

# Recent Updates to the CHINS Law, RSA 169-D

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### A Word of Caution

No two cases are exactly alike. This material is designed to provide educators with a broad understanding of the recent updates to the CHINS law, RSA 169-D. 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. Children in Needs of Services (CHINS), RSA 169-D

Effective September 1, 2013, RSA 169-D will undergo substantial revision. See N.H. Gen. Laws of 2013, Ch. 249 (HB 260). These revisions include changes to the how a “child in need of services” is defined. The new definition of a child in need of services will be:

A child under the age of 18:

- Who is subject to compulsory school attendance, and who is habitually, willfully, and without good and sufficient cause, truant from school;
- Who habitually runs away from home, or who repeatedly disregards the reasonable and lawful commands of his or her parents, guardian, or custodian and places himself or herself or others in unsafe circumstances;
- Who has exhibited willful repeated or habitual conduct constituting offenses which would be violations under the criminal code of this state if committed by an adult or, if committed by a person 16 years of age or older, would be violations under the motor vehicle code of this state; or,
- With a diagnosis of severe emotional, cognitive, or other mental health issues who engages in aggressive, fire setting, or sexualized behaviors that pose a danger to the child or others and who is otherwise unable or ineligible to receive services under RSA 169-B or RSA 169-C; and
- Is expressly found to be in need of care, guidance, counseling, discipline, supervision, treatment, or rehabilitation.

RSA 169-D:2, II (emphasis added).

In addition, the following definition will be added to RSA 169-D:2:

“Truant’ means a child between the ages of 6 and 18 years who is either not attending school as required by law or who is not participating in an alternative learning plan under RSA 193:1. ‘Truancy’ shall have the same meaning as in RSA 189:35-a.”<sup>1</sup>  
See N.H. Gen. Laws of 2013, Ch. 249:3 (adding RSA 169-D:2, XIV).

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<sup>1</sup> RSA 189:35-a defines “truancy” as:

The amendments will also reflect that a petition alleging that a child is in need of services may be filed by a truant officer or a school official from the district where the child attends school, with a judge or clerk in the district where the child is found or resides. However, a truant officer or school official shall not file a CHINS petition until all steps in the district's truancy intervention process have been followed. See N.H. Gen. Laws of 2013, Ch. 249:4 (amending RSA 169-D:5, I) (emphasis added).

The amendments provide that a school district may file a CHINS petition when the student habitually runs away, disregards reasonable and lawful commands of parents, places him/herself or others in unsafe circumstances, or exhibits willful repeated or habitual conduct constituting offenses that would be violations under the criminal code if committed by an adult in the district where the child is found or resides. Id.

The amendments continue to provide that a district cannot file a CHINS petition for a student who has been diagnosed with "severe emotional, cognitive, or other mental health issues who engages in aggressive, fire setting, or sexualized behaviors that pose a danger to the child or others and who is otherwise unable or ineligible to receive services under RSA 169-B or RSA 169-C" without first obtaining consent from DHHS. See N.H. Gen. Laws of 2013, Ch. 249:4.

All CHINS petitions must include "language demonstrating whether appropriate voluntary services have been attempted, the nature of voluntary services attempted, and the reason court compulsion is necessary. The petition also shall include information regarding the department's determination as to whether voluntary services are appropriate for the child or family under RSA 169-D:5-c. Refusal of the child to participate in the development of a voluntary services plan may constitute sufficient information that voluntary service and support options have been unsuccessful." See N.H. Gen. Laws of 2013, Ch. 249:5 (adding a new provision, RSA 169-D:5, II-a).

The amendments contain several provisions pertaining to "voluntary services" and the duties of the Department of Health and Human Services. These include, but are not limited to, the following:

- A determination (by DHHS) as to whether to offer the child and family any voluntary services. Such services shall not exceed 9 months, unless

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- I. ". . . [A]n unexcused absence from school or class and 'unexcused absence' is an absence which has not been excused in accordance with RSA 189:34, II(a).
  - II. Ten half days of unexcused absence during a school year shall constitute habitual truancy.
  - III. A school district shall define the term 'half day of absence.'
  - IV. Nothing in this section shall affect or limit a school district's power to adopt bylaws concerning truancy pursuant to RSA 193:16.
  - V. Nothing in this section shall affect or limit the duties of a parent pursuant to RSA 193:1.
  - VI. School district attendance records shall be presumed to be true and accurate unless evidence to the contrary is presented."

DHHS determines that an extension for an additional, specified period of time is appropriate.

- Voluntary services include:
  - Individual/family counseling
  - Community service;
  - Attendance at an after-school or evening program that addresses some of the child's compliance issues
  - Supervision during the time of day in which the child most values his/her freedom and which is used to perform unruly acts.
- The voluntary services plan suspends proceedings on the CHINS petition; if the child satisfies the requirements in the voluntary services plan, then he/she will be discharged from further services or supervision, and the pending complaint shall be dismissed with prejudice.
- When the CHINS petition alleges that the child is a habitual truant under RSA 169-D:2, II(a), that the child repeatedly disregards the reasonable and lawful commands of his/her parents, guardian, or custodian under RSA 169-D:2, II(b), or that the child repeatedly or habitually engages in conduct that constitutes violation level offenses under RSA 169-D:2, II(c), the court shall not order the out-of-home placement of the child.

See N.H. Gen. Laws of 2013, Ch. 249:6-249:13.

A school district may refer a child or family to DHHS to determine whether DHHS would offer any voluntary services to the child or family. See N.H. Gen. Laws of 2013, Ch. 249:8.

Finally, the new law requires that the process for intervention developed by the school board "consider whether school record keeping practices and notification provided to the parents or guardians of the child's absences have had an effect on the child's attendance." See N.H. Gen. Laws of 2013, Ch. 249:14 (amending RSA 189:34, II(b)).

## **II. Delinquent Children, RSA 169-B**

Any person may file a petition, alleging that a minor is delinquent. The petition must include the date, time, manner, and place of the conduct alleged, and shall state the statutory provision(s) alleged to have been violated. RSA 169-B:6, I.

A delinquent minor is “a person who has committed an offense before reaching the age of 17 years which would be a felony or misdemeanor under the criminal code of this state if committed by an adult, and is expressly found to be in need of counseling, supervision, treatment, or rehabilitation as a consequence thereof.” RSA 169-B:2, IV.

Effective January 1, 2014, RSA 169-B will be amended to include a new paragraph, pertaining to “*serious threats to school safety*.” N.H. Gen. Laws (2013), Ch. 198 (HB 433) (emphasis added). That provision defines “serious threats to school safety” as “acts involving weapons; acts involving the possession, sale, or distribution of controlled substances; acts that cause serious bodily injury to other students or school employees; threats to cause bodily injury to students or school employees, where there is a reasonable probability that such threats will be carried out; acts that constitute felonious sexual assault or aggravated felonious sexual assault under RSA 632-A; arson under RSA 634:1; robbery under RSA 636:1; and criminal mischief under RSA 634:2, II and RSA 634:2, II-a.” Id. (amending RSA 169-B:2 by adding a new paragraph, XIV).

In addition, the following paragraph will be added to RSA 169-B:6:

Absent serious threats to school safety, when a delinquency petition is filed by a school official, including school resource officers assigned to a school district pursuant to a contract agreement with the local police department, or when a petition is filed by a local police department as a result of a report made by a school official or school resource officer, based upon acts committed on school grounds during the school day, information shall be included in the petition which shows that the legally liable school district has sought to resolve the expressed problem through available educational approaches, including the school discipline process, if appropriate, that the school has sought to engage the parents or guardian in solving the problem but they have been unwilling or unable to do so, that the minor has not responded to such approaches and continues to engage in delinquent behavior, and that court intervention is needed.

Id.

When a school official, including a school resource officer assigned to a school district pursuant to a contract agreement with a local police department, or a local police department as a result of a report made by a school official or school resource officer, files a petition involving a minor with a disability pursuant to RSA 186-C, upon the submission of a juvenile petition, but prior to the child’s initial appearance, the legally liable school district shall provide assurance that prior to its filing:

- a) It was determined whether or not the child is a child with a disability according to RSA 186-C:2, I.

- b) If the school district has determined that the child is a child with a disability, a manifestation review pursuant to 20 U.S.C. section 1415(k)(1)(E) occurred.
- c) If the child's conduct was determined to be a manifestation of the child's disability, the school district has followed the process set forth in 20 U.S.C. section 1415(k)(1)(F).
- d) It has reviewed for appropriateness the minor's current individualized education program (IEP), behavior intervention plan, and placement, and has made modifications where appropriate.

N.H. Gen. Laws (2013), Ch. 198 (HB 433).