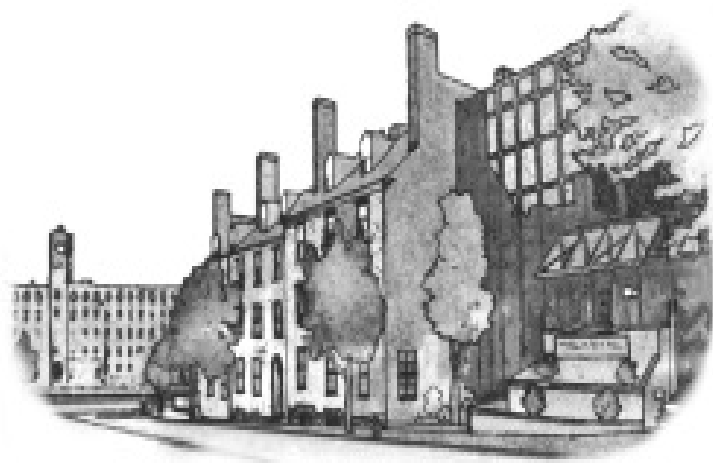


# A Summary of Student Rights

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### A Word of Caution

No two cases are exactly alike. This material is designed to provide educators with a summary of the rights that transfer to individuals when they turn eighteen. This material does not include every aspect of the law. You are strongly encouraged to seek a legal opinion from your school district's legal counsel regarding any specific case.

## **I. Overview**

The following table contains a summary of the rights held by students when they turn eighteen and the rights shared by eighteen-year olds and their parents. Eighteen is the age of majority in New Hampshire. RSA 21:44. As a general rule, in New Hampshire, parental consent is not required once an individual reaches the age of eighteen. However, the rights set forth below generally do not transfer to students who have been adjudicated incompetent; thus, if a student has been adjudicated incompetent, parental consent would still be required.

## **II. Access to Records**

### **A. The Family Educational Rights and Privacy Act (“FERPA”), 20 U.S.C. 1232g, et seq.**

As a general rule, FERPA prohibits the release of student records without written consent from parents. 20 U.S.C. § 1232g(B). FERPA also gives parents the right to inspect and review their child’s educational records. Id. at § 1232g(a).

When a student attains eighteen years of age, “the permission or consent required of and the rights accorded to the parents of the student shall thereafter only be required of and accorded to the student.” 20 U.S.C. § 1232g(d). Districts must inform students who have attained eighteen years of age of their FERPA rights. 20 U.S.C. § 1232g(e).

However, parents of students who are eighteen-years or older, but who remain dependent for tax purposes, share the right to access the student’s educational records. 20 U.S.C. § 1232g(B)(1)(H).

A dependent is defined as “a qualifying child or a qualifying relative.” 25 U.S.C. § 152(a). Pursuant to 26 U.S.C. § 152(c),

Qualifying child means, with respect to any taxpayer for any taxable year,

- (A) an individual who bears a relationship to the taxpayer described in paragraph (2),
- (B) who has the same principal place of abode as the taxpayer for more than one-half of such taxable year,
- (C) who meets the age requirements of paragraph (3), and
- (D) who has not provided over one-half of such individual’s own support for the calendar year in which the taxable year of the taxpayer begins.

For purposes of paragraph (1)(A), an individual bears a relationship to the

taxpayer described in this paragraph if such individual is

- (A) a child of the taxpayer or a descendent of such a child, or
- (B) a brother, sister, stepbrother, or stepsister of the taxpayer or a descendant of any such relative.

For purposes of paragraph 1(A), the age requirements are met if the individual “(i) has not attained the age of 19 as of the close of the calendar year in which the taxable year of the taxpayer begins, or (ii) is a student who has not attained the age of 24 as of the close of such calendar year.” 26 U.S.C. § 152(c)(3).

**B. The Individuals with Disabilities Education Improvement Act (IDEIA), 20 U.S.C. § 1400 et seq.**

The IDEIA regulations require that participating agencies permit parents to inspect and review educational records relating to their child that are collected, maintained, or used by the agency. See 34 C.F.R. 300.613. Parental consent must be obtained before personally identifiable information is disclosed to parties other than officials of participating agencies, unless the disclosure is authorized by FERPA.

Parental consent, or the consent of a student who has attained eighteen years of age, is required before personally identifiable information is released to officials of agencies providing or paying for transition services in accordance with § 300.321(b)(3) (which requires consent from parents, or a child who has reached the age of majority, before inviting a representative of a participating agency that is likely to be responsible for providing or paying for transition services to an IEP meeting). See 34 C.F.R. 300.622.

If the rights accorded to parents under Part B of the IDEIA are transferred to a student who attains the age of majority, then the rights regarding educational records are also transferred to the student. See 34 C.F.R. § 300.625. However, any notice required by Section 615 must be provided to parents and students. This transfer of rights is discussed in more detail in Section 10, below.

**III. Abortion, RSA 132:25**

Once an individual reaches the age of eighteen, parents do not have the right to receive written notice of a pending abortion.

Parents do not have the right to receive written notice of a pending abortion if their child is younger than eighteen but is an emancipated minor. An emancipated minor is “any minor female who is or has been married or has by court order otherwise been freed from the care, custody, and control of her parents.”

Abortions cannot be performed on unemancipated minors or on females for whom a guardian or conservator have been appointed, unless written notice of the pending abortion has been provided to the female's parent (or guardian).

**IV. Body Art and Tattooing, RSA 314-A:8**

Eighteen year-olds may obtain tattoos and body piercings without the consent of their parents.

Individuals may not be tattooed or branded until they reach the age of eighteen. There is no parental consent exception to this prohibition. See RSA 314-A:8(I). However, individuals may have their body pierced before they reach eighteen years of age, provided they have parental consent.

**V. Change of School or Assignment, RSA 193:3**

This statute permits "[a]ny person having custody of a child" to seek relief from the school board due to a manifest educational hardship. It also permits school boards to change the school to which the pupil is assigned, provided that (among other things) "[t]he pupil's parent or legal guardian petitions the superintendent for a change of school assignment or consents to the superintendent's recommendation for such a change." Thus, students who are eighteen years of age or older do not have the right to seek relief for a manifest educational hardship or to seek a change of school assignment, without consent from their parents.

**VI. Court**

**A. Right to file suit, RSA 508:1, et seq.**

Individuals who have attained the age of majority may bring suit on their own behalf.

**B. Pleading guilty, RSA 605:1**

An eighteen year old may plead guilty and be tried without parental consent.

Seventeen year-olds may plead guilty without parental consent; however, they may not be tried until counsel has been appointed. RSA 605:1.

**VII. Driver's Licenses**

An eighteen year old may obtain a license without parental consent. RSA 263:14. An individual who is under the age of 18 but has been emancipated by

marriage may also obtain a license without parental consent. Individuals under the age of eighteen need written parental consent in order to obtain a license. RSA 263:17. If the parent or guardian who provided the written consent dies, the DMV may cancel the youth's license until such time as written consent has been provided by the other parent or a guardian. RSA 263:18.

In addition to parental consent, individuals between the age of 16 and 18 must successfully complete a driver education course, which must include an additional 20 hours of supervised driving time with a parent or guardian, or, if there is no licensed parent or guardian, a licensed individual over the age of 25. RSA 263:19.

The Director of Motor Vehicles, "upon being satisfied that no readily available means of transportation exist to and from a school and that the provisions of RSA 263:19 (driver education) would cause undue hardship, may permit a driver's license, limited to use to and from school and school assignments, to be issued to a person who has attained his sixteenth birthday and is under 18 years of age who has not completed an approved driver education program, if the other requirements of this chapter are met by such person." RSA 263:21.

Individuals between the ages of 16 and 21 will receive a youth operator license. They cannot operate a motor vehicle between the hours of 1:00 am and 5:00 am, and within the first 6 months after their license is issued, they shall not operate a motor vehicle with more than one passenger less than 25 years of age who is not a member of the youth's family, unless a licensed adult (at least 25 years of age) is in the motor vehicle. RSA 263:14.

School bus drivers must be at least 18 years of age or older. RSA 263:24. Drivers of commercial motor vehicles must also be at least 18 years of age or older. RSA 263:25.

## **VIII. Employment**

### **A. Youth Employment Law, RSA 276-A:1, et seq.**

Once a person attains the age of 18, he or she may work in a hazardous occupation (as defined by the Children's Bureau of the US Department of Labor). Individuals under the age of 18 may not work in a hazardous occupation, except in an apprenticeship, vocational rehabilitation, or training program approved by the labor commissioner.

Individuals who are 16 years of age or older may work without a youth employment certificate, provided that their parents have provided a signed written document permitting the youth's employment, except that if the individuals who are 16 or 17 and in school, may not work more than 6 consecutive days or more than 20 hours during the school year, and more than 6 consecutive days or 48 hours during school

vacations, including summer vacation.

Individuals under 16 years of age may not be permitted to work without a youth employment certificate unless they are working for their parent or guardian, doing casual work, or doing farm labor. Casual work is “employment which is infrequent or of brief duration or productive of little or sporadic income and not commonly held to establish an employer-employee relationship.” RSA 276-A:3(VII).

Individuals under 16 years of age, with a youth employment certificate, may not work in a dangerous area in manufacturing, construction, and mining and quarrying occupations, or in woods and logging. Nor may they work earlier than 7:00 am or later than 9:00 pm, or more than 3 hours per day on school days and 23 hours per week during school weeks. On non-school days, they may work for 8 hours per day and on school vacations, for 48 hours per week. RSA 276-A:4.

Youths under 12 years of age may only work if: it is for their parents, grandparents, or guardian; the work is casual; or, the work is for the door-to-door delivery of newspapers. RSA 276-A:4.

Youth employment certificates are issued by principals “after the determination of a satisfactory level of academic performance by the student. . . . If the student does not continue to meet a satisfactory level of academic performance after the issuance of the certificate, the principals of schools or persons authorized by them may revoke the certificate.” Within 48 hours of the revocation, the principal must notify the employer, the parent or legal guardian, and the department of labor. RSA 276-A:5.

## **B. Miscellaneous employment**

Individuals who have reached the age of majority may be employed as entertainers in establishments licensed to sell liquor or beverages. RSA 179:19. Individuals who have attained 18 years of age may also be employed as bartenders, waiters, waitresses or hostesses. RSA 179:23.

Establishments licensed to sell liquor or beverages shall not employ minors to serve or otherwise handle liquor or beverages, except that off-premises licensees may employ minors who are 15 years of age or older, if the beverage is sold in the original container and delivered in the place of business of the seller, or at the vehicle of the buyer parked on or adjacent to the premises of a seller. RSA 179:23. A person may act as a cashier in a selling capacity once that person has reached the age of 16, as long as an 18 year old is in attendance and has been designated as “in charge” of the employees and business.

**IX. The Individuals with Disabilities Education Improvement Act (IDEIA), 20 U.S.C. § 1400 et seq.**

All rights accorded to parents under the IDEIA transfer to the student once the student has reached eighteen years of age. 20 U.S.C. § 1415(m)(1); see also 34 C.F.R. § 300.520; N.H. Ed. R. 1125.01(a); § 1125.01(b).

However, any notice required by section 615 of the IDEIA must be provided to parents and students. 20 U.S.C. § 1415(m)(1)(A); 34 C.F.R. § 300.625(c). The notice requirements set forth in section 615 include: written prior notice; notice of procedural safeguards, and notice of a due process complaint.

Students and parents must also be notified of the District's duties and obligations under the Rehabilitation Act. 34 C.F.R. § 104.32; id. at § 104.33(a).

**X. Marriage, RSA 457:1, et seq.**

Eighteen year-olds may get married without parental consent. Upon reaching the age of eighteen, an individual who was previously married before the age of eighteen may confirm the marriage.

Males over the age of 14 and females over the age of 13 may get married, however, if either person is below the age of 18 at the time of the marriage, the marriage may be annulled at the request of either party or their parents. RSA 457:4, 457:5.

Marriages entered into by males below the age of 14 and females below the age of 13 are void.

**XI. Military, 10 USC § 505**

Once an individual reaches the age of 18, he/she may enlist in the military without parental consent. Individuals under the age of 18 may enlist with written consent from their parent or guardian.

**XII. Medical Treatment**

Once an individual reaches the age of 18, parental consent for medical treatment, including genetic testing, donating blood, and drug treatment is not required. RSA 141-H:2 (genetic testing); RSA 318-B:12-a (treatment for drug abuse); RSA 571-C:1 (donating blood). Medical information contained in an individual's medical records is the property of the patient, and health care providers are prohibited from revealing confidential communication or information without the consent of the patient, unless provided for by law, or by the need to protect the welfare of the individual or the public

interest. RSA 332-I.

Once a student reaches the age of 14, a licensed physician may diagnose, treat or prescribe for the treatment of a sexually transmitted disease without the knowledge or consent of the parent or legal guardian of the minor. RSA 141-C:18.

Individuals 12 years of age or older may voluntarily submit themselves to treatment for drug dependency at any municipal health department, state institution or facility, public or private hospital or clinic, licensed physician or advanced registered nurse practitioner, or other accredited state or local social welfare agency, without parental consent. RSA 318-B;12-a.

Married minors or minors 17 years of age or older who are of sound mind may donate blood without obtaining consent from their parents. RSA 571-C:1.

### **XIII. Services for the Developmentally Disabled, RSA 171-A:1, et seq.**

When an individual with developmental disabilities reaches the age of majority, parents and legal guardians may not seek changes in services, or withdraw the individual from the service delivery system. RSA 171-A:7.

### **XIV. Sexual Assault**

#### **A. Aggravated Felonious Sexual Assault, RSA 632-A:2**

Under certain circumstances, a person who engages in sexual penetration with another person is guilty of aggravated felonious sexual assault. These circumstances include:

- When, except as between legally married spouses, the victim is 13 years of age or older and under 16 years of age and: the actor is a member of the same household as the victim or the actor is related by blood or affinity to the victim;
- When, except as between legally married spouses, the victim is 13 years of age or older and under 18 years of age and the actor is in a position of authority over the victim and uses this authority to coerce the victim to submit;
- When the victim is less than 13 years of age;
- When he intentionally touches whether directly, through clothing, or otherwise, the genitalia of a person under the age of 13 under circumstances that can reasonably be construed as being for the

purpose of sexual arousal or gratification;

- When the person engages in a pattern of sexual assault against another person, not the actor's legal spouse, who is less than 16 years of age.

RSA 632-A:2.

**B. Felonious Sexual Assault, RSA 632-A:3**

A person is guilty of a class B felony if that person:

- engages in sexual penetration with a person, other than his legal spouse, who is 13 years of age or older and under 16 years of age where the age difference between the actor and the other person is 3 years of age or more; or
- engages in sexual contact with a person other than his legal spouse, who is under 13 years of age

**C. Sexual Assault, RSA 632-A:4**

A person is guilty of a class A misdemeanor if:

- the actor subjects another person who is 13 years of age or older to sexual contact under any of the circumstances named in RSA 632-A:2;
- the actor subjects another person, other than the actor's legal spouse, who is 13 years of age or older and under 16 years of age to sexual contact where the age difference between the actor and the other person is 5 years or more;
- in the absence of any of the circumstances set forth in RSA 632-A:2, the actor engages in sexual penetration with a person, other than the actor's legal spouse, who is 13 years of age or older and under 16 years of age where the age difference between the actor and the other person is 3 years or less.

**XV. School Attendance**

When a student reaches the age of 18, he/she may drop out of school without written approval from his/her parents. Children between the ages of 16 and 18 may drop out of school, provided that they confer with the principal or his designee, the principal requests a conference with the parents, and the principal receives written

consent from the parents. The signature of the parent or guardian must be witnessed by the principal or the principal's designee. RSA 193:1.