

## 1667 EDUCATIONAL REQUIREMENTS FOR CHILDREN OR YOUTH WITH DISABILITIES

Chapter: **Out-of-Home Placements**

Section: **Educational Stability**



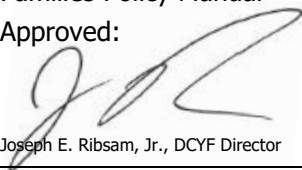
New Hampshire Division for Children, Youth and Families Policy Manual

Policy Directive: **19-21**

Approved:

Effective Date: **May 2019**

Scheduled Review Date:

  
Joseph E. Ribsam, Jr., DCYF Director

Related Statute(s): [RSA 169-B](#), [RSA 169-C](#), [RSA 169-D](#), and [RSA 186-C](#)

Related Admin Rule(s): [ED 1100](#)

Related Federal Regulation(s): [34 CFR 300.321](#)

Related Form(s): **FORM 1609, FORM 1666, and FORM 1667**

Bridges' Screen(s) and Attachment(s):

All children and youth have the right to a free and appropriate education and stability in their educational programming when they are in placement. Children and youth identified with disabilities are entitled to an individualized program for special education and related services to allow them to achieve their educational potential and should be supported in securing these services to protect their well-being. The Division will encourage positive family functioning by empowering parents/guardians to advocate and act on their own behalf and for their child/youth directly in these matters and will collaborate with parents/guardians, local school systems, and other parties to effect appropriate referrals and planning.

### Purpose

This policy establishes the procedures to safeguard the educational rights of children/youth with disabilities and ensure they have necessary supports for their needs including educational/vocational programming.

### Definitions

**"CASA"** or a **"Court Appointed Special Advocate"** means a volunteer who serves as an advocate for an abused and/or neglected child/youth in the New Hampshire court system.

**"Child with a Disability"** means any child/youth between three (3) years of age and 21 years of age who has been identified and evaluated by a school district according to rules adopted by the state Board of Education and determined to have a disability or impairment as defined in RSA 186-C:2 I which necessitates special education or special education and related services.

**"CPSW"** or **"Child Protective Service Worker"** means an employee of DCYF who is authorized by the Division to perform functions of the job classification Child Protective Service Worker.

**"DCYF"** or the **"Division"** means the Department of Health and Human Services' Division for Children, Youth and Families.

**"Educational Surrogate Parent"** means a person appointed to act as a child/youth's advocate in place of the child/youth's biological parent(s), adoptive parent(s), or guardian(s) in the educational decision making process, (as defined in RSA 186-C:14(II)(b)).

**"Guardian Ad Litem"** or **"GAL"** means a court-appointed representative designated to represent the best interests of children legally considered to be incapable of managing their own affairs.

**"IEP" or "Individualized Education Program"** means a written plan for the education of a child/youth with a disability that has been developed by an IEP Team and that provides necessary special education or special education and related services within an approved program.

**"Individualized Education Program Team" or "IEP Team"** means a group of individuals as defined in 34 CFR 300.21 and Ed 1103.01, that is responsible for developing, reviewing, or revising an IEP for a child/youth with a disability.

**"JPPO" or "Juvenile Probation and Parole Officer"** means an employee of DCYF who is authorized by the Division to perform functions of the job classification Juvenile Probation and Parole Officer.

**"Placement"** means the removal of a child/youth from his/her normal place of residence to reside in a court-ordered substitute care setting under the placement and care responsibility of DCYF.

**"Receiving School District"** means the school district in which a home for children, or health care facility is located if a child who is placed therein attends a public school in that district or receives educational services from that district. (RSA 193:27 V)

**"Sending School District"** means the school district in which a child most recently resided other than in a home for children, the home of a relative or friend in which a child is placed by the department of health and human services or a court of competent jurisdiction pursuant to RSA 169-B, RSA 169-C, RSA 169-D, RSA 170-C, or RSA 463, health care facility, or state institution, if such child is not in the legal custody of a parent or if the parent resides outside the state; if the child is retained in the legal custody of a parent residing within the state, "sending district" means the school district in which the parent resides (RSA 193:27 IV).

## Required Practices

- I. DCYF collaborates with the IEP Team to determine if the child/youth is a child with a disability, as defined in RSA 186-C, or review the services offered/provided under RSA 186-C if the child/youth has already been determined to be a child with a disability.
- II. For a child/youth who has not been identified for special education, the sending school district has 15 business days to convene the special education referral meeting following receipt of a referral request for which the parents have been notified pursuant to Ed 1106.01(c), or upon notification that the school district has been joined to the case.
  - A. The IEP team will determine if the child/youth:
    1. Requires additional evaluations to make a determination and request the parents/guardians to provide written consent; or
    2. Does not have an educational disability and that no further evaluation is necessary.
  - B. Per NH Department of Education (DOE) rules, if the parent(s)/guardian(s) disagree with the IEP Team's disposition of the referral, they may request alternative dispute resolution or a due process hearing.
  - C. The CPSW/JPPO will monitor that the parent(s)/guardian(s) are included on and respond to any request by the school district for additional evaluations or meetings.

- D. The CPSW/JPPPO will consult with their Supervisor regarding additional case management strategies.
  - E. The school district shall report to the Court its determination of whether the child/youth is determined to be a child with a disability and make a recommendation to the Court as to where the child/youth's educational needs can be met in accordance with state and federal education laws, pursuant to RSA 169-B:22, II; RSA 169-C:20, II; or RSA 169-D:18, II.
- III. The CPSW/JPPPO shall:
- A. Contact the sending and receiving school districts to send the Notice to School District of Residence Change (Form 1667) as soon as possible in advance or within five (5) days of the placement change;
  - B. Immediately request the convening of the IEP team no later than 10 days after the child/youth is placed, if an emergency placement occurs (ED 1117.04);
  - C. Participate in the IEP team meetings and support:
    - 1. The completion of the Educational Best Interest Determination (BID) Form 1666 as outlined in policy 1666;
    - 2. To the extent possible and appropriate the continuation/implementation of the current IEP;
    - 3. Timely review and revision of the child/youth's IEP; and/or
    - 4. Discussions of the least restrictive educational program options.
  - D. Ensure that the child/youth's current educational records from the sending school district are provided to the receiving school district as soon as possible if the child will be changing schools, including the child/youth's current IEP, so the IEP may be implemented immediately.
    - 1. The CPSW/JPPPO shall verify that the receiving school receives the child/youth's current IEP and evaluations;
    - 2. The receiving school district shall ensure that, to the extent possible and appropriate, the child/youth shall continue their current IEP; and
    - 3. The CPSW/JPPPO must notify the Court if a sending school district refuses to assume responsibility for a child/youth in a foster home or residential treatment program.
- IV. Children/youth with disabilities, who are placed in foster homes, general group homes, and intermediate group homes must receive public education in local schools or the school they were attending prior to the placement change, unless the IEP team determines the child/youth requires a different educational placement.
- A. Educational programs must be certified by the DOE and DCYF to implement the child/youth's IEP and to assure continued protection by the Individual Disabilities Education Act (IDEA) and FAPE for all disabled children/youth (see Form 1609, Directory of Certified Residential Treatment Programs).

- V. For children/youth with a disability who are being placed or who are currently placed in educational residential facilities, the Sununu Youth Services Center, or at New Hampshire Hospital, the CPSW/JPPPO must:
  - A. Only join public school districts to the court case, as residential on-site education programs may not be joined.
  - B. Seek a court order from the Court having jurisdiction over the child/youth, to designate a legally liable school district, unless the child/youth is held at the Sununu Youth Services Center or admitted to New Hampshire Hospital.
  
- VI. An application for an Educational Surrogate Parent for a child/youth with a disability must be completed by a CPSW/JPPPO pursuant to policy 1668 Surrogate Parents, when DCYF receives a guardianship order, or the parents are unknown or unable to be located.
  
- VII. If a child/youth is no longer considered to be a child with a disability, the CPSW/JPPPO must:
  - A. Contact the school district to obtain the exact date when the child/youth's status changed and request a copy of the written prior notice from the school district which describes the rationale behind why the school district found the child/youth was no longer eligible for special education.
  - B. Notify at State Office and provide the child/youth's name, current service authorization number, and the date of the status change, so Fiscal Specialists can update Bridges.

<b>Best Practice</b>
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- I. The Division for Children, Youth and Families has a responsibility to include the educational well-being of children/youth in case planning and to work with children/youth and their families if a child/youth is identified for special education.
  
- II. At initial and ongoing meetings with the child/youth and the parent(s)/guardian(s), the CPSW/JPPPO will discuss the child/youth's academic performance to assess if the child/youth has behaviors or symptoms that might indicate the presence of an educational disability, including but not limited to:
  - A. A history of psychiatric hospital admission and/or diagnosis;
  - B. Outpatient services for mental health issues;
  - C. Speech or language problems;
  - D. Physical handicaps or issues;
  - E. Cognitive or developmental delays;
  - F. Short attention span and distractibility;
  - G. Social relational problems including an inability to get along with peers and staff;
  - H. Emotional problems;

- I. Multiple behavioral incidents including detentions and suspensions;
  - J. Grade retention;
  - K. Failure to progress in the current academic program, sub average grades; and/or
  - L. Request from a legally liable school district or parent/guardian for placement.
- III. Grade advancement does not indicate the absence of an educational disability.
- IV. If the CPSW/JPPPO determines that one or more of the conditions described in II above are present or otherwise suspects the child/youth may be a child with a disability, the CPSW/JPPPO will discuss the rationale for making a referral for a complete educational evaluation with the parent(s)/guardian(s) and the child/youth if appropriate.
- A. The CPSW/JPPPO shall provide the parent(s)/guardian(s) and child/youth with information about the NH Department of Education special education process and services.
  - B. If required, the CPSW/JPPPO will assist the parent(s)/guardian(s) in making a referral for their child/youth to have a complete educational evaluation by the IEP Team. This includes assisting in the drafting and submission of a written request for the child/youth to be evaluated;
  - C. The CPSW/JPPPO shall discuss appropriate follow-up with their Supervisor if the parent(s)/guardian(s) fail(s) to complete a referral.
  - D. If the parent(s)/guardian(s) do not complete the referral in a timely manner, the CPSW/JPPPO shall draft and submit a Referral Request directly to the Special Education Director of the School Administrative Unit.
  - E. Any referral made will be completed pursuant to Section II under Required Practices above.
- V. The school district will convene an IEP Team for each child/youth with a disability (or referred for a special education evaluation), which includes:
- A. The parent(s)/guardian(s) of the child/youth;
  - B. An Educational Surrogate Parent, when applicable;
  - C. At least one (1) regular education teacher of the child/youth (if the child/youth is, or may be, participating in the regular education environment);
  - D. At least one (1) special education teacher of the child/youth, or if appropriate, at least one (1) special education provider of the child/youth;
  - E. A representative of the receiving school district, if the child is attending public school in the receiving district, who:
    - 1. Is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children/youth with disabilities;

2. Is knowledgeable about the general curriculum; and
  3. Is knowledgeable about the availability of resources of the receiving school district;
- F. An individual who can interpret the instructional implications of evaluation results, who may be a member of the team described in A through E above;
  - G. Other individuals, at the discretion of the parent(s)/guardian(s) or the school district, who have knowledge or special expertise regarding the child/youth, including related services personnel (such as a paraprofessional) as appropriate;
  - H. The CPSW/JPPPO, and their respective Supervisor if possible, must be involved in the meetings and discussions at the school when the child/youth's IEP is being developed;
  - I. The relative caregiver(s), Foster Parent(s), or a representative of the Residential Treatment Program;
  - J. An appointed CASA/Guardian Ad Litem; and
  - K. If appropriate, the child/youth.
    1. The team shall invite a child/youth with a disability of any age to attend their IEP meeting if a purpose of the meeting will be the consideration of the child/youth's transition services needs under 34 CFR 300.347(b)(1).
    2. If the child/youth does not attend the IEP meeting, the school district shall take other steps to ensure that the child/youth's preferences and interests are considered.
  - L. When any vocational, career, or technical education components are being considered, an individual knowledgeable about vocational education, career, or technical programs shall be included as a member of the IEP Team.

### Practice Guidance

#### **Who is eligible for Special Education services?**

- Children and youth age three (3) to 21-year-old are eligible to receive individualized education supports and services through their Local Education Agency if they are determined to be a child/youth with a disability.
- If the youth's IEP requires continued educational services, youth age 18-21 must continue to receive educational services from the school district in compliance with the student's IEP and anticipated graduation/completion date.

#### **Who is liable for the costs associated with Special Education services while a child is in placement?**

- The sending school district, when it has been joined, has the financial liability for special education and educationally related services for a child/youth with a disability.
- The local educational authority's liability is limited to three (3) times the state average cost per pupil, as determined by the state board of education, for the preceding school year. Any costs for special education or educationally related services in excess of three (3) times the state average cost per pupil are the liability of the Department of Education.
- DCYF is liable for all court-ordered costs pursuant to RSA 169-B:40, RSA 169-C:27, and RSA 169-D:29, other than for special education and educationally-related services.