. For example, authority to adopt rules pursuant to RSA 541-A on license procedures could be in one RSA section, but a provision requiring that a person obtain a license (implemented by rules on license procedures) might be in a different section. The citation under Item 2 would be the same as in Item 6(c) only if the RSA rulemaking authority and the specific RSA provision being implemented are in the same RSA section or provision.

A list of cross-references will be necessary in Item 6(c) if different portions of the rule relate to different sections or provisions of state or federal statutes or regulations. Pursuant to RSA 541-A:3-a, III:

General references to the name or title of a state or federal statute or regulation shall not suffice for the purposes of this section. To the extent that specific provisions of the proposed rule are designed to implement different sections or provisions of state or federal statutes or regulations, the agency shall reference the state or federal statutes or regulation with the provision of the proposed rule that is intended to implement that statute or regulation.

Item 6(c) may be submitted as an attached cross-reference table on a separate sheet if necessary. The same information must be submitted as an appendix to the rules. See Section 2.5 of Chapter 3 in the Manual.

Item 7 shall identify the name, title, address, telephone and fax numbers, and e-mail address, of a person in the agency who can supply copies of the proposed rule and answer questions about it including requests to accommodate persons with disabilities in the rulemaking process.

Item 8 shall be the deadline for submission of materials in writing or, if practicable for the agency, in electronic format (such as fax, e-mail, or on diskette). Pursuant to RSA 541-A:11, I, this deadline shall be at least 5 business days after the public hearing(s), but if the rule is proposed by a group, such as a board or commission, that agency may specify a shorter period in the notice provided that the deadline is not earlier than the scheduled conclusion of the public hearing(s). Specify the electronic format, if any, that is practicable for your agency.

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Item 9 shall be the date, time, and place of the agency's public hearing(s) required by RSA 541-A:11, I. Pursuant to RSA 541-A:6, I, the agency shall give at least 20 days' notice of the hearing. The notice period shall begin on the day after the date of publication in the Rulemaking Register. Therefore the date of the first hearing shall be no earlier than 3 weeks after the online publication date of the Rulemaking Register containing the notice, which is Thursday, or earlier if Thursday is a holiday.

Item 10 shall consist of the fiscal impact statement prepared by the Legislative Budget Assistant. When it receives the fiscal impact statement, the agency shall either retype this as part of the notice form and shall not amend it, or submit the original document as received from the Legislative Budget Assistant, provided the agency keeps a photocopy for its own records.

Item 11 shall contain a statement which the agency shall prepare. Pursuant to RSA 541-A:6, I(j), it is the statement that the proposed rule does not violate Part I, Article 28-a of the N.H. Constitution. It shall contain the agency's concise rationale, in compliance with Section 2.4 of Chapter 3 in the Manual, why it does not.

PART Ed 320 MANIFEST EDUCATIONAL HARDSHIP

Ed 320.01 Change of School Assignment.

~~(a) If a parent(s) or guardian thinks the attendance~~ **Any person having custody of the a child may apply at to the school board of residence to change the child's school assignment if the person having custody thinks that the child's attendance at the assigned school** ~~the school to which such child has been assigned will result in a manifest educational hardship to the child.; a parent or guardian~~ **A person having custody of said child may apply to the school board for a change of school assignment to:**

(1) Attend another public school **or public academy** in the same district; or

(2) Attend a public school **or public academy** in another district.

~~(b) In order to apply to the school board for a change of school assignment based on manifest educational hardship a parent~~ **To establish a manifest educational hardship, as set forth in (e)(1)-(3), the person having custody shall demonstrate that continued attendance at the assigned school will have a** ~~the detrimental or negative effect on the~~ **child's education.** ~~pupil if the pupil continues to attend the school to which he/she is assigned.~~ **The person having custody shall also demonstrate that another public school or public academy, either within the district or in another district, may reasonably meet the child's educational needs.**

~~(c) If a school board determines that manifest educational hardship has been found, the school board shall issue a waiver of the school assignment and the student shall be reassigned to a reasonably available public school, in the district or in another district.~~ **Each school board shall establish a written policy, which authorizes the school board to act, with the recommendation of the superintendent, on an application to change a child's school assignment to another public school or public academy within the district or to request a change of assignment to a public school or public academy in another district when a manifest educational hardship has been demonstrated.**

~~(d) Each school board shall establish a policy, which shall allow a school board, with the recommendation of the superintendent, to take appropriate action including, but not limited to, assignment to a public school in another district when manifest educational hardship is shown.~~ **Upon receipt of a request from a person having custody for a change of a child's school assignment based on a claim of a manifest educational hardship, the school board shall order a hearing within 30 days.**

(e) The local school board shall issue a finding of manifest educational hardship if it determines that there is clear and convincing evidence that:

- (1) A substantial portion of a ~~pupil's~~ **child's** academic, physical, personal and social needs cannot be met by the assigned school or are not found within the student body of the assigned school;
- (2) ~~The assigned school's failure to meet the pupil's needs will impair the educational progress of the pupil~~ **The attendance at the assigned school will impair the educational progress of the child;** and
- (3) Another public school **or public academy**, either within the district or in another district, may reasonably meet the ~~pupil's~~ **child's** educational needs.

(f) ~~If a parent or guardian is aggrieved by the decision of the school board, cooperative school board, or the authorized regional enrollment area receiving school board, he/she may appeal to the state board in accordance with the provisions of Ed 200.~~ ***If a school board determines that manifest educational hardship has been found, the school board shall issue a waiver of the school assignment and the child shall be reassigned to a reasonably available public school or public academy, in the district or in another district.***

(g) *If a person having custody is aggrieved by the decision of the school board, he/she may appeal to the state board in accordance with the provisions of Ed 200.*

Rule	State or Federal Statute or Federal Regulation Implemented
Ed 320	RSA 193:3, I, II