

CHANGE OF CLASS OR SCHOOL ASSIGNMENT BEST INTERESTS AND MANIFEST HARDSHIP

The Superintendent is charged with assigning students of the District to schools and classes consistent with Board policies and procedures. New Hampshire RSA 193:3 recognizes that there are limited instances when the class or school to which a student might be assigned under a district's ordinary assignment policies and procedures, might not be in that student's best interests, or other factors might exist under which create a manifest educational hardship upon the student such that a change (referred to in this policy as "reassignment") in the student's class or school assignment is warranted. The Board has adopted this policy consistent with RSA 193:3 and to provide procedures for parents/guardians to follow when they believe a reassignment is appropriate.

A. Best Interest Re-Assignment – Determination by Superintendent.

Consistent with RSA 193:3, I, and subject to the provisions below, the Superintendent is authorized to reassign a student residing in the District to another class within the school, to another public school, -public academy, -or approved private school in another District.

Authorization granted Superintendent to make reassignments under this policy applies only after application is made by the parent /guardian of the student or with the parent/guardian's consent, and upon a finding by the Superintendent that reassignment is in the student's best interests, after taking into consideration the student's academic, physical, personal, or social needs. This policy, however, does not limit the Superintendent's discretion to make other in-District assignments consistent with applicable Board policies and administrative rules.

1. Procedure:

- a. In order to initiate consideration of a reassignment based upon the child's best interests, the parent/guardian shall submit to the Superintendent a written request stating why and/or how the child's best interests warrant reassignment. In order to facilitate a determination, such application may also include any additional information described in 4 below. The written request should be mailed or delivered to the SAU office or emailed to the Superintendent at the email address provided on the District's website.
- b. Upon such request, the Superintendent shall schedule a meeting (the "reassignment meeting") with the parent or guardian, to be held within 10 days of receiving the request.
- c. Prior to or at the reassignment meeting, the parent or guardian shall make a specific request that the student be re-assigned to another class/grade within the same school, or to a public school, public academy, or approved private school in another district.
- d. At the reassignment meeting, the parent or guardian may present documents, witnesses, or other relevant evidence supporting the parent's belief that reassignment is in the best interest of the student.
- e. The Superintendent may present such information as he or she deems appropriate.
- f. In determining whether reassignment is in the student's best interest the superintendent shall consider the student's academic, physical, personal, or social needs.

2. Finding Reassignment is or is not in Best Interest:

- a. Within five school days of the reassignment meeting, the Superintendent shall deliver to the parent/guardian a written determination as to whether or not reassignment is in the child's best interest. Delivery of the written determination should be done in a manner to produce evidence of the delivery (e.g., courier, email, fax).
- b. If the Superintendent finds it is in the best of the interest of the student to change the student's school or assignment, the Superintendent shall initiate:
 - i. A change of assignment within the student's current assigned school;
 - ii. The student's transfer to another public school, public academy, or approved private school within the district of residence; or
 - iii. The student's transfer to a public school, public academy, or approved private school in another district.
- c. If the Superintendent does not find that it is in the best interest of the student to change the student's school or assignment, the parent or guardian may request a hearing before the School Board to determine if the student is experiencing a manifest educational hardship as provided in Section B of this policy.

3. Tuition Determination:

- a. *Assignment to Another School District or Public Academy.* If a student is to be reassigned to a public school in another school district or approved public academy as a result of a best interest determination, the Superintendent shall work with the Superintendent or administrator of the receiving District/approved school to establish a tuition rate for such student. Pursuant to RSA 193:3, I (g), if the Superintendent has made a finding that it is in the best interest of the student to be reassigned, then the School Board shall approve the tuition payment consistent with the Board's ordinary manifest approval procedures.
- b. *Assignment to an Approved Private School.* If the student is reassigned to an approved private school as a result of a best interest determination, that school may charge tuition to the parent/guardian or may enter into an agreement for payment of tuition with the School District in which the student resides. The Superintendent shall consult with counsel regarding tuition obligations in such an instance. Any such Agreement shall be subject to approval by the School Board on behalf of the School District and shall be at the sole discretion of the School Board with due consideration given to the fiscal impact of such approval on the District, and shall not be granted if, in the opinion of the School Board, there are other viable public school options for reassignment.

The Superintendent shall assure that the reassignment approval is placed on the agenda for the next regularly scheduled Board meeting.

4. Transportation: Transportation for a student reassigned to schools in another district under this section A (best interest) shall be the responsibility of the parent/guardian.
5. Tuition for Students Reassigned by Other Districts Pursuant to RSA 193:3, I: It is the general policy of the Board that the tuition amount to be charged to another District for any student reassigned by that District to a school within this District under the best interest standard of 193:3, I, shall be the lesser of the tuition charged for nonresidential students under Board policy JFAB or as computed under the formula set out in RSA 193:4. The

Superintendent, however, is authorized to reduce the tuition amount below those thresholds or for other good cause shown (e.g., reciprocal assignments between the two districts).

6. Other In-District Assignments: Nothing in this policy is intended to limit authority otherwise extended to the Superintendent to make assignments or reassignments according to the policies, regulations, and ordinary practices of the District.
7. Review/Appeal of Decision. The decision of the Superintendent shall be final and any appeal shall be limited to the process set forth in Section B, below.
8. Annual Review of Decision. A reassignment on the basis of best interest of the student shall be limited to no longer than the end of the ensuing school year, and shall be subject to review by the Superintendent prior to any subsequent school year to determine that the reassignment remains in the best interest of the student, with the understanding that the Superintendent may, at his/her discretion waive the review when he/she deems such to be appropriate.

B. Manifest Educational Hardship – Determination by School Board and Appeal to State Board.

If, after following the procedure outlined in Section A of this policy, the Superintendent did not find that it was in the best interest of the student to reassign the student as requested by the student's parent/guardian, then the parent/guardian may request a hearing before the School Board to determine if the student is experiencing a manifest educational hardship.

1. "Manifest Educational Hardship" Defined. As provided in RSA 193:3, II (a), "manifest educational hardship" means that student has a documented hardship in his or her current educational placement; and that such hardship has a detrimental or negative impact on the student's academic achievement or growth, physical safety, or social and emotional well-being. Such hardship must be so severe, pervasive, or persistent that it interferes with or limits the ability of the student to receive an education.
2. Procedure for Determination of Manifest Educational Hardship.
 - a. Within thirty (30) days after receipt of the Superintendent's written determination described that reassignment is not in a student's best interest as described in paragraph A.2.a & c, above, the parent/guardian requesting a manifest educational hardship hearing shall submit a written application to the Superintendent detailing the specific reasons why they believe that the current assignment constitutes a manifest educational hardship.
 - b. The Superintendent shall duly notify the School Board that the parent or guardian has requested a manifest educational hardship hearing, upon which the School Board shall schedule a hearing to be held no more than 15 days after the request has been received by the Superintendent. The Board shall provide at least two full days' notice of the hearing. The Board will conduct the hearing in non-public session, unless the parent/guardian requests the hearing be held in public session, subject to RSA 91-A:3, II(c).
 - c. Prior to or at such hearing, the parent/guardian shall provide to the Superintendent a specific request in writing that the student attend a public school, public academy, or approved private school in another school district. The Superintendent shall provide such request to the School Board at the hearing. Although not required, the parent/guardian may include this request as part of the original hearing request.
 - d. At such hearing, the parent or guardian may present documents, witnesses, or other relevant evidence supporting their belief that the student is experiencing a manifest educational hardship. The Superintendent may present such information as he or she may deem appropriate to assist the School

Board in reaching its decision. The parties (or their appointed designee) shall have the right to examine all evidence and witnesses. The formal rules of evidence shall not apply. The Superintendent will assure that the means for the Board to establish an adequate record of the hearing.

- e. The parent or guardian shall have the burden of establishing the presence of a manifest educational hardship by clear and convincing evidence, which means that the evidence is highly and substantially more likely to be true than untrue, and the Board must be convinced that the contention is highly probable.¹
 - f. The Board will render its decision in writing within seven (7) days after the hearing and will forward its written decision to the parents or guardians via means producing proof of delivery (e.g., courier, email, etc.). The decision will conform to the requirements of NH Dept. of Education Rule Ed. 320(c)-(e).
3. Finding of Manifest Educational Hardship: If the School Board finds that the student has a manifest educational hardship, the School Board shall grant the parent's or guardian's request to reassign the student to a public school, public academy, or approved private school in another District.
 4. Finding that Manifest Educational Hardship has not Established – Appeal to the New Hampshire State Board of Education: If the School Board finds that the parent or guardian has not met their burden of proof, the parent or guardian may appeal the local Board decision to the New Hampshire State Board of Education (“SBOE”), within thirty (30) days of receipt of the Board’s written decision in accordance with NH Dept. of Ed. Rule Ed. 204.01 (g). If a parent/guardian believes that denial of a re-assignment under this policy upon the child’s disability, the parent/guardian may appeal to the SBOE or file a complaint with the N.H. Human Rights Commission under RSA 354-A:28.
 5. Tuition for Students Reassigned Upon Finding of Manifest Educational Hardship. If, after a finding of a manifest educational hardship - by either the School Board or the State Board - a student of the District is assigned to attend school in another district, or a student from another district is assigned to a school in this District, the District in which the student resides shall pay tuition to the District to which the child is reassigned.

Such tuition shall be computed according to RSA 193:4. The school board of the district in which the student resides shall approve the tuition payment consistent with its ordinary manifest approval process.
 6. Transportation. Transportation for a student reassigned to schools in another district under this section B (manifest educational hardship) shall be the responsibility of the District unless otherwise ordered by the SBOE.
 7. Annual Review of Manifest Hardship Determination. A reassignment on the basis of manifest educational hardship shall be limited to no longer than the end of the ensuing school year and shall be subject to review by the School Board prior to any subsequent school year to determine that the manifest educational hardship still exists, with the understanding that the Board may, at its discretion, waive the review when it deems such to be appropriate.

C. Admission Requirements.

Students reassigned under this Policy shall meet the admission requirements of the school to which the student is to be reassigned.

D. Statutory Reassignment Limit.

The total reassignments or transfer made under this policy in any one school year will not exceed one (1) percent of the average daily membership in residence of a School District, or five (5) percent of the average daily membership in residence of any single school, whichever is greater, unless the School Board votes to exceed this

¹ The clear and convincing standard differs from the “preponderance of the evidence” standard which only requires that evidence indicates that the contention is more likely than not.

limit.

E. Count of Reassigned Students, Tuition Payment and Rate, and Transportation.

Pupils reassigned under this policy will be counted in the average daily membership in residence (“ADMR”) of a given student's resident school district. Said student's resident District will forward any tuition payment due to the District to which the student was assigned.

F. Notice to the Department of Education.

The Superintendent of the student’s resident SAU will notify the Department of Education within thirty (30) days of any reassignment made under this policy.

G. Special Education Placements.

A placement made relative to a student's special education needs and services shall not be deemed a change of school assignment for purposes of this section.

Legal References:

RSA 193:3, III, Change of School Assignment

RSA 193:14-a, Change of School Assignment; Duties of State Board of Education

N.H. Dept. of Education Administrative Rule Ed. 320 [Pending revision]

Legal References Disclaimer: *These references are not intended to be considered part of this policy, nor should they be taken as a comprehensive statement of the legal basis for the Board to enact this policy, nor as a complete recitation of related legal authority. Instead, they are provided as additional resources for those interested in the subject matter of the policy.*

First Reading:	April 9, 2002
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Revised:	March 3, 2021
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