

# Special Education Complaints

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*New Hampshire Department of Education*

*Bureau of Special Education*

*Improving Outcomes for Students with Disabilities Together*

# Special Education Complaints



- When someone believes that the a school district has violated special education rules and/or laws, they may file a complaint.
- The NHDOE may investigate the complaint if it meets the criteria in Ed 1121 Complaint Procedures
- The investigation may result in findings of non-compliance for the school district.
- Findings of non-compliance require corrective action which is determined by the NHDOE.

# Allegations



- When if a compliant meets the criteria in Ed 1120, the NHDOE creates “allegations”.
- The allegations are the basis of the investigation.
- Allegations cite specific rules and laws:
  - The New Hampshire Standards for the Education of Children with Disabilities (NH Standards, represented by an “Ed” number)
  - The Individuals with Disabilities in Education Act (IDEA, represented by a number beginning with 34 CFR 300)

# IEP Team



- Ed 1103.01(e)- The LEA or parent shall notify the other party of the expected absence of a team member at least 72 hours before a scheduled meeting or upon learning of the expected absence of a team member, whichever occurs first.
- 1 allegation

# Parent Participation



- Ed 1103.02(a) The LEA shall ensure that the parent or parents of the child with a disability receive a written notice no fewer than 10 days before an IEP meeting. If the parent(s) agrees in writing, the LEA may satisfy this requirement via transmittal by electronic mail. Such an agreement shall be effective until revoked in writing. A notice sent by first class or certified U.S. mail 12 days prior to the meeting shall be deemed received 10 days before an IEP team meeting.
  - 2 allegations
- Ed 1103.02(d) The notice requirements in Ed 1103.02(a) and (b) shall be waived with the written consent of the parent.
  - 1 allegation
- Ed 1103.02(e) Parent participation shall be in accordance with 34 CFR 300.322 and 34 CFR 300.501(b)-34 CFR 300.501(c).
  - 3 allegations

# Process; Provision of FAPE (referral)



- Ed 1106.01(d) The IEP team shall within 15 business days of the referral, determine whether the concerns raised by the referral can be addressed utilizing existing pupil support services available to all children, whether additional information is required, and what evaluations, if any, are needed to address any remaining concerns raised by the referral;
- 1 allegation

# Evaluation



- Ed1107.01(d)- For reevaluations, the evaluation process as defined in Ed 1102.02(n) shall be completed within 60 days after the receipt of parental consent to evaluate, or at the conclusion of any extension provided in Ed 1107.01(e).
- 2 allegations

When an IEP Is in Effect; IEP Meetings; Development, Review, and Revision of an IEP; Transition Services.



- Ed 1109.03(a)- The LEA shall provide special education, related services, supplementary aids and services, accommodations, and modifications to a child with a disability in accordance with the child's IEP. IEPs shall be in effect in accordance with 34 CFR 300.323.
- 15 allegations

# Monitoring and Annual Review of IEPs



- Ed 1109.06(b) The LEA, upon a written request for an IEP team meeting by the parent, guardian, or adult student shall:
    - (1) Schedule a mutually agreeable time and date for an IEP team meeting;
    - (2) Convene the IEP team on the mutually agreeable time and date; or
    - (3) Provide the parent, guardian, or adult student with written prior notice detailing why the LEA refuses to convene the IEP team that the parent, guardian, or adult student has requested.
- 2 allegations

# Class Size and Age Range



- Ed 1113.10(d)(3)&(6)- The following shall apply to a self-contained special education class grades K - 12:
  - (3) The maximum number of children in a self-contained classroom shall be 12;
  - (6) Regardless of the specific teacher-student ratio, each program shall provide personnel who are endorsed in the area of disability consistent with the student population of the program;
- 1 allegation

# Personnel Standards



- Ed 1113.12(a)- Personnel providing services to children with disabilities in public elementary and secondary schools shall be highly qualified special education teachers as required under 34 CFR 300.18 and 34 CFR 300.156, except as provided in Ed 1113.12 (b) and (c) for paraprofessional personnel.
  - 1 allegation
  
- Ed 1113.12(b)(1)&(2)- Paraprofessional personnel providing services to children with disabilities shall:
  - (1) Work under the supervision of a certified special education teacher;
  - (2) Be supervised and observed by a certified special education teacher under whom they work as often as deemed necessary by the LEA, but no less than once each week;
- 2 allegations

# Personnel Standards



- Ed 1113.12 (c)- Paraprofessional personnel providing services to children with disabilities shall not:
  - (1) Design programs;
  - (2) Evaluate the effectiveness of programs;
  - (3) Assume responsibilities of a teacher or a substitute teacher; or
  - (4) Instruct a child with a disability.
- 1 allegation

# Placement in the Least Restrictive Environment



- Ed 1111.01 (a) Each LEA shall ensure that, to the maximum extent appropriate, children with disabilities, including children in public or private providers of special education, are educated with children who do not have disabilities and that, consistent with 34 CFR 300.114, special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.
- 1 allegation

# Initiating a Request for Appointment of a Surrogate Parent.



- Ed 1115.02 (a) -Any employee of an LEA, the department, or a residential school or hospital, any physician, any judicial officer, or any other person who knows or believes that a child's parent is not known, or is not able to be located, or that the child is under legal of DCYF, or any person who knows or believes that a court has issued a written order for a surrogate parent, shall initiate the appointment of a surrogate parent, pursuant to Ed 1115.02(b).
- 1 allegation

# Confidentiality Requirements



- Ed 1119.01(a) Each participating agency shall comply with 34 CFR 300.610-300.627, relative to confidentiality of information, including compliance with the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. 1232G, (FERPA) and its implementing regulations in 34 CFR Part 99.
- 1 allegation

# Written Prior Notice



- Ed 1120.03(a)- Parent(s) of a child with a disability shall be notified in writing within a reasonable time, but not less than 14 days, before the LEA proposes to initiate or change, or refuses to initiate or change, the referral, evaluation, determination of eligibility, IEP, or educational placement of the child or the provision of FAPE to the child.
- 3 allegations

# Written Prior Notice



- Ed 1120.04(a) An LEA shall obtain informed, written consent from the parent of a child with a disability prior to:
  - (1) Conducting an initial evaluation;
  - (2) Initial provision of special education and related services to a child with a disability;
  - (3) Annual renewal of the IEP and placement of a child with a disability;
  - (4) Determining or changing the disability classification;
  - (5) Changing the nature or extent of the special education or special education and related services;
  - (6) Conducting a reevaluation;
  - (7) Access to public insurance pursuant to 34 CFR 300.154(d); and
  - (8) Each time the public agency proposes to access private insurance.
- 2 allegations

# Consent



- 34 CFR 300.9 *Consent* means that—

- (a) The parent has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language, or through another mode of communication;
- (b) The parent understands and agrees in writing to the carrying out of the activity for which his or her consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom; and
- (c)(1) The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time.  
(2) If a parent revokes consent, that revocation is not retroactive (i.e., it does not negate an action that has occurred after the consent was given and before the consent was revoked).  
(3) If the parent revokes consent in writing for their child's receipt of special education services after the child is initially provided special education and related services, the public agency is not required to amend the child's education records to remove any references to the child's receipt of special education and related services because of the revocation of consent.

➤ 1 allegation

# IEP Team



- 34 CFR 321(a)(2) General. The public agency must ensure that the IEP Team for each child with a disability includes—Not less than one regular education teacher of the child (if the child is, or may be, participating in the regular education environment)
  - 2 allegations
- 34 CFR 321(e)(2) A member of the IEP Team described in paragraph (e)(1) of this section may be excused from attending an IEP Team meeting, in whole or in part, when the meeting involves a modification to or discussion of the member's area of the curriculum or related services, if—
  - (i) The parent, in writing, and the public agency consent to the excusal; and
  - (ii) The member submits, in writing to the parent and the IEP Team, input into the development of the IEP prior to the meeting.
  - 1 allegation

# Parent participation



- 34 CFR 300.322(a) Public agency responsibility—general. Each public agency must take steps to ensure that one or both of the parents of a child with a disability are present at each IEP Team meeting or are afforded the opportunity to participate
  - 3 allegations
  
- (B) That the agency will invite the student;
  - 1 allegation
  
- (c) Other methods to ensure parent participation. If neither parent can attend an IEP Team meeting, the public agency must use other methods to ensure parent participation, including individual or conference telephone calls, consistent with §300.328 (related to alternative means of meeting participation)
  - 1 allegation
  
- (e) *Use of interpreters or other action, as appropriate.* The public agency must take whatever action is necessary to ensure that the parent understands the proceedings of the IEP Team meeting, including arranging for an interpreter for parents with deafness or whose native language is other than English.
  - 1 allegation

# When IEPs must be in effect



- 34 CFR 300.323(c)(1)- (c) *Initial IEPs; provision of services*. Each public agency must ensure that—
  - (1) A meeting to develop an IEP for a child is conducted within 30 days of a determination that the child needs special education and related services; and
- 1 allegation

## Opportunity to examine records; parent participation in meetings



- 34 CFR 300.501 (b)- *Parent participation in meetings*. (1) The parents of a child with a disability must be afforded an opportunity to participate in meetings with respect to—
  - (i) The identification, evaluation, and educational placement of the child; and
  - (ii) The provision of FAPE to the child.
- 1 allegation

# Prior Notice By the Public Agency



- 34 CFR 300.503(a) Notice. Written notice that meets the requirements of paragraph (b) of this section must be given to the parents of a child with a disability a reasonable time before the public agency—
    - (1) Proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child; or
    - (2) Refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child.
- 1 allegation

# Prior Notice by the Public Agency



- 34 CFR 300.503(c)- *Notice in understandable language.* (1) The notice required under paragraph (a) of this section must be—
  - (i) Written in language understandable to the general public; and
  - (ii) Provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so.
- 1 allegation