

Annual Report of the State Advisory Committee on the Education of Students with Disabilities FY 2007-2008



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Acknowledgements

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Purpose

Legislative Mandate

Pursuant to RSA 186-C:3-b, the purpose of this report is to inform the Commissioner of Education, Governor and General Court on issues related to the education of children with disabilities in New Hampshire.

The State Advisory Committee's responsibilities include the following:

- Advise the New Hampshire Department of Education regarding unmet needs within the state related to the education of children/students with disabilities.
- Provide an annual report to the Governor and the State Legislature on the status of education of children with disabilities in New Hampshire.
- Comment publicly on the state plan and rules and regulations proposed for issuance by the state regarding the education of children with disabilities.

- Assist the state in developing and reporting such information and evaluations as may assist the U.S. Secretary of Education in the performance of responsibilities under Section 618 of the Individuals with Disabilities Act.
- Advise the Department of Education in developing corrective action plans to address findings identified in federal monitoring reports.
- Advise the Department of Education in developing and implementing policies relating to the coordination of services for children/students with disabilities.
- Advise the Department of Education on the education of eligible children with disabilities who have been convicted as adults and incarcerated in adult prisons.

Composition

Openings on the State Advisory Committee (SAC) occur each year, as members resign, move, or do not attend meetings. Individuals interested in being nominated for membership on the State Advisory Committee should contact the N.H. Department of Education or the Chairperson of the State Advisory Committee. Members must fit into one of the legislatively mandated categories for membership; if they do not, or if there are no current vacancies in the appropriate category, individuals may wish to work with the subcommittees as an ad hoc member.

The committee is composed of representatives from the following groups/organizations/agencies:

- 2 members of the House Education Committee
- 2 members of the Senate Education Committee

- 1 state education official
- 1 local education official
- 1 special education teacher
- 1 representative of a vocational, community or business organization concerned with the provision of transition services to children/students with disabilities
- 1 representative of the Department of Health and Human Services
- 1 representative of the Disabilities Rights Center
- 1 representative of the Parent Information Center
- 2 individuals with disabilities who have benefited from special education services, one of whom may be a high school student
- 1 administrator of a public special education program
- 1 representative of an institution of higher education that prepares special education and related services personnel
- 1 representative of a private school approved for special education
- 1 representative of a public charter school
- 1 representative of the Division for Juvenile Justice
- 1 representative of the Department of Corrections

- parents of children/students with disabilities
- A representative from the State child welfare agency responsible for foster care

A simple majority of the members of the committee shall be individuals with disabilities or parents of children/students with disabilities. Members serve a term of three years, and may succeed themselves. A list of members who were appointed to serve during the 2008 period may be found at the end of this report. A Chairperson is selected by a majority of the membership. Patricia Swonger currently serves as the Chairperson.

Meetings

The committee holds regular monthly meetings from September through June at the New Hampshire Department of Education to share information, discuss concerns, review committee reports, and make recommendations for further action. Such action may take several forms: further study and research; discussion; requests for additional data from the New Hampshire Department of Education or other state departments, agencies, and organizations; written communication to the State Board of Education or the Commissioner of Education; or public comment on issues of concern to the committee. Meetings are open to the public. Minutes are prepared after each meeting and are distributed via e-mail to committee members as well as being posted on the Department web site. Hard copies of minutes are available at the following monthly meeting.

Organization

The State Advisory Committee utilizes subcommittees to study and report on specific issues identified by the committee. Committee members self-select the subcommittee(s) they wish to serve on based on their interests, expertise and concerns. The New Hampshire Department of Education provides staff to clarify the department's procedures; explain programs and/or initiatives; provide technical assistance, administrative support, statistical data, and other background information. During the period covered by this report the following subcommittees were in operation:

Membership Subcommittee:

Audrey Burke, chair
Suzanne Whitney
Donna Curtain
Caithlin Daley-Meinhardt
Trisha Swonger

Legislative Subcommittee:

Dick Cohen, chair
Heather Thalheimer
Audrey Burke
Trisha Swonger

FAPE/LRE Subcommittee:

Janice Wiers, chair
Dick Cohen
Angela Keef
Frank Sgambati
Maureen Tracy
Anne Wilkinson

Parent Involvement Subcommittee:

Heather Thalheimer, chair

Suzanne Whitney

Audrey Burke

Actions and Issues

During the period of September 2007 through June 2008, the State Advisory Committee was involved in a number of activities, which are outlined on the following pages.

In September 2007 the State Advisory Committee held its annual planning retreat in Concord, NH. The committee reviewed the accomplishments of the previous year for inclusion in the annual report.

There were presentations by Mary Heath on the Follow the Child Initiative, Ralph Tilton on Following the Money in Special Education and an overview of Special Education in the State of New Hampshire by Santina Thibedeau. There was also a presentation by Ben Kilham titled “Bears, Education and Life with Dyslexia.”

There was discussion about the committee’s recommendations regarding the special education legislation and rules being worked on this year. A chart was presented outlining the proposed changes in legislation for the members to weigh in on by voting to agree or disagree with each change proposed.

After a three-year tenure as chair, Michael Maroni would be stepping down due to the end of his membership term on the committee as of November 2007. Therefore, nominations were

opened for the Chair position to be voted on at the October meeting.

In October a new chairperson was elected and the results of the voting chart regarding the special education legislation changes were reviewed. These results were presented at testimony of the State Board of Education by the new chair on October 10, 2007.

After the installation of the new chair and appointment of a vice chair the committee discussed ways in which they might be more effectively utilized by the New Hampshire department of Education, State Board of Education, and the state legislature. The committee chair met with the commissioner of education to discuss collaboration with the Department of Education and possible areas of focus for the committee. The committee agreed upon the following areas of focus for the year 2007-2008. Subcommittees were established, members were given the opportunity to choose which subcommittee(s) they wished to work on, and chairpersons were nominated to bring the groups together. Following are the actions and findings of the subcommittees.

Collaborative Activities with the Department of Education:

During the 2007-2008 year the committee heard presentations on the following topics:

September 2007

Follow the Child Initiative – Mary Heath, Department of Education

Follow the Money in Special Education – Ralph Tilton Department of Education

“Bears, Education and Life with Dyslexia” – Benjamin Kilham

October 2007

State Special Education Director's Report – Santina Thibedeau,
Department of Education

New Hampshire Vision and Hearing Network – Cate Weir

November 2007

Indicators # 4, 9 and 10 (Rates of suspension and expulsion,
disproportionate representation)– Robert Wells, Education
Coordinator – Department of Education

December 2007

Indicator 8 (Parent Involvement) - Mary Lane, Education
Consultant II, Department of Education

Indicator #14 (Post Secondary Outcomes Survey) – Amy Jenks,
Program Specialist II, Department of Education

January 2008

Indicator #16 (percent of written complaints with reports issued
that were resolved within a 60 day timeline or a timeline extended
for exceptional circumstances with respect to a particular
complaint) - Terry Brune, Department of Education

April 2008

National data presentation – Jane Nell Luster, Data Accountability
Center

NECAP Update - Gaye Fedorchak, Department of Education

May 2008

Department Strategies in Response to NECAP Gap- Santina Thibedeau, Department of Education

Indicator #11(60 day eligibility determination) – Robert Wells, Department of Education

Indicator #5 (Time removed from regular classroom)– Ruth Littlefield, Department of Education

June 2008

Indicator #1(Regular diploma graduation rate) – McKenzie Harrington, Department of Education'

Indicator #13(Transition services) – Leander Corman, Department of Education

SUBCOMMITTEE REPORTS

Subcommittee – FAPE/LRE

- This committee was formed in February, 2008.
- Current members of the group are Angela Keef, Frank Sgambati, Janice Wiers, and Anne Wilkinson.
- We set priorities at the March meeting.
- SPP indicators numbers 1-8 are a priority for the committee. The first area of concentration is indicator #2, “Percent of youth with IEPs dropping out of high school compared to the percent of all youth in the State dropping out of high school.
- In April, Angela presented information on Senate Bill 18.
- We will continue to follow Senate Bill 18 and any initiatives being developed around that area.

Unmet needs within the state related to the education of children/students with disabilities

Based on widely accepted measures ie. Graduation rates, statewide assessment scores a significant number of students receiving special education services statewide are not having their needs met.

Note: The SAC advised the Commissioner of Education this past year regarding this overriding unmet need and received no response, see SAC's letter attached as appendix.

These problems are exacerbated in a number of communities based on geography, poverty, lack of services and resources, and local decisions.

Recommendations

The State Advisory Committee respectfully submits the following recommendations to the Governor, Commissioner of Education, members of the General Court, and other interested parties with regard to key issues raised in this report. The recommendations are not in order of priority.

The State Advisory Committee welcomes the opportunity to work more closely with the New Hampshire Department of Education, State Board of Education, Governor, House and Senate Education Committees, and other state and local policy makers to improve special education services in New Hampshire.

The committee believes that it is important to have all appointed members attend meetings, particularly elected officials who have much to share with committee members. It is recommended that the House and Senate appoint members who will be able to attend State Advisory Committee meetings on a regular basis.

The State Advisory Committee respectfully recommends to the elected officials in the Legislative body to resolve the public funding issue pursuant to the Londonderry Supreme Court decision, and Claremont 1 & 2 decisions in order to ensure all NH children have access to an adequate public education.

SAC recognizes that there are schools that are excelling in the provision of education to students with disabilities, thereby demonstrating that these students can achieve as well as their non disabled peers. Therefore, SAC recommends the state provide opportunities for these schools to share their successful methodologies with other schools.

**State Advisory Committee on the Education of
Students with Disabilities;
Advising the Governor and Legislature;
Per RSA 186-C:3-b**

Membership List

Updated: June 2008

<i>The committee shall consist of the following members:</i>	<i>Name</i>	<i>Term Expiration</i>
Two members of the house education committee, appointed by the speaker of the house	Representative Sharon M. Carson	Expires 12/3/08 Term 1
	Representative Claire D. Clarke	Expires 12/3/08 Term 1
Two members of the senate education committee, appointed by the president of the senate	Senator Peter Bragdon	Expires 12/3/08 Term 1
	Senator Molly Kelly	Expires 12/3/08 Term 1
One representative of a vocational, community, or business organization concerned with the provision of transition services to children /students with disabilities appointed by the governor	Vacant	
One state education official, who shall be an administrator, appointed by the governor	Joan Holleran, Administrator of VR/Policy Planning	Expires 5/4/11 Term 1
One local education official, who shall be an administrator, appointed by the governor	Vacant	
One special education teacher, appointed by the governor	Anne Wilkinson	Expires 5/4/11 Term 2
One representative of the department of health and human services, recommended by the commissioner of the department of health and human services, and appointed by the governor	Michelle Rosado	Expires 1/18/09 Term 1

One representative of the Disabilities Rights Center, recommended by the Disabilities Rights Center and appointed by the governor	Richard (Dick) Cohen	Expires 12/22/10 Term 2
One representative of the Parent Information Center, recommended by the Parent Information Center and appointed by the governor	Heather Thalheimer	Expires 5/4/11 Term 2
Two individuals with disabilities who have benefited from special education services, one of whom may be a high school student, appointed by the governor	Sarah Cooley Benjamin Kilham Spencer Nozell Griffin Nozell	Expires 10/4/08 Term 1 Expires 10/4/08 Term 1 Expires 10/4/08 Term 1 Expires 2/15/2010 Term 1
One administrator of a public special education program, appointed by the governor	Brian Balke, Director of Special Education	Expires 5/4/11 Term 1
One representative of an institution of higher education that prepares special education and related services personnel, appointed by the governor	Frank Sgambati	Expires 5/4/11 Term 2
One representative of a private school approved for special education, appointed by the governor	Amy Allen, Director of Ed	Expires 12/12/10 Term 1
One representative of a public charter school, appointed by the governor	Susan Brule	Expires 1/13/09 Term 1
One representative from the department of corrections, appointed by the governor	Daniel Tanguay, Education Director	Expires 5/4/11 Term 1
<u>Parents</u> of children/students with disabilities, appointed by the governor. A simple majority of the members of the committee shall be individuals with disabilities or parents of children/students with disabilities		

	Audrey Burke	Expires 5/4/11 Term 2
	Janice Wiers	Expires 5/4/11 Term 2
	Robin Hefflefinger	Expires 5/4/11 Term 2
	Wendy Thomas	Expires 5/4/11 Term 2
	Raymond Dailey	Expires 5/4/11 Term 2
	Martha Shedd	Expires 5/4/11 Term 2
	Donna Curtin	Expires 10/4/08 Term 1
	Patricia Ann Swonger	Expires 11/28/08 Term 1
	Lisa Lowell	Expires 11/28/08 Term 1
	Suzanne Whitney	Expires 11/28/08 Term 1
	Ngozi Okongwu	Expires 4/13/09 Term 1
	Angela Kouroyen	Expires 2/15/2010 Term 1
	Susan Frenette	Expires 5/14/11 Term 1
	Theresa Kraft	Expires 2/15/2010 Term 1
	Melissa Nadeau	Expires 6/11/11 Term 1
	Angela O'Connor	Expires 6/11/11

		Term 1
	Maureen Tracy	Expires 6/11/11 Term 1
According to IDEA 2004, the additional individuals must be included;		
State and local education officials, including officials who carry out activities under subtitle B of title VII of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11431 et seq.)	Lynda Thistle – Elliott	Expires 10/4/08 Term 1
A representative from the State child welfare agency responsible for foster care	Angela Keef, M.Ed, Education Specialist	Expires 1/9/11 Term 1
Representative from the State juvenile agency	Vacant	

Attendance at SAC meetings for 2007-2008

Key: P- Present A- Absent R- Resigned/Term expired

MEMBER	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN
Allen, Amy			P	P	P	A	A	P	P	A
Balke, Brian										P
Bragdon, Peter	A	A	A	A	A	A	A	A	A	A
Brule, Susan	A	A	A	A	A	A	A	A	A	A
Burke, Audrey	A	A	A	A	A	A	P	P	P	P
Carozza, Bill	A	A	A	A	A	A	A	A	A	A
Carson, Sharon M.	A	A	A	A	A	A	A	A	A	A
Clarke, Claire D.	A	A	A	A	A	A	A	A	A	A
Cohen, Dick	P	A	P	P	A	P	P	A	A	P
Cooley, Sarah	A	A	A	A	A	A	A	A	A	A
Curtain, Donna	A	P	A	P	P	A	A	P	P	P
Dailey, Raymond	P	P	A	A	P	A	P	A	A	P
Dailey-Meinhardt, Caitlin	P	A	A	P	P	A	A	A	A	A
Doty, Robert	R									
Dowey, Pat	P	P	P	P	A	A	P	A	A	A
Finn, Bill	P	P	A	A	A	A	A	A	A	A
Frenette, Susan									P	P
Hanna, Matthew	A	A	P	A	A	A	A	A	A	A
Hefflefinger, RobinP	P	P	P	P	A	A	P	P	P	P
Holleran, Joan										P
Huff, Emily	A	A	A	A	A	A	A	A	A	A
Keef, Angela						P	P	P	P	A
Kelley, Molly	A	A	A	A	A	A	A	A	A	A
Kilham, Benjamin	P	P	A	P	P	A	A	P	P	P
Kouroyen, Angela	P	A	P	A	A	A	A	A	A	A
Kraft, Theresa	P	A	P	A	A	A	A	A	A	A
Letts, Kitty	P	A	P	P	P	A	P	A	A	A
Lord, Karen	A	A	A	A	A	A	A	A	A	A
Lowell, Lisa	A	A	A	A	A	A	A	A	A	A
Maroni, Mike	P	P	A	P	A	A	A	A	A	A
Morales-Hill, Lilia	A	A	A	A	A	A	A	A	A	A
Nozell, Griffin	P	A	A	A	P	A	P	P	A	P
Nozell, Spencer	P	A	P	A	P	A	P	P	A	A
O'Connor, Angela										P
Okongwu, Ngozi	A	A	A	A	A	A	A	A	A	A
Rosado, Michelle	P	A	P	A	A	A	P	P	A	A
Sgambati, Frank	A	P	P	A	P	A	P	A	P	P
Shedd, Martha	A	A	P	A	A	A	P	A	A	A

Swonger, Patricia	P	P	P	P	P	P	P	P	P	P
Tanguay, Danny										P
Thalheimer, Heather	P	P	P	A	P	A	P	P	P	P
Thibedeau, Santina	P	P	P	P	R					
Thistle-Elliot, Linda	P	P	A	P	A	A	P	A	P	
Thomas, Wendy	P	A	P	A	P	A	P	P	A	P
Tracey, Maureen										P
Whitney, Suzanne	P	P	P	P	P	P	P	P	A	A
Wiers, Janice	P	P	P	P	P	A	P	P	P	P
Wilkinson, Anne	A	P	P	A	A	A	P	A	P	A

POLICIES AND PROCEDURES

STATE ADVISORY COMMITTEE ON THE EDUCATION OF CHILDREN/STUDENTS WITH DISABILITIES

The Individuals with Disabilities Education Act (IDEA) requires that each state establish and maintain an advisory panel for the *purpose of advising the state special education staff regarding the education of all eligible children with disabilities*. This includes advising the state on the education of eligible children with disabilities who have been convicted as adults and incarcerated in adult prisons, even if a state assigns general supervision responsibility for those children to a public agency other than a State Education Agency. All states are required to meet the federal regulations regarding state advisory panels, however, states may also have laws/regulations which establish panel requirements and responsibilities beyond those outlined in federal regulation (1).

In New Hampshire, this panel is the State Advisory Committee on the Education of Children/Students with Disabilities (SAC). State law, RSA 186-C:3-b, specifies the purpose, membership, terms and duties of the committee. The purpose of the committee is to “advise the Commissioner of Education on issues relating to special education, and to promote communication and cooperation among individuals involved with students with disabilities. In addition, the committee shall review the federal financial participation and the level of state funding to determine their impact on the programs and delivery of services to children/students with disabilities” (2).

Membership

The State Advisory Committee must be appointed by the Governor or other officials authorized under State law to make those appointments. The committee shall consist of the following members:

- (a) Parents of children with disabilities, appointed by the governor
- (b) Two members of the House Education Committee, appointed by the Speaker of the House
- (c) Two members of the Senate Education Committee, appointed by the President of the Senate
- (d) One representative of a vocational, community, or business organization concerned with the provision of transition services to children/students with disabilities, appointed by the Governor
- (e) One state education official, appointed by the Governor
- (f) One local educational official, who shall be an administrator, appointed by the Governor
- (g) One special education teacher and one regular education teacher, appointed by the Governor;
- (h) One representative of the Department of Health and Human Services involved in the financing or delivery of special education or related services to children with disabilities, recommended by the Commissioner of the Department of Health and Human Services, and appointed by the Governor;

- (i) One representative of the Disabilities Rights Center, recommended by the Disabilities Rights Center and appointed by the Governor.
- (j) One representative of the Parent Information Center, recommended by the Parent Information Center and appointed by the Governor.
- (k) Two individuals with disabilities who may have received (who have benefited from) special education services, one of whom may be a high school student, appointed by the Governor
- (l) One administrator of a public special education program, appointed by the Governor.
- (m) One representative of an institution of higher education that prepares special education and related services personnel, appointed by the Governor.
- (n) One representative of a private school approved for special education, appointed by the Governor.
- (o) One representative of a public charter school, appointed by the Governor
- (p) One individual representing children with disabilities who are home schooled.
- (q) One representative from the Department of Corrections and one representative from a county correctional system, both of whom are responsible for providing or overseeing the provision of special education or special education and related services, appointed by the Governor.
- (r) State and local education officials, including officials who carry out activities under subtitle B of title VII of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11431 et seq.)
- (s) A representative from the state child welfare agency responsible for foster care.
- (t) Parents of children/students with disabilities, appointed by the Governor. A simple majority of the members of the committee shall be individuals with disabilities or parents of children/students with disabilities.

A simple majority of the members of the committee shall be parents of children/students with disabilities (ages birth through 26) or individuals with disabilities.

Ex-officio members may be appointed to assist and support the work of the State Advisory Committee.

Tenure of Members

Committee members shall be appointed to staggered 2-year terms. Committee members shall have all voting rights and privileges granted by their appointment.

As vacancies occur, the Membership Committee will solicit recommendations for individuals to fill the open position(s), and forward the information to the Governor's office for action, except where appointments of representatives are made by the NH Legislature.

Duties of the State Advisory Committee

The committee is charged by law to:

- (a) advise the department of education regarding unmet needs within the state in the education of children/students with disabilities;
- (b) provide an annual report to the Governor and the state legislature on the status of education of students with disabilities in New Hampshire;
- (c) comment publicly on the state plan and rules or regulations proposed for issuance by the state regarding the education of children/students with disabilities;
- (d) assist the state in developing and reporting such information and evaluations as may assist the U.S. Secretary of Education in the performance of responsibilities under the Individuals with Disabilities Education Act;
- (e) advise the Department of Education in developing corrective action plans to address findings identified in federal monitoring reports; and
- (f) advise the Department of Education in developing and implementing policies relating to the coordination of services for children/students with disabilities;

Operating Procedures

The committee operates under Robert's Rules of Order . Meetings are held monthly from September through June, with additional meetings at the call of the chair, as necessary. Meetings will be held in accessible facilities.

A chairperson is selected by a majority of the committee members for a term of one year. The chairperson shall preside at all meetings, plan and organize meetings, prepare agenda, review minutes, assist in preparing required documents, and sign all official documents on behalf of the State Advisory Committee. A vice-chairperson may be appointed by the chairperson, to assist the chair and serve as chair in the absence of the chairperson.

Below are examples of items commonly included on State Advisory Committee agendas:

- welcome and introductions;
- approval of minutes of the previous meeting;
- announcements;
- report from Special Education Director, DOE staff, and/or invited presenters
- committee reports;
- actions items (i.e., comment on proposed regulations);
- report on collaborative activities between SAC and DOE (i.e., forums);
- overview of materials/handouts;
- old/new business;
- future agenda items or speaker(s) for next meeting;
- date for next meeting
- public comment

Committees/subcommittees may be established, as needed, to carry out the work of the State Advisory Committee. Committees may include SAC members, ex-officio members, and other individuals who can contribute to the work of the committee. Each committee will be chaired by a member of SAC. Committees will report on their work, recommendations, and/or conclusions at the next regularly scheduled meeting of the full SAC.

The State Advisory Committee conducts a retreat in September of each year to review the accomplishments of the previous year, highlight unresolved issues from the previous year, discuss and develop priorities for the coming year, and appoint committees to carry out the work of the full committee. A schedule of proposed meeting dates is developed for planning purposes. The retreat is also an opportunity to provide an orientation for new members.

Administrative support is provided to the State Advisory Committee by the NH Department of Education. Minutes of each SAC meeting are prepared and published in accordance with timeliness under state law. The agenda and minutes will be sent to all SAC members one week in advance of the meeting. Minutes and agendas may be sent electronically and/or by mail. Minutes are approved by the chairperson and the SAC prior to publication on the DOE's website. SAC minutes are available to the public. Department of Education staff will assist in organizing Sac meetings, take and prepare minutes for review and distribution, notify members of meeting times and locations, disseminate minutes and other official documents to members, and carry out other duties necessary for the efficient operation of the committee.

Each year, the State Advisory Committee will submit a report outlining the activities and recommendations/conclusions of the committee during the previous year (September through June). The report outlines advice to the state on the priority areas that were addressed by SAC during the year, activities undertaken by SAC, recommendations, areas of need which are viewed as priorities in the education of children with disabilities, membership and attendance.

All State Advisory Committee meetings are open to the public and agenda items must be publicly announced prior to the meeting. Interpreters and other necessary services must be provided at SAC meetings for members or participants.

State Advisory Committee members serve without compensation, but the Department of Education must reimburse the members for reasonable and necessary expenses for attending meetings, such as travel reimbursement.

References

1. State Special Education Advisory Panels Under the Individuals with Disabilities Education Act (IDEA) Public Information Guide, 2003, Mountain Plains Regional Resource Center, 1780 N. Research Parkway, Logan, UT 84341
www.usu.edu/mprrc

2. RSA 186-C:3-B Advisory Committee; Purpose: Membership: Terms: Duties: Meetings. Source 1994, 114.1; 1995, 310:149, eff. Nov. 1, 1995; 1998, 201:1, eff. June 18, 1998; 2001, 286:19 eff. Sept. 14, 2001.
3. South Dakota Special Education Advisory Panel Under the Individuals with Disabilities Education Act Part B By-Laws and Operating Procedures, 2003, S.D. Department of Education and Cultural Affairs.

**State Advisory Committee on the Education of
Children/Students with Disabilities;
Advising the Governor and Legislature;
Per RSA 186-C:3-b**

November 8, 2007

New Hampshire State Board of Education
c/o: Mary Mayo
101 Pleasant Street
Concord, NH 03301

Dear Mary,

The State Advisory Committee (SAC) on the Education of Children/students with Disabilities is charged by federal and state statute with, among other things, commenting publicly on any rules and regulations proposed by the state regarding the education of children with disabilities. The SAC is comprised of a diverse group of individuals defined by statute, with a least fifty percent of the group being parents of students with disabilities, students with disabilities and individuals with disabilities. In addition members include representation from special education teachers, public and private school administrators, special education administrators, DHHS and DOE.

The SAC has studied and discussed the Proposed NH Rules for the Education of Children with Disabilities. Fifteen members out of a total of 39 current members took part in this vote (all of whom were given the opportunity to vote). The actual vote on each comment/recommendation is attached. Based on this vote, our comments/recommendations are;

1. The definition of “child with a disability” add acquired brain injury (ABI) to the list of disability categories.
2. Keep short-term objectives as a required IEP component for all children with disabilities.
3. Keep our current 45-Day Evaluation Timeline (with the option of a 15-day extension).
4. Transition services to begin being part of a child’s IEP beginning with the IEP that is in place when the child turns age 14.
5. A Functional behavioral assessment to be an option only after a child has been suspended from school.
6. In the IEP component on reporting a child’s progress – to include *how & when* parents will be informed of their child’s progress and keep the “sufficiency statement” (“the extent to which that progress is sufficient to enable the child to achieve the goals by the end of the year”).

7. Keep the manifestation determination criteria that was deleted by IDEA (whether the IEP and placement were appropriate and if the special education services, supplementary aids and services and behavioral intervention strategies were provided consistent with the child's IEP and placement, if the child's disability impaired his/her ability to understand the impact and consequences of the behavior and whether the child's disability impaired his/her ability to control the behavior).
8. Keep NH's current parental consent requirements (for example, requiring consent for every IEP).
9. Keep the requirement that the LEA must provide parents with 10-day notice of an IEP meeting (5 days for a manifestation determination review).
10. "Mapping" of a cochlear implant should be an allowable related service.
11. If an IEP team member is excused, the excused IEP team member should be required to provide the required written input to the parents and IEP team, a certain number of days in advance.
12. Removal to an interim alternative educational setting for the most serious behavioral violations should be for 45 *calendar days* (previous language).
13. Before a hearing officer decides to remove a child to an interim alternative educational setting because the hearing officer determined that if the child remained in his/her current placement, the child's behavior would be likely to put the child or others at risk, the hearing officer should first be required to consider whether the LEA made reasonable efforts to minimize the risk of harm in the child's current placement, including the use of supplemental aids and services.
14. Continue to require that each teacher and service provider responsible for implementing a child's IEP be given a copy for working and monitoring purposes (IDEA says only that the IEP must be accessible to the teachers/service providers).
15. The court should be able to order reimbursement for reasonable expert witness fees if a parent prevails at a due process hearing (with certain exceptions).
16. Follow IDEA's new rules giving the LEA the option of filing for a due process hearing when a parent does not provide consent or does not respond to a request for consent for an initial evaluation? (2001 NH Rules require the LEA to file for a due process hearing to protect the child's right to a FAPE.).

Thank You,

Patricia A. Swonger
Chairman, State Advisory Committee

Cc: Emma Rous, Chairman of the House Education Committee

SAC Vote on Some Key Decisions on What Should be Included in the Proposed *NH Rules for the Education of Children with Disabilities*

Check One:		Issues
Yes	No	
14	1	Should the definition of “child with a disability” add acquired brain injury (ABI) to the list of disability categories?
13	2	Do we want to keep short-term objectives as a required IEP component for all children with disabilities?
14	1	Do we want to keep our current 45-Day Evaluation Timeline (with the option of a 15-day extension) or adopt a longer timeframe?
12	3	Do we want transition services to begin being part of a child’s IEP beginning with the IEP that is in place when the child turns age 14 (an alternative is beginning with the IEP that is in place when the child turns age 16).
9	6	Do we want a Functional behavioral assessment to be an option only after a child has been suspended from school? (Or a FBA could be conducted at any time that a child’s IEP team has concerns about the child’s behavior.)
13	2	In the IEP component on reporting a child’s progress - should we include <i>how & when</i> parents will be informed of their child’s progress and keep the “sufficiency statement” (“the extent to which that progress is sufficient to enable the child to achieve the goals by the end of the year”)?
15	0	Do we want to keep the manifestation determination criteria that was deleted by IDEA (whether the IEP and placement were appropriate and if the special education services, supplementary aids and services and behavioral intervention strategies were provided consistent with the child’s IEP and placement, if the child’s disability impaired his/her ability to understand the impact and consequences of the behavior and whether the child’s disability impaired his/her ability to control the behavior)?
12	2 1 abstain	Should we keep NH’s current parental consent requirements, or reduce our requirements to reflect those in IDEA (for example, we now require consent for every IEP, while IDEA requires it only for the first IEP)?
14	1	Should we keep the requirement that the LEA must provide parents with 10-day notice of an IEP meeting (5 days for a manifestation determination review)? (Or adopt IDEA’s language requiring notice a “reasonable time” before the meeting.)
10	4 - 1 abstain	Should “mapping” of a cochlear implant be an allowable related service?

13	2	If an IEP team member is excused, should the excused IEP team member be required to provide the required written input to the parents and IEP team a certain number of days in advance?
9	6	Should removal to an interim alternative educational setting for the most serious behavioral violations be for 45 <i>calendar days</i> (previous language)? Otherwise, it will be for the 45 <i>school days</i> allowed by IDEA.
12	3	Before a hearing officer decides to remove a child to an interim alternative educational setting because the hearing officer determined that if the child remained in his/her current placement, the child's behavior would be likely to put the child or others at risk, should the hearing officer first be required to consider whether the LEA made reasonable efforts to minimize the risk of harm in the child's current placement, including the use of supplemental aids and services?
13	2	Should we continue to require that each teacher and service provider responsible for implementing a child's IEP be given a copy for working and monitoring purposes? (IDEA says only that the IEP must be accessible to the teachers/service providers.)
13	2	Should the court be able to order reimbursement for reasonable expert witness fees if a parent prevails at a due process hearing (with certain exceptions)?
11	4	Should we follow IDEA's new rules giving the LEA the option of filing for a due process hearing when a parent does not provide consent or does not respond to a request for consent for an initial evaluation? (2001 NH Rules require the LEA to file for a due process hearing to protect the child's right to a FAPE.)

**State Advisory Committee on the Education of Children/Students
with Disabilities;
Advising the Governor and Legislature;
Per RSA 186-C:3-b**

January 9, 2008

Representative Emma Rous
House Education Committee Chairperson
64 Adams Point Road
Durham, NH 03284

Representative Nancy Stiles
40 Hobbs Road
Hampton, NH 03842

Re: HB 766 with respect to the Statewide Advisory Committee on the Education of Children with Disabilities (SAC)

Dear Representatives Rous and Stiles:

We are writing to bring to your attention some concerns of the Statewide Advisory Committee on the Education of Children with Disabilities (SAC) regarding proposed changes to HB 766 that deal with the SAC membership. Since we have expressed our support and appreciation for the efforts of the special education task force and their recommended bills, and do not want to jeopardize the bills, if you feel that it is better to address our concerns on the Senate side, we leave that to your judgment. For that reason we have copied Senator Iris Estabrook, the Chair of the Senate Education Committee.

However, the SAC felt it important that our concerns be expressed as early as possible. Our understanding is that the changes that were made to existing law, RSA 186-C:3-b(II) and (III), that we are concerned about were not due to any desire to make substantive changes but were of a drafting nature.

First, the appointing authority should be stated for the following membership categories for the proposed changes to RSA 186-C:3-b(II). (The italicized language is SAC's suggestion.)

- (a) Individuals with disabilities, ~~or parents of children with disabilities~~, *as appointed by the Governor.*
- (b) *Parents of children with disabilities, as appointed by the Governor.*

Note: In addition to retaining the appointing authority as stated in the current law (the governor), SAC's suggestion divides the proposed section into two provisions as required by federal law, 34 CFR 300.168(a)(1)(2). Otherwise as HB 766 currently reads, you could end up with no parents on the advisory council.

- (p) One individual representing children with disabilities who are home-schooled, *as appointed by the Governor.*

Note: Having a representative from home-schools is new and is not required by federal law. However the appointing authority was not specified.

(r) State and local officials who are responsible for performing activities under subtitle B of Title VII of the McKinney-Vento Homeless Assistance Act, 42U.S.C. section 11431, et seq, *as appointed by the Governor.*

Note: While this membership category is not new, the current law did not state who the appointing authority was. This clarifies it.

(s) A representative from the department of Health and Human Services responsible for foster care, *recommended by the commissioner of the department of Health and Human Services, and appointed by the governor.*

Note: While this membership category is not new, the current law did not state who the appointing authority was. This clarifies it. The proposed language is also the same as that used under subsection (g), a similar provision.

Second, there is a concern that the amendment to RSA 186-C:3-b(III)(a), which would change the current 3 year term to a staggered two year term, would seriously hinder the capacity of parents to effectively participate in the SAC. As it is a federal requirement that more than 50% of the SAC membership consist of parents of children with disabilities or people with disabilities, this change could make it difficult to meet our membership requirements. One suggestion would be to keep the three year term with a single succession in place to give members time to familiarize themselves with SAC procedures and the complexities of the system on which we are charged to advise.

Finally, we have some concern regarding the addition of required members. For every individual representative that is added to the roster, the SAC would be required by law to add at least one more parent or individual with a disability. Again, this could make it difficult to meet our federal compliance with IDEA. While it is necessary and desirable to have broad representation on the SAC, that must be balanced with the realities of fulfilling membership requirements

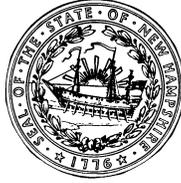
We would be open to discussing any of the changes proposed for the SAC with you.
Thank you for your attention to this matter.

Sincerely Yours,

Patricia Ann Swonger, Chairman
State Advisory Committee on the Education of Children/Students with Disabilities

Cc: Senator Iris Estabrook

Lyonel B. Tracy
Commissioner of Education
Tel. 603-271-3144



Mary S. Heath
Deputy Commissioner
Tel. 603-271-7301

**STATE OF NEW HAMPSHIRE
DEPARTMENT OF EDUCATION
101 Pleasant Street
Concord, N.H. 03301
FAX 603-271-1953
Citizens Services Line 1-800-339-9900**

June 6, 2007

The Honorable John Lynch
Governor of New Hampshire
State House
107 North Main Street
Concord, NH 03301

Dear Governor Lynch,

I am writing to request a meeting with you, the President of the Senate, and the Speaker of the House on behalf of the State Advisory Committee for Children with Disabilities (SAC).

The State Advisory Committee for Children with Disabilities is a statutory committee established by RSA:186-C:3-b. The main purpose of the committee is to inform the Commissioner of Education, Governor and General Court on issues related to the education of children with disabilities in New Hampshire.

I have enclosed the attached motion which outlines the SAC's request for a meeting.

Sincerely,

Lyonel B. Tracy
Commissioner of Education

State Advisory Committee on the Education of
Children with Disabilities;
Advising the Governor and Legislature;
Per RSA 186-C:3-b (SAC)

April 2, 2008

Commissioner Lyonel B. Tracy
New Hampshire Department of Education
101 Pleasant Street
Concord, NH 03301-3860
Re: Open Records Request by the Disability Rights Center

Dear Commissioner Tracy:

Approximately six months ago the Disability Rights Center made an Open Records request for the raw data used by the Department of Education in calculating the dropout rate for the State Performance Plan. It is our understanding that RSA 91-A:4, IV requires that "If a public body is unable to make a public record available for immediate inspection and copying, it shall, within 5 business days of request, make such record available, deny the request in writing with reasons, or furnish written acknowledgement of the request and a statement of the time reasonably necessary to determine whether the request shall be granted or denied."

It is our understanding that the data has not been provided, nor has the request been acknowledged or responded to in any of the ways detailed in RSA 91.

As a committee we request that you honor this long overdue request immediately by providing the requested data to the Disability Rights Center.

Sincerely,

Patricia Swonger, Chair
cc: Richard Cohen, Executive Director, Disability Rights Center

Be it resolved that The State Advisory Committee for Children with Disabilities (SAC) supports the Disabilities Rights Center's, April 30, 2007 analysis, entitled "Half of New Hampshire Students with Disabilities are Dropping Out; Legislature Considering Bills to Address Crisis in Special Education."

The analysis shows the drop out rate from High School in New Hampshire for students with disabilities as 47%, ranking New Hampshire as 52nd among the states and territories.

The SAC asks the Chair to assure inclusion in the Annual Report that we find this information to be appalling, that actions have been insufficient and we can find no evidence of immediate and substantive actions by the Department of Education, Governor or legislature to address the issue.

We wonder, out of the number of children with disabilities that dropped out, how many were below proficient in reading, writing, and/or math? The performance of children with disabilities does not mirror the potential of learning for a majority of the 31,399 children with disabilities in NH between ages of (3-21). Most of the students are not significantly cognitively disabled, according to the data provided by NH Department of Education for December 2006. Look at the categories, they speak for themselves:

- 41.4 % Specific Learning Disability
- 19.2 % Speech/Language
- 15.4% Other Health Impaired
- 8.0% Emotional Disturbance

So have we just set low expectations systemically? How will the local and state educators aggressively address this? The issues begin in the schools, with the level of expectations and instruction and/or programs for children with disabilities, and follows with the need for strong data accountability at both the state and local levels.

We formally ask what the agencies involved are doing and will do to address this issue. Furthermore, in an attempt to heighten awareness and assure appropriate action is taken; we formally ask to convene a meeting with the Commissioner of Education, The Governor, the President of the Senate and the Speaker of the House. We will rely on the administrative support provided to the SAC under the authorizing statute to arrange the meeting.

Memorandum

TO: State Advisory Committee
FROM: Richard Cohen
DATE: December 5, 2007
RE: Dropout Rates in New Hampshire

Last spring, considerable attention was paid to a national ranking of New Hampshire's dropout rate for children with disabilities. Sometime after mid-April the Department revised its calculations of its dropout rates, revising the rate from 8.4% down to 3.9% for 2005-2006 and from 7.9% to 3.4% for 2004-2005. The DRC set out to analyze the basis for the DOE's original and revised dropout calculations. We sought information about the methodology used by the Department, the data used for the original and revised calculations, and the basis for the low national ranking for New Hampshire's ranking. Set out below is a brief summary of our findings to date.

The indicator is to measure percent of youth with IEPs dropping out of high school compared to the percent of all youth in the State dropping out of high school

Dropout Calculation Methodology

- The greatest contributor to the dramatic decrease in the disability dropout rates reported by the Department was its change in the base population used in its calculations. The earlier versions utilized the population of students with disabilities from ages 16 to 21 (6,320 SWD), while the revised calculations relied on a population of students ages 14 to 21 (11,839 SWD). This change in method was an attempt to approximate the high school grades, for the Department's database only allows age based sampling. Use of the 14 and older sample results in a sample that is clearly too large for an accurate calculation, however, for children 14 and even older attend grades below high school, and children with disabilities probably do so at a higher rate than other children. Because the revised population is larger than the population of children in high school, it causes the high school disability dropout rate to be understated. A straightforward sampling process could correct this problem.
- Reducing the number of students dropping out by a factor of 18% (545 to 447) to account for returning dropout students deflates or reduces the disability dropout rate. This figure is said to be based on the behavior of the general dropout population, but has not been verified through sampling.
- Increasing the base population (thus decreasing the dropout rate) of students with disabilities by assuming that 23% of students who dropout do so in the early months of the school year. This is also an adjustment said to be based on the behavior of the general population of dropouts, but has not been verified through sampling.
- As identified by the New Hampshire Center for Public Policy Studies, the Department tends to undercount dropouts generally, through such errors as counting uncompleted referrals to alternative schools as transfers rather than dropouts. These errors would deflate the actual dropout rates and are likely to affect the disability dropout rate to a greater degree than the general dropout rate.

- The Department has reported inconsistent dropout numbers to the United States Department of Education. The dropout count of 545 in the State Performance Plan resulted in a calculated dropout rate of 3.8%, while the number of 1465 in another federal report for the same period would result in a dropout rate of 10% using the same methodology.

Data Requests

- Despite repeated requests under New Hampshire's Right to Know Law, we were not given access to sufficient data to confirm or disprove any of the Department's dropout calculations, the claims it has made about the accuracy of its data, or the validity of the various adjustments it has made to its dropout calculations.

Federal Requirements

- Federal statutes and regulations require that New Hampshire establish performance goals for graduation and dropout rates for children with disabilities. New Hampshire's chosen indicator, dropout rates for the high school years, is not being measured for students with disabilities. Rather, the Department measures the rate for students 14 to 21.
- The federal Office of Special Education Programs has notified the Department that it had found deficiencies in the timely submission of reliable and valid data for graduation and dropout rates. If the finding is repeated next year, New Hampshire will be subject to enforcement action which may include limitations on the use of federal funds.
- Despite changing the content of its federal reports in the areas where it has received adverse findings, the Department has apparently not informed the responsible federal agencies of the changes.

New Hampshire's National Ranking by the National Center for Special Education Accountability Monitoring

- New Hampshire's ranking places it 52d among states and territories in the fraction of its students leaving special education through dropout (as opposed to transfer to regular education, graduation, etc.) The Department disputes the reliability of the data used for this ranking, but graduation rate rankings also put New Hampshire below average among other states.
- Because New Hampshire's exiting rate is similar to the national rate, the relatively large fraction of dropouts among exiting students is a significant statistic, even if it is not a measure of overall dropout rates.

Memorandum

TO: Richard Cohen
FROM: Michael Skibbie
DATE: November 30, 2007
RE: Dropout Rates in New Hampshire

Set out below is a description of our efforts to date to verify the accuracy of reporting by the New Hampshire Department of Education (the Department) of dropout rates for children with disabilities in New Hampshire.

Background

During 2007, the Department revised its State Performance Plan for 2005-2010 (SPP). The dropout rate for youth with IEPs was first reported as 7.9%, which was more than double the overall high school dropout rate, which the SPP reported as 3.4% for 2004-05. The SPP was changed to report the dropout rate for youth with IEPs as 3.8% for 2004-05. The modification of the disability dropout rate was significant, as the revised version showed a difference in dropout rates of only .4%. The new version of the SPP bears the same title as the original version - both are designated as "Submitted February 1, 2007" and "Revised April 9, 2007." It is unclear when the new version was produced or published on the Department website, or if and when it was transmitted to United States DOE.

The Department also revised its Annual Performance Report for FFY 2005 (**2005-06**), which in *its original version reported the dropout rate for youth with IEPs as 8.4%*, even higher than in 2004-05. A modified version of the APR was issued which reduced the disability dropout rate to 3.9%, which is within a percentage point of the APR's reported overall dropout rate of 3.1 %. As in the case of the SPP, the newer version of the APR does not alert the reader that it has been revised since its original publication - both versions are labeled as being published on February 1, 2007 and revised on April 1, 2007.

In April of 2007, the Disabilities Rights Center (DRC) became aware of a ranking of U.S. states' and territories' dropout rates published by the National Center for Special Education Accountability Monitoring, an arm of Louisiana State University funded by the Office of Special Education Programs (OSEP) of the U.S. DOE. The ranking placed New Hampshire's dropout rate of 47% for children with disabilities at 52d among states and US territories. This ranking received local media coverage in early May of 2007. Commissioner Tracy was quoted in press reports as saying that although he questioned the accuracy of the figures, he believed that New Hampshire's dropout rate for students with disabilities was too high.

The State Advisory Committee in its May 2007 meeting heard a presentation from you about the 47% drop out rate as well as the SPP/APR reported drop out rates which as noted above were more than two times higher than the drop out rate for all children. Additionally you highlighted the achievement gap as represented by the statewide assessment scores. In response the Bureau at a subsequent meeting provided revised drop out figure as discussed above. You indicated that ORC would be requesting data from the Department to verify and help understand the both the original calculations and now the revisions.

Department Explanations of Changes to the Dropout Rates and National Ranking

During the summer I met with Santina Thibedeau and Sallie Fellows of the Department to discuss the revisions to the reported dropout rates. Thibedeau is Administrator of the Bureau of Special Education and Fellows is a Systems Development Specialist in the Commissioner's office who works with the Department's information systems. They told me the following:

- Calculation of a dropout rate for children with IEPs requires use of the SPEDIS system, which does not allow reporting by grade level. In order to approximate high school grade levels the ages of 14-21 should be used. **Note:** Because some 14 year olds are not yet in 9th grade, this method is likely to understate the disability dropout rate for high school students because the overall population includes some students not yet in high school. Students with disabilities are more likely to be retained in grade and to be subject to delayed primary school enrollment than their peers.
- In the original calculation of disability dropout rates, the ages 16-21 were used. However, because dropouts would be expected to be concentrated in the ages 16 and above, using the smaller age range overstates the dropout rate over the high school years .
- The dropout calculations rely on a snapshot of the student population. The overall student population is counted as of October 1 of the school year, while December 1 is used for the SPEDIS population. Because the dropout rate for each population is based on the student population as of the beginning of the school year, the population snapshots must be adjusted by adding those students who dropped out after the school year began but before the snapshot was taken. SPED IS does not determine the date of dropout for individual students, so adjustment of the base population uses the factor of 23%, which is based on the proportion of dropouts in the overall population before October 1. The adjustment was made in the latest revision to the APR and SPP, but not in the earlier versions. **Note:** There does not appear to have been any verification of the assumption that the dropout behavior of students with disabilities is distributed throughout the year in the same way as the overall population. This adjustment to the base population figures is not part of the federal

dropout calculation method for either population. This adjustment would also tend to reduce the reported dropout rate by increasing the base population. To the extent that other states follow the federal calculation without making a similar adjustment, New Hampshire's dropout rates would appear lower in comparison simply due to methodological differences .

- Another significant adjustment is made during the dropout calculations for students with disabilities to account for students who were initially counted as dropouts because they did not enroll in the fall of the reporting year but enrolled later in the year after they were counted as dropouts. Due to SPEDIS limitations, the designation as dropout in the database cannot be reversed when a student returns to school. The Department makes an estimate that 18% of students initially designated as dropouts return to school during the month of September, stating that that estimate is based on the behavior of the overall dropout population. As in the case of the pre-snapshot adjustment to the base population, there does not appear to have been any verification that this adjustment is an accurate reflection of actual behavior for students with disabilities. Note: Higher rates of dropout among children with disabilities is generally understood to be related to higher rates of school failure and poverty, alienation from supportive school structures and personnel, and less effective parental support. These factors may also cause differences in the rates and timing of return from an initial dropout status. It is not difficult to come up with reasonable hypotheses that students with disabilities are likely to drop out later in the year than their non-disabled peers, due to frustration with the results of IEP revisions, a buildup of academic failure, or due to the alienation caused by a series of disciplinary procedures,
- The calculation of dropout rate and resulting national ranking by LSU center was based on a federal report that only includes a breakdown of students who exit the special education system. This report, known as "Table 4" is the Report of Children with Disabilities Exiting Special Education During the 2004-2005 School Year. Therefore the dropout calculation is really not a calculation of dropout rates among all students with disabilities, though it is reported as such. Rather, it is a calculation of that fraction of exiting students who exited by dropping out. In the case of New Hampshire, 47% of exiting students were reported as dropouts, with the other 53% falling into categories such as graduation, aging out, transferring to regular education, etc. Even the federal dropout reporting in New Hampshire is exaggerated because many school districts are designating students as dropouts for federal reporting purposes when in fact they fall into some other category, such as refusal of special education services. Note: This assertion by Department representatives is noteworthy, as the form they claim is inaccurate was provided to the USDOE despite concerns about its validity. In addition, the Department explicitly relies on the data in the report in its SPP Indicator 1, which is a

comparison of graduation rates for students with and without disabilities. Thus, it appears that for some purposes the Department treats the data in Table 4 as accurate but for others it rejects it as unreliable. We are not aware of efforts to correct or supplement the report.

Verification Efforts

I requested documentation from the Department which would allow us to verify the Department's original and revised dropout calculations and the explanations I received from Department representatives. An initial Right to Know request for documents was made to Thibedeau on August 24, 2007 and requested the following categories of materials:

1. Documents describing the discovery of the errors in dropout calculation and the nature of the errors;
2. Documents describing modifications to the dropout calculations;
3. Documents containing or describing communications with local, state or federal agencies about the errors in dropout calculations and the modified calculation method;
4. Documents which were the source of the raw data used in the original dropout calculations and the modified calculations;
5. Documents describing or including guidance or direction from the Office of Special Education Programs or other subdivision of the United States Department of Education about the proper or recommended methodology for dropout rate calculation.

RSA Chapter 91-A requires that a Right to Know request be addressed immediately if possible, and if immediate action is not possible a written response must be given no later than 5 days after receipt of the request. The Department did not respond in a timely fashion. Some documents were provided 28 days after our request, on September 21, such as the revised State Performance Plan and Annual Performance Report (available on the Department website). Also included were a Louisiana State University map showing the percent changes in diploma rates (available at the website for the National Monitoring Center), a copy of an undated federal report entitled "Report of Children With Disabilities Exiting Special Education During the 2004-2005 School Year," and a table of state-by-state figures on students with disabilities exiting school, retrieved from the web site of IdeaData.org. No correspondence, emails or memoranda describing the calculation errors or corrections were included. Most significantly, no raw data was included in the document delivery.

I wrote Thibedeau again on September 28 to reiterate our request for information and reminded her of the Department's legal obligations under Chapter 91-A. I

also pointed out that the Department response to our request was demonstrably incomplete as I was aware of Department documents describing the problem with dropout calculations to the SAC which were covered by our request but had not been included in the document delivery. Thibedeau called me on October 4 and requested clarification of our request. During that call Thibedeau stated that there was no internal or external correspondence regarding the calculation problems. I repeated my request for the raw data underlying the calculation³.

On October 12, we received another delivery of documents:

1. A redacted database printout, apparently from the SPEDIS system, hand marked "revised exit data for 05-06." The printout appears to cover exiting students ages 16 through 21, and is dated May 10, 2007, so it does appear to be the raw data underlying the revised calculations (which they say used the broader age range of 14 to 21), nor is it the data underlying the earlier calculations, which presumably occurred before the April revision dates. In addition, the enrollment figures used for any of the dropout calculations, so it was impossible to reconstruct even the purportedly erroneous calculations.
2. A PowerPoint presentation regarding dropout calculations which was described as having been used during a SAC meeting.
3. A copy of the June 11 memorandum to the SAC which I had referenced in my September 28 letter.

We received no other raw data or other documents, and the raw data delivered was insufficient to allow us to reconstruct either the original or revised dropout calculations.

I have again written Thibedeau, explaining that the Department has failed to comply with our request for documents containing the raw data underlying its dropout calculations, and requesting immediate compliance. I also wrote Education Commissioner Tracy requesting information about the Department's document retention policy and was informed by telephone by a member of his staff that the Department did not appear to have such a policy and that individual employees decide what documents to retain and for how long.

New Hampshire's National Ranking by the National Center for Special Education Accountability Monitoring

We were not given access to the necessary data to evaluate the Department's assertions about the accuracy of the 47% dropout figure reported by the National Center. The Department provided me a copy of the "Report of Children with Disabilities Exiting Special Education During the 2004-2005 School Year." That

report has the following categories and entries for children exiting in ages 14 to 21
 :

B f Exit Total Exit" A 14-21

Transferred to Regular Education	365
Graduated with Regular High School Diploma	1587
Received a Certificate	34
Reached Maximum Age	1
Died	10
Moved, Known to be Continuing	335
Dropped Out	1465
Totals	3797

Dropouts represent 39% of the total students exiting for that year, which does not match the Center's 47% figure. However, it is possible to derive a 47% dropout figure if the total is adjusted by removing the 700 exiting students in the categories "Transferred to Regular Education" and "Moved, Known to be Continuing." If the data is being used in that way, it would tend to support the Department's contention about the 47% figure, but we were not provided data that would allow us to independently verify the accuracy of the dropout calculations .

New Hampshire's 47% figure is significant even if it does not show a true dropout rate, for it shows that a very high portion of our exiting students are dropping out as compared to the national average. The national rate is 28%, and half the rated states and territories are at 29% or less. Such a comparison is only valid if the overall exiting rate in New Hampshire is similar to other states. Using figures available in the most recently available Annual Report to Congress, I calculated that exiting rates in both New Hampshire and the nation fall between 28 and 29% of special education students between the ages of 14 and 21. It thus appears that there is legitimate reason for concern about the high rate of dropouts among our exiting students.

As noted above, Thibedeau has called into question the accuracy of the 47% rate, stating that New Hampshire's dropout reporting to the federal DOE overstates the number of dropouts by including students who actually exited special education through such avenues as transfers to general education. The limited raw data printout we were provided includes two entries for each exiting student: a "federal Exiting Category" and a "Spedis Exiting Reason." There are numerous instances in the printout of students receiving a federal designation of "dropped out" and a SPEDIS designation other than "dropped out of school." Based on the limited data provided, there is some evidence that New Hampshire is not reporting its dropout data accurately and consistently to federal agencies.

Failure to measure the chosen dropout performance indicator: New Hampshire's chosen indicator, dropout rates for the high school years, is not being measured for students with disabilities. If New Hampshire deals with its other data and calculation errors, it may be able to reach valid conclusions about changes in dropout behavior over time, but until it adjusts the data it uses for calculating the disability dropout rate it cannot reach valid conclusions about the rate for the actual high school years and it cannot make valid comparisons between the disability rate and the overall rate. Even before the promised replacement of the SPEDIS system, it would be possible. to properly measure the disability dropout rate. For example, sampling of the population of students with disabilities between ages 14 to 21 to determine the percentage of students in grades eight and below would result in an adjustment factor that would produce valid statistics.

Reporting inconsistent dropout data to the federal government: For the school year 2004-2005, New Hampshire has reported to the US DOE dropout numbers of 545 in the State Performance Plan (resulting in a calculated dropout rate of 3.8%), and 1465 in Table 4, which would result in a dropout rate of 10% using the same methodology.

New Hampshire data problems identified by federal Q-nice of Special Education Programs: In June 2007 DOE Commissioner Tracy was notified by the Director of OSEP of a finding that New Hampshire "needs assistance in meeting the requirements of Part B of the IDEA." This finding was based on deficiencies in timely submission of reliable and valid data for indicators 1 and 2 of the SPP (graduation and dropout rates). If the finding is repeated next year. the US Secretary of Education is required to take enforcement action which may include directed use of federal funds or imposition of conditions on the receipt of federal funds. The sanctions provisions of IDEA are in section 616.

Apparent failure to notify OSEP of further revision to SPP and APR: As previously noted, the SPP and APR documents were modified after their April revision dates without noting on the documents that they had been further revised. Such changes should have been clearly identified and brought to the attention of OSEP, particularly since the OSEP enforcement action was based in part on problems with the dropout performance indicator. A plain reading of the June 2007 correspondence announcing the OSEP finding indicates that.it is based on the revisions received on March 30, 2007. Our document request should have prompted production of correspondence with OSEP about the errors in dropout rate calculation, but no such documents were provided.

April 2007 APR for FFY 2005		May 2007 APR for FFY 2005	
All Youth	Youth with IEPS	All Youth	Youth with IEPS
2146/67,832=3.2%	570/6799=8.4%	2,129/67,859=3.1 % ¹	467/11,840=3.9% ²

¹ Both the numerator and denominator were changed in the May revision, but without explanation in the text of the APR.

² Per the text of the revised APR, the numerator was reduced by assuming that 18% of dropouts returned the following year. The denominator was increased by expanding the total dataset to include 14 and 15 year olds and by assuming that 23% of dropouts for the year had left school before the total number of students with IEPs was established in December of 2005.

New Hampshire Department of Education
Part B State Annual Performance Report (APR) for FFY 2005

Overview of the Annual Performance Report Development:

The development of the NH Part B State Annual Performance Report (APR) for FFY 2005 is described in the beginning (Indicator 1) of this report.

Monitoring Priority: FAPE in the LRE

Indicator 2: Percent of youth with IEPs dropping out of high school compared to the percent of all youth in the State dropping out of high school.

(20 U.S.C. 1416 (a)(3)(A))

Measurement:

Measurement for youth with IEPs should be the same measurement as for all youth. Explain calculation.

FFY	Measurable and Rigorous Target
-----	--------------------------------

2005 (2005- 2006)	The dropout rate for youth with IEPs will be 3.7%
-------------------------	---

Actual Target Data for FFY 2005 (reporting period July 1, 2005-June 30, 2006):

The New Hampshire Department of Education computes a dropout rate for each public high school. The rates are reported in March of the following year.

Calculating Dropout Rates:

The NHDOE definition of dropout includes GED recipients, students who fail to return to school after the summer, and students whose status is unknown. Dropout data is collected on October 1st for the prior school year. The number of dropouts is divided by the October 1st enrollment count plus the count of September dropouts for that same year (September dropouts are primarily those students who do not return after the summer). For example, the 2005-2006 dropout count is divided by the October 1, 2005 enrollment plus the number of students who dropped out in September of 2005.

Annual High School Dropout Rate =	2005-2006 Dropout Count	
For all students		2005 Fall Enrollment + September 2005 Dropouts

Data for FFY 2005-2006:

Annual High School Dropout Rate =	2,129 (2005-2006 Dropout Count)	
		67,376 (2005 Fall Enrollment) + 483 (September 2005 Dropouts) = 67,859
		= 2,129 divided by 67,859 = .031 x 100 = 3.1%

New Hampshire Department of Education
Part B State Annual Performance Report (APR) for FFY 2005

Annual Dropout Rate for youth 14-21 with IEPs:

The rate for youth with IEPs includes students age 14 and above enrolled in public schools and private school placement. The same dropout definition applies to students with IEPs, and includes students who reach the age of 21 without receiving a diploma or certificate. To compute a comparable rate for IEP youth, it is necessary to assume that these youth have the same subsequent year return rate (18%) and same September drop percentage (23%) as the high school population. Beginning with the 2007-2008 school year, actual data will be available, and it will not be necessary to make these assumptions.

Annual Dropout Rate for Youth with IEPs (age 14-21):

July 1, 2005 to June 30, 2006 Dropout Count = 570

Estimated number that returned September 2006 = $570 \times 18\% = 103$

Estimated number of dropouts = $570 - 103 = 467$

Estimated number that dropped out before the December 1, 2005 count = $467 \times 23\% = 107$

(Estimated number of Dropouts that did not return)

$11,733$ (12/01/05 Enrollment Count) + 107 (Est. pre-December 1, 2005 Dropouts) = $11,840$ Dropout

Rate for youth with IEPs = 467 divided by $11,840 = .039 \times 100 = 3.9\%$

Discuss:-- of Improvement Activities Completed and Explanation of Progress or Slippage that occurred for FFY 2005:

NH SPP Improvement Activities

Improve:-.t activities for this indicator are addressed in Indicator 1: High School Graduation of this APR.

Explanation of Progress or Slippage

There has been slippage in this indicator as represented by a 0.1 % increase from the FFY 2004 baseline data of 3.8% of NH students with IEPs dropping out of high school. The target dropout rate for students with IEPs .• 'Vas 3.7%. NH has not met this target.

Revisions, with Justification, to Proposed Targets 1 Improvement Activities 1 Timelines / Resources for FFY 2005:

For Indicator 2 the Bureau of Special Education has complied with Table A - New Hampshire Part B Required Action of the March 20, 2006 letter from the Office of Special Education (OSEP) and Rehabilitative Services regarding the December 2, 2005 State Performance Plan. The Bureau of Special Education has complied by including in the SPP the baseline data from FFY 2004 (July 1, 2004 through June 30, 2005). This baseline data is referenced in the FFY 2005 APR.

The actual target data on the dropout rate for all youth in the State was available in March 2007. Based on this data, NH submitted the revised APR to OSEP on April 1, 2007 in order to comply with Table ANH Part B Required Action of the March 20, 2006 letter.

- The NHDOE has revised this indicator as of May 22, 2007 based on a clearer understanding of the dropout calculations. The NHDOE will submit this revision to this indicator to OSEP for February 1, 2008 with the submission of the Annual Performance Report.

rron~: Trisha Swonger <trisha@swonger.net>
SL:";";~: Draft proposal public comments
_JJ~:;: March 27, 2008 9:48:10 PM EDT (CA) Tv:
John Lyons <JLyons@Lyonslaw.net>

I wanted to bring to your attention an omission in the comments dealing with EdII02.67. In reviewing the document that was handed out at the work session on March 26th, I noticed that there was no record of the recommendation of the State Advisory Committee on the Education of Children with Disabilities (SAC) regarding EdII02.67 (page 9). The SAC did recommend retaining manifestation determination criteria that was deleted by IDEA in our letter to the State Board of Education dated November 8, 2007.

Thank you for your attention.

Trisha Swonger
Chairman
State Advisory Committee on the Education of Children with Disabilities

From: "John Lyons" <JOHNL@lyonslaw.net> S~ .

.Jjo:.,l: RE: Draft proposal public comments ~~.~.):

March 28. 2008 9:08:38 AM EDT (CA) Yo: "Trisha

Swonger" <t:trisha@swonger.net>

Cc: "Fredrick Bramante" <fredbramante@daddys.com>, "William Walker"

<bwalker@dhhs.state.nh.us>, "Helen Honorow" <helen@barrylawoffice.com>, "Tom Raffio"

<t:omraffio@nedelta.com>, "Stephen R. L'Heureux" <s.lheureux@comcast.net>, "Daphne

Kenyon" <dkenyon433@aol.com>, "Heath, Mary S." <MHeath@ed.state.nh.us>, "Browning,

Sarah" <SBrowning@ed.state.nh.us>

Trisha,

Thank you for the clarification which I have sent on to the full Board.

John

John E. Lyons, Jr., Esq.

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Lyonel B. Tracy
Commissioner of Education
Tel. 603-271-3144

Mary S. Heath
Deputy Commissioner
Tel. 603-271-7301

STATE OF NEW HAMPSHIRE
DEPARTMENT OF EDUCATION 101
Pleasant Street Concord, N.H. 03301
FAX 603-271-1953
Citizens Services Line 1-800-339-9900

April 16, 2008

Mrs. Patricia A. Swonger, Chairman
State Advisory Committee on the Education of
Children with Disabilities
6 Klara Drive
Merrimack, New Hampshire 03054

Re: April 8, 2008 Letter to Commissioner Regarding DRC Right-to-Know Request for Information

Dear Chairman Swonger:

The Commissioner has asked me to write to you concerning the above-referenced matter. The department received your letter this morning. I have looked into the matter and I am able to report to you the following information:

- On Friday, January 11, 2008 at 10:04 AM, at the request of Deputy Commissioner Mary Heath, I sent an e-mail to Michael Skibbie, Policy Assistant at the Disabilities Rights Center. My message to Attorney Skibbie was that the department was working on his request regarding the special education dropout numbers, but that compiling the information was taking longer than expected and that we would make the information available to him when it was ready.
- On March 12, 2008 the department sent to Attorney Skibbie an 80-page redacted report with a two-page cover memo from the Deputy Commissioner and Santina Thibedeau, the administrator for the bureau of special education.
- I spoke with Attorney Skibbie this morning and he confirmed that he received this document.

The department works diligently to respond to all requests for information in a timely fashion and within the requirements of the law.

I hope this information is useful to you.

Sincerely,

Sarah L. Browning
Special Assistant to the Commissioner

cc: Richard Cohen, Executive Director
Disabilities Rights Center

TDD Access: Relay NH 711
EQUAL OPPORTUNITY EMPLOYER- EQUAL EDUCATIONAL OPPORTUNITIES

New Hampshire's Special Education Laws and Regulations Have Been Revised!

As the result of a 3-year process, where parents, educators, advocates, legislators and many other professionals and volunteers worked side-by-side sharing their experience, insight and ideas, NH has completed the revisions to our special education law and regulations.

On June 11, 2008, the State Board of Education unanimously adopted Ed 1100, the *NH Rules for the Education of Children with Disabilities* (NH's special education regulations). On July 11, 2008, the Governor held a public ceremony, attended by more than 75 people, to sign 2 important pieces of special education legislation, House Bills 766 and 679 (see companion article, *New Hampshire Revises Special Education Laws*).

The level of public involvement in this process was unprecedented - The NH legislature, State Department of Education and State Board of Education demonstrated how much they value public participation by outreaching to all stakeholder groups. The Parent Information Center on Special Education would like to thank all of the parents, educators, advocates, administrators, and policymakers who took the time to participate in the process of revising NH's special education law and regulations.

The newly revised *NH Rule for the Education of Children with Disabilities*, which went into effect on June 30, 2008, were changed to ensure that NH is in compliance with the Federal special education law, the Individuals with Disabilities Education Improvement Act (IDEA), while continuing to meet the unique needs of NH children with disabilities. The revised *NH Rules* maintain critical rights and protections for NH children with disabilities and support parent involvement in the special education process. Some of the highlights of the revised *NH Rules* are:

Parent Involvement:

- ||* Maintains NH's current parental consent requirements for each step in the special education process, but adopts IDEA's requirement prohibiting a school district from using due process to disagree when a parent refuses consent for the initial provision of services, and making it optional when a parent refuses consent for an initial evaluation (*NH Rules* continue to include a process that school districts may use when parents do not respond to a request for consent);
- * Continues to require 10-day written notice before an IEP meeting (5 days for manifestation meetings);

Preschool:

- * Describes the interagency agreement between early supports and services (ESS) and the school district to facilitate the transition process from Part C to Part B;
- * Provides a continuum of alternative learning environments for preschool children, with descriptions for each setting;

Child Find:

- * Revises Child Find requirements so that referral to special education, and the school district's response to the referral begins at age 2.5 years;
- * Adopts IDEA's new requirements for parentally-placed private school children with disabilities, including making the liable district the district in which the child's private school is located;

Evaluations:

- ||* Keeps NH's current 45-day evaluation timeline (with 1 mutually-agreed upon 15-day extension);
- ||* Clarifies the type of evaluations to be conducted and qualified evaluators for each disability category;

IEPs:

- * Includes short-term objectives or benchmarks as part of each child's IEP, unless the parent agrees that they are not necessary for one or more of the child's annual goals;
- * Continues to require planning for transition services, with a focus on the child's courses of study to be included in the IEP beginning by age 14;

J. Keeps the "sufficiency statement" (whether the child's progress is sufficient to meet the annual goal) as part of the regular report to the parents of the child's progress towards his/her annual goals;

* Refers to the IDEA statute instead of the IDEA regulations in the definition of related services (IDEA regulations exclude the optimization or maintenance of a surgically-implanted medical device including mapping of a cochlear implant - as a related service).

Establishes that notice be provided 72 hours before a meeting when an IEP team member wishes to be excused (or when the member's absence is known, whichever is soonest);

1; Requires the school district to either schedule or convene an IEP meeting or provide the parents with a written prior notice detailing why the district is refusing to convene an IEP meeting within 21 days of a parental request for such a meeting;

Placement:

,r Includes more specificity regarding placement options for preschool children with disabilities; Discipline:

'k Includes expanded sections on child management, emphasizing positive behavioral supports, prohibiting the use of aversives (maintaining language in current rules) and establishing strict limits and procedures for the use of restraints;

-/: Adopts IDEA's new discipline (suspension/expulsion) requirements, but requires that services a child receives during suspensions provide the child an opportunity to progress in the general education curriculum consistent with the child's IEP;

Monitoring:

* Continues to require that a complete copy of the IEP be given to each of the child's teachers/service providers and to the parents;

* Strengthens and clarifies NH's monitoring, enforcement and corrective action processes;

||* Requires weekly on-site monitoring/visits to any extended school year (ESY) or transition service setting that is based outside of school;

Other:

||* Adds many new definitions, including terms defined in IDEA, and others used in the *NH Rules*;

* Adopts IDEA's new requirements (also in NCLB) regarding highly qualified teachers (does not apply to private school teachers), but adds that if it is an IEP team placement, the child's teachers must meet State certification requirements;

* Adopts IDEA's new prohibition on mandatory medication; and

* Adopts IDEA's new requirement & timeline for a resolution session when a parent files a due process hearing request.

The Parent Information Center on Special Education presents FREE workshops to provide parents, educators and others with the most up-to-date information on their rights and responsibilities in the NH special education process. Visit PIC's workshop calendar at www.vicnh.org

New Hampshire Revises Special Education Laws

On July 11, 2008, the Governor held a public ceremony to sign 2 important pieces of special education legislation, House Bills 766 and 679. HB 766, which goes into effect on January 1, 2009, revises RSA 186C (NH's special education law). HE 679, which has already gone into effect, revises other laws (RSA 169, 193 and 194) that affect children with disabilities, including those involved in the juvenile justice system and those enrolled in charter schools ..

These bills were culmination of a 2!h year process that started with a 33-member work group made up of legislators, parents, special education administrators, teachers, advocates and others, including a representative from the Parent Information Center on Special Education, which identified changes that were needed in our state special education laws. Highlights of each of those bills follows.

HB 766:

- ||* Makes language more consistent with Federal law;
- ~ Removes outdated references (i.e. Laconia State School and Training Center), and language that conflicts with Federal/State law (i.e. "Eligibility for participation in an approved program of special education shall be determined by the school board of the school district under rules adopted by the state board of education");
- * Brings NH law into compliance with IDEA 2004;
- ||* Clarifies and updates the purpose to reflect the high expectations set for children with and without disabilities under No Child Left Behind and state law.
- * Revises the definition of "a child with a disability" by adding a category for children with acquired brain injury and simplifies the eligibility process for a child with a developmental delay;
- * Includes short-term objectives or benchmarks as part of each child's IEP, unless the parent agrees that they are not necessary for one or more of the child's annual goals;
- ||* Promotes education in the least restrictive environment. Provides an incentive for school districts to help them build capacity to meet children's needs within district;
- * Strengthens the State Department of Education's oversight, monitoring, technical assistance and accountability;
- *|| Better ensures that eligible incarcerated children with disabilities receive special education;
- *|| Makes the language in the section on extended school year services more consistent with that in IDEA and more clear regarding preschool children with disabilities;
- ||* Adds facilitated IEP team meetings as an additional (and free) alternative dispute resolution option;
- * Allows courts to award reimbursement for expert witness fees to a parent who prevails at a due process hearing, but only "when the court determines that a school has not acted in good faith in developing or implementing the child's individualized education program, including appropriate placement"; and
- * Improves coordination between schools and other agencies serving children in order to avoid duplication and prevent delays in children receiving services when agencies disagree over who is financially responsible, and to promote better transitions when children enter school from early supports and services and transition from high school to post-secondary education, employment, adult living and/or service systems.

HB 679:

- * Requires that police and others involved in the criminal justice system notify the responsible school district when they are placing a child into a juvenile diversion program;
- * Mandates that juvenile courts ask court-involved children and their families whether there is evidence of a disability, and requires that children with disabilities consult with an attorney before giving up their right to counsel;

- 1: Requires the school district to investigate whether a child has a disability and needs special education when notified by a juvenile court that a student is involved in a juvenile case; and
- 1* Clarifies that public charter schools may not discriminate on the basis of disability.