5071 (JCA) CHANGE OF CLASS OR SCHOOL 5071 (JCA)
ASSIGNMENT BEST INTERESTS AND MANIFEST HARDSHIP

The Superintendent is charged with assigning students of the Milford School District to schools and classes consistent with Milford School 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 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. Under specified conditions and procedures as set forth below, reassignment may be made to another public school, public academy or "approved private school" within or outside the District.

As used in this policy, "**approved private school**" means a school that has been approved and contracted by the Board to provide a student or students with the opportunity to acquire an adequate education (see RSA 193:3, VII). The term also includes schools that the Board has "approved as a school tuition program." (See NH Dept. of Education Rule 307.01(a).

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 public school, public academy or **approved** private school within the District, or to another public school, public academy, or approved private school in another district.

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 for Best Interest Assignments to a School/Academy **Within the District**

a. Request for Change of Assignment Within District. In order to initiate consideration of a reassignment within the current school, or to a public school, public academy or approved private school within the District, the parent/guardian shall submit to the Superintendent a written request indicating the specific school requested. The parent/guardian is encouraged, but not required, to provide information as to how the child's interests are served by the change in assignment.

   NOTE: The request by the parent should be delivered to the Superintendent no later than July 1. Requests following that date will require a meeting with the Superintendent and may require the parent/guardian to provide relevant evidence supporting the parent/guardian's belief that it is in the best interest of the student to change the current assignment.

b. Reassignment Determination. In determining whether to grant a request to change a student's current assignment within the current school or to another public school/academy or approved private school within the District, the Superintendent will only consider whether the school has the ability to accommodate the student based upon "existing school capacity." For purposes of determining existing school capacity, the Superintendent will consider the District's Board policy 3560, IIB, the Class Sizes and Student-Educator Ratios, for that school year, and shall consult with the Executive Director of Student Support Services for special considerations relating to the student's educational program.

   If the Superintendent determines that the requested school within the District **does not** have the ability/capacity to accommodate the student and therefore denies the request, the Superintendent will give written notice to the parent/guardian with the reason the request was denied. The parent/guardian is encouraged to provide a supplemental written statement to the Superintendent with any additional information that the parent/guardian believes is relevant to the initial request. The Superintendent will review the additional information and inform the parent/guardian of the decision within 5 school days.

If the **Superintendent grants the request** to change the student's school or assignment, the Superintendent shall initiate the student's transfer within the current school, or to the other school/academy within the District.

If the Superintendent **does not find that it is in the best interest and does not approve the request** to change the student's school or assignment, the parent/guardian may request a hearing before the Board to determine if the student is experiencing a manifest educational hardship as provided in Section B of this policy.

2. Procedures for Best Interest Assignments to a School **Outside the District**.

A change in assignment to a school/academy outside of the District under this section requires 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 (**Note:** if the public school/academy is an open enrollment school, the parent/guardian need not use this process).

a. Change of Assignment Request. In order to initiate consideration of a reassignment to a public school, a public academy or approved private school outside of the District ("school outside the district") 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 the change. To facilitate a determination, such application should also include any additional information described in paragraph A.1.a.iii, below. The written request should be mailed or hand-delivered to the SAU office or emailed to the Superintendent at the email address provided on the District's website.

b. Reassignment Meeting and Review of Request.

i) Upon receiving a request to change assignment to a school outside the District, the Superintendent will schedule a meeting (the "reassignment meeting") with the parent/guardian, to be held within 10 days of receiving the written request.

ii) Prior to or at the reassignment meeting, the parent/guardian shall make a specific request that the student be re-assigned to a specific school outside the District.

iii) At the reassignment meeting, the parent/guardian may present documents, witnesses, or other relevant evidence supporting the parent/guardian's belief that reassignment is in the best interest of the student.

iv) The Superintendent may present such information as he or she deems appropriate.

v) In determining whether reassignment is in the student's best interest, the Superintendent shall consider the student's academic, physical, personal, or social needs.

c. Determination Whether Reassignment is in Best Interest.

Within five school days of the reassignment meeting, the Superintendent shall deliver to the parent/guardian a written determination 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).

i) Finding that Change is in Student's Best Interest. 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 the process to implement the student's transfer to a school outside the district (requires agreement of the other school/district).

ii) No Finding that Change is in Student's Best Interest. 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/guardian may request a hearing before the Board to determine if the student is experiencing a manifest educational

hardship as provided in Section B of this policy. The Superintendent shall assure that the reassignment approval is placed on the agenda for the next regularly scheduled Board meeting.

3. Tuition Determination.

a. Public Academy Within the District. A student whose assignment is changed to a public academy within the district, then tuition will be based upon outstanding agreements between the District and the public academy.

b. Public School or Academy Outside the District. If a student is to be reassigned to a public school or academy in another school district following a best interest determination, the Superintendent shall work with the Superintendent or senior education official of the receiving school district/academy 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 Board shall approve the tuition payment; such approval shall be consistent with the Board's ordinary manifest approval procedures.

c. Approved Private School Either Within or Outside of the District. If the student is reassigned to an approved private school under this policy, that school may charge tuition to the parent/guardian or may enter into an agreement for payment of tuition 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 Board on behalf of the District and shall be at the sole discretion of the Board with due consideration given to the fiscal impact of such approval of the District, and shall not be granted if, in the opinion of the Board, there are other viable public school options for reassignment.

The Superintendent shall assure that the reassignment to an approved private school is placed on the agenda for the next regularly scheduled Board meeting.

d. 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 non-residential students under Board policy 5055 (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).

4. Transportation. Transportation for a student reassigned **to a school in another district** under this Section A (best interest) shall be the responsibility of the parent/guardian. Transportation **within the District** will be consistent with the transportation policies of the District for the public, charter and private schools located within the District.

5. 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.

6. Review/Appeal of Decision. The decision of the Superintendent relative to best interest reassignments shall be final, and any appeal shall be limited to the process set forth in Section B, below.

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 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 a 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 denying a request for change of assignment as described in Section A, 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 Board that the parent or guardian has requested a manifest educational hardship hearing, upon which the 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). The hearing will be held following the procedures set forth under NH Dept. of Education rules Ed 204.01, and Ed 307.01(f).

    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 or public academy or approved private school in another district. The Superintendent shall provide such request to the 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 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 provide 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.

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 204.01(d) and (e).

3. Finding of Manifest Educational Hardship. If the Board finds that the student has a manifest educational hardship, the Board shall grant the parent's or guardian's request to re-assign the student to another public school or public academy within the district or to a public school or 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 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 Education, Rule Ed. 204.01(g). ~~SBOE.~~ If a parent/guardian believes that denial of a re-assignment under this policy is based 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 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 re-assigned.

   Such tuition shall be computed according to RSA 193:4. The 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 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. Pursuant to RSA193:3, III-a(d), 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 Board votes to exceed this limit.

E. Count of Reassigned Pupils, Tuition Payment and Rate, and Transportation. Pupils reassigned under this policy will be counted in the average daily membership in residence of a given pupil's resident school district. Said pupil's resident district will forward any tuition payment due to the District to which the pupil was assigned.

F. Notice to the Department of Education. The Superintendent of the pupil'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:

NH Statutes	Description
RSA 189:1-a	Duty to Provide Education
RSA 189:6	Transportation of Pupils
RSA 193:14-a	Change of School Assignment; Duties of State Board of Education

RSA 193:3	Change of School or Assignment, Manifest Educational Hardship or Best Interest, Excusing Attendance
RSA 193:4	District Liability for Elementary or Junior High School Tuition
RSA 354-A:28	Procedure on Public School Complaints

NH Dept of Ed Regulation	**Description**
N.H. Code Admin. Rules Ed 204.01	Board Hearings
N.H. Code Admin. Rules Ed 307 (formerly Ed 320)	Manifest Educational Hardship

Adopted: 6/8/2021
Revised 9/19/2022, 5/6/2024, 10/6/2026