



If you have concerns about a child's access to education services you can contact us to speak with an attorney free of charge.

Education Series

Individuals with Disabilities Education Act (IDEA)

The federal Individuals with Disabilities Education Act (IDEA) as well as New Hampshire state law require school districts to provide education and related services for children with certain types of disabilities who, due to their disability, need specialized instruction and related services to receive an appropriate education. Under these laws, school districts must make a free appropriate public education (FAPE) in the least restrictive environment (LRE) available to eligible children.



✓ Individualized Education

Every child who is eligible under the IDEA receives specialized instruction and related services that are outlined in a written document, called an Individualized Education Program (IEP). The IEP is individually designed to meet the unique needs of the specific student. The IEP is developed by the student's IEP Team which includes the student's parents or guardians and can include the student themselves.

Qualifying for an IEP

Having a medical diagnosis does not automatically qualify a student for an IEP under the IDEA. To be eligible for an IEP, the student must have a disability for which they need specialized instruction and related services to receive an appropriate education. In New Hampshire, a qualifying disability is defined as one of the 14 categories below:

1. Autism
2. Deaf-blindness
3. Deafness
4. Developmental delay for children ages 3 to 10 (DD)
5. Emotional disturbance (ED)
6. Hearing impairment (HI)
7. Intellectual Disability
8. Multiple disabilities
9. Orthopedic impairment
10. Other health impairment (OHI)
11. Specific learning disability (LD)
12. Speech or language impairment (SL)
13. Traumatic brain injury (TBI)
14. Visual impairment, including blindness (VI)

A meeting to develop the IEP must occur within 30 days after a student is determined eligible.

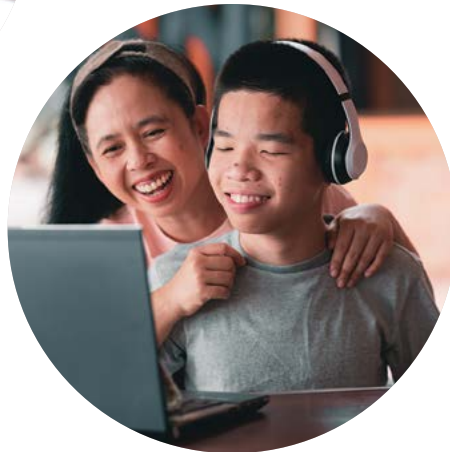
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DRC-NH is New Hampshire's designated Protection and Advocacy agency and authorized by federal statute "to pursue legal, administrative, and other appropriate remedies" on behalf of individuals with disabilities. We are a statewide organization independent from state government or service providers.



Creating an IEP

An IEP must follow a specific format which includes annual measurable goals for the school year and the specialized instruction and related services the student will receive to assist them in reaching those goals. An IEP is a legally enforceable document. The IDEA grants certain rights and protections to the student and their parent or guardian. The IDEA also includes specific procedures that must be followed before any changes to an IEP can be made by the school.



For additional information about the development and approval of an IEP visit <https://picnh.org/steps-of-the-special-education-process-2/>

✓ Least Restrictive Environment (LRE)

Once an IEP has been developed, the IEP team determines where the IEP can be implemented in order for the student to receive a free appropriate public education (FAPE) in the least restrictive environment (LRE). Often, this will be in the student's local public school.

Out-of-District Placements

- **IEP Team Placement:** A student whose IEP team determines that an out-of-district placement into a private or another public school is necessary to enable them to receive a FAPE, retains their rights under the IDEA. In such circumstances, the student's local public school district or 'sending district' remains responsible for providing the student with the supports and services outlined in the student's IEP.

However, this is not true for students whose parents choose to remove them from their resident public school and enroll them into a private school or homeschool them when FAPE is not at issue.

- **Parental Placement:** When a student is removed from their public school and 'parentally-placed' into another setting, neither the student's public school nor their private school has an obligation to provide that child with a free appropriate public education or implement their IEP.

School districts do set aside a small amount of federal IDEA funding to provide 'equitable services' to some students with disabilities who are parentally-placed out of their local public school where FAPE is not at issue. However, the school district has discretion to decide what services may be made available and which students will receive those services. This means that a student with disabilities who is parentally-placed into a private school, no longer has a legal right to have the education supports and services contained in their IEP (see [CFR 34 § 300.137 -138](#)).



✓ Disagreements about FAPE

When a student with a disability is parentally-placed into a private school because their parents believe the school district has failed to provide the student with a free appropriate public education (FAPE), [state and federal regulations](#) govern who provides and pays for the student’s education, including specialized instruction, supports, and related services. In this situation, if a parent wants to be reimbursed for these costs, then the parent must follow certain notice requirements as [outlined in the regulations](#). These require that at the most recent IEP meeting prior to removing their child from the public school, the parent must:

- Inform the IEP team that they reject the placement proposed by the school district, state their concerns and their intent to enroll their child in a private school at public expense; or
- At least ten business days prior to the child’s removal, the parent must give written notice to the school district of the information listed above.

Disagreements between the parent and the school district regarding the placement and the question of financial reimbursement are subject to due process procedures and may be decided by a hearing officer or court.

[For additional information and specific legal citations, see the Parent Information Center’s Guide to NH Standards for the Education of Children with Disabilities.](#)



For more information on the education of students with disabilities including the IDEA and IEPs, visit our education page at <https://drcnh.org/issue-areas/childrens-issues/education/>

Disability Rights Center - NH

Protection and Advocacy System for New Hampshire

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MISSION: Disability Rights Center – New Hampshire protects, advances, and strengthens the legal rights and advocacy interests of all people with disabilities.

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TDD access also through NH Relay Service

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This flyer is not meant to be legal advice. For specific legal advice an attorney should be consulted.

This flyer is based in part on resources developed by the [Parent Information Center of New Hampshire](#).