

CHAPTER Ed 400 APPROVAL OF NONPUBLIC SCHOOLS

PART Ed 401 DEFINITIONS AND SCOPE

Readopt with amendment Ed 401.01 - Ed 401.02, effective 6-15-13 (Document #10360), to read as follows:

Ed 401.01 Definitions.

(a) "Accrediting agency" means a business or other organization that evaluates schools against a set of criteria determined by the business or other organization.

(b) "Chartered public school" means "chartered public school" as defined by RSA 194-B:1, IV.

(c) "Education program" means a program consisting of subject matter and related learning experiences for the instruction of pupils on a regular or systematic basis, usually for a predetermined length of time which constitutes part of a school's total education curriculum, or serves as the education component of a facility, agency, or institution whose primary purpose does not qualify it as a school.

(d) "Nonpublic school advisory council (NSAC)" means the nonpublic school advisory council established by the state board as set forth in Ed 408.

(e) "Nonpublic school" means a school established by an individual or group other than the state, subdivision of the state, or federal government and whose operation, or any portion thereof, rests with those officials who have not been publicly elected or appointed. The term includes "private school," but does not include a public academy as defined by RSA 194:23(II).

(f) "Public school" means a school which is established and operated by a school district, maintained primarily by public funds, and administered by a school board whose members are elected as provided under the laws of the state of New Hampshire.

(g) "School" means an educational institution whose primary purpose is the development of individual potential by means of a systematic method of instruction of a defined type comprising:

(1) A single grade or more than one grade group or other identifiable grouping;

(2) A teacher or more than one teacher(s) who guides and supervises the learning experience of pupils; and

(3) An education program leading to the awarding of a diploma or appropriate certificate upon completion of the requirements of the program.

Ed 401.02 Types of Approval.

(a) In order to be an approved nonpublic school, a nonpublic school shall contain some combination of grades K through 12 and comply with the requirements of one of the approval categories in (e) below.

(b) A nonpublic school, which has satisfactorily completed the requirements for status of attendance as set forth in Ed 403, shall be approved for attendance for a period of 5 years.

(c) A nonpublic school which meets all requirements for status of attendance and program as set forth in Ed 404 shall be approved for status of attendance and program for a period of 5 years.

(d) Schools that consist only of kindergarten, pre-school levels, or both shall not be eligible for approval as non-public schools.

(e) The following school approval categories shall apply to the administration of Ed 400 and be recommended to the state board for one of the following:

(1) "Approved," which means that a school meets and continues to meet all requirements of Ed 403 or Ed 404;

(2) "Preliminary approved," which means that a school meets the requirements of (h) and (i) below in addition to Ed 403 or Ed 404;

(3) "Conditionally approved," which means that a school meets the requirements of (j) and (k) below in addition to Ed 403 or Ed 404;

(4) "Delay in full compliance," which means that a school has received a recommendation in accordance with (n) below; or

(5) "Denied approval," which means a school that has failed to meet the requirements of Ed 403 or Ed 404 and failed to be approved after 3 years of being conditionally approved.

(f) If one or more facilities are to be used for educational purposes, the facilities shall be approved or conditionally approved to operate in accordance with Ed 320 prior to student occupancy.

(g) Approval shall be terminated by the state board upon receipt of 2 consecutive annual enrollment reports, as outlined in Ed 402.01, in which the school reports zero students enrolled.

(h) A nonpublic school, which has not been previously approved, shall be granted preliminary approval during its first year of operation when the following conditions have been met:

(1) If one or more facilities are used for educational purposes, the facilities have been approved or conditionally approved to operate in accordance with Ed 320 prior to student occupancy; and

(2) There are standards not required by statute or Ed 320 which the school is unable to meet prior to opening and which do not prevent the school from adequately meeting the needs of its students.

(i) In no circumstances shall preliminary approval extend beyond one school year.

(j) A nonpublic school which does not meet all of the applicable requirements of Ed 403 or Ed 404 shall be recommended for being conditionally approved for a period of one year provided that:

(1) The school was previously approved and is seeking continued approval pursuant to Ed 403.04 or Ed 404.04;

(2) All identified deficiencies and a timetable for their correction are incorporated into the approval designation; and

(3) All facilities used by students for educational purposes are approved or conditionally approved to operate in accordance with Ed 320.

(k) In no case shall a school be recommended for being conditionally approved for more than 3 consecutive school years.

(l) A conditionally approved school which fails to meet the requirements of an approved school pursuant to Ed 403.01 within 3 consecutive school years shall be recommended for denied approval.

(m) A nonpublic school recommended for denied approval shall have 10 days to make a request to the commissioner for a grievance hearing before the NSAC grievance committee, in accordance with the provisions of Ed 408.07.

(n) A nonpublic school shall be considered for a delay in full compliance for up to one year upon receipt of a written recommendation for such delay from the NSAC following a vote of the council.

(o) The decision from the NSAC shall include:

- (1) Identifying requirements not met;
- (2) Reasons why the school is unable to meet each unmet requirement;
- (3) An expected date of compliance for each requirement; and
- (4) An explanation of the unique conditions which justify the delay in meeting all state requirements.

(p) The state board shall hold a rehearing in accordance with Ed 213.02 for one or more of the following conditions:

- (1) Additional information has been received which indicates that the school is not eligible for program approval status;
- (2) The information submitted by the school as required in Ed 403 or Ed 404 is determined by the state board to be inaccurate or false; or
- (3) The NSAC grievance committee misapplied a statute or administrative rule in making its recommendation.

(q) The applicant shall not advertise or offer services as a school without approval from the state board.

Readopt with amendment Ed 401.03, effective 6-15-13 (Document #10360), as amended effective 4-9-20 (Document #13024, Emergency), which expired 10-6-20, to read as follows:

Ed 401.03 School Year.

(a) Each nonpublic school shall maintain a school year consisting of the following number of hours of instructional time:

- (1) In kindergarten, at least 450 hours;
- (2) In grades one through 6, at least 945 hours; and
- (3) In grades 7 through 12, at least 990 hours.

(b) Each school shall have in its school year an additional 30 hours in duration to provide for instructional time lost due to inclement weather or unexpected circumstances, and shall use these additional hours to reschedule lost instructional time before requesting a reduction of the amount of instructional time as outlined in (h) below.

(c) A school may have a shortened day when an emergency condition exists which might adversely affect the health and safety of students, provided that the number of hours of instructional time originally planned for the day shall be credited to the number of hours of instructional time in the school year, if:

- (1) On that day, the school would normally have had at least 5.25 hours of instructional time; and

(2) The school remained open for at least 3.5 hours of instructional time.

(d) There shall be no requirement to reschedule instructional time for kindergarten if morning or afternoon kindergarten sessions are canceled due to delayed opening or early release for students in grade one or higher.

(e) A school may conduct instruction remotely. The school shall create a plan that includes procedures for participation by all students. Academic work shall be equivalent in effort and rigor to typical classroom work, and include an assessment of all student work for the day.

(f) Lunch time, home room periods, passing time, and breaks shall not be counted toward the required amount of instructional time. Elementary schools may count up to 30 minutes of recess per day as instructional time for pupils in kindergarten through grade 6. Advisory periods in middle and high schools shall be counted as instructional time.

(g) The school year for high school seniors may be reduced by no more than 5 days or 30 hours of instruction, whichever is less, from the number of days or hours of instruction for other high school students.

(h) Pursuant to RSA 189:2, the required minimum hours of instruction shall be reduced upon written request of the school and a determination by the commissioner, as authorized by the state board, that extraordinary circumstances exist that would place an unreasonable burden on the school or students.

Readopt with amendment and renumber Ed 403.03, effective 2-16-19 (Document #12726), as Ed 402.01, cited and to read as follows:

PART 402 REQUIRED ANNUAL REPORTS

Ed 402.01 Annual Reports.

(a) Each nonpublic school shall report enrollment by grade as of October 1 of the reporting year on a deadline established by the department.

(b) Each nonpublic school shall complete and submit “Nonpublic Restraint and Seclusion Data Collection,” revised November 2023. The form shall be completed online at <https://my.doe.nh.gov/myNHDOE/Login/Login.aspx> by June 30 of each year.

Readopt with amendment Ed 403.01, effective 6-15-13 (Document #10360), cited and to read as follows:

PART Ed 403 APPROVAL OF NONPUBLIC SCHOOLS FOR ATTENDANCE PURPOSES

Ed 403.01 Application for Initial Approval Status for Attendance Purposes.

(a) A nonpublic school seeking initial approval for attendance purposes shall submit the following written materials to the department no less than 120 days prior to the proposed date of opening:

- (1) The specific education purpose(s) and objectives to be served by the nonpublic school;
- (2) A statement as to how the school shall evaluate the achievement of its stated educational purpose(s) and objectives;
- (3) The school program's philosophic or religious traditions;
- (4) Academic competencies and personal characteristics the program is designed to develop;

- (5) The characteristics of the student body to be served by this program, including the criteria for student selection and admission to the school;
- (6) The relationship between the school program and the community;
- (7) Program of studies or other document(s) that explain academic content, assessment processes, and promotion requirements for each grade level and high school diploma requirements, if applicable;
- (8) A description of all courses, activities, and offerings included as part of the school's education program as defined by the school, including a list and descriptions of the courses offered for credit;
- (9) A description of the school's supporting services as outlined in RSA 189:49, including but not limited to:
 - a. Health, including a process for verification of child vaccinations required by RSA 141-C:20-a;
 - b. Advising and counseling system, relative to educational, personal, and career;
 - c. Library and media services;
 - d. Food and health services;
 - e. Referral services; and
 - f. Transportation services, including:
 1. To and from school;
 2. Field trips; and
 3. Extracurricular activities;
- (10) A statement indicating how the school complies with each of the statutory requirements of nonpublic schools, pursuant to:
 - a. RSA 126-U, relative to limiting the use of child restraint practices;
 - b. RSA 141-C:20-a, relative to immunization;
 - c. RSA 189:11, relative to instruction in national and state history, government, and civics;
 - d. RSA 189:17, relative to flags;
 - e. RSA 189:19, relative to the requirement of the use of English language;
 - f. RSA 189:20, relative to teaching foreign language;
 - g. RSA 189:21, relative to language of devotional exercises in private schools;
 - h. RSA 189:64, relative to emergency response plans;
 - i. RSA 193:31-a, relative to dual enrollment; and
 - j. RSA 198:20-a, relative to payment of governmental moneys;

- (11) Administrative responsibilities and authority documented in an organizational chart;
 - (12) Description of content and policy for storage, security, and disposition of student records to include items listed in Ed 407;
 - (13) First year budget indicating anticipated expenses and revenue, which clearly demonstrates the availability of resources to support the program;
 - (14) Documentation indicating whether the school is incorporated as a nonprofit institution and whether it has federal tax-exempt status;
 - (15) Proof of registration with the New Hampshire secretary of state as required in RSA 349; and
 - (16) A copy of the school's grievance policy including, but not limited to, procedures to address complaints concerning:
 - a. Bullying;
 - b. Teacher misconduct;
 - c. Tuition refund when a student leaves the school; and
 - d. The use of child restraint practices as outlined in RSA 126-U.
- (b) All applicants shall also indicate:
- (1) The educational level(s) to be included in the school's enrollment such as elementary, middle/junior high, or high school, and, if the school is to be ungraded, the applicant shall indicate the approximate age range of the pupils to be enrolled;
 - (2) The name, telephone number, and mailing address of the person authorized to represent the interests of the nonpublic school;
 - (3) The location and a description of those facilities to be used for school purposes and any off-campus facilities used for the program, if such information is available; and
 - (4) If one or more facilities are to be used by students for educational purposes, a statement that the school shall submit an application to operate the facility in accordance with Ed 320 no later than 90 days prior to the desired opening date of the school facility.

Readopt with amendment and renumber Ed 403.02, effective 6-15-13 (Document #10360), as Ed 403.02 through Ed 403.04, to read as follows:

Ed 403.02 Procedures for Evaluation and Determination of the Status of a School for Attendance Purposes.

- (a) Upon receipt of the required written materials and reports from schools seeking approval, the department shall review the materials received and advise the commissioner whether the schools satisfy the criteria outlined in Ed 403.01.
- (b) Incomplete applications shall be returned to the nonpublic school for completion.
- (c) The commissioner shall make a recommendation to the state board based on whether the criteria outlined in Ed 403.01 has been met.

(d) The state board, after reviewing the recommendation(s) from the commissioner, shall within 45 business days of receipt of such recommendation(s), take any one of the actions described in Ed 401.02(e).

(e) A nonpublic school recommended for denied approval shall have 10 business days to make a request to the commissioner for a grievance hearing before the nonpublic school advisory council grievance committee in accordance with the provisions of Ed 408.07.

Ed 403.03 Procedures for the Request of a Status Change.

(a) In the event of a change to the nonpublic schools' grade levels, the school shall submit a status change request in the form of a letter to the department 60 days prior to the change.

(b) Any change(s) shall be subject to review by the state board at the next regularly scheduled state board meeting.

(c) The school shall implement said change(s) only after receiving approval from the state board.

(d) In the event of a change to the school facility's location, the school shall submit an application to operate the facility in accordance with Ed 320 not later than 90 days prior to the desired opening date of the school facility.

(e) The facility referenced in (d) above shall be approved or conditionally approved to operate, in accordance with Ed 320, prior to student occupancy.

(f) A nonpublic school whose requested change is recommended for denied approval shall have 10 business days to make a request to the commissioner for a grievance hearing before the NSAC grievance committee in accordance with the provisions of Ed 408.07.

Ed 403.04 Application for Continued Approval Status for Attendance Purposes.

(a) At the conclusion of an approval period, an approved nonpublic school seeking continuation of its approval status for attendance purposes shall submit written materials to the department no less than 90 days prior to the expiration of the current approval, to include:

(1) Change(s) to any of the information listed in Ed 403.01 that have occurred since the initial approval or the submittal of the last report;

(2) Evidence of ongoing registration with the secretary of state;

(3) A school calendar to include first and last day of school, holidays, time off, and 30-hour overage in event of emergency or inclement weather;

(4) A statement that all facilities used by students for educational purposes are approved to operate or conditionally approved to operate in accordance with Ed 320; and

(5) Citation(s) of any new construction or renovations completed since the initial approval or the submittal of the last report.

(b) The state board shall review the information in (a) above and follow the procedures outlined in Ed 403.02 to evaluate and determine the approval status of the school.

Readopt with amendment Ed 404, effective 6-15-13 (Document #10360), to read as follows:

PART Ed 404 APPROVAL OF NONPUBLIC SCHOOLS FOR PROGRAM PURPOSES

Ed 404.01 Application for Initial Approval Status for Program Purposes.

(a) Program approval shall be deemed recognition by the state board that a school's curriculum, staffing, administration, governance, and facilities meet the standards determined by an approved third-party accrediting agency as described in Ed 405.01 for the appropriate delivery of education.

(b) In addition to the requirements outlined in Ed 403.01, a nonpublic school seeking initial program approval status shall submit no less than 120 days prior to the proposed date of opening, evidence of approval from an authorized agency that has been recognized by the NSAC and state board in accordance with Ed 405.01 or through the alternate method for program approval status in accordance with Ed 405.02.

Ed 404.02 Procedures for Evaluation and Determination of the Status of a School for Program Purposes.

(a) Upon receipt of the required written materials and reports from schools seeking initial approval status, the department shall review the materials received and advise the commissioner whether the schools satisfy the criteria outlined in Ed 404.01(b).

(b) Incomplete applications shall be returned to the nonpublic school for completion.

(c) The commissioner shall make a recommendation to the state board based on whether the criteria outlined in Ed 404.01(b) has been met.

(d) The state board, after reviewing the recommendation(s) from the commissioner, shall within 45 business days of receipt of such recommendation(s), take any one of the actions described in Ed 401.02(e).

(e) A nonpublic school recommended for denied approval shall have 10 business days to make a request to the commissioner for a grievance hearing before the nonpublic school advisory council grievance committee in accordance with the provisions of Ed 408.07.

Ed 404.03 Procedures for the Request of a Status Change.

(a) In the event of a change to the nonpublic schools' grade levels, the school shall submit a status change request in the form of a letter to the department 60 days prior to the change.

(b) Any change(s) shall be subject to review by the state board at the next regularly scheduled state board meeting.

(c) The school shall implement said change(s) only after receiving approval from the state board.

(d) In the event of a change to the school facility's location, the school shall submit an application to operate the facility in accordance with Ed 320 not later than 90 days prior to the desired opening date of the school facility.

(e) The facility referenced in (d) above shall be approved or conditionally approved to operate, in accordance with Ed 320, prior to student occupancy.

(f) A nonpublic school whose requested change is recommended for denied approval shall have 10 business days to make a request to the commissioner for a grievance hearing before the nonpublic school advisory council grievance committee in accordance with the provisions of Ed 408.07.

Ed 404.04 Application for Continued Approval Status for Program Purposes.

(a) At the conclusion of an approval period, an approved nonpublic school seeking continuation of its approval status for attendance purposes shall submit written materials to the department no less than 90 days prior to the expiration of the current approval, to include:

- (1) Change(s) to any of the information listed in Ed 404.01 that have occurred since the initial approval or the submittal of the last report;
- (2) Evidence of ongoing registration with the secretary of state;
- (3) A school calendar to include first and last day of school, holidays, time off, and 30-hour overage in event of emergency or inclement weather;
- (4) A statement that all facilities used by students for educational purposes are approved to operate or conditionally approved to operate in accordance with Ed 320; and
- (5) Citation(s) of any new construction or renovations completed since the initial approval or the submittal of the last report.

(b) The nonpublic school shall submit evidence of continued approval from an authorized agency that has been recognized by the NSAC and the state board in accordance with Ed 405.01, or through the alternative method for program approval status as in accordance with Ed 405.02.

(c) The department shall review the information in (a) and (b) above and follow the procedures in Ed 404.02 to evaluate and determine the approval status of the school.

Readopt with amendment Ed 405.01, effective 2-16-19 (Document #12726), cited and to read as follows:

PART Ed 405 APPROVAL OF A RECOGNIZED AGENCY FOR PROGRAM APPROVAL AND
ALTERNATE METHOD FOR PROGRAM APPROVAL

Ed 405.01 Identification of Recognized Agencies for Program Approval.

(a) Accrediting agencies that want to be considered for recognition shall be identified in one of the following ways:

- (1) An agency may directly request recognition;
- (2) A school seeking program approval may request recognition of an agency; or
- (3) A member of the NSAC may request recognition of an agency.

(b) Applicants seeking approval from the state board as an agency recognized by the state board for program approval shall apply for recognition to the state board by submitting a letter of intent and the following:

- (1) A brief history of the agency;
- (2) A statement as to the scope of operations and indicating whether it is a regional, national, or state agency;
- (3) A definition of the purpose, character, and scope of its activities as described in its charter or by-laws and written standards for accreditation or recognition;
- (4) The agency's organization including:
 - a. Its governance and administrative structures;
 - b. A description of its ownership and control; and
 - c. The type of legal organization, including but not limited to tax-exempt or proprietary;

(5) Financial information including:

- a. Fee structure;
- b. Current operating statement; and
- c. Most recent independent certified opinion audit;

(6) A description of procedures used in the evaluation of schools by the agency, including documentation that a school shall be required to provide, which shall include a visit to verify the written documentation, and who participates in school visitations;

(7) Definitions of levels of recognition or accreditation status and written procedures for providing due process in granting, denying, continuing, or revoking accredited or recognized status; and

(8) Frequency of evaluation of schools for continued accreditation or recognition.

(c) Agencies seeking program approval shall have a process for reviewing nonpublic school programs which, at a minimum, evaluates the adequacy for ensuring the well-being of students enrolled based on the following criteria:

- (1) School mission statement and educational philosophy;
- (2) Governance;
- (3) School facilities;
- (4) School health and safety programs;
- (5) Curriculum;
- (6) Staff qualifications;
- (7) Admissions process;
- (8) Graduation requirements for high schools only;
- (9) Process for assessing student performance;
- (10) Financial management;
- (11) Student support services;
- (12) Co-curricular activities;
- (13) Parent involvement; and
- (14) School and community relations.

(d) The NSAC shall review applications for program approval. If the NSAC finds that the application meets the requirements of (b) and (c) above, it shall recommend the agency to the state board for recognition.

(e) The board shall review the NSAC recommendation and take one of the following actions:

- (1) Upon finding that the application meets the requirements of (b) and (c) above, the board shall identify the applicant as a recognized agency for program approval; or
- (2) Disapprove the application if, in the opinion of a majority of board members, one or more of the following conditions exist:
 - a. Additional information has been received which indicates that the applicant is not eligible to be a recognized agency for program approval;
 - b. The information submitted by the applicant as required in (b) and (c) above is determined by the state board to be incomplete, inaccurate, or false; or
 - c. The NSAC misapplied a statute or administrative rule in making its recommendation.
- (f) The department shall publish the list of recognized agencies for program approval at least annually.
- (g) An agency may, at any time, submit written notification to the department that it does not wish to be recognized.
- (h) Upon receipt of such a request the department shall:
 - (1) Remove the agency's name from the list of recognized agencies; and
 - (2) Notify all schools that have previously been granted program approval through accreditation by the withdrawing agency.
- (i) Program approval status for any school previously accredited by an agency whose name has been withdrawn from the list of recognized accrediting agencies shall remain in effect until the date of expiration of the most recent approval by the state board.
- (j) The NSAC shall review those agencies previously recognized for program approval every 10 years and make one of the following approval recommendations to the board:
 - (1) Full approval for a period of 10 years, if the NSAC finds that the agency meets the requirements of (b) and (c) above;
 - (2) Conditional approval for a period of 2 to 3 years when deficiencies are found that are not serious enough to warrant non-approval, but are serious enough to warrant attention and review; or
 - (3) Non-approval.
- (k) The board shall review the NSAC recommendation and take one of the actions enumerated in Ed 405.01(j).
- (l) Previously recognized agencies shall be reviewed by the NSAC prior to the expiration of the most recent approval when information becomes known to the NSAC which indicates:
 - (1) The agency might no longer be meeting the requirements of (c) above; or
 - (2) The agency has acted in an unfair or unlawful manner in conducting accreditations.
- (m) Agencies that have been recognized for program approval may request to be removed from the list of recognized agencies.

Readopt with amendment Ed 405.02, effective 6-15-13 (Document #10360), to read as follows:

Ed 405.02 Alternative Method for Program Approval Status.

(a) In the event that a nonpublic school is unable to receive accreditation or approval from a recognized program approval agency, the school may submit a written request for program approval status to the NSAC for review and recommendation to the state board.

(b) In making such a request, the school shall:

- (1) Describe its attempts to seek accreditation from a recognized program approval agency; and
- (2) Explain why it has been unable to achieve accreditation by a recognized program approval agency.

(c) The nonpublic school's request shall include:

- (1) A narrative explanation of all items listed in Ed 405.01(b); and
- (2) Any additional information that the school wishes to have considered by the NSAC.

(d) If, after reviewing and evaluating the request, the NSAC finds that the non-public school has made a reasonable effort to seek accreditation and warrants further review, the NSAC shall appoint an approval review team which shall conduct an evaluation of the school equivalent to those conducted by recognized program approval agencies.

(e) The review team shall consist of not less than 3 and not more than 7 members, and at least one of whom shall be an employee of a nonpublic school that is currently approved for program by the state board.

(f) The review team shall:

- (1) Physically visit the nonpublic school and evaluate all items listed in Ed 405.01(c);
- (2) Submit a written report to the NSAC within 45 working days of appointment; and
- (3) Recommend approval of the request if it finds that the school meets the criteria in Ed 405.01(c).

(g) The department shall reimburse review team members for travel expenses associated with conducting the review visit if funds are available. Review team members shall be reimbursed for travel expenses at the same rate as state employees.

(h) Within 45 working days of receipt of the report from the review team, the NSAC shall take one of the following actions based on the review team's recommendations:

- (1) Recommend the school for program approval status to the state board if, in the opinion of the majority of NSCA members, the school meets the criteria in Ed 405.01(c);
- (2) Recommend to the state board that the school be denied approval for program approval status if additional information has been received which, in the opinion of the majority of NSAC members, indicates that the school does not meet the criteria in Ed 405.01(c); or
- (3) Return the application to the review team if the information in the review team's report is determined to be incomplete or if it is determined that the review team did not follow the procedures required by (e) or (f) above.

(i) The NSAC shall notify the nonpublic school of its findings within 10 working days.

(j) If the NSAC recommends denied approval of the request for program approval status, the nonpublic school may, within 10 business days of notification of the recommendation for denied approval, request a hearing before the state board to submit evidence in support of its request for status pursuant to Ed 200.

(k) The state board shall hold a rehearing in accordance with Ed 213.02 for one or more of the following conditions:

- (1) Additional information has been received which indicates that the school is not eligible for program approval status;
- (2) The information submitted by the school as required in Ed 405 is determined by the state board to be inaccurate or false; or
- (3) The NSAC misapplied a statute or administrative rule in making its recommendation

Readopt with amendment and renumber Ed 402.01, effective 6-15-13 (Document #10360), as Ed 406.01, cited and to read as follows:

PART Ed 406 NONPUBLIC SCHOOLS ELIGIBLE FOR SERVICES

Ed 406.01 State and Federal Program Eligibility. Nonpublic schools shall be eligible to participate in state and federally funded programs, including but not limited to:

- (a) Child benefit services;
- (b) Dual enrollment programs;
- (c) Driver education reimbursement;
- (d) Child nutrition programs;
- (e) Federal education programs; and
- (f) Vocational rehabilitation.

Readopt with amendment Ed 407, effective 2-16-19 (Document #12726), to read as follows:

PART Ed 407 RETENTION OF STUDENT RECORDS

Ed 407.01 Student Records.

- (a) Each nonpublic school shall permanently maintain individual student records that include:
 - (1) Pupil registers for each year that the school was approved to operate, as required by RSA 189:27-a, that include, at minimum, the following information:
 - a. Name;
 - b. Date of birth; and
 - c. Town of legal residence;
 - (2) Transcripts of academic performance for each year that a student attended the school; and
 - (3) Record of award of high school diploma, including the date of award.

(b) In the event of a school closing or termination of operations, the school shall notify the department no less than 90 days prior to the closing date and provide the following:

- (1) Permanent location of student records, as described in (a) above, which shall be:
 - a. Submitted in a format determined by the school if the school chooses to deposit the records to the local school district or other third-party agency; or
 - b. Electronically, if the school chooses to deposit the records with the department;
- (2) Reason(s) for closure; and
- (3) The name and contact information of 2 school representatives who the department may contact after school closure.

Readopt with amendment and renumber Ed 406, effective 6-15-13 (Document #10360), as Ed 408 to read as follows:

PART Ed 408 ESTABLISHMENT OF THE NONPUBLIC SCHOOL ADVISORY COUNCIL

Ed 408.01 Duties of the Nonpublic School Advisory Council.

(a) The NSAC shall carry out those duties assigned to it by the state board. The council shall work with nonpublic schools to encourage and develop nonpublic schooling in New Hampshire.

(b) Assigned areas of responsibility shall include, but not be limited to the following:

- (1) Developing and maintaining effective communications between nonpublic schools and those state and local agencies involved in the approval process;
- (2) Offering consultant assistance in the implementation of the school approval requirements;
- (3) Recommending to the commissioner and state board desired changes in the rules for the approval of nonpublic schools;
- (4) Explaining the availability of nonpublic school services in the state; and
- (5) Investigating grievances submitted under the provisions of Ed 401.02(m), Ed 403.02(e), Ed 403.03(f), Ed 404.02(e), and Ed 404.03(f), and making appropriate recommendations to the commissioner.

(c) The department shall reimburse NSAC members for travel expenses associated with attending meetings if funds are available. NSAC members shall be reimbursed for travel expenses at the same rate as state employees.

Ed 408.02 Membership Selection. Membership on the NSAC shall consist of the following:

(a) Ten members representing New Hampshire's nonpublic schools appointed by the commissioner upon nomination of the NSAC;

(b) The commissioner shall appoint one public school or chartered public school administrator;

(c) The commissioner may appoint other individuals interested in nonpublic school education but not affiliated with a nonpublic school or state agency; and

(d) The commissioner of health and human services shall appoint one member representing children, youth, and families.

Ed 408.03 Rotation of Membership and Term of Appointment.

(a) The term of appointment shall be 3 years.

(b) Terms of appointment as provided in this section shall end on June 30 of the year in which the term is completed.

(c) The conduct of business shall not depend upon the maintenance of full council membership.

(d) The term of appointment of members who are absent for 3 consecutive meetings may be reduced in length or terminated by the commissioner.

(e) In the event of vacancies, the commissioner shall appoint replacements at the time such vacancies occur.

Ed 408.04 Records of the Advisory Council. The records and minutes of the NSAC shall be filed and maintained in the department.

Ed 408.05 Funding and Support of Council Activities. The members of the NSAC shall serve without compensation. Subject to available funds, the state board shall financially support the activities of the council to cover expenses including but not limited to mileage and cost associated with holding a statewide conference. The chairperson of the council shall present budget requests to the state board biennially.

Ed 408.06 Grievance Committee.

(a) The grievance committee shall be a subcommittee of the NSAC appointed by the chairperson, consisting of at least 5 and no more than 9 members, a majority of whom shall be representatives of nonpublic schools. One member of the grievance committee shall be appointed by the chairperson to preside at grievance conferences.

(b) The grievance committee shall hear all grievances referred to it by the commissioner pursuant to the provisions of Ed 401.02(m), Ed 403.02(e), Ed 403.03(f), Ed 404.02(e), and Ed 404.03(f).

(c) The grievance committee shall:

(1) Keep a written account of its investigations; and

(2) Submit such an account, together with its findings, to the commissioner within 30 days of the commissioner's referral.

Ed 408.07 Request for Grievance Conference for the Denied Approval of a Nonpublic School. Any nonpublic school may request a grievance conference and have such request acknowledged as follows:

(a) Such request shall be in writing to the commissioner;

(b) The request shall state in detail the reasons for the request for a grievance conference and name the parties involved;

(c) The commissioner shall notify the requestor within 5 days in writing that:

(1) A grievance conference has been scheduled in accordance with Ed 408.08; or

(2) Additional information is required to clarify the issues;

(d) The requestor shall have 10 days from receipt of the commissioner's request for additional information to respond with the requested information; and

(e) The commissioner shall, upon receipt of the requested information, schedule a grievance conference in accordance with Ed 408.08.

Ed 408.08 Grievance Conference for the Denied Approval of a Nonpublic School.

(a) Upon receipt of a request pursuant to Ed 401.02(m), Ed 403.02(e), Ed 403.03(f), Ed 404.02(e), and Ed 404.03(f), or concerning an action taken under these rules, the commissioner shall notify the chairperson of the NSAC of the request for a grievance conference, and the grievance conference shall then proceed in accordance with this section.

(b) Within 5 days of the commissioner's notification of a request for a grievance conference, the chairperson shall schedule the conference with the parties to the grievance.

(c) At the conference, each party shall be prepared to consider:

- (1) The simplification of the issues and an agreement of facts;
- (2) Possibility of settlement; and
- (3) Such other matters as may aid in disposition of the action.

(d) Parties to a grievance may be represented at the conference by counsel.

(e) At the grievance conference, the grievance committee shall interview the parties to the grievance to attempt to reach a settlement on the facts of the grievance.

(f) The grievance committee shall present its findings on unresolved grievances or report on the proposed settlement reached by the parties to the commissioner within 10 days of the conference.

(g) Any settlement reached at a grievance conference shall be subject to review by the commissioner to ensure that the settlement is consistent with these rules and applicable statutes. Any settlement that is not consistent with these rules and applicable statutes shall not be implemented.

(h) The findings shall list the pertinent facts found by the committee.

(i) The commissioner shall notify the parties of the issues agreed to, what issues remain unresolved, or both.

(j) The notice shall state the parties have 10 business days from receipt of the committee's findings on unresolved issues to request a hearing pursuant to the provisions of Ed 200.

Readopt with amendment and renumber Ed 408, eff 6-15-13 (Document #10360), as Ed 409 to read as follows:

PART Ed 409 GRIEVANCE PROCEDURES

Ed 409.01 Definitions.

(a) "Abuse" means causing:

- (1) Intentional physical injury to a student;
- (2) Physical injury to a student by other than accidental means; or

(3) Psychological injury to a student so that the student exhibits symptoms of emotional problems generally recognized to result from consistent mistreatment or neglect.

(b) “Approved nonpublic school” means a nonpublic school that has been approved by the state board in accordance with Ed 401.02.

(c) “Day” means calendar day.

(d) “Governing body” means an approved nonpublic school’s board of directors, board of trustees, or executive board or person with responsibility to supervise and control the school.

(e) “Grievance” means a complaint based on:

(1) A pattern of failure to respond to accusations of abuse or neglect of any student(s) by a teacher or administrator employed by an approved nonpublic school or by a volunteer serving at such school; or

(2) A pattern of failure to respond to accusations of harassment of any student(s) by a teacher or administrator employed by an approved nonpublic school or by a volunteer serving at such school.

(f) “Neglect” means the failure to provide care or control necessary for a student’s physical, mental, or emotional health in the school setting, when it is established that the student’s health has suffered or is very likely to suffer serious impairment.

(g) “Parent” means:

(1) Natural or adoptive parent;

(2) Legal custodian or guardian; or

(3) Surrogate parent.

Ed 409.02 Grievance Procedures; Request for Administrative Due Process Hearing.

(a) A parent of a child attending an approved nonpublic school with a grievance against the school shall request a meeting with the governing body of the school to resolve the issue.

(b) The parent may request a due process hearing as provided in Ed 409.03, only after all timely internal school grievance processes are exhausted under (a) above, and the parent and the governing body are not able to resolve the issue.

(c) A request for an administrative due process hearing shall be mailed or hand delivered to:

New Hampshire Department of Education
Office of Legislation and Hearings
101 Pleasant Street
Concord NH 03301-3860

Ed 409.03 Scheduling of Administrative Due Process Hearings; Pleadings; Order of Notice.

(a) If a parent requests an administrative due process hearing under Ed 409.02, the department shall schedule and hold a hearing in accordance with Ed 200, unless otherwise provided in Ed 409.03 – Ed 409.09.

(b) Within 10 business days of the receipt of the request for a hearing, the hearing officer shall begin the hearing process by issuing an order of notice in accordance with Ed 209.02.

Ed 409.04 Continuance and Rescheduling of the Hearing; Consequences of Default.

(a) Upon good cause shown, including but not limited to illness, accident, or death of a family member, the hearing officer shall continue the hearing and reschedule it for a date later than that shown in the order of notice but in no case shall the continuance be granted for more than 15 days. Notice of the continuance shall be made in writing to all parties except that if the continuance is granted less than 3 days before the scheduled hearing date, notice shall be made by telephone followed by notice in writing.

(b) Any party who has been served notice in accordance with Ed 409, who fails to appear and who fails to obtain a continuance from the hearing officer prior to the scheduled time of the hearing, shall have a decision rendered against that party if the interests of justice will be served by such action.

Ed 409.05 Proposed Written Decision of Hearing Officer. The hearing officer shall render a proposed written decision at least 10 calendar days subsequent to a hearing. The proposed written decision shall list the pertinent facts found by the hearing officer in accordance with Ed 210.01 and Ed 212.01. A copy of the proposed written decision shall be mailed by certified mail, return receipt requested, to all parties named in the order of notice.

Ed 409.06 Appeal of State Board Decision. Any party aggrieved by the decision may appeal the decision of the state board to a court of competent jurisdiction within 30 days of the decision. Pending appeal, the nonpublic school shall continue to operate.

Ed 409.07 Revocation and Probation.

(a) A written petition to the state board to revoke a nonpublic school's approval status may be made by the parent of any pupil currently attending that school, alleging that the school refused to implement a decision of the state board, after conclusion of a due process hearing under Ed 409.

(b) After 30 days' notice has been provided to all affected parties, the state board shall revoke a nonpublic school's approval prior to the expiration of its term if the board determines, after a hearing, that the school has refused to implement a decision of the state board as provided in (a) above.

(c) Before revoking a nonpublic school's approval, the state board shall consult with the nonpublic school's governing board on the development and implementation of a corrective action plan.

(d) The state board shall place a nonpublic school on probationary status for up to one year to allow the implementation of a corrective action plan. If the board determines after the expiration of the probationary status that the plan was not successfully implemented, the board shall revoke its approval of the nonpublic school.

(e) Nothing contained in this section shall prevent the state board from immediately suspending a nonpublic school approval status in circumstances posing an immediate or ongoing danger to life or safety, provided that the state board shall commence a hearing on the suspension within 10 days of issuing the suspension order.

Ed 409.08 Appeal of Decision of State Board. Any party aggrieved by a decision of the state board may appeal the decision to a court of competent jurisdiction within 30 days of the decision. Pending appeal, the nonpublic school shall continue to operate.

Ed 409.09 Public Notice of Revocation of Approval. If the state board revokes approval of a nonpublic school, it shall provide public notice of such revocation by the following means:

(a) Posting of the notice of revocation on the website of the department;

(b) Causing a notice of the revocation to be published in a newspaper of general circulation in the area in which the nonpublic school is located; and

(c) Requiring the nonpublic school to send a copy of the notice of revocation to all the parents of students attending the school.

APPENDIX

RULE	STATUTE IMPLEMENTED
Ed 401.01	RSA 21-N:9, II(o); RSA 186:11, XXIX
Ed 401.02	RSA 21-N:9, II(f); RSA 21-N:9, II(o); RSA 186:11, XXIX; RSA 186:11, XXIX-a
Ed 401.03	RSA 21-N:9, II(o); RSA 186:11, XXIX; RSA 189:1
Ed 402.01	RSA 126-U:8, I(a); RSA 189:1; RSA 189:28, I-b; RSA 194:31
Ed 403.01	RSA 186:6
Ed 403.01(a)(9)a.	RSA 141-C:20-a; 189:9; RSA 189:49
Ed 403.01(a)(10)	RSA 126-U; RSA 141-C:20-a; RSA 189:27-a; RSA 189:19; RSA 189:20; RSA 189:21; RSA 189:28; RSA 189:64; RSA 193:31; and RSA 198:20-a
Ed 403.02-Ed 403.04	RSA 21-N:9, II(o); RSA 186:11, XXIX
Ed 404.01-Ed 404.04	RSA 21-N:9, II(o); RSA 186:11, XXIX
Ed 405.01-Ed 405.02	RSA 21-N:9, II(f); RSA 21-N:9, II(o); RSA 186:11, XXIX
Ed 406.01	RSA 186:11, XXIX
Ed 407.01	RSA 189:27-a
Ed 408.01-Ed 408.08	RSA 21-N:9, II(f)
Ed 409.01-Ed 409.07	RSA 21-N:9, II(f); RSA 186:11, XXIX-a