

**STATE OF NEW HAMPSHIRE
DEPARTMENT OF EDUCATION
SPECIAL EDUCATION
DISPUTE RESOLUTION PROCESSES**

**PERFORMANCE AUDIT REPORT
MARCH 2024**



MICHAEL W. KANE, MPA
Legislative Budget Assistant
(603) 271-3161

CHRISTOPHER M. SHEA, MPA
Deputy Legislative Budget Assistant
(603) 271-3161

State of New Hampshire

OFFICE OF LEGISLATIVE BUDGET ASSISTANT
State House, Room 102
Concord, New Hampshire 03301

CHRISTINE L. YOUNG, CPA
Director, Audit Division
(603) 271-2785

To The Fiscal Committee Of The General Court:

The purpose of the audit was to determine whether the Department of Education effectively managed special education dispute resolution processes during State fiscal years 2020 through 2022. The audit was to address the recommendation made to you by the joint Legislative Performance Audit and Oversight Committee. We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Office of Legislative Budget Assistant

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March 2024

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**STATE OF NEW HAMPSHIRE
SPECIAL EDUCATION DISPUTE RESOLUTION PROCESSES**

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ABBREVIATIONS AND GLOSSARY OF TERMS

<i>1991 Performance Audit</i>	<i>Developmental Services System Performance Audit Report April 1991</i>
<i>1999 Performance Audit</i>	<i>Department of Education Special Education Catastrophic Aid Program Performance Audit Report July 1999</i>
Ad Hoc Rule	Uncodified and unenforceable clarification or interpretation of an insufficiently detailed adopted rule.
<i>Administrative Procedure Act</i>	RSA 541-A
Administrative Rule	Each regulation, standard, form, or other statement of general applicability adopted by an agency to (1) implement, interpret, or make specific a statute enforced or administered by such agency; or (2) prescribe or interpret an agency policy, procedure or practice requirement binding on persons outside the agency, whether members of the general public or personnel in other agencies.
Alternative Dispute Resolution	Special education dispute resolution options available to the public as an alternative to a due process complaint or State complaint.
BSES	Bureau Of Special Education Support
Child With A Disability	A child evaluated as having an intellectual disability, a hearing impairment, a speech or language impairment, a visual impairment, a serious emotional disturbance, an orthopedic impairment, autism, traumatic brain injury, another health impairment, a specific learning disability, or multiple disabilities, and who, by reason thereof, needs special education and related services.
<i>Code Of Ethics</i>	RSA 21-G:21 through RSA 21-G:35
Due Process Complaint	A complaint filed by a parent or public agency for any matter occurring within the two prior years related to the identification, evaluation, or education placement of a child with a disability or the provision of a free and appropriate public education.
FAPE	Free Appropriate Public Education
Fraud	Obtaining something of value through willful misrepresentation.
<i>Hearing Officers' Guide</i>	<i>Hearing Officers' Guide To Administrative Process, 2020</i>
<i>IDEA</i>	<i>Individuals With Disabilities Education Act Of 2004</i>
IEP	Individualized Education Program

Judgmental Sample	A nonrandom selection of cases chosen to review for which results cannot be projected to the population.
LBA	Legislative Budget Assistant
LEA	Local Educational Agency
Local Dispute Resolution	Process developed by the local educational agency intended to resolve a special education issue without New Hampshire Department of Education involvement. This does not include individualized education program team meetings, or resolution meetings as part of due process.
Local Educational Agency	A public board of education or other public authority legally constituted with administrative control or direction of, or to perform a function for, public elementary or secondary schools in a city, county, township, school district, or other political subdivision, or for a combination of school districts or counties. This term includes individual schools, school districts, and school administrative units.
NHED	New Hampshire Department Of Education
PII	Personally Identifiable Information
Public Agency	Any agency, authority, department, or office of the State or of any county, town, municipal corporation, school district, school administrative unit, chartered public school, or other political subdivision.
SAC	State Advisory Committee On The Education Of Children/Students With Disabilities
SFY	State Fiscal Year
SJD	Supplemental Job Description
<i>Special Education</i>	State special education law under RSA 186-C.
Stakeholder	Any person, group, or organization interested in or knowledgeable about special education dispute resolution.
State Complaint	A complaint filed by any organization or individual alleging that a local educational agency or New Hampshire Department of Education failed to meet federal special education requirements under Part B of the <i>Individuals With Disabilities Education Act of 2004</i> within the year prior.
Waste	Using or expending resources carelessly, extravagantly, or to no purpose, primarily due to mismanagement, inappropriate actions, or inadequate oversight.

**STATE OF NEW HAMPSHIRE
SPECIAL EDUCATION DISPUTE RESOLUTION PROCESSES**

EXECUTIVE SUMMARY

We found the New Hampshire Department of Education (NHED) did not effectively manage special education dispute resolution processes. NHED did not adequately:

- ensure the rights of children with disabilities and their parents were protected;
- encourage early resolution of disputes;
- identify trends, issues, and unmet needs to provide assistance to local educational agencies (LEA) and other stakeholders; and
- monitor performance of, and enforce compliance with, special education requirements.

Ineffective management of these processes and the resulting issues we identified negatively impacted stakeholders. Compliance and public transparency were compromised, and parents were inappropriately burdened with enforcement responsibilities.

Six special education dispute resolution processes were available through NHED to help parents and LEAs resolve special education disputes – primarily issues related to students with an individualized education program (IEP). Between July 1, 2019, and June 30, 2022, there was an average of 29,968 students identified with a disability in New Hampshire. According to our review of NHED records, there were 331 dispute resolution complaints and requests filed with the Department during the same period. State law also allowed LEAs to develop processes to facilitate early resolution of issues without NHED involvement, but NHED was not aware of any locally developed dispute resolution processes.

System Of Controls And Compliance With Requirements Needs Improvement

NHED lacked adequate controls to: 1) ensure requirements were consistently implemented and enforced, 2) reduce risk of fraud and waste, and 3) identify and address conflicts of interest or potential conflicts of interest. Without effective controls, State eligibility for federal assistance was also potentially at risk. Existing controls were limited, informal, inconsistently implemented, and not clearly documented or communicated. Management relied significantly on staff institutional knowledge to understand requirements and administer processes. Trends and needs affecting dispute resolution processes were not always identified and addressed. Monitoring controls were not well-designed, which resulted in unfulfilled dispute resolution enforcement responsibilities.

NHED lacked procedures to help ensure necessary changes to its dispute resolution regulatory framework were timely and comprehensive. State law and rule inconsistently reflected federal requirements, conflicted with each other or were ambiguous, and did not include authority for two of the six dispute resolution options available. NHED's ability to effectively manage certain processes was limited in part due to unclear and conflicting record restrictions in State law. Many dispute resolution practices and requirements were informally developed over time without appropriate adoption into rule, were not properly communicated internally and externally, and could not be enforced. Burdensome and confusing requirements were also a cost and barrier to stakeholders, which NHED did not fully address. Some weaknesses we identified have existed for many years. We first reported on unnecessarily complex requirements in 1991.

Processes And Outcomes Need Better Monitoring

NHED lacked a comprehensive performance measurement system informed by strategy and risks. State requirements and operational processes were not connected to expected outcomes. NHED did not have a public communication system to consistently obtain and objectively evaluate stakeholder feedback to help make comprehensive process or performance improvements. Performance measurement was focused on limited federal outputs. Other quantifiable goals, objectives, and targets were not developed, monitored, and routinely reported.

Records were incomplete, missing, or not timely provided to NHED by contractors. Staff tracked dispute resolution processes in various formats without procedures to ensure information collected was complete and accurate. Resulting data was unreliable which compromised federal reporting and was insufficient to determine effectiveness or achievement of outcomes. Systemic defects with records management and uncontrolled data also made some controls, processes, practices, and transactions unauditible.

Processes Need To Be Adequately Designed, Resourced, And Administered

Organizational changes occurred in 2017 without a documented strategy or plan which impacted special education dispute resolution operations and contributed to deficiencies. NHED did not detail costs and resources necessary to administer special education dispute resolution processes prior to or after making changes to demonstrate improved efficiency and effectiveness. Dispute resolution processes continued to be administered generally independent of each other without aligning processes and objectives to NHED's mission and vision. Most contractors and the NHED staff overseeing them also had non-special education responsibilities. However, staff responsibilities were not inventoried, properly assigned or delegated, and clearly communicated to ensure continuity of operations and that resources were sufficient. Neither did NHED evaluate whether it could improve efficiency by contracting with stakeholder organizations that provided similar services to some NHED responsibilities. Lack of documented policies and procedures and staff turnover contributed to knowledge loss and unfulfilled responsibilities.

Contract management controls for dispute resolution processes were not comprehensive. NHED contracted with investigators, hearing officers, and facilitators to conduct the six processes. Contract terms and conditions were incomplete, limited controls were not always implemented or enforced, and contractors were inconsistently held accountable for noncompliance or unmet deliverables. Documentation in case records also inconsistently supported contractor payments. Neither did management ensure NHED consistently contracted with enough qualified individuals to fulfill dispute resolution regulatory and contract requirements. NHED lacked ongoing training requirements, certain scheduling requirements in State law were unimplemented, and some processes were inconsistently available to the public.

NHED Needs To Develop A Strategy To Address Deficiencies

Making improvements to the special education dispute resolution regulatory framework and NHED's management control framework will likely be a multi-year undertaking. This report presents 20 observations with recommendations that are intended to help NHED management

improve controls, improve administration of dispute resolution processes, ensure implementation of dispute resolution results, achieve intended outcomes, and ensure rights are protected. In May 2023, we provided NHED management our detailed review of dispute resolution requirements related to our specific audit objectives. However, a comprehensive analysis of NHED's dispute resolution regulatory framework will still be necessary to ensure deficiencies are systematically identified and addressed.

Additionally, evaluating current responsibilities, developing a risk-based approach to prioritize needs, and developing and implementing related plans should assist NHED with making necessary changes. While management recognized many issues we identified, and reported beginning to address deficiencies, most NHED responses to our recommendations lacked enough detail to make clear whether, how, and when management will remediate deficiencies. Improvements will be difficult to make without a strategy outlining clearly defined goals and objectives, effective management oversight, and sufficient resources for ensuring full implementation.

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SPECIAL EDUCATION DISPUTE RESOLUTION PROCESSES**

RECOMMENDATION SUMMARY

Observation Number	Page	Legislative Action May Be Required	Recommendations	Agency Response
1	27	No	Evaluate manager and staff responsibilities, conduct a risk assessment, develop plans to implement and monitor controls, and hold staff accountable for performance.	Concur
2	31	No	Develop a risk-based strategy and plans aligned with the Department of Education's (NHED) mission and vision, incorporate goals and objectives, assign responsibilities for implementing plans, develop performance measures, and use data and objective assessments to support decisions.	Concur In Part
3	35	No	Develop organizational plans aligned with strategy, assign responsibilities for implementation, ensure rules and published materials accurately reflect NHED's organizational structure, inventory and evaluate dispute resolution workloads and implement necessary adjustments, ensure supplemental job descriptions accurately reflect responsibilities, formalize delegations of authority, routinely monitor performance, and refine plans as needed.	Concur In Part
4	40	No	Formalize processes for identifying and engaging with stakeholders, develop methods to obtain stakeholder feedback, determine whether contracting with stakeholder organizations would be beneficial, and collaborate to identify unmet needs and improve services between NHED and stakeholder organizations.	Concur
5	45	No	Develop policies and procedures for managing contracts, ensure contract terms are complete, formalize and implement ongoing training requirements, and implement performance evaluations for all contractors.	Concur

Observation Number	Page	Legislative Action May Be Required	Recommendations	Agency Response
6	50	No	Periodically conduct a comprehensive and strategic assessment to determine the appropriate number of contractors and whether contract redesigns are necessary, review and amend existing contracts to reflect each contractor’s required scope of work, and ensure contractors fulfill all requirements.	Concur In Part
7	55	Yes	Develop ethics guidance; address gaps between federal and State impartiality requirements; develop comprehensive policies and procedures to implement requirements and for disclosing conflicts of interest; ensure staff review, address, and document reported conflicts of interest; and provide conflict of interest training to staff and contractors.	Concur
8	60	No	Implement procedures to determine costs associated with dispute resolution processes for staff, contractors, and stakeholders; ensure salaries and activities are funded and expended appropriately; implement existing controls and establish time limits and supporting documentation requirements for contractors to submit invoices; ensure staff timely reconcile invoices and record contractor payments; identify potential fraud risks and periodically conduct reviews of contractor payments; determine NHED’s liability for repayment and obligation to recoup certain costs; conduct cost benefit analyses for dispute resolution processes; and objectively minimize costs and barriers to stakeholders.	Concur In Part
9	65	No	Conduct periodic assessments to ensure rules accurately reflect federal requirements; request necessary changes to rules; and develop procedures to implement, monitor, and enforce federal requirements.	Concur In Part

Observation Number	Page	Legislative Action May Be Required	Recommendations	Agency Response
10	69	Yes	Develop procedures for improving, monitoring, and implementing State dispute resolution requirements; ensure statute consistently reflects requirements and rules interpret statute; routinely assess the regulatory environment; determine whether to seek changes to procedural requirements in statute; request necessary changes to statute and rules; ensure all requirements in excess are annually identified and published; enforce NHED compliance with requirements; and discontinue offering processes without authority.	Concur In Part
11	73	No	Develop controls to ensure consistent compliance with the <i>Administrative Procedure Act</i> ; conduct periodic assessments of laws, rules, guidance, and practices to identify ad hoc rules and inconsistencies; reconcile Ed 200, Ed 1100, and Jus 800 rule issues; and request necessary rule changes, including form requirements.	Concur
12	77	No	Develop comprehensive policies and procedures, ensure applicable policies and procedures are subjected to the required public comment process, develop a periodic review process, and ensure consistent implementation.	Concur
13	80	No	Develop a plan to comprehensively address NHED website, guide, and manual issues; periodically review each source of information for effectiveness; monitor and enforce local educational agency (LEA) compliance with procedural safeguard notice content requirements; and hold required public hearings for input on procedural documents.	Concur In Part
14	82	No	Develop procedures to implement targeted training and education, evaluate and address deficiencies with current related activities, ensure staff training and education responsibilities are fulfilled, ensure training and education includes relevant requirements	Concur In Part

Observation Number	Page	Legislative Action May Be Required	Recommendations	Agency Response
14 (Continued)	82	No	for LEA special education dispute resolution compliance and local dispute resolution development options, and address related prior audit findings.	
15	88	No	Formalize goals and objectives with quantifiable performance measures to demonstrate achievement of expected outcomes, evaluate and report on the effectiveness of dispute resolution processes, address records management and data quality deficiencies, develop effective dispute resolution data collections processes department-wide, and incorporate performance data into decision making.	Concur
16	93	No	Identify and implement monitoring and enforcement requirements, ensure responsibilities are fulfilled, identify dispute resolution requirements LEAs are responsible for implementing, conduct a risk assessment of LEA requirements, implement monitoring controls for LEA compliance, implement procedures and guidance for issuing and reviewing the appropriateness of corrective actions, implement processes to identify and track corrective actions, assess the effectiveness of controls, and issue enforcement actions for noncompliance with orders.	Concur In Part
17	98	Yes	Develop controls to ensure agreements meet requirements, enforce agreements which incorporate amendments to individualized education programs (IEP), ensure contractors provide agreements to NHED, require LEAs provide copies of agreements for resolution meetings and applicable local level dispute resolution processes, seek legislation and necessary rule changes, develop procedures and guidance for complying with Right-to-Know requests, and consider developing additional optional procedures to expand NHED enforcement responsibilities of agreements.	Concur In Part

Observation Number	Page	Legislative Action May Be Required	Recommendations	Agency Response
17 (Continued)	98	Yes	We suggest the Legislature consider reviewing usage of agreements and determine whether State policy changes regulating aspects of agreements would benefit participants and improve dispute resolution processes.	
18	101	Yes	Develop a public communication system with an intake process, clear reporting lines, and procedures for managing external communications; establish timeliness goals and objectives for posting and notification requirements; review processes for collecting public communication data; ensure all allegations and requests are addressed and communicated; seek appropriate changes to contact and filing information in laws, rules, and guidance materials; and publicize communication processes.	Concur In Part
19	105	No	Review records requirements, develop controls for records and data management, provide contractors training on documentation requirements and timeliness, develop cost-effective systems to track and manage dispute resolution processes, and periodically assess record completeness and data reliability.	Concur
20	110	Yes	Develop procedures guiding practices and provide training for deleting personally identifiable information (PII) from due process hearing decisions, consider delegating deletion of PII responsibilities to individuals familiar with case details, implement a formal review process of redacted decisions, develop controls over facilitated IEP team meeting records, and seek legislation to remove conflicting record requirements.	Concur

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STATE OF NEW HAMPSHIRE
SPECIAL EDUCATION DISPUTE RESOLUTION PROCESSES

BACKGROUND

As a recipient of federal special education grant funds, the New Hampshire Department of Education (NHED) was required to ensure a free appropriate public education (FAPE) was available to children with disabilities under the *Individuals with Disabilities Education Act of 2004 (IDEA)* in the least restrictive environment. FAPE emphasized special education and related services be designed to meet students' unique needs, and prepared them for further education, employment, and independent living. Least restrictive environment required children with disabilities be provided education and services with other students to the maximum extent appropriate. If there were allegations or disagreements related to a student's special education, several dispute resolution options were available through NHED for parents and local educational agencies (LEA) to help resolve issues. As of October 1, 2022, there were 30,917 students identified with a disability in New Hampshire.

Special Education Dispute Resolution Options

NHED managed six dispute resolution processes and supporting contractors. In accordance with *IDEA*, NHED was required to establish and maintain procedures for State complaints, due process complaints, and mediation to ensure children with disabilities were guaranteed procedural safeguards. NHED could develop additional dispute resolution options through procedures established in State law and rule. Over time, NHED made available neutral conferences, third party moderated discussions, and facilitated individualized education program (IEP) team meetings, but corresponding procedures were not always established in law and rule. State law also encouraged LEAs to develop local dispute resolution options and resolve disputes without the involvement of NHED. However, there was no required reporting or monitoring of local dispute resolution options. Table 1 summarizes the regulatory structure and associated contract for each dispute resolution process.

Table 1

Summary Of NHED-managed Dispute Resolution Processes

Dispute Resolution Process	Regulatory Structure			Contract
	Federal Regulations	State Law	State Rule	
State Complaint	X		X	Investigator
Due Process Complaint	X	X	X	Hearing Officer
Mediation	X	X	X	Hearing Officer
Neutral Conference		X	X	Hearing Officer
Third Party Moderated Discussion				None ¹
Facilitated IEP Team Meeting				Facilitator

Note:

¹ Third party moderated discussions were conducted by hearing officers, but the dispute resolution process was not in the associated contract.

Source: LBA analysis of federal regulations, State law and rule, and NHED contracts.

State Complaint

The State complaint, sometimes referred to as a “special education complaint,” was first established in federal regulations in 2004. This process was available if it was believed that an LEA or state educational agency (i.e., NHED) violated special education laws under Part B of *IDEA*. Any organization or individual could file a State complaint specific to a child or for systemic issues. The reported violation had to occur within one year prior to the complaint being filed.

State complaints were to be investigated and have a written decision issued within 60 days of NHED receiving the complaint. The 60-day time limit could be extended if there were exceptional circumstances, or the LEA and other party agreed in writing to extend the time limit to engage in other dispute resolution proceedings. If a State complaint contained allegations that were also the subject of a due process hearing, NHED had to set aside any part of the State complaint that was being addressed in the hearing until it concluded. Remaining allegations had to be resolved in accordance with State complaint procedures within the 60-day time limit.

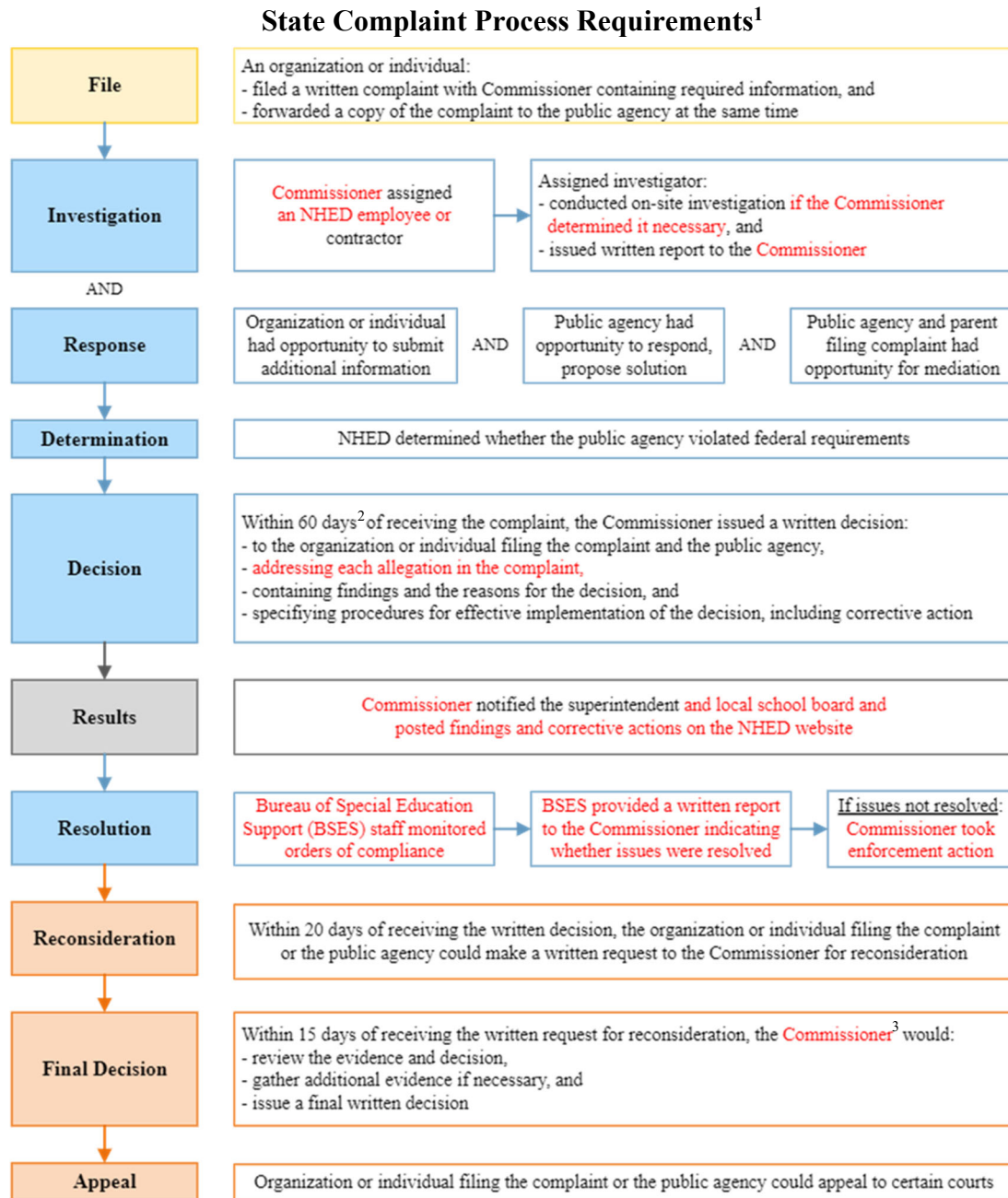
At a minimum, a State complaint had to include:

- a statement the public agency violated Part B of *IDEA*,
- facts on which the statement was based,
- the filing party’s signature and contact information, and
- if specific to a child, name and address of the child, and name of the school the child attended.

The filing party was required to forward a copy of the State complaint to the public agency providing services to the child at the same time it was filed with NHED. If NHED determined the complaint met minimum requirements, an independent investigator was assigned to gather information surrounding the allegation. The investigator had to send a completed investigation report to the Commissioner who then issued a written decision on whether allegations were substantiated, and if applicable, included corrective action and a timeframe for the LEA to address violations. Either party could appeal the decision to the Commissioner for reconsideration within 20 days. If a party was still dissatisfied after reconsideration, appeals could be made to the New Hampshire Supreme Court or a New Hampshire Superior Court. Figure 1 summarizes requirements for the State complaint process.

During State fiscal years (SFY) 2020 through 2022, 114 State complaints were filed, and three investigators were contracted as of June 30, 2022.

Figure 1



Notes:

1. Red text shows federal and State requirements that were not followed in practice. Figure does not include all time limits, exceptions to time limits, or process requirements.
2. Federal regulations allowed the 60-day time limit to be extended under certain circumstances.
3. The Governance Unit’s Education Consultant I was responsible for reviewing the evidence and decision, and gathering additional evidence if necessary.

Source: LBA analysis of federal law and regulations, administrative rules, NHED guidance, interviews, and State complaint records.

Due Process Complaint

The due process complaint was first established in federal law in 1973. A due process complaint, or request for a due process hearing, was available for matters related to the identification, evaluation, or educational placement of a child with a disability; or the provision of FAPE. A parent or LEA could file a due process complaint for alleged violations occurring within the previous two years. The initial time limit was dependent on whether the moving or filing party was a parent or LEA. Parent-filed due process complaints had a time limit of 75 days for a decision while an LEA-filed complaint had 45 days. However, a range of factors could extend, shorten, or restart time limits, all of which could occur during a single complaint. Additionally, if a due process complaint met certain criteria, an expedited hearing had to occur within 20 school days of the filed complaint, and a decision issued within 10 school days of the hearing.

At a minimum, a due process complaint had to include:

- the name and address of the child,
- name of the school the child was attending,
- a description and facts related to the problem regarding the proposed or refused initiation or change, and
- a proposed resolution to the problem.

The filing party had to provide the other party the due process complaint and forward a copy to NHED. Staff assigned a hearing officer, scheduled dates for a due process hearing, and provided an opportunity for parties to attend mediation. A due process complaint was deemed sufficient unless the party receiving the complaint notified the hearing officer and other party in writing within 15 days that it was believed the complaint did not meet requirements. If it was determined insufficient, the hearing officer could grant permission for the moving party to file an amended due process complaint. An amended due process complaint restarted the time limit.

The LEA had to hold a resolution meeting within 15 days of receiving a due process complaint. A resolution meeting was not required if the LEA filed the complaint, the parent waived the meeting in writing, or parties agreed to substitute the meeting with mediation. If the complaint was not resolved through a resolution meeting or mediation, a due process hearing occurred. Until July 2021, State law required the filing party to have the burden of proof. Changes to State law subsequently required the LEA have the burden of proof in all due process hearings regardless of who filed the due process complaint. Parents had the right to have their child present during proceedings and the hearing open to the public. After personally identifiable information was deleted, NHED staff made hearing officer decisions public and transmitted decisions to the State Advisory Committee On The Education Of Children/Students With Disabilities (SAC) through a link to NHED's website.

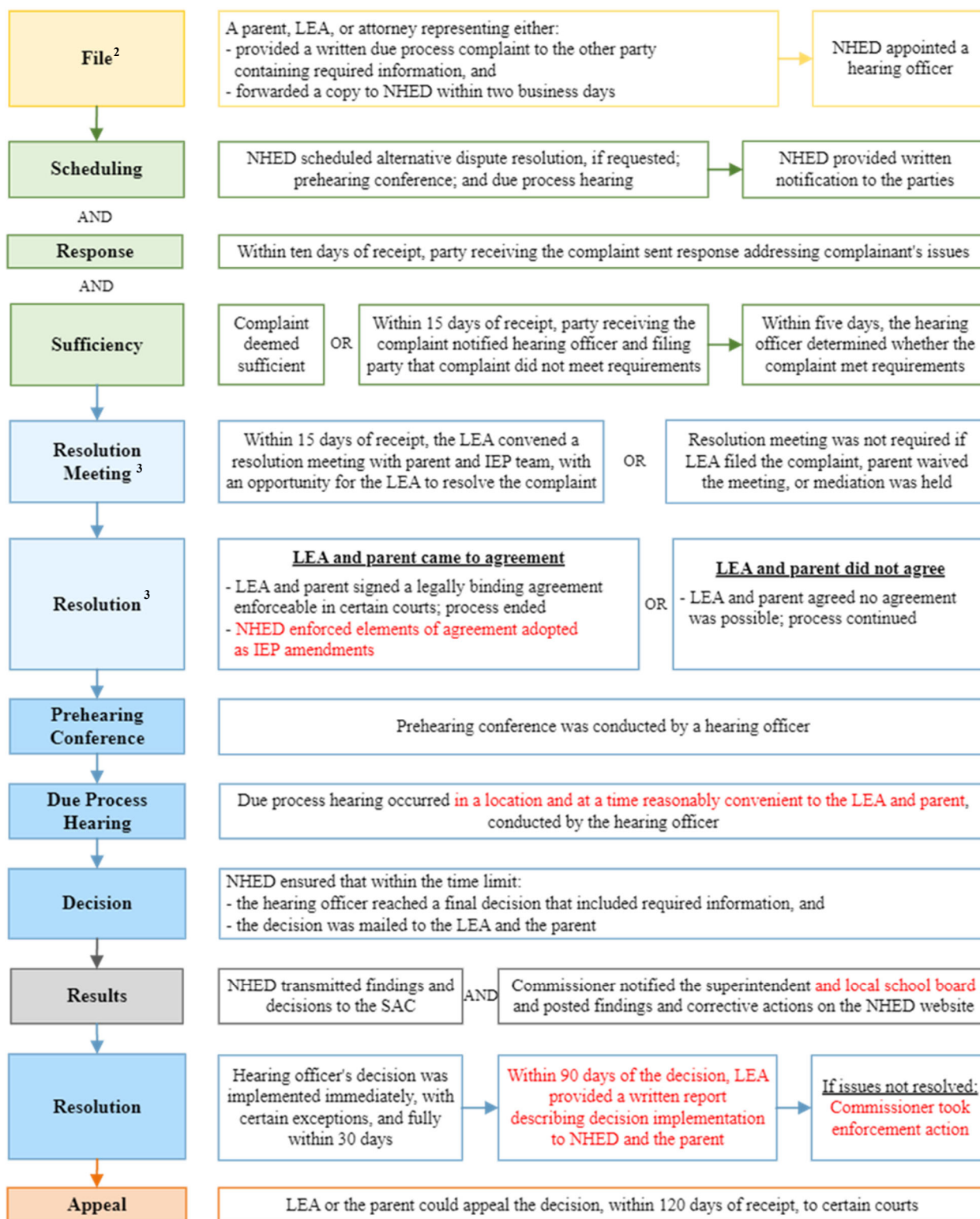
NHED was responsible for ensuring implementation of due process hearing decisions. LEAs had to implement the decision within 30 days and submit a report on implementation of the decision to NHED and the parent within 90 days. The same issues addressed through a due process hearing complaint could not be raised again through another due process complaint or State complaint once a decision was issued. However, parties could appeal decisions through a court of competent

jurisdiction within 120 days from receipt of the final decision. Figure 2 summarizes requirements for the due process complaint process.

During SFYs 2020 through 2022, 115 due process complaints were filed, and six hearing officers were contracted as of June 30, 2022.

Figure 2

Due Process Complaint Process Requirements¹



Notes:

- ¹ Red text shows federal and State requirements that were not followed in practice. Figure does not include all time limits, exceptions to time limits, or process requirements.
- ² Federal requirements allowed a complaint to be amended and specified time limits started over once an amended complaint was filed.
- ³ When a parent filed a due process complaint, a 30-day time limit applied to a resolution period. When an LEA filed a due process complaint, there was no resolution period.

Source: LBA analysis of federal law and regulations, State law and rules, NHED guidance, interviews, and due process complaint records.

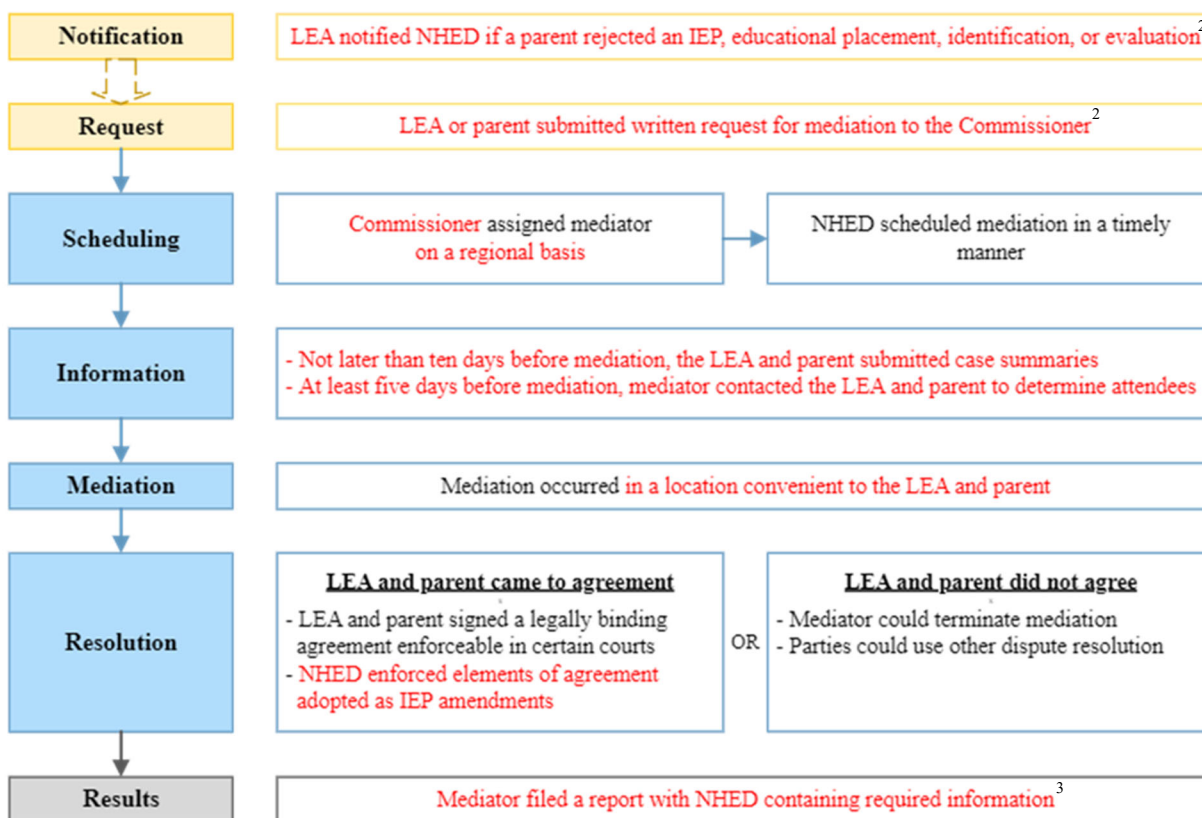
Mediation

Mediation was first established in federal law in 1990. Mediation was a voluntary process available as an alternative to filing a due process or State complaint, or it could be used during either complaint process to attempt to resolve special education issues before a decision was issued. To initiate mediation independent of due process and State complaint procedures, State law required LEAs notify NHED in writing of a parent's rejection of an IEP, placement, identification, or evaluation. NHED had to provide the parent a description of available alternative dispute resolution, including mediation. The parent and LEA could then voluntarily agree to request and participate in mediation if chosen. However, a request for mediation could be made at any time by a parent or LEA and was not dependent on the LEA notification requirement. It had to be a written request specifying issues and desired resolution.

The Commissioner was to assign an impartial mediator, who was trained in effective mediation techniques, on a regional basis. Pending the result of mediation, no change could be made to the child's IEP, classification, or placement unless both parties agreed. Information, statements, and evidence provided during mediation proceedings were to remain confidential, but issues could be raised again separately through another dispute resolution option. Disputes resolved through mediation had to result in a legally binding agreement with a statement acknowledging confidentiality requirements, and be signed by both the parent and authorized representative of the LEA. NHED was responsible for enforcing agreements or portions of agreements which resulted in an amendment to the IEP. Agreements were otherwise enforceable through a court of competent jurisdiction. Figure 3 summarizes requirements for the mediation process.

During SFYs 2020 through 2022, there were 34 requests for mediation independent of a due process complaint. As of June 30, 2022, responsibilities for the six individuals under the hearing officer contract included mediation. However, if parties chose to participate in mediation during a due process complaint, the same contractor could not be assigned to conduct both the mediation and due process hearing.

Figure 3

Mediation Process Requirements¹

Notes:

- ¹. Red text shows federal and State requirements that were not followed in practice.
- ². Statute established two processes to initiate mediation with associated time limits. The first was a required *notification* process with mediation to be conducted within 30 days of notification. The second was a required *request* process with mediation to be conducted within 30 days of receipt of the written request.
- ³. Statute allowed only certain information to be recorded if mediation did not result in an agreement. Rule established three reporting requirements with associated time limits.

Source: LBA analysis of federal law and regulations, State law and rules, NHED guidance, interviews, and mediation records.

Neutral Conference

In 1994, State *Special Education* law established a neutral conference process as an additional alternative option to filing a due process or State complaint. Neutral conferences offered the parent and LEA an opportunity to present abbreviated case facts and issues to a neutral individual who was responsible for reviewing the strengths and weakness of a case and issuing a recommendation. After receiving required written LEA notification of a parent's rejection of an IEP, placement, identification, or evaluation, NHED had to provide the parent a description of a neutral conference

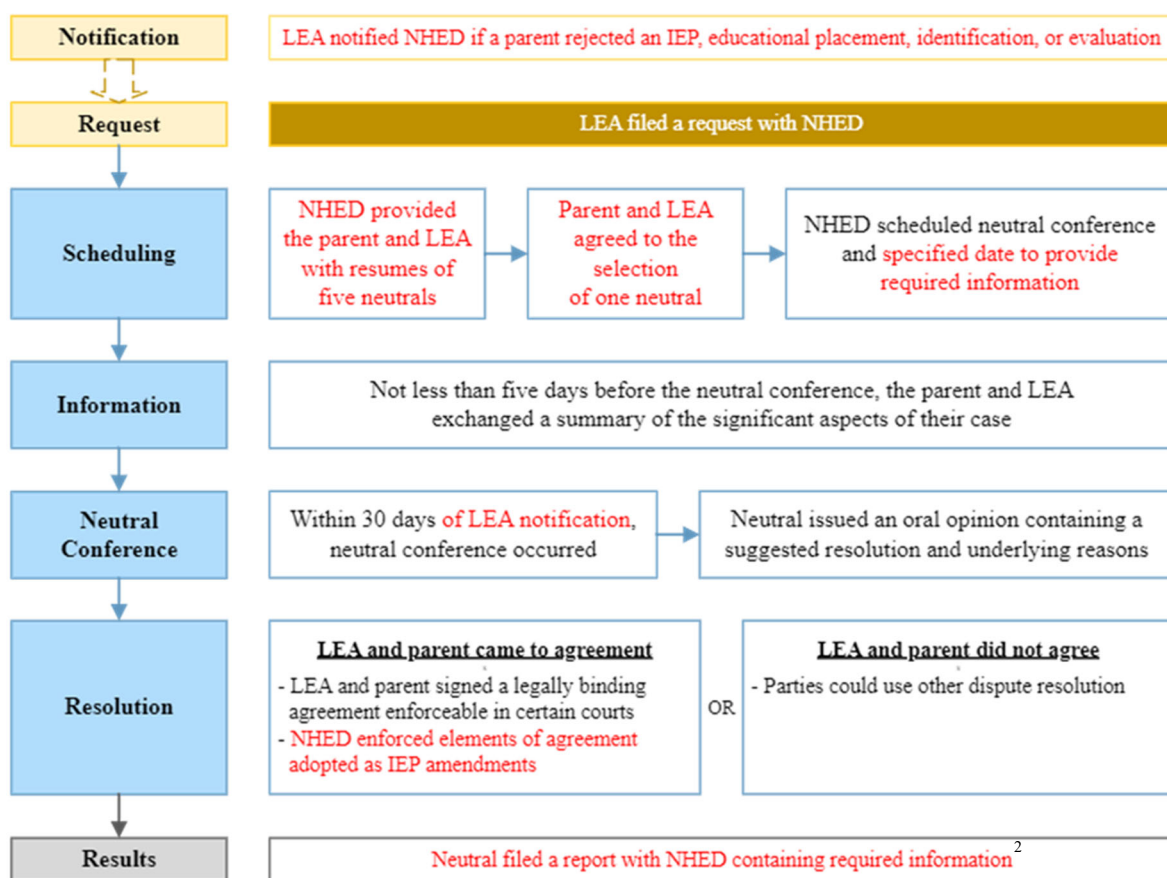
as an option to resolve a dispute. The LEA and parent could then voluntarily agree to request and participate in a neutral conference. Formal procedures were not established to request a neutral conference without the LEA notification requirement, but independent requests were accepted.

If parties chose a neutral conference, the NHED was required to provide resumes of five neutral individuals for parties to agree on selection of one individual to conduct the conference. NHED was to schedule parties for a two-hour conference with the selected neutral individual and specify dates for providing required information. Parties had to exchange summaries of significant aspects of their case in four pages or less through the neutral individual prior to the conference. During the conference, the parent and LEA were limited to 30 minutes each to provide supplemental oral statements about their written summaries. The neutral individual then issued an oral opinion to the parties suggesting a settlement or other disposition, and reasons for the opinion.

Information, statements, and evidence provided during neutral conference proceedings were to remain confidential, but issues could be raised again separately through another dispute resolution option. Disputes resolved through a neutral conference had to result in a legally binding agreement and be signed by both the parent and authorized representative of the LEA. NHED was responsible for enforcing agreements or portions of agreements which resulted in an amendment to the IEP. Agreements were otherwise enforceable through a court of competent jurisdiction. Figure 4 summarizes requirements for the neutral conference process.

During SFYs 2020 through 2022, there were three requests for a neutral conference. As of June 30, 2022, responsibilities for the six individuals under the hearing officer contract included neutral conferences. However, if parties chose to participate in a neutral conference during a due process complaint, the same contractor could not be assigned to conduct both the neutral conference and due process hearing.

Figure 4

Neutral Conference Process Requirements¹

Notes:

¹ Red text shows federal and State requirements that were not followed in practice. Dark shaded boxes with white text indicate unauthorized, informal practices.

² Statute allowed only certain information to be recorded regarding a neutral conference. Rules established a reporting requirement with associated time limit.

Source: LBA analysis of federal law and regulations, State law and rules, NHED guidance, interviews, and neutral conference records.

Third Party Moderated Discussion

NHED developed third party moderated discussions in 2013. After the Department of Justice indicated to NHED that existing administrative rules were sufficient to establish the third party moderated discussion process, NHED established ad hoc requirements and procedures in participant and contractor guides. The third party moderated discussion was a voluntary process for the parent and LEA to have a confidential and non-adversarial discussion led by a moderator about any special education disagreement. The moderator's role was to listen to each party's perspective, provide insight on how a hearing officer would view the matter and whether proposed

resolutions were permitted under regulations, and offer other resolution options for parties to consider.

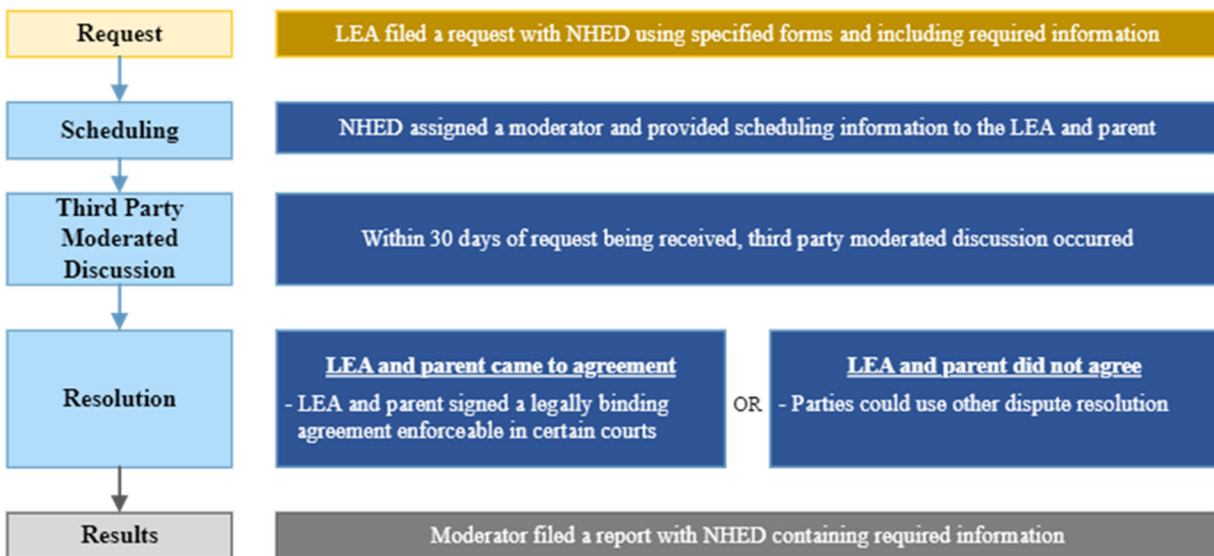
If both parties agreed, the LEA made a written request for a third party moderated discussion to NHED. Both parties were to select mutually agreeable dates to meet, specify issues to be discussed, propose a preferred resolution, and disclose whether each party would attend with an attorney or advocate. NHED staff assigned a moderator after receiving the request. During the moderated discussion, each party was limited to 15 minutes to speak about their perception of the matter, but there was no time limit for discussing possible resolutions.

Although confidential, there were no restrictions for raising disagreements and related information or statements from third party moderated discussions again through another dispute resolution process. Disputes resolved through third party moderated discussions were to result in a legally binding agreement that was enforceable in a court of competent jurisdiction. Figure 5 summarizes the informal third party moderated discussion process.

During SFYs 2020 through 2022, there were five requests for a third party moderated discussion related to a special education disagreement. As of June 30, 2022, responsibilities were not included in contracts, but the six individuals under the hearing officer contract were expected to conduct third party moderated discussions.

Figure 5

Third Party Moderated Discussion Process Requirements



Note: Dark shaded boxes with white text indicate unauthorized, informal practices.

Source: LBA analysis of federal law and regulations, State law and rules, NHED guidance, interviews, and third party moderated discussion records.

Facilitated IEP Team Meeting

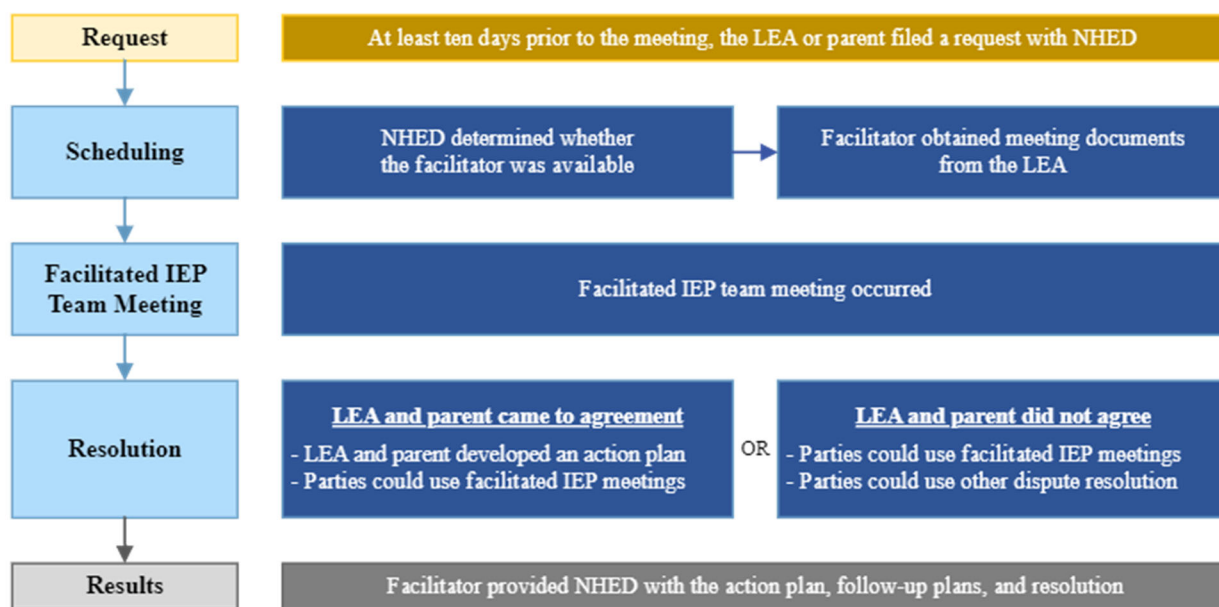
Facilitated IEP team meetings were established in State *Special Education* law in 2008 as an alternative to filing a due process or State complaint, but the option was repealed in 2015. The facilitated IEP team meeting process continued to be administered according to NHED staff's institutional knowledge without establishing other requirements and procedures.

A facilitated IEP team meeting took place when a facilitator attended an IEP team meeting to guide discussions and ensure parties progressed toward resolving disagreements. The facilitator did not provide input on disagreements or issues. After both the parent and LEA agreed to using a facilitator, requests were to be made to NHED at least ten days prior to a scheduled IEP team meeting. The NHED then assigned a trained facilitator to coordinate schedules with parties and conduct an IEP team meeting or several meetings. The facilitator submitted copies of action plans developed during IEP team meetings to NHED. Figure 6 summarizes the informal facilitated IEP team meeting process.

NHED did not have data for facilitated IEP team meetings. However, we identified 60 initial requests for facilitated IEP team meetings from SFYs 2020 through 2022. There was one contracted facilitator as of June 30, 2022.

Figure 6

Facilitated IEP Team Meeting Process Requirements



Note: Dark shaded boxes with white text indicate unauthorized, informal practices.

Source: LBA analysis of federal law and regulations, State law and rules, NHED guidance, interviews, and facilitated IEP team meeting records.

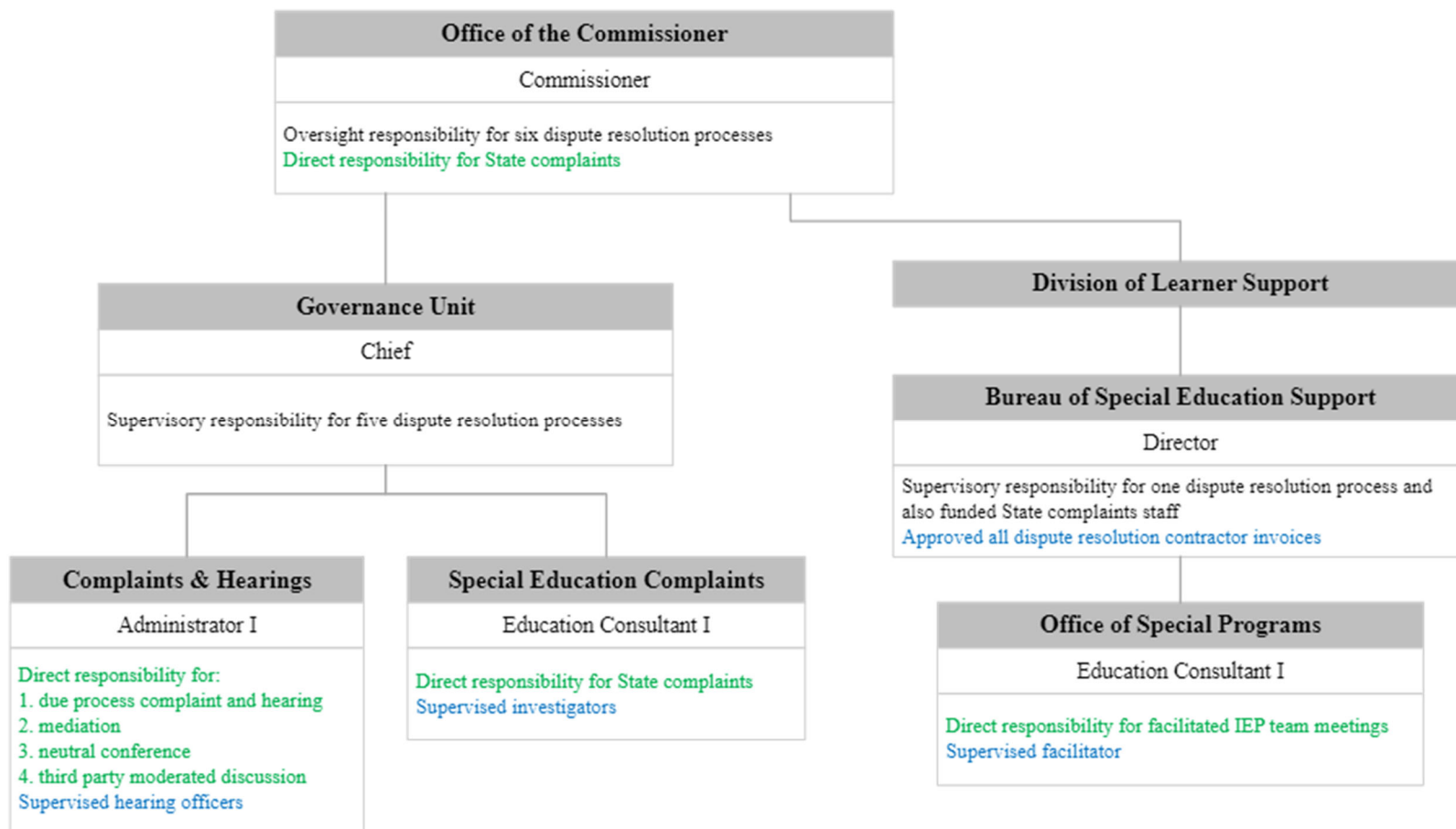
Special Education Dispute Resolution Organizational Structure And Staffing

Six full-time staff held special education dispute resolution responsibilities, five of whom were in classified positions. Staff and responsibilities were assigned to multiple units within NHED, as shown in Figure 7. Statute required special education due process hearings be located within the Commissioner's Office. NHED restructured in 2017, establishing the Governance Unit. The Governance Unit was responsible for five of six dispute resolution processes.

- One staff member had responsibility for four processes, including oversight of contracted hearing officers. The staff member had additional non-special education dispute resolution responsibilities.
- One staff member had responsibility for one process, including oversight of the contracted IEP team meeting facilitator. The staff member had other special education responsibilities.
- One staff member and the Commissioner had responsibility for one process, State complaints. The staff member's responsibilities also included oversight of contracted investigators, but no other non-special education dispute responsibilities during the audit period.

Figure 7

**NHED Special Education Dispute Resolution Organizational Structure,
As Of June 30, 2022**



Note: Black font indicates supervisory responsibilities over NHED staff. Green font indicates direct responsibilities for NHED processes. Blue font indicates supervisory responsibilities related to dispute resolution contractors.

Source: LBA analysis of NHED organizational charts, supplemental job descriptions, and interviews.

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**STATE OF NEW HAMPSHIRE
SPECIAL EDUCATION DISPUTE RESOLUTION PROCESSES**

MANAGEMENT CONTROL

Management’s directives, attitude, and behaviors should reflect the integrity and values expected throughout the organization. Management’s internal controls should include plans, policies, and procedures used to strategically achieve goals and objectives through effective stewardship of public resources. A strong organizational culture with a positive focus on internal controls was particularly important as staff were responsible for implementing and operationalizing management controls, and for reporting issues to management so they could be addressed timely. Without an emphasis on these values, an organization’s ability to identify and respond to risk could be incomplete or inappropriate, control activities may not be effective, and monitoring may be insufficient to identify and address issues.

Effective management oversight includes designing, implementing, and monitoring appropriate control activities to ensure responsibilities are fulfilled and operations remain consistent. Control activities should be designed to achieve objectives and respond to risks, clearly documented and communicated, and implemented with appropriate oversight for accountability. Properly maintained and documented controls help retain organizational knowledge and reduced the risk of knowledge loss during periods of staff turnover.

Observation No. 1

Improve Oversight Of Internal Controls

Department of Education (NHED) oversight of internal controls was ineffective. Management did not adequately design, implement, or monitor special education dispute resolution process controls. Existing controls were limited, informal, inconsistently updated, and not clearly documented or communicated. Instead, management relied significantly on staff institutional knowledge to carry out operations. This was insufficient to ensure consistent and effective operations or reduce organizational knowledge loss risk. These were known risks during the audit period, which likely existed for many years. There were no strategies, plans, policies, or procedures for supporting decisions and managing dispute resolution processes; records and databases supporting processes were inadequate; and staff turnover occurred, all of which contributed to operational deficiencies and knowledge loss.

We reviewed over 1,600 special education dispute resolution requirements. While our work was focused on controls, it was not designed to review implementation of every requirement. However, we identified many operational deficiencies which adversely affected special education dispute resolution processes and limited accountability. Specifically, deficiencies resulted in:

- noncompliance with, or unenforced, requirements at the State and local levels;
- untimeliness with dispute resolution process time limits and related reporting requirements;
- unmitigated risks, such as conflicts of interest, fraud, and waste;
- unaddressed longstanding issues identified in prior evaluations or audits;
- resource constraints;
- limited and inaccurate output data; and

- a lack of public transparency.

We provided the detailed results of our review of requirements to NHED management in May 2023.

Lack Of Continuity And Unfulfilled Responsibilities

Inadequate controls hindered effective supervision of, and operational continuity across, staff dispute resolution process responsibilities. Dispute resolution processes were generally managed independently of one another throughout NHED. Understanding staff responsibilities and providing effective oversight were particularly important for management considering the dispersed dispute resolution organizational structure and staff turnover risks.

The State complaint staff position experienced turnover during State fiscal year (SFY) 2020, and the replacement staff member left the full-time equivalent position in February 2023 for another position within NHED. There were no plans in place to fill the State complaint staff position with another full-time equivalent. Staff specifically expressed concerns about continuity in administering four other special education dispute resolution processes if the individual responsible for those processes left NHED. However, managers were not always aware of all responsibilities performed by their subordinates, or thought their subordinate held some responsibilities performed in practice by another staff member. Staff responsible for dispute resolution processes did not have a complete understanding of specific responsibilities and requirements associated with other staff members' assigned dispute resolution processes.

Inadequate controls limited management's ability to ensure responsibilities were consistently fulfilled. Unfulfilled responsibilities we identified included training, policy development, and monitoring of final dispute resolution decisions. Management also did not monitor rules for compliance or consistency with federal and State laws. There was no integrated process to proactively update relevant NHED requirements, guides, manuals, or supplemental job descriptions (SJD). Additional examples of unfulfilled responsibilities are shown in Table 2.

Table 2

Examples Of Responsibilities Not Performed As Required

Source	Responsibility	Issue
State Laws	Required the “Bureau of Special Education” Administrator to provide a written report to the Commissioner on corrective action resulting from orders of compliance.	Not performed
	Required the Commissioner to issue a report annually on all proposed or adopted special education rules exceeding the minimum requirements of State or federal law.	Incomplete reports
	Required NHED evaluate the effectiveness of alternative dispute resolution procedures annually and report findings to the State Advisory Committee on the Education of Children/Students with Disabilities (SAC).	Not performed
SJDs	Ensure rules and policy were in compliance with federal and State law.	Not performed
	Oversee corrective actions for due process hearing complaints.	Not performed
	Ensure hearings were handled in compliance with rules and statute.	Inconsistently performed
	Assess policy effectiveness and develop or modify operational procedures.	Inconsistently performed

Source: LBA analysis of statute, rules, SJDs, and interviews.

Recommendations:

We recommend NHED management:

- **evaluate manager and staff responsibilities;**
- **conduct a risk assessment to determine gaps in controls and potential areas where knowledge loss would be imminent or most detrimental;**
- **develop related plans to design, implement, and monitor appropriate controls to facilitate operational continuity and knowledge transfer;**
- **document and clearly communicate established controls;**
- **develop operational and staff performance goals and measures;**
- **routinely monitor performance; and**
- **hold managers and staff accountable for their performance and achievement of assigned responsibilities.**

NHED Response:

We concur with the recommendations.

NHED makes the following remarks related to the auditors’ observations:

NHED strives to work with families who are in crisis and timely addresses issues to ensure children are provided with an education to succeed. While NHED agrees that there are areas in which management oversight of the process controls could be strengthened, NHED has supported numerous families over the years through its special education dispute resolution processes. NHED also recognizes policies and procedures should be formalized and become more comprehensive, and in doing so, can better serve families. Additionally, within the Governance Unit there has always been a strong understanding of the special education dispute resolution process and the Unit has been working to continually update and formalize relevant policies and procedures in accordance with federal and State guidelines as processes have continually evolved.

The Governance Unit (previously titled Office of Legislation and Hearings) has existed at NHED in one form or another since approximately the 1980s. Organizational changes in 2017 were meant, in part, to facilitate operational continuity and knowledge transfer. Staff turnover is an inherent part of State government. The positions within the Governance Unit often have areas of redundancy and overlap which help preserve operational efficiency and position and job knowledge. The positions within the Governance Unit are designed to work collaboratively with inherent overlap. This was a purposeful design to ensure that all members of the Unit have a natural understanding of each position. However, NHED recognizes formal and comprehensive policies and procedures are necessary to improve operations.

The Governance Unit and Bureau of Special Education Support (BSES) is in the process of creating an internal Dispute Resolution and Constituent Complaint Policy and Procedure manual to identify and set forth the roles and responsibilities of the Dispute Resolution positions. This document will be reviewed and updated on a consistent basis.

NHED continuously and consistently works with stakeholders to address their concerns as they relate to NHED's dispute resolution processes and will continue to engage relevant stakeholders as the Governance Unit and BSES works to improve and formalize its policies and procedures. The Governance Unit and BSES worked collaboratively with stakeholders to create an updated Parents Guide to help clarify the processes for parents.

NHED will take the opportunity to review SJDs and class specifications to ensure all required roles and responsibilities are adequately covered and that all required responsibilities are addressed. All NHED SJDs include "other duties as assigned" to help facilitate a purposeful, dynamic, and responsive organization. The NHED conducts annual reviews of staff and hearing officers, which helps to hold managers and staff accountable for their performance and achievement of assigned responsibilities.

Strategic Management

Strategy and planning are essential for effective management control. When properly developed and implemented, strategic planning is a comprehensive and systematic management approach that helps management develop objective risk-based assessments, timely respond to issues or changes, and improve operations in accordance with established goals and objectives. Effective strategic planning processes include:

- stakeholder collaboration to identify related concerns, needs, and priorities;
- developing formal goals, measurable objectives, and specific activities consistent with a shared mission and vision;
- written plans detailing assigned responsibilities, priorities, and target dates for achieving goals and objectives;
- establishing performance measures and using reliable data to monitor and report on progress toward achieving goals and objectives; and
- periodic reviews to ensure plans remained relevant.

Strategic planning with well-designed corresponding controls could have helped NHED improve dispute resolution communication, efficiency, and effectiveness.

Observation No. 2

Develop Strategic Management Controls

NHED did not develop a strategic plan with clearly defined goals and objectives for special education dispute resolution processes. Staff managed dispute resolution processes generally independent of each other without a connection to NHED's mission. NHED also did not connect expected outcomes to State requirements and operational processes it developed. Management did not proactively evaluate and address issues or provide adequate oversight of controls. Consequently, dispute resolution processes were ineffectively managed, which negatively impacted NHED stakeholders.

Lack Of Strategic Planning Processes

NHED's department-wide mission and vision were not incorporated into plans or operations to facilitate achievement of expected dispute resolution outcomes. Informally, managers and staff generally reported the purpose of NHED dispute resolution processes was to provide impartial, compliant, and timely services to parents and local educational agencies (LEA) for when special education disagreements elevated from the local level to the State level. Federal laws and regulations were similarly designed for this purpose and encouraged early resolution when possible. State law also encouraged LEAs develop options for local level resolution.

A clear understanding of mission, goals, objectives, and activities was essential to help ensure operations consistently focused on achieving expected outcomes. This was particularly important given a lack of an effective management control system and reliance on dispersed staff institutional knowledge to make decisions affecting the public. However, NHED did not implement strategic planning processes with goals, objectives, and activities in alignment with NHED's mission, or to facilitate achievement of impartial, compliant, timely, and early or local resolution when possible. Existing formal goals or objectives were limited to minimal outputs required for federal grant compliance and reporting. The outputs were: 1) insufficient for demonstrating achievement of outcomes, and 2) not applicable to all six NHED dispute resolution process options.

Lack Of Supported Decisions

With no written strategy or plans, staff did not have a sufficient understanding of dispute resolution requirements and responsibilities. Management decisions were reactive and not supported by quantitative assessments or objective information which contributed to ineffectiveness and compromised public transparency. The following were some areas in which dispute resolution process operations were negatively impacted:

- Management did not conduct risk assessments to proactively identify and timely respond to changes or issues of noncompliance. Instead, issues were addressed on a case-by-case basis when they were brought to management's attention without systematic approaches to ensure resolution was comprehensive and effective.
- Management did not demonstrate its organizational structure contributed to dispute resolution efficiency or effectiveness. Organizational structure changes reportedly occurred in 2017 without underpinning plans, assessments, or objectives to support related decisions and evaluate results. Dispute resolution processes were managed without adequate controls, performance measures, and workforce planning to facilitate compliance with requirements and continuity in operations.
- Management did not proactively evaluate and monitor dispute resolution process requirements to ensure consistent and appropriate incorporation into State laws, rules, policies, and procedures. Neither did management objectively demonstrate the need for additional dispute resolution processes that NHED developed. Dispute resolution process performance was not evaluated, and cost-benefit analyses did not occur to determine efficiency and effectiveness.
- Management did not assess each dispute resolution process' contract requirements, scope of work, desired and required contractor qualifications, and scheduling requirements to objectively determine contracting needs and design appropriate contracts. Contractors inconsistently fulfilled expectations. Recruitment, retention, and availability issues also occurred.
- Management did not identify trends and address unmet stakeholder needs related to dispute resolution training and education. NHED and non-NHED resources were not evaluated to determine sufficiency of existing information and services provided to stakeholders, which hindered NHED's ability to make necessary and comprehensive improvements.

Recommendations:

We recommend NHED management:

- **develop risk-based, data-informed strategy and plans aligned with NHED's mission and vision through collaborative efforts with key staff and stakeholders to identify needs and priorities;**

- **incorporate measurable goals, objectives, activities, target dates, and assigned accountability for implementation and achieving expected outcomes;**
- **develop performance measures, regularly and formally monitor performance, and refine the strategy and plans as warranted; and**
- **use performance data and objective assessments to support decisions in accordance with strategy and plans.**

NHED Response:

We concur in part with the recommendations.

NHED makes the following remarks related to the auditors' observations:

NHED has a shared vision and mission across the organization. This vision and mission reflect the important work of the agency reaching back to work begun in 2005 and consistently transitioned as changes in leadership have occurred over that period.

That initial work in 2005 centered around student learning and the importance of recognizing student learning – competency – as more relevant than time spent learning. This vision is inculcated throughout agency rules. As one example, unlike any other state, schools are required to offer 180 days of instruction, but students advance on proficiency.

Under the current leadership, in the fall of 2017, the agency contracted with the Council for Chief State School Officers and McKensey & Company, a leading global management consulting firm, to continue to extend this vision. During a two-day, off-site meeting, agency leadership gained consensus around its vision and developed an organizational structure to implement that vision most effectively.

In this work with McKensey, the placement of the Governance Unit (Previously titled Office of Legislation and Hearings) under the Deputy Commissioner's purview since 1984, was determined to be the correct alignment for NHED. Within this structure, the five processes which focused on conflict resolution aligned with the mission of the Governance Unit. The IEP facilitation process was retained in the BSES as it dealt with conflict avoidance compared to the other processes which focused on conflict resolution. NHED will revisit this decision and, as appropriate, recommend change if it believes the initial decision should be changed.

In the fall of 2019, the leadership once again convened an off-site meeting refreshing and validating its commitment to its vision, which included commitments to meet as individual bureaus. In turn, the bureaus would review the vision and mission and collaborate on how the vision and mission related to the work of the individual bureaus. These meetings were facilitated internally by division leadership.

In the Spring of 2021 (post COVID disruption) and again in the Spring of 2022, BSES convened to review its work and the alignment of that work with the shared agency vision and mission.

Since 2017, individuals hired from outside of NHED interview with the Commissioner and, as part of that interview process, the vision and mission as a learner centered organization are shared with prospective employees. This helps them understand the vision and mission of NHED and inculcate the organization with a learner centric culture.

As a result of this work, leadership believes that staff throughout the agency, even if they cannot articulate the specific words, understand the mission of supporting learners consistent with the agency vision and mission of:

Vision: Live Free and Learn

Mission: NHED advances learner centered opportunities that create bright futures.

In continuing its work toward its vision and mission, NHED, in response to the auditors' observations, will continue the on-going work of making sure there is organizational and strategic alignment, that NHED uses data-informed strategies that incorporate goals and objectives, and that it regularly evaluates progress against those goals. Relative to the dispute resolution processes, the Governance Unit and BSES will evaluate its work and mission in relation to overall agency mission and its contribution thereto and develop performance measures and dashboards to support the execution of its work.

LBA Comment: We acknowledge NHED had a department-wide mission and vision in the Observation. However, the mission was not incorporated into plans or operations to facilitate achievement of expected dispute resolution outcomes.

While NHED reports it held meetings regarding a mission and vision, NHED did not provide documented plans, assessments, or evaluations which confirms our conclusions that management lacked a risk-based, data-informed strategy and plans with goals and objectives to assess performance and to support decision making.

Organizational Structure

Organizational structure consists of units, assignment of responsibilities, delegation of authority, and reporting lines to ensure clear internal and external communication. An effective organizational structure could have helped NHED manage risk, ensure compliance, and achieve special education dispute resolution outcomes. Clearly assigned responsibilities could have enabled dispute resolution staff to operate in an efficient and effective manner, follow applicable laws and regulations, and reliably report quality information. Assessing workforce needs would have assisted management in determining whether there was an appropriate number of staff with necessary knowledge, skills, and abilities assigned to handle dispute resolution responsibilities.

Observation No. 3

Improve Controls Over Organizational Structure

NHED lacked adequate controls over its organizational structure, adversely affecting dispute resolution process efficiency and effectiveness. An ineffective organizational structure hindered achievement of outcomes. Allocation of staff, assignment of responsibilities and workloads, and reorganization occurred without an overall strategy or workforce planning. Organizational structure and associated controls were not always documented, accurate, or effective at communicating responsibilities. Dispersed responsibilities negatively affected operations. It was unclear whether assignments were appropriate or workloads manageable, and some responsibilities were unfulfilled.

We reviewed special education dispute resolution requirements but did not review every responsibility assigned to NHED or individual staff. While our work was focused on NHED controls and not designed to find every issue, we identified several issues related to organizational structure. We provided the detailed results of our review to NHED management in May 2023.

Lack Of Strategy And Planning

NHED did not strategically manage its dispute resolution organizational structure. NHED lacked a strategy, goals and objectives, and operational plans. Management lacked a systematic approach to understand how much time staff spent performing dispute resolution responsibilities, or what the cost was to the State.

Organizational Planning

Management did not assess organizational structure effectiveness to determine whether changes were necessary to improve operations or demonstrate the reorganization was the most effective option. Neither did management assess the effect of reorganization on performance generally, staffing levels and workloads, or NHED costs. Our *Developmental Services System Performance Audit Report April 1991 (1991 Performance Audit)* found dispute resolution responsibilities were not always clearly assigned, and recommended consolidation under the Office of the Commissioner. The most recent NHED reorganization in 2017 was intended, in part, to consolidate responsibility for State complaints. However, the reorganization occurred without a strategic plan, inventory of dispute resolution responsibilities, or workforce planning.

Reorganization also appeared to have unintended consequences due to inadequate controls over assignments, knowledge management, and internal communications. For example, management did not assess whether keeping responsibility for facilitated IEP team meetings under the Bureau of Special Education Support (BSES) was most effective. Managers and staff expressed varying opinions on this arrangement.

Workforce Planning

Management lacked a strategic approach to workforce planning and relevant strategy or plans. Staff had skills and knowledge that could not be replaced by others in NHED. Without adequate

workforce planning and knowledge management, management's ability to maintain critical staff knowledge and skills and ensure continuity of operations was at risk. Staff turnover was a known and near-term risk. As of December 2022, three of five classified staff with responsibilities related to two dispute resolution processes had entered their position within the past two to five years. As of December 2022, one staff member responsible for four processes had extensive institutional knowledge and was eligible for retirement. Staff expressed substantial concerns about NHED's ability to ensure this individual's responsibilities could be performed in their absence. In February 2023, one staff member responsible for State complaints transferred to a different position within NHED.

Inadequate Controls Over Organizational Structure

Control deficiencies affected the reorganized structure. There were no organizational rules. Special education rules reportedly were not updated after the reorganization and no longer accurately reflected dispute resolution staff assignments. Organizational charts incompletely reflected the reorganization. NHED rules, guides, and manuals contained 90 outdated or discrepant organizational references. Information on how the public could contact staff about special education dispute resolution processes was inconsistent, unclear, or outdated.

Unclear Assignment Of Responsibilities

Management did not always clearly assign responsibilities, and some were also assigned informally or on an improvised basis as dispute resolution processes developed over time. Monitoring and enforcement responsibilities were unclear even to managers. Consequently, there was essentially no monitoring or enforcement of dispute resolution process requirements.

Management should have ensured SJDs described each position's accountability, authority, and assigned responsibilities, and were accurate and up-to-date. However, some SJDs were inaccurate and reflected responsibilities held by other staff, as shown in Table 3. Some SJDs omitted key dispute resolution responsibilities. For example, the Governance Unit's Education Consultant I oversaw State complaint investigators, but the position's SJD did not include this responsibility.

Table 3

Examples Of Inaccurate Or Unclear Assignment Of Responsibilities In SJDs

Position	Assigned Responsibility	Responsibility Performed By
Attorney IV, Governance Unit	Administers and coordinates all hearings ¹	Administrator I, Governance Unit
	Ensures hearings ¹ are handled in an appropriate and timely manner in compliance with rules and statutes	Administrator I, Governance Unit
Education Consultant I, Governance Unit	Supervises State complaints	Attorney IV, Governance Unit
	Coordinates due process hearings	Administrator I, Governance Unit
	Oversees corrective actions ²	Education Consultant I (State complaints)
		No staff (Due process complaints)
	Plans and coordinates technical assistance and support for the implementation of IEPs	BSES staff

Notes:

- ¹. Includes special education due process hearings.
- ². Education Consultant I oversaw corrective action for State complaints, but not for due process complaints. Although the Education Consultant I also held responsibility for due process complaint corrective actions, staff reported the BSES actually held responsibility. In practice, there were no monitoring processes for due process complaint corrective actions.

Source: LBA analysis of NHED SJDs, rules, procedures, and interviews.

Potentially Unreasonable Workloads

Without a comprehensive system to manage staff performance, it was insufficiently clear whether workloads were reasonable and the number of dispute resolution staff and contractors was appropriate. Managers and staff did not perceive some workloads to be reasonable. Some staff workloads increased due to staff performing certain contractor responsibilities, which were initially intended to assist NHED with effective contract oversight. Consequently, staff reportedly prioritized certain responsibilities, leaving other responsibilities unfulfilled. This subjective prioritization of work contributed to noncompliance.

Delegations Of Authority

Management did not consistently and formally delegate authority to staff, as shown in Table 4. Management could delegate authority for certain responsibilities to staff, but remained responsible for ensuring those responsibilities were met. When made, delegations should have been in writing and clearly communicated the authority being delegated, any limitations to the authority, and

performance expectations. We requested delegations of authority from NHED, but none were provided.

Table 4

Examples Of Responsibilities Improperly Delegated To Staff

Source	Responsibility	Formally Delegated	Responsibility Performed By
State Law	<i>NHED</i> shall evaluate the effectiveness of alternative dispute resolution annually.	No	No one
Rule	The <i>Commissioner</i> or <i>designee</i> shall appoint staff to monitor orders of compliance.	No	No one
	<i>NHED</i> shall assign a mediator. The <i>Office of Legislation and Hearings</i> schedules. ¹	No	Administrator I, Governance Unit
	The <i>Commissioner</i> shall assign investigations.	No	Education
	The <i>Commissioner</i> shall review evidence and gather evidence for reconsideration.	No	Consultant I, Governance Unit

Note:

¹ Rules seemingly delegated authority on behalf of the Commissioner to the *Office of Legislation and Hearings*. However, authority could not be delegated through a definition in rules, and there was no office by that name.

Source: LBA analysis of statute, rules, SJDs, and interviews.

Recommendations:

We recommend NHED management:

- **develop organizational, workforce, succession, and contingency plans aligned with strategy;**
- **assign accountability and oversight responsibilities for implementation;**
- **ensure rules, guides, and other published materials accurately reflect NHED organizational structure and contact information;**
- **request the State Board of Education adopt organizational rules that accurately reflect NHED organizational structure and request other necessary changes to rules;**
- **inventory and evaluate dispute resolution assignments and workloads to determine and implement necessary adjustments;**
- **ensure SJDs accurately and clearly reflect current position responsibilities;**
- **review, formalize, and clearly communicate delegations of authority in writing; and**
- **formally monitor performance and refine plans as needed.**

NHED Response:

We concur in part with the recommendations.

NHED makes the following remarks related to the auditors' observations:

NHED has a shared vision and mission across the organization. This vision and mission reflect the important work of NHED reaching back to work begun in 2005 and consistently transitioned as changes in leadership have occurred over that period.

That initial work in 2005 centered around student learning and the importance of recognizing student learning – competency – as more relevant than time spent learning. This vision is inculcated throughout agency rules. As one example, unlike any other state, schools are required to offer 180 days of instruction, but students advance on proficiency.

In the fall of 2017, the agency contracted with the Council for Chief State School Officers and McKensy & Company, a leading global management consulting firm, to help facilitate organizational design and reorganization. During a two-day off-site meeting, agency leadership gained consensus around its vision and developed an organizational structure to implement that vision most effectively.

This work included the restructuring of, among other functions, the six dispute resolution processes. Through this work, the five processes which focused on conflict resolution were aligned in the Governance Unit (previously titled Office of Legislation and Hearings) reporting to the Commissioner through the Deputy Commissioner. The IEP facilitation process was retained in the BSES as it dealt with conflict avoidance compared to the other processes focused on conflict resolution. NHED will revisit this decision and, as appropriate, recommend change if it believes the initial decision should be changed.

In the fall of 2019, the leadership once again convened an off-site meeting refreshing and validating its commitment to its vision, which included commitments to meet as individual bureaus. In turn, the bureaus would review the vision and mission and collaborate on how the vision and mission related to the work of the individual bureaus. These meetings were facilitated internally by division leadership.

Since 2017, individuals hired from outside of NHED interview with the Commissioner and, as part of that interview process, the vision and mission as a learner-centered organization are shared with prospective employees. This helps them understand the vision and mission of NHED and inculcate the organization with a learner-centric culture.

As a result of this work, leadership believes that staff throughout the agency, even if they cannot articulate the specific words, understand the mission of supporting learners consistent with the agency vision and mission of:

Vision: Live Free and Learn

Mission: NHED advances learner centered opportunities that create bright futures.

In continuing its work toward its vision and mission, the agency, in response to the auditors' observations, will continue the on-going work of making sure there is organizational alignment, that NHED utilizes data informed strategies that incorporate goals and objectives, and that NHED regularly evaluates progress against those goals. In all these systems, NHED will continue to implement appropriate performance measures that are consistent with, for example, statutory timelines for dispute resolution and transparent communication about performance against those measures. NHED will also work to ensure that administrative rules are updated as necessary and conduct a review of staff's SJDs to ensure that they reflect the appropriate responsibilities and delegation of duties.

LBA Comment: We acknowledge NHED had a department-wide mission and vision in Observation No. 2. However, it was not incorporated into plans or operations to facilitate achievement of expected dispute resolution outcomes.

While NHED reports it held meetings regarding organizational structure decisions, NHED did not provide documented plans, assessments or evaluations which confirms our conclusion that management lacked a strategy, plans, and performance measures to demonstrate effectiveness and support changes NHED made to the organizational structure.

Stakeholder Engagement And Collaboration

A stakeholder is any person, group, or organization interested in or knowledgeable about special education dispute resolution. Management is responsible for understanding NHED objectives, related risks, and stakeholder expectations. Stakeholders could affect or be affected by NHED objectives making their engagement a critical part of effective dispute resolution management and necessary for setting expectations. Consistent stakeholder engagement and collaboration also promotes transparency, supports process improvement, and aids in using resources efficiently.

Observation No. 4

Formalize Stakeholder Engagement And Collaboration Processes

Stakeholder engagement and collaboration processes were limited or informal. NHED did not assess responsibilities to determine whether it would benefit from leveraging resources through stakeholder partnerships. State law required NHED hire personnel or contract for services to ensure special education responsibilities were fulfilled, including monitoring, compliance, and support to stakeholders. Some stakeholder organizations independently provided certain related services and activities to the public. Formal processes would have helped NHED consistently and strategically obtain stakeholder feedback, identify needs, and prioritize and allocate resources. Without formal processes, NHED staff did not always fulfill statutory responsibilities, meet stakeholder expectations, or ensure transparency with dispute resolution processes.

Inconsistent Stakeholder Engagement And Collaboration

Stakeholder engagement and collaboration were inconsistent during the audit period. NHED used materials from, or referred parents and LEAs to, stakeholder organizations for additional resources. At times, NHED created working groups consisting of staff and certain stakeholders to provide input on dispute resolution guidance or manuals. One manager also reported periodically communicating with advocates and associations, maintaining a stakeholder list to communicate updates or procedural changes, and holding routine calls with LEA special education administrators. However, we found collaboration and engagement varied among stakeholders which hindered NHED's ability to effectively identify needs and expectations, as described below:

- LEA special education administrators responding to our survey generally reported NHED communication was positive and effective, but some additional comments indicated inconsistent or ineffective collaboration occurred.
- Two stakeholder organizations reported decreases in collaboration, communication, and engagement, one of which specified declines occurred after NHED made changes to its operations in 2017. A third stakeholder organization reported routinely participating in NHED meetings and trainings.
- Although response rates were reportedly low, NHED staff consistently sent feedback questionnaires to participants of four dispute resolution processes. None were sent to participants of the other two processes.
- NHED working groups used for stakeholder input on manuals and guides were organized as needed without connection to an underpinning strategy. Staff acknowledged identifying stakeholders was challenging, and working groups did not always include appropriate representatives to obtain quality feedback and input.
- SAC members reported its relationship with NHED was generally positive but needed improvement. Members suggested more collaboration and that NHED provide necessary information to the SAC so it could effectively carry out its responsibility to advise the Commissioner on unmet special education needs.

Additionally, legislation created the Office of the Advocate for Special Education in July 2022. The new agency was to operate independently of NHED. However, there were certain overlapping duties between the Office of the Advocate for Special Education and NHED. Collaboration would be necessary to ensure overlapping responsibilities and expectations were understood, and resources were allocated efficiently. NHED reported there were no plans to collaborate and formalize expectations between the two agencies.

NHED And Stakeholder Resources Not Evaluated

NHED did not evaluate staff resources and responsibilities or services provided by stakeholder organizations to hire sufficient personnel or contract for services according to State law. Some staff workloads were perceived to be unmanageable and certain responsibilities related to dispute

resolution monitoring, compliance, and support to stakeholders were unfulfilled. At times, staff reported they could not assist parents or LEAs without compromising neutrality.

NHED also did not develop controls to ensure information and services provided by stakeholder organizations aligned with NHED dispute resolution processes and addressed unmet needs. As a result, staff across NHED did not have a consistent understanding of non-NHED dispute resolution resources available to the public. Staff reported concerns about the sufficiency of services and information provided by stakeholder organizations. Some stakeholder organizations provided services in addition to or similar to certain NHED dispute resolution responsibilities and requirements. One stakeholder organization was federally required to carry out related activities such as providing training and information, helping parents with dispute resolution process options and procedural safeguards, and reporting on alternative dispute resolution. NHED management acknowledged developing a formal relationship and improving collaboration with appropriate stakeholder organizations could help address resource issues and provide the public better assistance.

Recommendations:

We recommend NHED management:

- **formalize processes for identifying stakeholders, routinely collaborate and engage with stakeholders, and prioritize needs and expectations;**
- **develop methods to consistently obtain participant feedback from all dispute resolution processes;**
- **evaluate staff resources and stakeholder organizations' services to determine whether it would be beneficial to contract for certain services; and**
- **collaborate with stakeholder organizations to identify unmet stakeholder needs and inconsistencies between services provided to improve transparency and public assistance.**

NHED Response:

We concur with the recommendations.

NHED makes the following remarks related to the auditors' observations:

Auditors have appropriately defined "stakeholders" to mean "any person, group, or organization interested in or knowledgeable about special education dispute resolution." NHED routinely collaborates and engages with stakeholders and will evaluate its processes to determine if additional formalization of those processes is appropriate.

NHED will review the processes for receiving feedback on the varying dispute resolution processes and develop a consistent procedure for obtaining feedback.

NHED surveys all clients at the conclusion of a dispute resolution process—due process complaints, mediation, and neutral conference—to obtain feedback on how well that process is

functioning. NHED has historically viewed IEP facilitation as a pre-cursor to the conflict resolution process. As such, NHED has not surveyed participants in IEP facilitations, however NHED will evaluate the value of implementing feedback on facilitated IEPs.

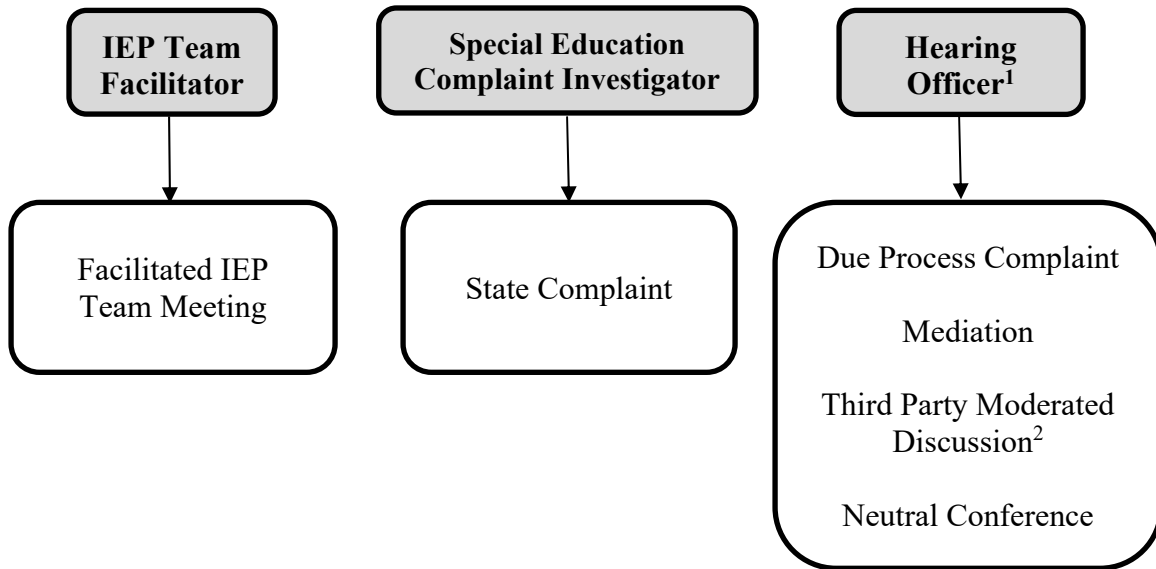
Contract Management

Effective contract management helps agencies fulfill responsibilities and public expectations, support programmatic objectives, and reduce fraud and waste risks. Clear and comprehensive contract terms provide contractors with applicable requirements and expectations. Management was responsible for developing procedures to train, monitor, and evaluate contractor performance to ensure accountability, qualifications were maintained, and expectations were met.

NHED staff managed three types of dispute resolution contracts during the audit period. Figure 8 shows the contract type and corresponding dispute resolution processes.

Figure 8

Contract Type And Corresponding Processes



Notes:

¹. Contract included other non-special education dispute resolution processes not shown here.

². Contract did not specify third party moderated discussions. However, contractors conducted work and billed for this process under the hearing officer contract.

Source: LBA analysis of NHED contracts.

Facilitated IEP team meeting, State complaint, and due process complaint options were only available for special education disputes. Three dispute resolution process options – mediation,

neutral conference, and third party moderated discussion – were available for both non-special education and special education disputes.

- *Facilitators* improved communication among parties during IEP team meetings.
- *Investigators* conducted impartial investigations of State complaints which resulted in a written report with recommendations to the Commissioner.
- *Hearing officers* were also referred to as “mediators,” “neutrals,” or “moderators” and provided different impartial services depending on the process they were assigned. Hearing officers also conducted two additional non-special education dispute resolution processes, which we did not review for effectiveness.

Hearing officer contracts were funded with 35 percent federal funds and 65 percent State general funds. Investigator and facilitator contracts were funded with 100 percent federal funds. Table 5 shows authorized contract amounts, payments made according to invoice date, and payments made according to payment date from SFYs 2020 through 2022. We did not reconcile discrepancies between payments according to invoice date and payments according to payment date.

Table 5

NHED Contractor Payments, SFYs 2020–2022

	Authorized Contract Amounts	Payments By Invoice Date ¹	Payments By Payment Date ²
SFY 2020			
Facilitators	\$ 5,000	\$ 2,380	\$ 2,518
Investigators	\$ 84,000	\$ 46,160	\$ 44,713
Hearing officers ³	\$ 77,500	\$ 30,411	\$ 30,065
Total	\$ 166,500	\$ 78,951	\$ 77,296
SFY 2021			
Facilitators	\$ 5,000	\$ 1,443	\$ 1,443
Investigators	\$ 84,000	\$ 35,679	\$ 35,484
Hearing officers ³	\$ 77,500	\$ 30,232	\$ 43,129
Total	\$ 166,500	\$ 67,354	\$ 80,056
SFY 2022			
Facilitators	\$ 5,000	\$ 3,940	\$ 3,190
Investigators	\$ 60,000	\$ 33,967	\$ 39,935
Hearing officers ³	\$ 77,500	\$ 23,355	\$ 28,035
Total	\$ 142,500	\$ 61,262	\$ 71,160

Notes:

- ¹ Invoices may not have been submitted in the same SFY in which services were provided.
- ² Payments may have not been made in the same SFY in which invoices were submitted or services were provided.
- ³ Includes due process complaints, mediations, neutral conferences, third party moderated discussions, and other hearings, some of which were non-special education.

Source: LBA analysis of vendor contracts and NH FIRST data.

Observation No. 5**Develop And Implement Contract Management Controls**

Special education dispute resolution contract management was ineffective. NHED lacked comprehensive controls. Existing controls were limited and unimplemented, and monitoring was inadequate. NHED did not centralize or standardize contract controls which resulted in inconsistent contract management throughout NHED and contractor noncompliance. Instead, three staff were individually responsible for oversight of each contract associated with the corresponding special education dispute resolution processes they administered.

Incomplete Contract Terms

Contract requirements and scope of services were incomplete. Contract terms should have been clear, detailed expectations for deliverables and training, and included specifically, or by reference, relevant laws, rules, and policies or procedures to ensure contractors were aware of all requirements. Hearing officers were contracted to conduct some of the most complex and different types of work compared to the other two types of contractors. While hearing officer contracts appropriately included a larger scope of work compared to the investigator and facilitator contracts, none had complete contract terms which accurately reflected expectations and requirements. Incomplete contract terms contributed to ineffective contract management and contractor noncompliance.

Facilitator and investigator contract scope of services were minimal and generalized without specifying details of deliverables, training expectations, or relevant regulations or policies. A single requirement was specified that the facilitator conduct up to eight NHED-assigned IEP team meetings each year. Investigator contract requirements were included for written investigation reports and monthly reports but excluded detailed expectations on deliverables.

Hearing officer contracts included a 28-point scope of services outline with a reference to a procedural handbook and expected deliverables. However, it did not include training requirements, relevant regulations, or invoice due dates such as monthly submissions or upon case closure. Additionally, although hearing officers were assigned by NHED to conduct third party moderated discussions, the process was not included in their contracts.

Unfulfilled Contract Requirements

NHED lacked comprehensive controls to ensure contractors fulfilled contract expectations. Policies and procedures did not exist, and other controls were informal or unimplemented. Certain requirements and deliverables were unfulfilled for all three contract types.

IEP Team Facilitator

Staff reported tracking scheduled meetings, documentation received, and meeting requests. However, tracking was not used to ensure contract requirements were fulfilled or implemented for most of the audit period. Some controls that were once in place were no longer managed by NHED. For example, management was unable to locate a NHED copy of a December 2016 manual the facilitator reportedly used for their work. Consequently, IEP team meeting records inconsistently contained documentation demonstrating fulfillment of general responsibilities. The facilitator also scheduled several IEP team meetings without informing NHED, instead of NHED assigning the facilitator to IEP team meetings per the contract. The contractor exceeded the contractual limit of eight facilitated IEP team meetings in two out of three SFYs in the audit period.

Special Education Complaint Investigator

NHED lacked controls to ensure on-site visits occurred when necessary. Although on-site visits were contractually required, staff reported investigations were conducted through remote or

telephone interviews supported with electronic documentation. In-person meetings or visits did not occur; however, an investigator reported making on-site visits to assist with certain investigations. During part of the audit period, one investigator could not fulfill the on-site visit requirement due to living in another state.

Hearing Officer

Contract requirements that also served as procedural controls were unenforced and not fulfilled, including: 1) following the *Hearing Officers' Guide to Administrative Process (Hearing Officers' Guide)*, 2) using NHED checklists to maintain records and conduct prehearings, and 3) filing weekly case reports. Additionally, the purpose of the *Hearing Officers' Guide* contradicted the contract requirement to follow it by stating, “[i]t is simply a presentation of some recommended procedures and sample forms.” NHED staff and one contractor also reported forms and checklists within the *Hearing Officers' Guide* were not required. As a result, invoice submissions were uncontrolled and case records were incomplete and untimely. Instead of submitting weekly reports, case status updates were informal, untimely, and inconsistently prompted by staff on a case-by-case basis.

Regulatory Noncompliance

NHED lacked controls to ensure contractors complied with federal and State special education laws and rules during dispute resolution processes. Other State laws were not incorporated in requirements and enforced, such as records management laws. Rather than proactively reducing noncompliance risk through effective supervision and monitoring, staff reported specific noncompliance was addressed when it was brought to their attention. Inadequate oversight of contractor compliance also risked providing stakeholders inconsistent and subjective dispute resolution services which compromised parental rights.

We could not always determine contractor compliance during the audit period due to: 1) records management issues, 2) a low population of applicable cases, or 3) the amount and complexity of due process hearing requirements. Additionally, 2015 legislation repealed facilitated IEP team meetings from statutory alternative dispute resolution process options. Third party moderated discussions were not appropriately adopted in State law or rules. Therefore, any specific facilitator or moderated discussion requirements were ad hoc rules and could not be enforced for compliance. However, we did identify several areas of contractor noncompliance or indicated noncompliance.

Some State complaint investigation decisions exceeded the 60-day time limit, none of which had extensions. Hearing officers inconsistently complied with requirements related to case record documentation, adjudicative processes, challenges to the sufficiency of due process complaints, extensions, due process hearing recordings, and dispute resolution result submissions. Contractors were not always assigned to cases in accordance with independence or scheduling requirements for investigations, mediations, and neutral conferences. We provided NHED management our detailed review of the regulatory framework in May 2023 which included examples of contractor noncompliance.

Insufficient Contractor Training And Evaluations

NHED lacked controls to ensure contractors received ongoing training and performance evaluations. Ongoing training and performance evaluations would have helped management establish expectations, assess contractor work quality, ensure qualifications were maintained, and address areas for improvement. In practice, ongoing training and performance evaluations were dependent on the contractor type and NHED staff.

One investigator reported receiving more formalized consistent training prior to the audit period, but other contractors reported receiving informal, inconsistent, or no training during the same time period. During the audit period, hearing officer training was not formalized or always mandatory. However, staff reported NHED held several informational meetings, encouraged contractors use nationally available professional development resources for due process hearings, and allowed hearing officers to consult with each other as part of contracted work. Except for one investigator training session in July 2020, investigators and facilitators did not receive ongoing training during the three-year audit period. A statutorily required 2016 independent evaluation of the BSES recommended management ensure investigators specifically received ongoing trainings.

While hearing officers received performance evaluations, the other two types of contractors did not. Lack of ongoing training and performance evaluations contributed to noncompliance with regulatory and contract requirements. Several stakeholders and nine of 23 parents (39.1 percent) responding to our survey also reported dissatisfaction or concerns with contractor compliance, knowledge, or skills.

Recommendations:

We recommend NHED management:

- **develop comprehensive policies and procedures for managing contracts, regularly monitoring contractors for compliance, and enforcing requirements;**
- **incorporate clear, detailed, and complete contract terms including expectations for deliverables, training, and relevant regulatory and procedural requirements;**
- **formalize and implement ongoing training that focuses on maintaining qualifications and areas of improvement; and**
- **implement periodic performance evaluations for all contractors.**

NHED's responses to our recommendations are presented below. NHED additionally provided detailed comments, which are in Appendix B.

NHED Response:

We concur with the recommendations.

The Division of Learner Support has a current policy in place for contracting that the BSES follows as all contracting and invoicing related to special education dispute resolution procedures

runs through BSES. BSES will continue to follow that policy as this policy was not previously implemented for these contracts.

Facilitators are provided an opportunity to take advantage of a national training each year. BSES will consider formalizing training requirements for facilitators.

NHED will assess the need to develop additional internal controls and update existing policies and procedures relating to contract development, training, and standardization for drafting of contract terms, contract management, oversight review of deliverables under contracts, formalized training of contractors, and implementation of formal performance evaluations for contractors to ensure consistency across the agency.

The Governance Unit strives to hold consistent meetings with the Hearing Officers to identify and discuss issues which have arisen during hearings and relevant statutory changes. All Hearing Officers are offered and encouraged to attend the Center for Appropriate Dispute Resolution in Special Education (CADRE) training courses. NHED will continue to offer consistent training opportunities to the Hearing Officers and assess whether to include training requirements as part of the contract.

NHED will continue to provide State complaint Investigators appropriate training opportunities and will assess whether that training requirement should be part of the contract.

NHED has used the third-party discussion lead by moderator since 2013 on the advice of the Attorney General's Office after meeting with stakeholders. Emails from the Attorney General's office documenting this guidance were provided to the auditors. NHED is seeking legislation to add elements of the third-party discussion lead by moderator into its neutral conferencing process to preserve the beneficial attributes of third-party discussion lead by moderators.

NHED has worked with stakeholders for approximately the past two years to update its Parent Guide and will work to update the Hearing Officer Guide to ensure that it is consistent with the administrative rules.

NHED has sought assistance and training for the development of Request for Proposals from the Attorney General's office and anticipates NHED staff may receive additional training to permit the improvement of internal processes during the fourth quarter of FY 2024.

Sufficient And Strategic Contracting

Effective management of an agency's workforce, including recruiting and retaining contractors, is essential to achieving intended results. Successful contracting approaches operate strategically by establishing goals and objectives to support a broader agency mission. Periodic assessments are necessary to inform timely contract designs and amendments. Special education dispute resolution contracting processes should have received periodic assessment based on review of regulatory requirements, NHED and stakeholder needs, contractor performance, and expected vacancies.

Six of eight dispute resolution processes offered through NHED-contracted services were available for special education disputes. Management was responsible for ensuring there were enough qualified contractors to impartially conduct special education dispute resolution processes.

Observation No. 6

Implement Strategic Contracting Processes And Assessments

NHED lacked processes to strategically assess its contracting needs. Management did not ensure NHED consistently contracted with enough qualified individuals to fulfill dispute resolution regulatory and contract requirements. Although no formal assessments were undertaken, staff reported difficulties in recruiting enough individuals for all six special education dispute resolution processes. As a result, noncompliance with scheduling requirements occurred, some contractors did not conduct certain processes for which they were contracted, and some processes were inconsistently available to the public.

Issues With The Number Of Contracted Facilitators

The number of facilitated IEP team meetings conducted exceeded contract limitations in two out of three SFYs. The facilitator was inconsistently available for requested IEP team meetings. NHED facilitated IEP team meeting records were unreliable, and the total number of meetings during the audit period was unknown. Based on available records, we identified 60 requests for a facilitator from SFYs 2020 through 2022, 44 (73.3 percent) of which we could determine a meeting occurred. Staff reported three to five facilitators were preferred, but NHED contracted with one individual since December 2016. Although the facilitator was limited to up to eight meetings each year of the contract, we found ten facilitated meetings occurred in SFY 2020, six in SFY 2021, and 28 in SFY 2022. We separately identified two additional meetings in SFY 2020 and one in SFY 2022 which were reported on contractor invoices without supporting documentation.

The facilitator implemented personal scheduling restrictions, was unavailable at other times due to accepting requests without NHED staff's knowledge, and did not accept requests from certain LEAs to avoid potential conflicts of interest. Additionally, parties dissatisfied with facilitator services did not have the option to request another facilitator. We identified six requests (10.0 percent) that resulted in delays because the facilitator was unavailable. There were four instances wherein parties expressed concerns about the facilitator and services provided. Facilitated IEP team meetings were described as a process to help communication between parties, usually before seeking another dispute resolution process option. Without enough facilitators, parties sometimes had to decide whether an IEP team meeting could occur without a facilitator or choose to spend more time and resources to file a request for one of the other dispute resolution process options. If facilitated IEP team meetings were ordered as part of an agreement or corrective action from other dispute resolution process results, there was also a risk they could not be fully implemented. In May 2023, management reported a second facilitator had been contracted.

Issues With The Number Of Contracted Investigators

The number of contracted State complaint investigators negatively impacted scheduling, and one investigator could not always fulfill a statutory requirement included in their contract. According

to NHED records, there were 114 State complaints filed from SFYs 2020 through 2022, 88 (77.2 percent) of which a contractor conducted an investigation. Staff reported NHED could contract with up to five individuals, and that was the preferred number of investigators. Although NHED contracted with four investigators in SFY 2020, there were three investigators for most of the audit period. State complaint investigations were assigned nearly evenly among these three investigators. However, scheduling issues reportedly happened occasionally when multiple State complaints were filed, but no investigators were available. Additionally, one of the three investigators could not consistently fulfill the requirement to conduct on-site visits when necessary due to living in another state for part of the audit period.

Regardless of scheduling issues, the 60-day federal time limit for an investigation and final decision had to be met. We reviewed a judgmental sample of 39 State complaints, 26 (66.7 percent) of which resulted in a report to the Commissioner and final decision. Sixteen of 26 decisions (61.5 percent) were issued on day 60, and five (19.2 percent) were issued past the 60-day time limit. It was unclear which cases were affected by scheduling issues. Staff did not document dates investigators were assigned State complaint investigations.

Contracting and retaining enough investigators continued to be an issue. In June 2022, management reported NHED was in the process of contracting a fourth investigator. In February 2023, management also reported an investigator indicated they would not submit a bid for contract renewal.

Issues With The Number Of Contracted Hearing Officers

The number of contracted hearing officers was not enough for NHED to comply with certain scheduling requirements. Not all hearing officers conducted each contractually required dispute resolution process which further restricted scheduling options. Contracting and retaining enough hearing officers was a longstanding issue. Hearing officers could be any individual knowledgeable about special education laws and due process hearing requirements. In practice, NHED only contracted with attorneys to conduct due process hearings. The number of qualified attorneys in the State was reportedly low and it was difficult to attract their services. Additionally, hearing officers became responsible for more dispute resolution processes over time without formal assessments to support contracting decisions. Neutral conferences were added to their responsibilities in 1994, mediations were added in 1996, and third party moderated discussions were added in 2013. Mediations were previously conducted by volunteers, but the process reportedly became too complicated for volunteers to effectively manage.

Based on available records, hearing officers were assigned to 223 dispute resolution cases from SFYs 2020 through 2022, of which 169 (75.8 percent) were for special education issues. However, the total number of assignments during the audit period was unknown. Mediation as part of a due process hearing was not required, and assignments were not included in NHED data. We separately identified and included 11 assignments to mediation as part of due process hearings. We could not determine the number of additional applicable assignments.

Staff reported hearing officers were assigned to dispute resolution cases on a rotational basis. Staff also described five or six hearing officers as sufficient including when caseloads increased. During

SFYs 2020 through 2021, NHED contracted with five hearing officers. A sixth hearing officer was contracted in SFY 2022. However, hearing officers were inconsistently available for assignments as noted below:

- One hearing officer requested to not conduct due process and other types of hearings.
- A second hearing officer had limited availability for part of the audit period due to personal circumstances.
- A third hearing officer was in training during the audit period and was not assigned cases.

Additionally, assigning cases on a rotational basis was not always compliant with statutory requirements. Hearing officers, or mediators, had to be assigned to mediations on a regional basis. For neutral conferences, NHED had to provide parties resumes of five hearing officers, or neutrals, and parties agreed on a neutral for appointment. Staff acknowledged there were not enough hearing officers to comply with mediation scheduling requirements. Neutral conference scheduling requirements were unimplemented. Regardless, distribution of both special education and non-special education dispute resolutions indicated assignments were not always equal or based on rotation as shown in Table 6.

Hearing officers B and D were assigned over half of the total cases with 131 out of 223 (58.7 percent) assigned between the two. The same two hearing officers received over half of due process hearing assignments with 89 out of 114 (78.1 percent) assigned between the two. Hearing officer C did not conduct any due process hearings, while Hearing officer E did not conduct any mediations. There were not enough neutral conference or third party moderated discussion cases during the audit period to conclude on assignment distribution for these processes. Noncompliance with scheduling requirements and inconsistent availability for contracted dispute resolution processes hindered public transparency and risked the appearance of bias.

Table 6

**Hearing Officer Assignments For Special Education
And Non-special Education Dispute Resolutions,
SFYs 2020–2022**

Hearing Officer Assigned	Special Education Dispute Resolution Assignments					Non-Special Education Dispute Resolution Assignments			Total
	Due Process Hearing	Mediation As Part Of Due Process	Mediation	Neutral Conference	Third Party Moderated Discussion	Mediation	Third Party Moderated Discussion	Other ¹	
A	6	2	13	1	1	0	1	4	28
B	44	1	4	1	1	0	0	4	55
C	0	6	12	1	2	0	1	18	40
D	45	2	7	0	1	1	1	19	76
E	19	0	0	0	0	0	0	5	24
Total	114	11	36	3	5	1	3	50	223

Notes:

¹ Category includes two dispute resolution processes only available for non-special education issues.

Source: LBA analysis of unaudited NHED data.

Contracting issues continued after the audit period which further emphasized the importance of strategically assessing requirements, NHED and stakeholder needs, contractor performance, and vacancies. Staff reported no cases were going to be assigned to the hearing officer who was in training during the audit period. Staff did not provide a reason for lack of case assignments when we inquired, but one stakeholder had specific concerns about the hearing officer's qualifications. Instead of ending the contract due to the inability to fulfill contract requirements, NHED planned to have the hearing officer serve the remainder of the contract through SFY 2023 without any assignments. Additionally, the services of a long-serving hearing officer became unavailable after the audit period due to circumstances for which NHED could have prepared to timely address if it had conducted periodic assessments and developed related plans.

Recommendations:

We recommend NHED management:

- **establish procedures to periodically conduct a comprehensive and strategic assessment of contract and regulatory requirements, NHED and stakeholder needs, contractor performance, and expected vacancies;**
- **incorporate contracting goals and objectives into a strategic plan;**
- **determine the appropriate number of contractors to impartially assign dispute resolution processes in compliance with scheduling requirements;**
- **evaluate and timely implement changes to existing contracts to accurately reflect each contractor's required scope of work;**
- **determine whether contract redesigns are necessary to effectively acquire contracted services and achieve goals and objectives; and**
- **ensure contractors fulfill all requirements for which they are contracted.**

NHED Response:

We concur in part with the recommendations.

NHED makes the following remarks related to the auditors' observations:

BSES conducts Requests for Proposals seeking qualified individuals as hearing officers and special education complaint investigators on a regular basis. A tight job market makes the recruitment of qualified individuals difficult and it would be unsatisfactory to our constituents to provide them with unqualified support services. For example, NHED budgets and posts for five (5) special education complaint investigators but was only able to secure and fill three (3) positions. NHED will continue to seek additional avenues of recruitment to include mediation firms or other qualified resources to continue to meet the need of the organization.

While mediators do not have to be attorneys, it is important to note that NHED previously utilized non-legal mediators but has since made a policy decision to use attorneys. This decision overcame the problem of school district attorneys treating mediators poorly and gave the process more "weight" and effectiveness.

Facilitated IEP team meeting records are available. The NHED will evaluate compiling the data and its reporting needs and requirements. The language regarding the number of meetings is a difference of interpretation between NHED and the auditors. The BSES has historically called all of the meetings in a case for facilitation as one meeting per the Individuals with Disabilities Act of 2004 (IDEA). The IEP meeting is one “meeting” over several days. The BSES will review the contracts with IEP facilitators for accuracy in documenting the number of meetings.

BSES and the Governance Unit will review the existing contracts to ensure they accurately reflect the scope of work required. BSES reviews contracts each time they are set to end to ensure that the terms of the contract meet the on-going business needs. The number of appropriate contractors is determined for each area of dispute resolution.

The Division of Learner Support has a current policy in place for contracting that BSES follows as all contracting and invoicing related to special education dispute resolution procedures runs through the BSES. BSES will continue to follow that policy. This policy was not previously implemented for these contracts.

With the implementation of the procedure for contracts from the Division of Learner Support, the invoicing requirements will clearly outline if the contract requirements have been fulfilled. The BSES currently has a policy in place by which invoices for special education hearings which are submitted late are not paid. The Governance Unit will modify hearing officer contracts to require invoices be submitted to NHED within 90 days of service to be eligible for payment and look to see if it can create similar policies for other hearing officer activities which are submitted late.

Impartiality And Independence

Federal laws and regulations required impartiality and independence for State complaint, due process complaint, and mediation processes. Management was responsible for identifying related risks and establishing procedures to ensure impartiality and independence during all special education dispute resolution processes NHED offered. State *Code of Ethics* laws provided minimum standards to help NHED increase transparency and avoid related risks, such as conflicts of interest. Developing supplemental guidance to address issues specific to dispute resolution processes would have helped reduce conflict of interest risks for staff, contractors, and participating stakeholders.

Observation No. 7

Improve Controls Over Conflicts Of Interest

NHED lacked adequate controls over potential and actual conflicts of interests to ensure staff and contractors fully understood, implemented, and followed impartiality and independence requirements. NHED laws and rules reflected broad federal requirements with some additional impartiality requirements specific to: 1) hearing officers during a due process hearing, and 2) scheduling contractors for neutral conferences and mediations. There were limited disclosure requirements and no formal procedures for staff, contractors, and parties to disputes to disclose

potential conflicts of interest. NHED did not develop optional supplemental guidance for State *Code of Ethics* laws.

We reviewed special education dispute resolution regulatory requirements. While our work was focused on NHED controls and not designed to find every issue, we found gaps between federal and State impartiality requirements, some requirements were informally established resulting in ad hoc rules, and staff inconsistently identified and addressed conflicts of interest during dispute resolution processes. We provided the detailed results of our review to NHED management in May 2023.

Lack Of Comprehensive Impartiality And Independence Requirements

NHED lacked comprehensive impartiality and independence requirements. Federal requirements were limited. Specifically, hearing officers and mediators could not: 1) be an NHED employee, 2) be an employee of the LEA involved with education of the child, or 3) have a personal or professional interest which compromised their objectivity. Mediators also had to be appointed on a random, rotational, or other impartial basis. State complaints required independence during investigations and final decisions.

State law and rule expanded on federal requirements for certain dispute resolution processes but not others. State law required mediators be assigned on a regional basis and neutral conference contractors had to be appointed after NHED provided five resumes for parties to agree on a neutral individual. Rule established eligibility requirements for serving as an impartial hearing officer and circumstances for recusal during due process hearings. Rule also prohibited an individual who conducted a mediation or neutral conference to be appointed as a hearing officer on the same issue if it progressed to a due process hearing. There were no additional impartiality State requirements for State complaints, and none were established for third party moderated discussions or facilitated IEP team meetings.

Other informal requirements were established in guides resulting in ad hoc rules or conflicts with State law or rule. For example, guides included an exception for hearing officers to recuse themselves from a due process hearing, while rules did not provide for exceptions in the same circumstances. Additionally, NHED contracted individuals to serve as hearing officers for multiple dispute resolution processes. However, hearing officer impartiality requirements were not clearly applicable to all processes for which these individuals were contracted. Requirements were adopted in a section of rules specific to due process hearings which stated “[t]he commissioner... shall enter into contracts with... individuals... to serve as impartial *due process hearing officers at administrative due process hearings.*” [emphasis added] Hearing officer impartiality requirements were also incorporated under the due process hearing section of guides but not other sections.

Lack Of Procedures For Identifying And Disclosing Conflicts Of Interest

NHED did not develop and implement procedures to identify and disclose conflicts of interest and ensure impartiality. Neither did it develop controls to consistently implement limited impartiality

requirements it did establish. Examples of unimplemented procedures and lack of controls are described below:

- NHED did not establish procedures to identify and disclose conflicts of interest for five of six dispute resolution processes. Neutral conferences had some disclosure requirements in State law, but other disclosure requirements were informal and limited to the contractor having to disclose a conflict after being assigned a case. None of the requirements for these processes specified how to disclose a conflict, addressed how *parties* should disclose conflicts they may have during the dispute, or included instructions on documenting the disclosure in the case record. Staff reported if disclosures were received, they were generally communicated via telephone or email.
- NHED did not develop controls to implement impartiality requirements established in law and rule for individuals conducting due process hearings, mediations, and neutral conferences. For example, management did not require attestations that no conflicts existed prior to contractors accepting and conducting each process.
- NHED established an incomplete ad hoc process in guides to disclose conflicts of interest during due process hearings. It was limited to a party's disclosure of a conflict with a hearing officer. It also conflicted with rules for adjudicative proceedings, which required a motion instead of a request. The process itself also inherently posed a potential conflict of interest. Parties who had a conflict of interest with their hearing officer had to disclose their conflict to that same hearing officer. That hearing officer was also then responsible for deciding whether to recuse themselves from the case. There was no NHED review to objectively determine whether a conflict existed.
- NHED did not implement statutorily required mediation and neutral conference scheduling requirements which were intended to help ensure transparency and prevent bias. Instead, scheduling reportedly occurred on a rotational basis among all contractors, but some contractors did not conduct certain dispute resolution processes as required. This compromised transparency and created a potential appearance of bias.
- NHED was federally required to develop procedures to ensure independent investigations and decisions occurred, but procedures were limited and did not sufficiently reduce impartiality and independence risks.

Identified Conflicts Of Interest Inconsistently Addressed

Conflicts of interest were inconsistently identified by staff, addressed, and documented during the audit period. Three respondents to our parent survey claimed conflicts of interest occurred with either the contractor or other individuals, but stated they did not know how to report the conflicts of interest. Follow up responses to our survey question indicated these instances were not addressed. Other stakeholders reported concerns regarding unaddressed conflict of interest risks such as the same hearing officer being assigned one type of dispute resolution process over others, or parties receiving the same contractor for multiple dispute resolution processes which could lead to bias over time.

NHED did not sufficiently address conflicts of interest for facilitated IEP team meetings. NHED contracted with one facilitator during the audit period. The facilitator reported they would not conduct meetings for a specific LEA due to a potential conflict of interest. Staff were unaware of any conflicts or potential conflicts of interest but reported if one was identified, parties would not be able to receive requested facilitated IEP team services since no other contractors were available. While we did not identify explicit conflict of interest issues in the 60 facilitated IEP team meeting requests we reviewed, parties expressed concerns about using the contracted facilitator for their meeting in two separate cases.

In our review of a judgmental sample of 39 State complaints, staff noted on an internal tracking spreadsheet that an investigator was reassigned to one case due to a conflict of interest. However, the reason was not provided, and there was no indication or documentation of a conflict in the case record. We also identified three additional State complaints containing conflicts of interest. An investigator reported a fourth which was not part of our review. Staff and the investigator did not identify these as a conflict of interest when they occurred. These four instances are described below:

- In the first case, a former staff member responsible for administering State complaints initiated a complaint against an LEA on behalf of NHED. The NHED Commissioner was responsible for making the final decision on the complaint based on an independent investigator report. Although federal regulations allowed organizations to file a State complaint, it also required NHED develop procedures and take appropriate actions to ensure an independent investigation and decision occurred. However, NHED did not develop adequate procedures and take appropriate actions. The same staff member who filed the State complaint continued to administer the complaint, an independent investigator was not assigned, and an investigation did not occur. The Commissioner subsequently issued an untimely decision without a required investigation. Required corrective actions were also not sufficiently verified.

When we inquired with NHED about this case, current staff speculated the State complaint was initiated to address systemic issues from multiple complaints. Staff also acknowledged there were no corresponding procedures. However, NHED was required to monitor the special education program, including LEAs for compliance. Well-designed monitoring controls could have helped NHED avoid conflict of interest risks and use appropriate resources efficiently and effectively to identify and address systemic issues.

- In the second and third cases, an LEA response to a State complaint included information noting an NHED staff member formerly responsible for administering complaints assisted in an investigation of a prior complaint against the LEA. State law allowed the Commissioner to assign staff for conducting independent investigations. However, NHED only used independent contractors to conduct investigations, and there were no procedures to appoint independent staff. Also in the LEA response, the same staff member reportedly provided inaccurate information to the LEA which adversely affected a student's services. This inaccurate information directly contributed to LEA noncompliance and resulted in the eventual State complaint against the LEA. The staff member continued to administer this complaint and a subsequent complaint against the same LEA.

- In the fourth case, an investigator reported an NHED staff member assisted with an on-site investigation. The staff member who assisted was the same individual responsible for administering the State complaint.

Recommendations:

We recommend NHED management:

- **develop supplemental ethics guidance to identify and address risks specific to dispute resolution;**
- **address gaps between federal and State impartiality requirements and develop procedures to ensure requirements are consistently implemented;**
- **comply with State complaint independence and investigation requirements, adopt required procedures, and ensure procedures effectively address independence;**
- **develop procedures for parties and contractors to disclose conflicts of interests;**
- **seek necessary changes to laws and request rules from the State Board of Education;**
- **update guides to reflect impartiality requirements and disclosure processes adopted in laws and rules;**
- **develop comprehensive policies and procedures for staff to identify, review, address, and document reported conflicts of interest; and**
- **provide conflict of interest training to staff and contractors.**

NHED Response:

We concur with the recommendations.

NHED makes the following remarks related to the auditors' observations:

NHED has consistently addressed conflicts of interest with IEP facilitators, special education complaint investigators, and hearing officers verbally and has handled specific conflicts of interest on a case-by-case basis. However, NHED will take this opportunity to create written policies which address conflicts of interest and incorporate a provision about conflicts of interest into the contracts with IEP facilitators, State complaint investigators, and hearing officers to ensure consistency on this issue.

Special Education Dispute Resolution Costs

NHED, LEAs, parents, and other stakeholders incurred both monetary and non-monetary costs to administer or use special education dispute resolution processes. NHED was federally required to implement and offer three dispute resolution process options – State complaints, due process complaints, and mediation. Federal laws and regulations were designed to alleviate some associated costs with these three processes. For example, certain payments or fees were prohibited, information for free or low-cost services had to be provided in specific circumstances, administrative and procedural burden on LEAs was restricted, and local resolution when possible

was encouraged. NHED could offer additional dispute resolution process options after obtaining statutory authority and adopting required rules and procedures.

NHED was responsible for ensuring its rules and procedures were at the minimum level necessary to implement laws without needlessly increasing the impact on stakeholders. A fiscal impact statement was statutorily required for each proposed rule. The statement had to include a narrative of the intended action with supporting data as to the costs and benefits to the State, the public, and political subdivisions. The Commissioner also had to issue an annual report on all special education rules exceeding minimum requirements in State or federal laws, including for dispute resolution processes.

A comprehensive understanding of costs was essential to develop and administer dispute resolution processes efficiently and effectively, comply with related requirements, and demonstrate achievement of outcomes. Conducting cost benefit analyses would have specifically helped NHED demonstrate effectiveness and returns on resources invested by LEAs, parents, and other stakeholders. Adequate controls could have helped ensure continued effectiveness and reduced the risk of fraud and waste.

Observation No. 8

Obtain An Understanding Of Costs And Develop Financial Controls

Controls over administration of dispute resolution processes and contractor payments were inadequate which resulted in waste and increased fraud risk. NHED lacked procedures to accurately track staff and contractor special education dispute resolution costs. NHED did not fully understand costs stakeholders incurred to use dispute resolution processes. Management could not determine effectiveness and make necessary improvements without adequate controls and a comprehensive understanding of associated costs.

Unidentified NHED Costs

NHED did not track costs to determine the amount of time managers and staff specifically spent on special education dispute resolution versus unrelated responsibilities and activities. Its organizational structure may have further complicated NHED's ability to accurately determine costs and efficiently distribute resources. Managers and staff with special education dispute resolution responsibilities were located in offices, units, and divisions across NHED. During the audit period, four of five managers and staff had other non-special education dispute resolution responsibilities, and the fifth eventually acquired other unrelated responsibilities. Salaries were also paid from multiple NH FIRST accounting units dispersed throughout NHED's special education and non-special education budgets. This further complicated management's ability to determine staff costs specific to special education dispute resolution.

Additionally, some salaries and activities were funded from a mix of sources. Federal funds could be used for eligible special education program costs, with portions reserved for specific activities. Special education federal funds could not be used for ineligible costs or activities. Some dispute resolution process options were also available for non-special education issues, which were not part of the special education program. We identified two mediation cases and three third party

moderated discussion cases which were miscategorized or not clearly categorized as a special education or non-special education dispute in NHED data. NHED wasted dispute resolution resources in one of these third party moderated discussion cases. Specifically, the issue was not related to special education *and* not applicable to the purpose of providing third party moderated discussion. Without sufficient cost tracking and controls, NHED could not ensure State and federal funds were consistently expended appropriately.

Inadequate Contractor Payment Controls

Contractor payment controls were inadequate and insufficient to reduce fraud risk. NHED lacked procedures to ensure an accurate accounting of contractor work, invoices, and payments. We reviewed contractor payment data provided by NHED for SFYs 2020 through 2022. We found NHED data was incomplete after comparing it with information we retrieved from NH FIRST, the State's financial management system.

Although invoices received secondary approval prior to payment, other controls intended to facilitate effective oversight of payments were not comprehensive and not always implemented. Contractors inconsistently submitted invoices on a timely basis. Staff inconsistently reconciled invoices with sufficient evidence verifying work was performed. For example, hearing officers and facilitators filled out a template describing work performed with a corresponding invoice. However, NHED did not consistently establish or enforce time limits for submitting invoices, and no other documentation was specifically required at the time of submission to support the information provided on the template and invoice. Records management issues also hindered NHED's ability to verify the accuracy of invoice submissions.

During our file review of dispute resolution cases, we identified seven contractor payment transactions for further review. Of these transactions:

- one appeared to be appropriate, but was not documented in the primary database staff used to track corresponding dispute resolution processes;
- two were supported by documentation in case records;
- two lacked supporting documentation in case records, and invoiced work could not be confirmed; and
- two conflicted with documentation in case records indicating invoiced work did *not* occur, resulting in potentially fraudulent payments.

In June 2023, we brought the two potentially fraudulent payments to NHED's attention and recommended management further investigate contractor payments to determine the scope of the issue and take certain actions as necessary.

Conversely, one contractor did not submit any invoices from November 2019 through June 2022. We were unable to determine the exact amount of unpaid work due to lack of documentation and limited scope of our file review. Based on available case assignment information, the contractor conducted a minimum of \$12,325 in unpaid work over the three-year audit period. NHED could not ensure expenditures were recorded in the proper SFY without corresponding controls.

Stakeholder Costs Not Objectively Evaluated

NHED did not develop procedures to objectively evaluate the extent of stakeholder costs. Nineteen of 25 parents (76.0 percent) responding to our survey reported costs associated with all six special education dispute resolution processes. Some parents also provided testimony to legislators expressing concerns about resource barriers during dispute resolution processes. Reported costs ranged from two dollars to over \$100,000. Costs were associated with copies, evaluations or assessments, research, travel, lost wages, advocates, and attorneys. Stakeholders expressed concerns that NHED did not fully understand the costs and barriers parents experienced. We found stakeholder concerns were valid.

NHED did not systematically evaluate its dispute resolution information, procedures, and other resources to identify issues, make improvements, and minimize related costs to parents. Staff sent questionnaires to parties who participated in four of six dispute resolution processes, but the questionnaires: 1) did not include a cost component, 2) received a low response rate, and 3) were not developed and sent to participants of the other two processes. Other stakeholder engagement and collaboration practices were informal or inconsistent during the audit period. NHED lacked corresponding controls to ensure quality information could be obtained, and that relevant input was addressed or incorporated into processes as appropriate.

NHED staff and published materials stated there was no cost to use most dispute resolution processes. Federal guidance described due process hearings as more formal, costly, time-consuming, and adversarial, and some staff acknowledged LEAs and parents could incur costs hiring attorneys, using specialists, or preparing for due process hearings. Staff generally understood navigating laws, rules, and procedures could be challenging. However, staff did not specify or provide analyses detailing cost impact of its dispute resolution rules and procedures on the public and LEAs.

NHED did not effectively address known barriers for users of dispute resolution processes. It was reportedly common practice for LEAs to use attorneys for dispute resolution processes, which made some parents feel at a disadvantage without the assistance of an attorney or advocate. While federal laws and rules regulated the use of attorneys during due process hearings, NHED did not objectively evaluate the use of attorneys during other processes and determine whether implementing changes to regulate usage would be beneficial.

Other parents felt overwhelmed by dispute resolution processes and unable to independently use available options successfully without hiring attorneys or advocates. NHED developed materials to assist the public with dispute resolution processes as well as referred individuals to stakeholder organizations. However, staff were inconsistently aware and confident about the quality of available resources to help minimize costs. Stakeholders also reported NHED information was not sufficiently clear or accessible, and not all parents could afford attorneys or advocates.

Lack Of Cost-benefit Analyses And Fiscal Noncompliance

NHED did not conduct cost-benefit analyses which potentially contributed to waste. NHED did not annually report on effectiveness of certain dispute resolution processes as required in State

law, nor could it demonstrate effectiveness without objective analyses. Management did not ensure all dispute resolution processes NHED developed were properly adopted into laws, rules, and contracts resulting in noncompliance with State appropriations laws.

Mediation, neutral conferences, third party moderated discussions, and facilitated IEP team meetings were intended to be alternative options to a more costly due process hearing and formal State complaint. NHED was responsible for establishing procedures and implementing mediation in accordance with federal requirements, while the other three processes were developed by NHED over time. Additional dispute resolution process options were developed in part to address stakeholder concerns regarding costs and “encourage informal resolution of differences of opinion.” Guidance from the Center for Appropriate Dispute Resolution in Special Education emphasized the importance of conducting cost-benefit analyses when developing additional dispute resolution process options. However, NHED lacked procedures to objectively analyze and determine effectiveness. Specifically, it did not:

- identify costs prior to implementing the processes,
- establish measurable goals and objectives,
- determine tangible benefits such as decreased attorney fees or decreased due process hearing complaints,
- determine other benefits such as improved relationships,
- compare dispute resolution costs versus costs prior to implementing processes, and
- assess benefits and demonstrate effectiveness of processes.

Additionally, third party moderated discussion and facilitated IEP team meeting procedures were not adopted in law and rules as required. Third party moderated discussions were also not incorporated into contracts resulting in hearing officers conducting work that was not contracted for *or* statutorily authorized since 2013. State appropriations law prohibited the use of public funds for any other purpose than for which they were appropriated. In June 2023, we brought this issue to NHED’s attention and recommended management immediately discontinue offering third party moderated discussion until procedures were properly adopted and contracts amended.

Recommendations:

We recommend NHED management:

- **develop and implement procedures to effectively determine costs associated with special education dispute resolution processes for staff, contractors, and stakeholders;**
- **review NHED costs and funding sources to ensure salaries and activities are funded and expended appropriately;**
- **consistently implement existing controls intended to facilitate effective contract oversight;**
- **establish and enforce time limits and documentation requirements for contractors to submit invoices;**
- **develop processes to ensure staff consistently reconcile invoices and record contractor payments in the appropriate SFY;**

- **conduct an assessment to identify potential fraud risks and periodically conduct reviews of contractor payments;**
- **determine NHED's obligation to recoup costs for identified improper contractor payments and liability for repayment of inappropriate expenditures;**
- **conduct cost benefit analyses on dispute resolution processes to determine and report on effectiveness; and**
- **objectively evaluate and develop plans to strategically minimize costs and barriers to stakeholders.**

NHED Response:

We concur in part with the recommendations.

NHED makes the following remarks related to the auditor's observations:

NHED dispute resolution processes are available without costs to stakeholders. Stakeholders who utilize third party services to support them in dispute resolution or facilitated IEP processes can result in significant costs to a stakeholder, which is borne by the stakeholder.

NHED currently has procedures in place to effectively determine the costs associated with special education dispute resolution processes for staff, contractors, and stakeholders that are paid through federal IDEA funds. However, in discussions with the auditors, they would like to see a robust, comprehensive system by which all costs associated with the dispute resolution processes can be accurately documented and subsequently obtained. The creation and implementation of such a system is a strategic idea that management will consider, but may include substantive obstacles, not the least of which would be participants sharing costs with NHED. NHED will review procedures in place for costs and funding sources to ensure salaries and activities are funded and expended appropriately.

BSES currently has procedures in place by which invoices for special education hearings which are submitted late are not paid. The Governance Unit will modify hearing officer contracts to require invoices be submitted to NHED within 90 days of service to be eligible for payment and look to see if it can create similar policies for other hearing officer activities which are submitted late. The Division of Learner Support has had bureau training on procedures and policies of invoicing and will continue to provide these trainings on a continual and consistent basis.

NHED follows the Department of Administrative Services contracting process. NHED will ensure that the Governance Unit also use State and agency contracting and invoicing procedures. A new practice has been implemented requiring the Governance Unit to approve invoices verifying the delivery of services prior to authorization of payment by BSES.

NHED will assess the need to develop additional internal controls and update existing policies and procedures relating to the following: contract development, identification of fraud risk, improper payments, ability to recoup costs for any identified improper contract payments, and contractor payments in the appropriate SFY.

**STATE OF NEW HAMPSHIRE
SPECIAL EDUCATION DISPUTE RESOLUTION PROCESSES**

REGULATORY FRAMEWORK

Federal law and regulations framed the special education program and established procedural safeguards, including special education dispute resolution processes. States had to adopt and maintain procedures guaranteeing procedural safeguards for children with disabilities and their parents, but had flexibility to design special education dispute resolution processes.

State *Special Education* law imposed additional dispute resolution processes and requirements. The Department of Education (NHED) was responsible for implementing and administering dispute resolution processes according to federal requirements and State law. Rules should have provided transparency and specified what the public needed to do to use those processes. Additionally, the Commissioner was to adopt practices to improve NHED’s efficiency and the provision of services. Documenting practices through policies and procedures, and ensuring those policies and procedures were appropriately communicated and understood, were necessary for facilitating effective implementation of requirements.

NHED management was responsible for ensuring both NHED and local educational agencies (LEA) met special education dispute resolution requirements. Well-designed, consistently implemented, routinely monitored, and refined requirements could have helped NHED ensure compliance and safeguard parental rights.

Observation No. 9

Implement And Monitor Federally Required Rules And Processes

NHED lacked controls over federal special education procedural safeguard requirements. It neither ensured rules completely and accurately adopted federal requirements, nor consistently followed or enforced federal requirements. Issues resulted in increasingly complex dispute resolution processes and the imposition of ad hoc rules, or unenforceable informal requirements. This compromised parental rights. Without effective controls, State eligibility for federal assistance was also potentially at risk.

We reviewed special education dispute resolution requirements but did not review every federal law or regulation. While our work was focused on NHED controls and not designed to find every issue, we identified many examples of noncompliance with federal requirements. We provided the detailed results of our review to NHED management in May 2023.

Federal Requirements Inconsistently Adopted In State Rules

NHED lacked controls to ensure rules consistently and timely adopted federal procedural safeguard requirements, including some requirements dating to 2006. Federal law and regulations imposed requirements for procedural safeguard notices, State complaints, due process complaints, mediations, and monitoring and enforcement. Our requirements review identified 58 federal requirements not adopted in rules. The federal government published a voluntary self-assessment in 2015, encouraging states to review State complaint, due process complaint, and mediation rules and processes. The 2015 federal self-assessment included many of the requirements we identified.

For example, rules lacked certain processes to develop legally binding agreements for resolution meetings and mediations. Rules also lacked:

- a process for parents to request a copy of the procedural safeguard notice;
- time limits to hold expedited due process hearings;
- certain processes to determine the sufficiency of, or amend, due process hearing complaints;
- processes to address issues subject to, or decided by, a due process hearing submitted as part of a State complaint;
- processes to provide individuals the opportunity to submit additional information about allegations as part of a State complaint;
- a process for electronic signatures on State complaints and due process complaints; and
- time limits to correct LEA noncompliance after it was identified.

Neither did rules clearly implement a requirement to allow State complaints to be filed against a public agency allegedly violating federal law. NHED inappropriately dismissed a State complaint filed against multiple entities and required it be refiled as separate complaints, without corresponding rules.

Federal Requirements Incompletely Or Inaccurately Adopted In Rules

NHED lacked controls to ensure adopted rules completely and accurately implemented all federal requirements. Our requirements review identified 23 incomplete rules based on federal requirements and 13 rules that conflicted with federal requirements. As a result, both adopted and ad hoc rules were complex and unclear. This issue was reported by stakeholders and also identified by both our *Developmental Services System Performance Audit Report April 1991 (1991 Performance Audit)* and *Department of Education Special Education Catastrophic Aid Program Performance Audit Report July 1999 (1999 Performance Audit)*. The 2015 federal self-assessment included implementation guidance on many issues we identified, including the following examples:

- Federal regulations imposed a 60-day time limit to issue a written decision on a State complaint, with extensions allowed in certain situations, including exceptional circumstances. Federal guidance reiterated the importance of requirements on receipt and extensions. However, rules on receipt and extensions simply referred to federal regulations, without specifying how NHED implemented federal requirements. Notably, rules did not address how receipt was to be determined, how to request an extension, or what constituted exceptional circumstances.

In one State complaint case we reviewed, NHED staff stopped investigating a complaint so the parties could engage in mediation. Rules did not establish a process to place investigations on hold for mediation, and there was no documentation of an extension. The request for mediation was not received until a week *after* the State complaint decision was due. The complaint was eventually settled through mediation and closed 213 days after a final State complaint decision should have been issued.

- Federal regulations required mediation sessions be at a convenient location for both parties, which federal guidance reiterated. Rules specified that NHED determined the location, without mentioning how it ensured the location was convenient. Ad hoc rules provided mediation sessions were held at NHED offices or a convenient location, if requested. Rules did not adopt a process for parties to make such a request.

Additionally, rules:

- prohibited exceptions to a 45-day time limit for expedited due process hearings, but the time limit was 20 school days, and federal regulations allowed specific exceptions;
- prohibited extensions *and* also established an extension process for expedited hearing time limits, while federal requirements did not allow for – and federal guidance specifically prohibited – extensions; and
- did not establish a process for parents to open due process hearings to the public despite being a federally-established parental right, an omission brought to NHED’s attention during calendar year 2021 legislative testimony.

Federal Requirements Inconsistently Implemented, Followed, Or Enforced

NHED lacked controls to ensure it and LEAs fully and timely implemented and followed federal requirements, including those intended to protect parental rights. NHED was responsible for meeting federal requirements. Federal law also required states to monitor and enforce LEAs’ compliance with federal requirements. To be eligible for federal grant funding, federal law required LEAs to demonstrate children with disabilities and their parents were provided all rights and procedural safeguards.

For example, LEAs were required to convene a resolution meeting with parents in certain situations to discuss due process complaints. Resolution meetings were intended to provide an opportunity for informal resolution prior to a due process hearing. Meetings were required, unless waived or parties agreed to use mediation instead. Federal guidance emphasized states must have procedures in place to enforce this requirement within a 15-day time limit. However, rules only reiterated the federal requirement to convene the resolution meeting and did not establish waiver processes. NHED guidance inconsistently reflected federal requirements, incorrectly stating in one publication an LEA had to offer – not convene – a resolution meeting. We identified 10 cases in which a resolution meeting was required through our review of a judgmental sample of due process hearing complaints. There was no documentation of a meeting, waiver, or mediation in seven cases (70.0 percent). Two of 13 parents responding to our survey (15.4 percent) also reported they were not offered a resolution meeting when it was required.

NHED did not consistently implement, follow, or enforce additional federal requirements and rules. Noncompliance affected monitoring, enforcement, oversight, and transparency. NHED did not:

- consistently document, monitor, or enforce implementation of due process hearing orders, and parties filed multiple State complaints due to non-implementation of orders;

- consistently follow State complaint requirements, and dismissed a general complaint that was not specific to a child, which was allowed under federal regulations, and required it be refiled with child-specific information;
- address each allegation made in a State complaint as required, while also not investigating or addressing additional noncompliance identified during investigations;
- consistently enforce procedural safeguard notice distribution requirements, as some special education administrators responding to our survey reported not providing the notice when required, and many parents reported not receiving it;
- enforce a requirement that LEAs inform parents of free or low-cost legal services when a due process complaint was filed, and LEAs inconsistently complied with this requirement according to special education administrators responding to our survey; and
- monitor or enforce compliance with all federal time limits, reportedly due in part to an inadequate database management system.

Recommendations:

We recommend NHED management:

- **conduct periodic assessments to ensure rules accurately reflect and interpret all federal dispute resolution requirements;**
- **request necessary changes to rules from the State Board of Education; and**
- **develop comprehensive procedures to implement, monitor, and enforce federal requirements.**

NHED Response:

We concur in part with the recommendations.

NHED makes the following remarks related to the auditor's observations:

The Governance Unit has processes to help ensure that it complies with federal and State timelines and will assess where these procedures can be developed so that they are more comprehensive and formal.

NHED agrees with the LBA's recommendation that the administrative rules should be periodically reviewed to ensure that NHED's rules accurately reflect and interpret both State and federal requirements for dispute resolution. However, it is important to note that neither NHED nor the Commissioner of NHED has independent rulemaking authority and NHED's rules require adoption and cooperation by the State Board of Education. NHED will review and determine whether it should make recommendations for revisions to the administrative rules to the State Board of Education.

Observation No. 10

Improve, Implement, And Monitor State Dispute Resolution Requirements

NHED lacked adequate controls over special education dispute resolution requirements in State law and rule, and did not ensure staff were aware of, implemented, understood, and consistently followed requirements. Without effective controls:

- State law and rule did not always reflect NHED operations or requirements imposed on the public;
- NHED did not always implement State law or rules;
- management did not identify or address certain longstanding issues with State requirements; and
- staff often relied upon informal practices to implement State law and rules, which contributed to ad hoc rulemaking, or unenforceable informal requirements.

We reviewed special education dispute resolution requirements but did not review every State law or rule. While our work was focused on NHED controls and not designed to find every issue, we identified numerous issues with requirements and examples of noncompliance. We provided the detailed results of our review to NHED management in May 2023.

Inadequately Designed State Requirements

NHED lacked controls to ensure statute and rules were effectively designed, comprehensive, and clear, contributing to the development of 472 ad hoc requirements. Management did not routinely or comprehensively assess the regulatory environment, including systemically or timely reviewing changes to statute, rules, and NHED operations. Ongoing assessment could have allowed management to understand and respond timely to changes affecting dispute resolution processes or address identified issues with requirements. However, statute and rules were inconsistent with one another and at times did not reflect federal requirements, while some NHED-instituted practices conflicted with requirements.

Contradictory, Complex, And Incomplete Requirements

NHED lacked controls to identify and request necessary updates to statute and rules, despite known issues with contradictory, complex, and incomplete requirements. NHED lacked statutory authority, and rules did not contain necessary procedures, for two dispute resolution processes. Third party moderated discussions began in 2013, at which time Department of Justice staff informally indicated to NHED that neutral conference rules provided authority. Statute authorized facilitated individualized education program (IEP) meetings from 2008 to 2015, when inaccurate stakeholder testimony resulted in its repeal from State law. NHED offered both processes through June 2023, although staff recognized the need for authority and to have rules establishing requirements.

Additionally, some statutory requirements:

- conflicted with other statutory requirements,
- did not fully reflect federal requirements,
- were inefficient and limited NHED's monitoring ability,
- were not reflected in rules, and
- conflicted with rules.

Management also did not ensure rules reflected all requirements and NHED practices. Specifically, rules:

- did not contain complete requirements for the other four dispute resolution processes,
- did not contain complete requirements on conflicts of interest,
- did not contain complete requirements to monitor and enforce compliance, and
- contained internally conflicting requirements for two of the four processes.

Need For Rules Not Demonstrated, And Excess Requirements Rarely Reported

Requirements were not always demonstrated to be essential and transparent. Substantial changes to dispute resolution rules occurred in March 2017 without relevant analysis. Federal law required the State to identify rules not federally required, and statute required an annual report of all special education rules that exceeded minimum federal or State requirements. NHED's November 2020 report, the most recent available, identified three dispute resolution rules that were in excess of requirements. Our requirements review identified over 100 rules that exceeded minimum federal and statutory requirements, an issue also identified by our *1999 Performance Audit*. While it may have been necessary for some rules to exceed minimum requirements, NHED could not demonstrate it had conducted such an analysis. Management reportedly could not locate a review requested by the Governor in January 2017 to demonstrate all rules had a clear need, were the minimum necessary, and were not unduly burdensome.

Unaddressed Stakeholder Concerns And Recommendations

NHED lacked processes to proactively and comprehensively identify and respond to stakeholder concerns and recommendations affecting its regulatory environment. Our requirements review found rules were complex and unclear, an issue reported by stakeholders, and also identified by both our *1991 Performance Audit* and *1999 Performance Audit*. NHED reportedly had no plans to address recommendations in a relevant report released in November 2021 by the Committee to Study Special Education Dispute Resolution Options and the Burden of Proof in Due Process Hearings. NHED also lacked procedures to address recommendations from the State Advisory Committee on the Education of Children/Students with Disabilities (SAC). Additionally, one manager was unaware of recommendations from a statutorily required 2016 independent evaluation of the Bureau of Special Education Support (BSES).

State Requirements Inconsistently Implemented, Followed, Or Enforced

NHED lacked controls to ensure it fully and timely implemented and followed statute and rules, including requirements intended to monitor dispute resolution processes, enforce orders, and protect parental rights. NHED was responsible for meeting, and helping school districts meet, federal and statutory requirements. Our requirements review found NHED did not always comply with statute and rules, an issue also identified by our *1999 Performance Audit*. Neither did NHED always enforce compliance with rules. Without ongoing assessment and a comprehensive understanding of the regulatory environment, noncompliance contributed to inconsistency and unnecessary complexity.

For example, since 1990, State law required LEAs to notify NHED when a parent had rejected an IEP, educational placement, identification, or evaluation. The notification began a 30-day window for NHED to inform parents of their alternative dispute resolution options and allow for voluntary use of those processes. However, rules did not address the requirement or structure a notification process. NHED did not implement the notification process, and staff were reportedly unaware of the requirement. Most special education administrators responding to our survey reported their LEA did not provide written notification to NHED, and not all LEA staff were aware of the requirement.

NHED did not consistently or clearly implement, follow, or enforce additional statutory requirements and rules. Noncompliance affected monitoring and enforcement, as NHED did not:

- monitor due process hearing, neutral conference, and mediation processes, although management recognized a monitoring process was needed;
- conduct on-site monitoring for remediation of State complaints or noncompliance with dispute resolution requirements;
- monitor orders of compliance issued from due process hearings and State complaints, although management reported a process was needed;
- report on whether LEAs took corrective action to comply with federal and State law;
- enforce orders of compliance from due process hearings and State complaints and certain elements of agreements, although management recognized a process was needed; or
- enforce a requirement that LEAs provide a written report within 90 days of a due process hearing decision describing implementation of the decision.

Noncompliance affected recordkeeping, oversight, and transparency, as NHED did not:

- implement procedures to ensure compliance with dispute resolution process time limits;
- notify local school boards of findings and corrective actions;
- notify the SAC of all findings, remedies, and sanctions issued in orders or decisions resulting from State complaints, due process hearings, and monitoring activities;
- enforce a requirement that contractors for neutral conferences provide a written opinion to the parties within 48 hours; or
- enforce requirements that contractors for neutral conferences and mediations report results to NHED.

Noncompliance also affected process consistency and efficiency, as NHED did not follow or enforce certain requirements related to parental rights and procedural dispute resolution requirements.

Recommendations:

We recommend NHED management:

- **develop comprehensive procedures for improving, monitoring, and implementing State dispute resolution requirements;**
- **identify all relevant dispute resolution requirements and ensure statute consistently reflects federal and State requirements and rules interpret statute;**
- **routinely and fully assess its regulatory environment, including identifying external evaluation results, third-party evaluation results, and stakeholder recommendations and concerns;**
- **determine how best to simplify and clarify State requirements;**
- **determine whether to seek changes to procedural requirements in statute, and if so, seek their repeal and request the State Board of Education adopt procedural requirements in rules;**
- **request necessary changes to statute and rules;**
- **ensure all requirements in excess are annually identified and published;**
- **ensure statute and rules are fully implemented; and**
- **monitor and enforce NHED compliance with statute and rules.**

Additionally, we recommend NHED management discontinue offering dispute resolution processes without authority. If NHED objectively determines these dispute resolution processes should be available to the public, we recommend management seek statutory authority and request the State Board of Education adopt required rules.

NHED Response:

We concur in part with the recommendations.

NHED makes the following remarks related to the auditors' observations:

BSES created an improved monitoring process and will determine where this process can be amended to include the monitoring of the dispute resolution process to ensure that the decisions are implemented. Additionally, NHED is exploring the possibility of whether NHSEIS can generate an automated report for this notification to better facilitate the management of the notification.

NHED has used the third-party discussion lead by moderator since 2013 on the advice of the Attorney General's office (emails from the AG were provided to the auditors). NHED is currently seeking legislation to add elements of the third-party discussion lead by moderator into its neutral conferencing process to preserve the beneficial attributes of third-party discussion lead by moderators.

NHED consistently works with the legislature to request changes which are necessary in statute and then implements such legislative changes in the subsequent rules. NHED tracks pending legislation and has frequent, internal meetings to address pending legislative issues. The Governance Unit has processes to help ensure that it complies with federal and State timelines and will assess where these procedures can be developed so that they are more comprehensive and formal. NHED staff who oversee rulemaking is notified of any pending laws which require rulemaking so that rulemaking efforts can begin in a prompt and effective manner.

NHED continuously and consistently works with stakeholders to address their concerns as it relates to the NHED's Dispute Resolution Processes and related statutes and rules. However, it is important to note that neither NHED nor the Commissioner of NHED has independent rulemaking authority and the agency's rules require adoption and cooperation by the State Board of Education. NHED will continue review and determine whether it should make recommendations for revisions to the administrative rules to the State Board of Education.

Administrative Rule Requirements

The *Administrative Procedure Act* required agencies adopt rules to: 1) implement, interpret, or make specific a statute enforced or administered by an agency; and 2) prescribe or interpret an agency policy, procedure, or practice requirement binding on persons outside the agency, including members of the general public. The State Board of Education was responsible for adopting rules to implement State special education laws, including dispute resolution requirements and procedures. State law required the NHED Commissioner establish procedures to assist school administrative units with addressing problems and resolving disputes.

The *Administrative Procedure Act* promoted transparency and helped ensure public rights were protected. It mandated any requirement imposed on the public be adopted under the administrative rules process. When properly adopted, rules created clear procedures for the public to follow, provided NHED with the legal authority to enforce requirements not specified in State law, and facilitated equal and consistent treatment of the public. Internal NHED policies and procedures should have further specified how staff implemented and applied the requirements set by federal and State policy makers.

All State agencies were required to follow the *New Hampshire Drafting And Procedure Manual For Administrative Rules*. In determining whether an agency procedure should be in rule, it stated agencies had to pay special attention to whether the procedure affected private rights or changed the substance of another rule binding on the public. Without clear and comprehensive rules, there was a risk of ambiguity and inconsistencies across requirements. Substantial changes to relevant special education dispute resolution rules last occurred in 2017.

Observation No. 11

Comply With The *Administrative Procedure Act*

NHED lacked controls to ensure consistent compliance with the *Administrative Procedure Act*. We reviewed special education dispute resolution requirements. While our work was not designed

to identify every issue, we identified 505 issues related to rules adopted for special education dispute resolution requirements. Rules were: 1) internally inconsistent; 2) inconsistent with federal laws or regulations, State laws, or NHED practices; or 3) ambiguous or not comprehensive. Issues resulted in the imposition of ad hoc rules, which were unenforceable informal requirements. We provided the detailed results of our review to NHED management in May 2023.

Unnecessarily Complex Rules

Special education dispute resolution rules were not comprehensive, and it was not always clear which rules applied to each special education dispute resolution process, creating unnecessary complexity and burden on the public. We first identified complexity of certain dispute resolution rules as an issue in our *1991 Performance Audit*. Stakeholders continued to identify it as an issue throughout the audit period.

Inadequate Citations To External Requirements

Some rules contained citations to federal or other external requirements without adopting the procedural language from external requirements or including necessary additional procedures. For example, requirements in rule for filing a State complaint stated, “[a] complaint shall be filed according to the provisions of 34 CFR 300.153.” As a result, stakeholders had to use multiple resources to identify requirements in laws and rules. Citations to external requirements were allowed in rules but had to be specific to ensure: 1) an accurate legal framework, and 2) that the intended requirement to be implemented was clearly communicated. However, we identified 227 issues related to special education dispute resolution citations in rule. Citations were missing, inaccurate, or not always specific. Other requirements cited by rules were not always independently clear or comprehensive for NHED to implement without establishing additional procedures. This contributed to ad hoc rulemaking. Additionally, stakeholders reported a supplemental guide, which was developed to publish all requirements in one location, was incomplete.

Applicability Of Rules Unclear

Rules adopted special education dispute resolution requirements under both Ed 200, *Rules of Practice and Procedure* and Ed 1100, *Standards for the Education of Students with Disabilities*, without clear guidance on which rules applied and when. Practice and procedure rules had to be in an agency’s 200 section of rules unless they were appropriately adopted under the specific chapter or section of rules for an individual program. NHED staff reported applicable special education dispute resolution rules were adopted under section Ed 1100 requirements. However:

- Ed 200 practice and procedure rules contained a single exemption for special education hearings, and the exemption was inaccurately cited;
- no other exemptions permitted Ed 1100 rules to supersede Ed 200 rules;
- Ed 1100 rules did not contain all dispute resolution processes, leaving certain processes uncontrolled without the use of Ed 200 rules; and
- Ed 200 and Ed 1100 rules conflicted in other areas.

NHED also referenced Ed 200 as the appropriate section for special education mediations and neutral conferences in a February 2021 federally required performance report. This was contrary to staff's reported understanding of applicable rules.

Due process hearings – as an adjudicative process – had an additional layer of complexity. We found hearing officers inconsistently complied with adjudicative processes, and some parents reported hiring an attorney at their own expense to assist with navigating requirements. Ed 1100 rules included some, but not all, adjudicative requirements. Where Ed 1100 rules did not provide guidance, the Department of Justice's *Model Rules of Practice and Procedure* (Jus 800) applied. However, NHED did not clearly communicate the applicability of Jus 800 rules or enforce requirements.

Ad Hoc Rulemaking And Requirements

Rules did not adopt all processes, practices, and procedures affecting the public. As a result, NHED did not have the authority to offer certain dispute resolution processes or require the public, including LEAs and other stakeholders, to follow practices or informal procedures. Ad hoc rulemaking and establishing ad hoc requirements compromised public transparency and due process, and contributed to ineffective management of dispute resolution processes.

Rules had to be specific, clear, and detailed enough to be understood and implemented without additional interpretation. Forms had to be adopted in rules either by reference or inclusion of the specific requirements of the forms in rules. Unclear or ambiguous rules that required interpretation or set requirements without proper adoption in rules resulted in ad hoc rulemaking. Ad hoc rules were invalid and could not be enforced. We identified 472 ad hoc rules in our review of requirements, and 80 ad hoc rules in a separate review of 23 NHED guides, manuals, and other published materials, some of which overlapped.

Processes Or Practices Not In Rule

None of the requirements to request a neutral conference were in rule. Instead, the ad hoc request process was established in a guide. Some ad hoc State complaint processes in other guides or templates included: 1) time limits for parties to provide State complaint investigators with documentation, 2) withdrawal of a complaint following agreement to a proposed resolution, and 3) NHED revising or opening a new complaint at its discretion.

NHED was not authorized to offer two other dispute resolution processes – third party moderated discussion and facilitated IEP team meetings. Third party moderated discussions were not in rule due to the Department of Justice informally indicating to NHED that neutral conference rules provided the authority. Alternative dispute resolution rules previously included facilitated IEP team meetings until 2015, when inaccurate stakeholder testimony resulted in facilitated IEP team meetings being repealed from statutory alternative dispute resolution options. In May 2023, management indicated it would review both processes, then determine whether to seek authority and request rules be adopted or discontinue offering these processes.

Other NHED practices conflicted with procedures in rule and should not have occurred without amending rules to include those practices. The following are some examples we identified during our review of dispute resolution cases:

- Final decisions had to be issued for due process hearings. However, NHED provided the option, and established informal procedures in guides, for hearing officers to issue a summary judgment instead of a decision. Statutory authority for summary judgments was unclear, and rules did not provide for a summary judgment process.
- Rules included some filing procedures for due process complaints and the option for parties to use mediation as part of due process. There were no procedures for combining due process hearing filings or to convert a due process case to mediation independently of the due process hearing. However, NHED practices conflicted with established procedures in two instances. In the first, staff combined an LEA's two separately filed due process hearing complaints into one, resulting in one decision being issued for two cases. In the second, staff converted a due process complaint to a mediation case instead of requiring a motion to withdraw and new request filing for mediation, or continuing mediation as part of due process.
- Rules reflected federal regulations for which an expedited due process hearing would be made available in limited circumstances. However, staff and hearing officers reportedly accommodated requests for "emergency" due process hearings to hold proceedings earlier than scheduled. There were no provisions in rule for emergency due process hearings.

Form Requirements Not In Rule

NHED did not adopt forms by reference or specify all form requirements in rule. Forms should have included the information necessary to file requests and complaints without placing unnecessary burden on the public. Federal regulations required agencies to develop model forms for parties to file due process complaints and State complaints, but prohibited agencies from requiring parties *use* the forms. However, specific requirements imposed on parties filing those complaints still had to be adopted in rule. We identified 79 ad hoc requirements included in model forms.

All other NHED-developed forms could be required once properly adopted in rule. NHED developed 13 additional forms to facilitate compliance, consistency, and effective administration of dispute resolution processes, but none were adopted in rule. As a result, information submitted to NHED as part of, or in addition to, requests and complaints was inconsistent, and did not always comply with the limited requirements established in statute or rule.

Recommendations:

We recommend NHED management:

- **develop controls to ensure consistent compliance with the *Administrative Procedure Act*;**

- **conduct periodic assessments of laws, rules, guidance, and practices to identify ad hoc rules and inconsistencies;**
- **reconcile Ed 200, Ed 1100, and Jus 800 rule issues and clearly communicate applicability to staff and stakeholders;**
- **review form requirements to ensure only information necessary to administer dispute resolution processes are included; and**
- **request necessary rule changes from the State Board of Education, including form requirements.**

NHED Response:

We concur with the recommendations.

NHED makes the following remarks related to the auditors' observations:

NHED agrees with the LBAs recommendation that the administrative rules should be periodically reviewed to ensure that the NHED's rules accurately reflect and interpret both State and federal requirement for dispute resolution and that all rules governing the adjudicatory processes should be consistent. NHED staff who oversee rulemaking are notified of any pending laws which require rulemaking so that rulemaking efforts can begin in a prompt and effective manner. However, it is important to note that neither NHED nor the Commissioner of NHED has independent rulemaking authority and the NHED's rules require adoption and cooperation by the State Board of Education. Regardless, NHED will continue to review and determine whether it should make recommendations for revisions to the administrative rules to the State Board of Education.

Documenting Policies And Procedures

Controlling activities through established policies and procedures is a core component to an effective internal control system. Management was responsible for policy and procedure development, documentation, and implementation. Federal regulations required public hearings for any policies and procedures created or amended under Part B of the *Individuals with Disabilities Education Act (IDEA)* which included special education dispute resolution rights and responsibilities.

Comprehensive and consistently followed policies and procedures contribute to transparent and objective decision-making. Documentation also helps communicate organizational knowledge amongst staff and reduced the risk of knowledge loss due to staff turnover.

Observation No. 12

Develop Policies And Procedures

NHED lacked formal special education dispute resolution policies and procedures for training, monitoring, and administering processes. Management relied heavily on institutional knowledge of staff to carry out responsibilities. Some staff reported receiving insufficient informal on-the-job

training and at times sought out individuals with institutional knowledge to clarify implementation of requirements. While some NHED directives were communicated as needed through memorandums, other informal policies and procedures were incorporated inconsistently in guides or undocumented entirely.

Lack of policies and procedures negatively impacted operations. Affected areas of special education dispute resolution operations included the following:

- NHED experienced institutional knowledge loss during the audit period. It continued to be a risk for a key position responsible for administering four of six dispute resolution processes.
- NHED did not assess where standardized procedures could benefit all dispute resolution processes, resulting in inconsistently controlled processes and inefficiencies.
- Monitoring of laws, rules, and staff responsibilities did not occur resulting in noncompliance, inconsistent application of requirements, ad hoc rulemaking, and unfulfilled staff responsibilities.
- Public information was insufficiently communicated, conflicted with requirements at times, and created unnecessary complexity for stakeholders. Required public hearings also did not occur for applicable policies and procedures informally established in guides.
- Records management issues were prevalent which impacted the auditability of certain requirements and some case records altogether. These issues contributed to unreliable NHED data.
- Contractors were ineffectively or inconsistently managed resulting in noncompliance with laws and rules and untimely or unmet contract deliverables.
- Conflicts or potential conflicts of interest were inconsistently identified and addressed.
- Monetary and non-monetary costs associated with dispute resolution processes for staff and stakeholders were not comprehensive, accurately tracked, and fully understood.

After the audit period, NHED staff acknowledged the need for formal policies and procedures and reported the documentation process had begun.

Recommendations:

We recommend NHED management:

- **develop comprehensive policies and procedures with sufficient detail to ensure efficient and effective implementation of administrative operations based on review of laws, rules, and supplemental job descriptions (SJD);**

- **evaluate current informal policies, procedures, and practices to ensure consistent and compliant processes are adopted in formal policies and procedures;**
- **determine inconsistencies in managing dispute resolution processes and identify areas which would benefit from establishing controls applicable to all dispute resolution processes;**
- **ensure applicable policies and procedures receive required public hearings;**
- **develop formal communication processes in policy to ensure directives and changes to policies or procedures are effectively issued and retained;**
- **incorporate a periodic review process and delegate responsibility for ensuring controls remain relevant and effective; and**
- **implement policies and procedures consistently and objectively.**

NHED Response:

We concur with the recommendations.

NHED makes the following remarks related to the auditors' observations:

Staff turnover is an inherent part of State government. The positions within the Governance Unit often have areas of redundancy and overlap which help preserve operational efficiency and position and job knowledge. The positions within the Governance Unit are designed to work collaboratively with inherent overlap. This was a purposeful design to ensure that all members of the Unit have a natural understanding of each position. NHED will revisit this decision and, as appropriate, recommend change if it believes the initial decision should be changed. NHED also recognizes formal and comprehensive policies and procedures are necessary to improve operations.

The Governance Unit and BSES have processes for the Dispute Resolution and Constituent Complaint processes, but it will assess where procedures can be developed so that they are more comprehensive and formal. As such, the Governance Unit and BSES are in the process of creating an internal Dispute Resolution and Constituent Complaint Policy and Procedural manual that sets forth the roles and responsibilities of the Dispute Resolution positions. This manual will help ensure consistent and compliant processes and ensure that directives and changes to policies and procedures are effectively issued and retained. The manual will be reviewed and updated on a consistent basis. In creating this policy and procedure manual, NHED will take the opportunity to review SJDs and class specifications to ensure all required roles and responsibilities are adequately covered and addressed. All NHED SJDs include "other duties as assigned" to help facilitate a purposeful, dynamic, and responsive organization.

NHED consistently conducts annual reviews of staff and the Hearing Officers which helps to hold managers and staff accountable for their performance and achievement of assigned responsibilities. NHED currently has checklists for the Hearing Officers and it will work to ensure the materials are used consistently. NHED will look to implement similar policies and procedures for the investigators and facilitators.

NHED continuously and consistently works with stakeholders to address their concerns related to NHED's dispute resolution processes and will continue to engage relevant stakeholders as the Governance Unit works to improve its processes. The Governance Unit and BSES worked collaboratively with stakeholders to create an updated Parents Guide to help clarify the process for parents.

Communicating Procedural Requirements

Providing readily available, clear, and understandable information for special education dispute resolution options and procedures to the public promotes transparency, early engagement in processes, and contributes to achieving agency objectives. Federal law specifically required the procedural safeguards notice be “written in an easily and understandable manner.” Management was responsible for using appropriate tools to effectively communicate needed information based on the audience, type of information, and cost. Management was also responsible for developing formal processes to consistently identify risks, expectations, and requirements to incorporate into information. Useful information could only be maintained through periodic evaluations assessing its effectiveness.

Observation No. 13

Improve NHED Website, Guides, And Manuals

NHED lacked adequate controls to ensure NHED-published resources were easily accessible, understandable, and contained accurate information. NHED posted special education dispute resolution information to its website. Information was either directly posted or contained in guides or manuals. However, special education dispute resolution process information was not in one easily retrievable location. We found relevant dispute resolution process information located across nine different webpages and 13 documents. There were issues with each source of information identified, which contributed to difficulties with understanding dispute resolution processes.

NHED did not have strategies, plans, or procedures to comprehensively address issues with information and materials published to the website. Management and staff reported changes to the website, guides, and manuals were reactive or prompted by stakeholder input. At times, NHED organized working groups consisting of staff and certain stakeholders to provide input. Some publications were created by external stakeholder organizations. Management and staff reported all website information, guides, and manuals received internal review before being posted. However, NHED processes during the audit period did not include review of existing materials to ensure information was consistent across publications and the website; accurately reflected laws, rules, and NHED practices; and was up-to-date. Neither did processes include holding federally required public hearings for any policies and procedures created or amended for compliance with Part B of *IDEA*, which included special education dispute resolution rights and responsibilities.

Stakeholders reported NHED-published resources were difficult to understand, unclear, overwhelming, and it was hard to find specific information. We reviewed website information guides, and manuals available during the audit period. Two guides, which were updated or in the

process of updates, and a third guide that was being created to add to existing information were not part of the review. We identified 339 issues including:

- inconsistencies between NHED-published information and laws or rules,
- informal guidance that was an ad hoc rule and could not be enforced,
- conflicting information across resources,
- missing and unclear guidance which affected consistent implementation of requirements,
- outdated information such as broken web links or references to former NHED offices and practices, and
- single source guidance wherein information was limited to one place making it difficult to locate and access.

NHED also did not ensure the procedural safeguards notice it produced, or other notices LEAs produced, complied with federal requirements. Stakeholders reported procedural safeguard notices were not easily understandable and contained inaccurate information. We identified similar issues in our review of NHED's notice related to unclear, inconsistent, or incomplete requirements. In May 2023, staff reported the procedural safeguards notice was one of the documents undergoing review with stakeholder input.

Recommendations:

We recommend NHED management:

- **develop a plan with measurable goals and objectives to comprehensively address website, guide, and manual issues;**
- **develop processes to monitor and enforce LEA compliance with procedural safeguard notice content requirements;**
- **ensure procedural documents receive required public hearings to obtain public input; and**
- **document procedures, and incorporate relevant plans into a strategy, for conducting periodic reviews to ensure NHED's website, guides, and manuals effectively communicate accurate information.**

NHED Response:

We concur in part with the recommendations.

NHED makes the following remarks related to the auditors' observations:

As noted in the audit, NHED does have documents and resources on its website available to the public. NHED continues to work to make this information easier to understand and readily accessible to the public through its website. NHED will continue its practice of continually assessing where these documents and resources can be improved upon so that they are more comprehensive and formal.

NHED continuously and consistently works with stakeholders to address their concerns and to improve access to information as it relates to NHED's Dispute Resolution Processes. The Governance Unit and BSES worked collaboratively with stakeholders to create an updated Parents Guide, to help clarify the process for parents. By way of example, NHED updated its procedural safeguards document in November of 2023.

Training And Educating Stakeholders

Training and education are essential for implementing effective special education dispute resolution processes and achieving local resolution when possible. Training and education should include various methods of communication, LEA professional development, coordinated research and distribution of information, monitoring of the dispute resolution processes, and technical assistance. NHED management was responsible for establishing standards, developing clear guidance, and providing technical assistance opportunities to stakeholders.

Passive technical assistance activities could include developing publicly available resources such as guides, manuals, and memorandums. More active or strategic activities would include proactive approaches incorporating targeted distribution of information and resources to stakeholders in efforts to facilitate: 1) effective implementation of relevant policies and procedures, 2) establishing a well-informed public, and 3) achieving LEA compliance.

Observation No. 14

Provide Stakeholder Training And Education

NHED did not provide proactive special education dispute resolution training and education to parents, LEAs, or other stakeholders. Management relied on NHED and non-NHED resources to have information and guidance available to the public. NHED resources included procedures outlined in statute and rule, documents and posted information located across agency webpages, and institutional knowledge among staff and management throughout NHED. Non-NHED resources included information or services offered by stakeholder organizations such as the Disability Rights Center, Parent Information Center, Center for Appropriate Dispute Resolution in Special Education, and other legal support agencies. However, there were issues with both types of resources, and neither was independently sufficient to meet public needs.

Noncompliance With Requirements And Unmet Needs

NHED lacked strategies, plans, goals, policies, and procedures to proactively ensure it met requirements in federal and State laws and rules to address stakeholder needs related to dispute resolution training and education. NHED was responsible for:

- ensuring parents and educators had the necessary tools to improve educational outcomes for children with disabilities;
- communicating federal and State regulatory and policy changes to LEAs;
- encouraging development of local dispute resolution options; and

- identifying trends, issues, and unmet needs to provide assistance to stakeholders and help ensure LEA regulatory compliance.

Additionally, the SAC was a federally required advisory panel responsible for providing special education policy guidance. Duties included advising the Commissioner about special education issues and NHED regarding unmet educational needs throughout the State, and promoting communication and cooperation among special education participants. However, the SAC was unable to effectively identify issues and provide stakeholder training and education recommendations to the Commissioner. Instead, NHED management relied on passive technical assistance activities and reactively addressed issues.

Trends, Issues, And Unmet Needs Not Identified

Although SAC members reported dispute resolution training and education would benefit stakeholders, the SAC did not provide formal recommendations to the Commissioner. The SAC was reportedly ineffective due to quorum issues and untimely member appointments, which resulted in its restructuring during the audit period. Neither did NHED provide the SAC with all federally and statutorily required information which could have helped the SAC effectively identify unmet stakeholder needs for training and education when membership was stable.

Additionally, there was no central intake and tracking process to manage informal complaints, questions, concerns, or special education dispute resolution processes. Inquiries were instead addressed by staff and management throughout NHED on a case-by-case basis. NHED management was unable to target training and education to stakeholders or ensure stakeholder organizations identified and addressed parent and LEA training and education needs.

NHED Resource Issues

NHED resources contained outdated, inconsistent, or conflicting information. Parents, LEAs, and other stakeholders also reported difficulty in finding and understanding necessary information from NHED resources. Parents responding to our survey indicated a need for training and education stating they did not know their dispute resolution process options, legal information, or how to execute actions such as filing a motion. Eleven of 25 parents (44.0 percent) reported having to hire an attorney, and 15 (60.0 percent) hired an advocate to assist with dispute resolution. The highest reported cost for legal services was over \$100,000, and nine of 15 parents (60.0 percent) reported advocate costs of \$1,500 or more.

Inconsistent LEA And Stakeholder Organization Training And Education

LEA and stakeholder organization training and education were inconsistent. Twenty out of 25 special education administrator survey respondents (80.0 percent) reported NHED did not provide special education dispute resolution training during the audit period, while another five (20.0 percent) did not know if it was provided. Certain special education administrators also commented NHED cancelled important calls with school districts, school districts needed guidance and training, changes were not effectively communicated, and overall helpful interactions were inconsistent. While one stakeholder organization reported receiving periodic NHED trainings and

participating in stakeholder meetings, it did not specify if special education dispute resolution processes were part of those trainings or meetings. Three other stakeholder organizations did not report receiving dispute resolution training and education. Although NHED referred the public to stakeholder organizations for additional resources, staff and management had concerns about the quality of training and education services these organizations provided.

Lack of NHED proactive training and education also contributed to LEAs being unaware of certain regulatory requirements and noncompliance such as the following:

- Eighteen of 26 special education administrator survey respondents (69.2 percent) reported they did not notify NHED when a parent rejected an IEP-related action, and another five (19.2 percent) did not know if NHED was notified.
- Four of 26 special education administrator survey respondents (15.4 percent) reported LEAs did not inform parents about low-cost legal and other relevant services. One special education administrator was unaware of this requirement while another stated staff needed training.

Additionally, there was minimal evidence LEAs were aware of the statutory option to develop local dispute resolution processes and submit related plans to NHED. NHED staff and management also reported no plans were submitted for review.

Unfulfilled SJD Responsibilities

NHED did not ensure responsibilities for training and education activities were fulfilled. We identified four NHED staff and management SJDs which required relevant special education dispute resolution training and education support, or activities be provided to stakeholders. Duties consisted of providing technical assistance; promoting and recommending special education programs; reviewing and explaining laws, rules, and policies; and responding to complaints and inquiries to help resolve issues. However, NHED made changes to its operations in 2017 without conducting a formal review to determine whether responsibilities, including stakeholder training and education, could be fulfilled under organizational changes. While staff reported answering inquiries on a case-by-case basis, responsibilities to proactively provide training and education were unfulfilled.

Unaddressed Issues From Prior Audits

NHED lacked formal processes to strategically address issues identified in prior audits related to dispute resolution training and education needs. Our *1999 Performance Audit* included an Other Issue And Concern. We commented that while LEAs routinely sought mediation as an alternative dispute resolution to due process, neutral conferences were rarely used. NHED staff and stakeholders continued to report the public was less aware of neutral conferences and third party moderated discussion options for dispute resolution. During the three-year audit period, we found neutral conferences and third party moderated discussions were used for special education dispute resolution three and five times, respectively.

Recommendations:

We recommend NHED management:

- **develop procedures to identify trends, issues, and unmet needs to implement targeted training and education;**
- **incorporate formal stakeholder training and education goals and objectives into a strategic plan;**
- **evaluate passive technical assistance activities, including NHED resources and the intake process for public inquiries, and address deficiencies;**
- **determine which stakeholder groups would benefit from proactive training and education;**
- **ensure training and education includes all relevant requirements for LEA special education dispute resolution compliance and local dispute resolution development options;**
- **collaborate with stakeholder organizations to ensure sufficient training and education services are provided;**
- **review SJDs and ensure training and education responsibilities are fulfilled; and**
- **implement stakeholder training and education to address prior audit findings.**

NHED Response:

We concur in part with the recommendations.

NHED makes the following remarks related to the auditors' observations:

As an initial matter, NHED remains open to providing training and support to parents and is always willing to work with stakeholders to identify necessary training areas. As such, NHED will evaluate current policies and procedures and will engage stakeholders to assess the need for additional training and professional development that NHED staff can provide to LEAs, parents, and other stakeholders. However, it is important to note that in accordance with IDEA, trainings on special education dispute resolution for parents and other stakeholders do not fall completely within the purview of the state agency. Therefore, the statement, "NHED did not provide proactive special education dispute resolution training and education to parents, LEAs, or other stakeholders" is not accurate, as NHED provides a Handbook for Dispute Resolution and procedural safeguards. NHED will assess where these resources can be improved upon and strengthened to be a more complete and comprehensive resource for parents. Rather, pursuant to IDEA, NHED is responsible for ensuring that children with disabilities receive a free and appropriate public education (FAPE). Through that directive, it is implied that NHED provides training on special education dispute resolution to the LEAs, but that training requirement is not specifically enumerated in the law. NHED does, however, work collaboratively and pro-actively with the Office of Special Education Programs funded, Parent Information Center to provide various trainings and education to parents.

LBA Rejoinder: NHED relied significantly on passive resources to be made available to the public for educational purposes. However, there were issues with both NHED and non-

NHED resources, and neither was independently sufficient to provide necessary training and education. Our recommendations are specifically meant to address gaps identified through our audit work as it relates to special education dispute resolution training and education. It is not clear how NHED could fulfill the regulatory requirements in the Observation without developing proactive approaches to special education dispute resolution training and education.

As noted in the audit, NHED has developed a website and continues to update, modify, and expand the content of its website to address requests for information and common constituent inquiries. NHED is working to comprehensively and holistically address issues with these resources. NHED continues to work to make dispute resolution processes and available procedures easier to understand and readily accessible to the public through its website.

NHED has processes to address both formal and informal constituent complaints, such as processes for dispute resolution procedures, State complaints, and facilitated IEP meetings. Complaints directed or relevant to the numerous programs administered by the NHED are channeled directly to the program for resolution and escalated through the management structure, as appropriate. NHED will evaluate its website to determine if revisions to the website would make information more easily accessed by parents and stakeholders.

NHED continuously and consistently works with stakeholders to address their concerns and to improve access to information as it relates to NHED's dispute resolution procedures. By way of example, NHED updated its procedural safeguards document in November of 2023. NHED will continue to collaborate with its stakeholders to improve special education dispute resolution processes.

NHED will take the opportunity to work with the Division of Personnel to review SJD and class specification to ensure all required roles and responsibilities are adequately covered and that all required responsibilities are addressed. All NHED SJDs include "other duties as assigned" to help facilitate a purposeful, dynamic, and responsive organization. NHED consistently conducts annual reviews of staff and hearing officers which helps to hold managers and staff accountable for their performance and achievement of assigned responsibilities.

**STATE OF NEW HAMPSHIRE
SPECIAL EDUCATION DISPUTE RESOLUTION PROCESSES**

PERFORMANCE AND ENFORCEMENT

The Department of Education (NHED) was responsible for monitoring performance, enforcing compliance with special education requirements, and ensuring the rights of children with disabilities and their parents were protected. Effective performance management helps provide a basis for making objective and data-informed strategic decisions. Well-controlled enforcement procedures could have increased the likelihood NHED efficiently and effectively achieved outcomes.

Performance management includes:

- establishment of a mission with quantifiable goals, objectives, and targets;
- assignment of accountability for achieving expected outcomes and compliance;
- assurance of reliable, transparent, and timely monitoring, measurement, evaluation, and reporting; and
- evidence-based decision making resulting in revision of expectations and processes.

Performance measurement rests upon quantifying inputs, process performance, outputs, and outcomes.

- *Inputs* are resources needed for special education dispute resolution operations, such as complaints or requests submitted, and staff or contractors allocated.
- *Process performance* includes: 1) consistency, the extent to which a process or procedure was regularly followed; 2) effectiveness, the extent to which goals, objectives, and targets were achieved; 3) efficiency, the extent to which processes minimized resource waste; 4) timeliness, how quickly processes were completed; and 5) compliance, assurances processes were conducted in accordance with requirements in laws and rules.
- *Outputs* are measures of services provided, such as the number of due process hearings conducted, or number of State complaints investigated.
- *Outcomes* are the results achieved from outputs, and measured the degree to which intended results were achieved. Outcomes are essential for assessing effectiveness. Intermediate outcomes are directly supported by outputs and include consistently conducting each dispute resolution process in compliance with laws and rules. Expected programmatic or special education dispute resolution process outcomes are underpinned by intermediate outcomes and demonstrate a connection to a mission.

Required Performance Measurement

Performance measurement and demonstrating achievement of outcomes were necessary for NHED to comply with federal and State requirements. As part of federal grant requirements, NHED annually reported on the number of resolution meetings and mediations, number of agreements from resolution meetings and mediations, and target percentage results of each. Staff also had to

track and report compliance with federal time limits for due process hearings and State complaints. Federal guidance for implementing requirements specifically stated agencies had to have adequate tracking processes to ensure timeliness and compliance with special education dispute resolution requirements.

State law required NHED annually report to the State Advisory Committee on the Education of Children/Students with Disabilities (SAC) on the effectiveness of alternative options to due process hearings and State complaints.

Observation No. 15

Develop And Implement Performance Management Controls

NHED lacked a comprehensive performance measurement system informed by strategy and risks. NHED did not and could not evaluate efficiency and effectiveness of administering special education dispute resolution processes or demonstrate achievement of outcomes. Dispute resolution processes were administered generally independent of each other without aligning operations to NHED's mission or vision. Outputs were limited and primarily focused on federal reporting requirements. Other quantifiable goals, objectives, and targets were not developed, monitored, and routinely reported. Available data were insufficient and unreliable for evaluating and reporting on performance.

Unreliable Required Performance Data And Inaccurate Reporting

NHED did not ensure databases and informal methods used for tracking dispute resolution processes were sufficient. Data used for federal performance reporting requirements were not reliable and resulted in overreported compliance. Records management issues contributed to unreliable data generally.

Compliance with State complaint requirements and resulting performance could not be determined based on existing data alone. Spreadsheets used to track State complaint processes during the audit period were incomplete and inadequate for performance measurement. For example, NHED did not require an extension in one State complaint case that exceeded the 60-day time limit due to parties attending mediation. While mediation was permitted and could extend the time limit, the State complaint was not compliant with federal time limits without a properly filed extension and should not have been reported as timely.

The primary database used to track four dispute resolution processes, including those subject to federal reporting, was insufficient for performance and monitoring needs. Sufficient and reliable systems for tracking due process hearings were especially important because time limits were dependent upon a range of factors which could extend, shorten, or restart time limits, all of which could occur during a single complaint. The initial time limit was dependent on whether the moving party was a parent or local educational agency (LEA). Parent-filed due process complaints had a time limit of 75 days for a decision while an LEA-filed complaint had 45 days. At a minimum, NHED needed to be able to consistently verify and document the following for accurate reporting:

- Date the non-moving party *received* the complaint – this started the time limit.
- Sufficiency challenges to a complaint, compliance with intermediate time limits, and corresponding results – this could restart the time limit.
- Compliance with required resolution meetings when applicable, intermediate time limits, and whether legally binding agreements resulted – this could shorten, extend, or end the time limit.
- Whether optional mediations occurred, compliance with intermediate time limits, and whether legally binding agreements resulted – this could shorten, extend, or end the time limit.
- Compliance with requested and approved extensions – this could extend the time limit.
- Date the decision was issued – this ended the time limit.

We reviewed a judgmental sample of twelve due process complaint cases out of 115 from State fiscal years (SFY) 2020 through 2022. We found due process timelines were not sufficiently tracked in the database for reporting requirements. Staff acknowledged the database was outdated and insufficient for tracking needs. Specifically, we found the following issues:

- Start Date – NHED lacked procedures for confirming the date the non-moving party received the complaint which negatively impacted overall case duration tracking and accurate monitoring of federal time limits. In nine cases, documentation in the record conflicted with the start date documented in the primary database, or we could not confirm the start date. The primary database also documented five of the nine cases (55.6 percent) had longer case durations, and three (33.3 percent) had shorter durations than what we determined from case records.
- Sufficiency Challenge – NHED did not consistently track sufficiency challenges to complaints and compliance with intermediate time limits for submitting and granting challenges. We identified four cases with sufficiency challenges. Two (50.0 percent) were documented in the primary database. These two were also noted as timely submitted but were not. In one case, the hearing officer accepted the untimely sufficiency challenge which effectively restarted the time limit albeit inappropriately. However, the primary database did not document the amended start date and updated time limit.
- Resolution Meeting – NHED lacked procedures for tracking required resolution meetings and related compliance. Resolution meetings were required in ten cases, and parties participated in a resolution meeting in one additional case that was not required. Required resolution meetings had to be held unless parties agreed in writing to either waive a resolution meeting or substitute it with mediation.

Based on NHED records, we determined three of the ten required resolutions (30.0 percent) were held but could not determine the status of the other seven (70.0 percent). We were

also not able to identify the date one of the three resolution meetings occurred. The primary database documented that the optional resolution meeting was held. It did not document whether the other ten required resolution meetings were held, waived, or substituted.

- Optional Mediation – NHED did not consistently track optional mediations and related compliance. Mediation was voluntary. It could occur in substitution or in addition to a resolution meeting, or independently when a resolution meeting was not required. Staff scheduled optional mediation and assigned a corresponding contractor each time a complaint was filed unless: 1) the option was declined on a complaint submission form, or 2) it was an expedited complaint.

Staff scheduled mediation in ten due process complaint cases. Based on NHED records, we determined two scheduled mediations (20.0 percent) were held and two (20.0 percent) were later declined. We could not determine the status of the other six scheduled mediations (60.0 percent). The primary database documented that two mediations (20.0 percent) were held. It did not document whether the other eight (80.0 percent) were held or declined.

- Extension – NHED did not ensure extensions were valid, timely, and documented resulting in noncompliance with time limits. Eight due process complaint cases had one or more extensions. We determined all eight cases had invalid, untimely, or undocumented extensions. The primary database documented seven of the eight cases with extensions (87.5 percent). Although none of the eight cases had fully compliant extensions, the primary database documented one of the eight cases (12.5 percent) did not meet federal time limit requirements.

Additionally, resolution meeting and mediation documented results were inconsistent with federal requirements. Staff documented results as “successful.” However, NHED did not develop a definition for “successful,” and federal requirements did not define or use it as a performance measure. Disputes resolved through resolution meetings and mediations had to result in a legally binding agreement which was the federal performance measure used for reporting. Rule also required contractors submit to NHED in writing whether the agreement resolved all issues in the due process complaint or resulted in a signed withdrawal request for due process. NHED did not monitor or enforce compliance with these requirements. It could not ensure accurate reporting without verifying agreements and related compliance.

Performance Management Not Informed By Strategy Or Risks

NHED did not develop additional formal performance measures, monitoring, and routine reporting. A strategy and plans should have identified what data to collect to assess performance. Systematic performance management tied to strategy and informed by risk assessments could have helped ensure objectives were met and performance was within established risk tolerances. However, NHED:

- lacked a strategy, plans, and formalized goals, objectives, and targets for each dispute resolution process making performance measurement problematic were it to occur;

- did not formally assign or clearly communicate performance monitoring, measurement, evaluation, or reporting responsibilities to staff, resulting in lack of accountability and noncompliance with annual effectiveness reporting requirements;
- lacked risk tolerances or comprehensive acceptable performance variations to be able to understand whether performance was within acceptable limits; and
- did not evaluate effectiveness of controls or how efficiently responsibilities were performed.

Consequently, limited outputs were collected and inconsistently reported, including the number of neutral conferences or third party moderated discussions with corresponding immediate results such as the number “withdrawn” or “settled.” Data used for informal reporting were similarly unreliable with some processes miscategorized, and results not always supported with case documentation. There were no timeliness measurements, and compliance with related limited State law and rule requirements were generally unauditably. Another dispute resolution process, facilitated individualized education program (IEP) meetings, lacked formal or informal performance measures and reporting. Staff inconsistently documented meeting requests, number of meetings conducted, and did not track results of meetings.

Tracking And Data Collection Not Connected To Outcomes

NHED lacked department-wide tracking of dispute resolution processes. Existing systems and data collection methods were not developed to allow for comprehensive assessment of dispute resolution effectiveness and demonstration of achievement of outcomes. NHED did not track dispute resolution processes to determine occurrences of parties using multiple processes to address the same issues. Neither did it track and evaluate dispute resolution results through full implementation of decisions, agreements, and corrective actions.

Excluding resolution meetings and mediation as part of due process hearing complaints, two staff separately reported one case each – two total – in which the parties participated in a second dispute resolution process to address the same issue. However, nine of 15 parents responding to our survey (60.0 percent) reported using multiple dispute resolution processes for the same issue during the audit period. In our review of 116 special education dispute resolution cases for six processes, 19 (16.4 percent) indicated more than one process was used to address issues, including failure to implement decisions, agreements, or corrective actions. We could not determine the number of processes used for each case with indicated overlap due to inadequate data and records management issues. NHED could not understand and report on effectiveness of dispute resolution processes as required without accurate and comprehensive department-wide data collection.

No Measuring And Monitoring For Process Improvements

NHED did not measure or monitor activities to identify areas of inefficiency and implement process improvements. For example, staff were unaware or did not understand the extent of unnecessary delays while administering dispute resolution processes, as described below:

- Contractors were reportedly not always immediately available when a complaint or dispute resolution request was filed, but staff did not document timeliness in assigning contractors

to determine inefficiencies in scheduling practices and impact on dispute resolution processes.

- State complaint decisions could have been issued earlier, but staff did not measure days between completed investigations and the final decision date. In our review of a judgmental sample of 39 State complaints, 26 resulted in an investigation and decision. On average, the final decision was issued on day 59 of the 60-day federal time limit. However, 17 investigation reports (65.4 percent) were completed more than 15 days before the final decision was issued, with one case having as many as 40 days between the report and final decision.
- Controls developed to help ensure timely case closures for certain dispute resolution processes were not enforced resulting in inefficient practices for determining case statuses. Staff did not measure and monitor case closures to determine the impact of unenforced controls.

We reviewed 43 dispute resolution process cases for due process complaints, mediations, third party moderated discussions, and neutral conferences to determine closure timeliness. Nine cases were unauditible due to unimplemented requirements and records management issues, and five were not applicable due to limitations in our review. Of the remaining 29 cases, we found nine (31.0 percent) received a final update for closure more than 12 days after the actual result date. Average days between the final update for closure and the actual result date was 80 days, with one case receiving a final update 1,016 days later.

Recommendations:

We recommend NHED management:

- **develop, implement, and refine a performance management system with quantifiable performance measures tied to strategy, risk tolerances, and achievement of expected outcomes;**
- **formally assign performance management responsibilities to NHED staff and ensure fulfillment of those responsibilities;**
- **ensure performance measurement is based upon reliable data;**
- **develop comprehensive and sufficient dispute resolution data collection processes department-wide;**
- **collect and process data timely, regularly assess performance measurement, and publicly report results periodically;**
- **assess effectiveness of alternative options to due process hearings and State complaints and annually report to the SAC; and**
- **incorporate performance data into decision making, and revise performance expectations and processes as necessary.**

NHED Response:

We concur with the recommendations.

NHED makes the following remarks related to the auditors' observations:

The Governance Unit has dispute resolution data collection processes and will assess where these procedures can be strengthened. It will also assess whether new technology can assist in ensuring a comprehensive data collection process. For example, the Department of Information Technology has implemented the Sales Force solution for management of complaints that has been implemented at the Governor's Office and the New Hampshire Office of Professional Licensure and Certification. NHED has expressed interest in incorporating this technology into its processes to coordinate constituent responses across the organization. Such a solution would replace existing ACCESS database tracking as well as the use of Excel for State complaints. Given the number of State complaints and dispute resolution cases (fewer than 50 per year), these existing solutions were intended to meet the needs of the organization. Although NHED believes that a technology solution would be more efficacious, staff managing these processes regularly confer among each other to ensure that there is not a duplication of efforts. However, incorporating a technology solution, such as JIRA, to this issue would likely require additional funds.

NHED will take the opportunity to work with the Division of Personnel to review supplemental job descriptions and class specification to ensure all required roles and responsibilities are adequately covered and addressed. All NHED supplemental job descriptions include "other duties as assigned" to help facilitate a purposeful, dynamic, and responsive organization. The NHED consistently conducts annual reviews of staff which helps to hold managers and staff accountable for their performance and achievement of assigned responsibilities.

Monitoring And Enforcing Compliance

Monitoring and holding LEAs accountable for noncompliance is essential to provide reasonable assurance rights were protected. Proactive monitoring controls are designed to be a preventative measure. These controls are intended to help NHED and LEAs meet special education dispute resolution requirements *before* rights are affected. Reactive monitoring occurs *after* rights are affected, such as overseeing the implementation of orders or corrective actions following identified noncompliance.

State laws and rules provided some monitoring activities and available enforcement actions for identified noncompliance. A risk-based approach to proactively monitor compliance, combined with reactive monitoring controls, would have helped NHED efficiently and effectively achieve expected outcomes.

Observation No. 16

Monitor LEA Compliance And Implement Enforcement Actions

NHED did not proactively monitor LEAs for compliance with special education dispute resolution requirements. Existing controls were inadequate or unimplemented. NHED monitoring reviews of LEAs during the audit period – intended to be proactive – were limited in scope and excluded compliance with special education dispute resolution process requirements. NHED did not develop procedures to actively encourage and monitor LEA-developed dispute resolution processes to

resolve disputes locally whenever possible. NHED inconsistently used available enforcement actions designed to address LEA noncompliance. Consequently, NHED could not provide reasonable assurance the rights of children with disabilities and their parents were protected.

Identified LEA Noncompliance With Requirements

NHED lacked a risk-based approach to proactively monitor LEAs for compliance with requirements. Our ability to comprehensively assess NHED monitoring and enforcement of LEA compliance with each applicable requirement was hindered by inadequate controls combined with: 1) records management issues, 2) a small number of applicable cases, and 3) the number and complexity of due process complaint requirements. Additionally, facilitated IEP team meetings and third party moderated discussion process requirements were ad hoc rules and could not be enforced for compliance without being appropriately adopted in State law and rules. However, we did identify several areas where NHED lacked controls, resulting in LEA noncompliance or indicated noncompliance. We provided NHED management detailed results of our review in May 2023.

Some areas where NHED lacked controls over LEA compliance with requirements included:

- dispute resolution agreement contents,
- written notification of an IEP-related parent rejection,
- procedural safeguards notice content and distribution,
- convening a resolution meeting within applicable time limits, and
- informing parents of free or low-cost legal and other relevant services for due process hearings.

Ineffective Reactive Monitoring Practices

Responsibilities for ensuring compliance with orders and corrective actions were unimplemented or unenforced. Unimplemented requirements and informal reactive practices inappropriately placed the burden on parents or other stakeholders to initiate allegations of LEA noncompliance with requirements. NHED staff reported noncompliance was generally addressed on a case-by-case basis following a public inquiry, State complaint filing, or filing with the judicial system independent of NHED. Our parent survey and file review results indicated some parents initiated similar actions to try to address LEA noncompliance with orders or corrective actions.

NHED did not enforce a requirement that LEAs report on the implementation of due process hearing decisions within 90 days of a decision being issued. A staff member was assigned responsibility for overseeing due process hearing decision orders, but the responsibility was unfulfilled, and no reports were submitted during the audit period. One due process hearing decision we reviewed specifically ordered NHED to monitor implementation of the decision. In August 2022, after we requested information from NHED about the requirement, staff began redirecting communications from parents who inquired about the 90-day reports to the assigned staff member.

Staff responsible for ensuring LEA implementation of State complaint corrective actions inconsistently enforced requirements. In our review of a judgmental sample of 39 State complaints from SFYs 2020 through 2022, 21 decisions required LEA corrective action to address noncompliance. In 16 of the 21 State complaint records (76.2 percent), there was:

- no evidence corrective action was implemented,
- insufficient evidence LEA corrective actions fully addressed noncompliance, or
- untimely corrective action.

NHED also had to enforce certain dispute resolution agreements that resulted in amendments to a student's IEP. However, NHED did not develop relevant controls, and the requirement was unimplemented.

Lack Of Procedures For Issuing Corrective Actions

NHED lacked procedures and adequate guidance for staff and contractors to determine appropriate corrective actions to address identified noncompliance. Staff were also not always aware of orders or agreements that included corrective actions requiring NHED action.

Corrective actions were not always effective or appropriate. Contractors had broad discretion to specify corrective actions in orders and agreements, after consideration of case details and input from dispute resolution parties. The Commissioner had similar broad discretion for issuing corrective actions in State complaint decisions. We did not review the appropriateness of specific corrective actions in orders, agreements, and decisions. However, we identified certain practices which contributed to ineffective oversight of corrective action determinations and potential inappropriateness such as the following:

- One contractor reported NHED staff did not provide procedures or formal guidance for determining appropriate corrective actions. The contractor instead relied on their judgment and sought assistance from staff or other contractors as needed.
- NHED established an informal time limit of 21 days – an ad hoc rule – for all LEAs to hold facilitated IEP team meetings required as part of corrective actions.
- One State complaint decision did not address a party's proposed resolution to hold mediation. Neither did the required corrective action include specific activities or time limits, which made it ineffective for addressing noncompliance.
- Staff and contractors reportedly did not include on-site monitoring as part of corrective actions, an effective option to address noncompliance when properly implemented.

Management did not monitor or review orders and agreements to identify required NHED follow up. Certain dispute resolution processes could be required as part of a corrective action in an agreement or order, necessitating NHED action such as timely contractor scheduling or conducting specific monitoring activities. However, one contractor reported they were not always informed by NHED staff that dispute resolution was required in an order or agreement. Parties to the dispute disclosed the requirement to the contractor instead. We also identified a due process hearing case

which specifically required NHED monitor implementation of the decision. Although the due process hearing decision was provided to NHED, communications in the record indicated staff were not aware of the requirement until the parent contacted staff with concerns about related LEA noncompliance.

Enforcement Actions Not Used

NHED did not use available enforcement actions established by State law and rule to address LEA noncompliance with implementation of orders in due process hearing and State complaint decisions. The Commissioner was statutorily required to issue enforcement actions to LEAs that were noncompliant with orders. Available enforcement actions included 12 sanctions such as requiring corrective action plans and monitoring, professional development, and repayment or loss of federal funding. However, management and staff inaccurately reported noncompliance could only be addressed if parties filed another State complaint or through a judicial process independent of NHED. No enforcement actions were issued by NHED during the audit period.

Recommendations:

We recommend NHED management:

- **identify and implement federal and State monitoring and enforcement requirements;**
- **establish, implement, and monitor procedures to ensure staff dispute resolution monitoring and enforcement responsibilities are fulfilled;**
- **identify dispute resolution requirements LEAs are responsible for implementing;**
- **conduct a risk assessment of LEA requirements to establish priority monitoring objectives;**
- **design and implement efficient and effective monitoring controls for LEA compliance, including proactive controls;**
- **develop and implement procedures and formal guidance for issuing and reviewing the appropriateness of corrective actions, including on-site monitoring;**
- **develop and implement processes to identify and track corrective actions requiring timely follow up from NHED; and**
- **conduct periodic assessments to determine the effectiveness of monitoring and enforcement controls.**

We also recommend the Commissioner begin issuing enforcement actions for noncompliance with orders as statutorily required, and ensure corresponding rules, procedures, guidance, and delegations of authority are properly adopted.

NHED Response:

We concur in part with the recommendations.

NHED makes the following remarks related to the auditors' observations:

NHED currently has procedures for implementing State dispute resolution requirements. However, NHED will take this opportunity to ensure that such procedures are comprehensive.

The Bureau of Special Education Support (BSES) utilized a risk monitoring system for approximately 15 years to ensure that LEAs were compliant with special education requirements. In 2019, NHED determined that a more effective risk monitoring system would help ensure a greater degree of compliance and began the development and implementation of a new system. This process occurred during the audit period. BSES has developed its comprehensive monitoring system which includes a risk assessment for LEA determinations. NHED is working to address the concerns that were raised by the audit in this observation to ensure they will be adequately addressed by the current monitoring system, to include enforcement actions as enumerated in RSA 186-C:5, V(e)(1)-(13). The current monitoring system aligns with the requirements for general supervision from the Office of Special Education Programs at the U.S. Department of Education.

During discussions with the auditors, NHED was informed that under the law, NHED has full jurisdiction over local processes—see NH Ed 1122.02 and 1123.17(k)—as such, NHED was encouraged to exercise its full authority to oversee local school district alternative dispute resolution programs. However, to effectuate the NHED’s full authority in this area would be taking on a role that NHED has not historically played and would require NHED to create a more robust monitoring system in relation to dispute resolution which may be challenged by school districts. There are outstanding questions as to whether the NHED, could in fact, legally oversee resolutions which NHED is not party to, at the local level.

Special Education Dispute Resolution Agreements

Written agreements developed as part of a resolution to a dispute were allowed, and in certain circumstances were required. If a dispute was resolved through a mediation, neutral conference, or resolution meeting, parties had to execute a legally binding agreement signed by both the parent and authorized representative of the educational agency.

Proceedings and discussions during both mediation and neutral conference were confidential. Neutral conference agreements did not require an explicit statement on confidentiality, but mediation agreements had to include a statement that all discussions during mediation would remain confidential and could not be used as evidence in a subsequent due process hearing or civil proceeding. Confidentiality protections did not apply to resolution meetings, but including a similar provision in an agreement was not prohibited. Other aspects of dispute resolution agreement contents were unregulated. Parties could include any other agreed to terms and conditions.

NHED was responsible for ensuring agreements were compliant with regulatory requirements. It was also responsible for enforcing elements of any agreement, developed in accordance with laws and rules, that resulted in amendments to a student’s IEP. This included agreements developed through local level processes – dispute resolution processes used to resolve issues between the parent and LEA without NHED involvement. Agreements were otherwise enforceable in a court of competent jurisdiction.

Observation No. 17

Develop Controls Over Dispute Resolution Agreements

NHED did not develop controls to ensure special education dispute resolution agreements were compliant with requirements. Neither did it develop procedures to implement related enforcement requirements. Stakeholders expressed concerns about the use and content of agreements, but NHED did not conduct objective assessments to determine the validity of those concerns and how to address them. Without effective controls and oversight, compliance and public transparency were compromised, and parents were inappropriately burdened with enforcement responsibilities.

Lack Of Controls To Implement And Enforce Requirements

NHED did not have a control framework and comprehensive monitoring controls to oversee implementation and enforce agreement requirements. Requirements did not apply to third party moderated discussions and facilitated IEP team meetings because neither process was authorized in State law and rule. For applicable dispute resolution processes, management did not develop procedures to ensure agreements: 1) were developed when required, 2) included specific language, 3) and were signed by authorized parties. Additionally, there were no formal requirements to provide copies of dispute resolution agreements to NHED. If contractors or parties provided agreements, staff did not review agreements for compliance and conditions requiring NHED follow up action. State law also prohibited NHED from retaining certain mediation and neutral conference records which contributed to inadequate controls over agreements. Consequently, the following requirements were unimplemented or unenforced which negatively impacted compliance and effectiveness:

- Authorized Representatives – There were no procedures to verify authorized representatives signed agreements. Processes for parties to submit authorization information to NHED were ad hoc rules, or unenforceable informal requirements. Staff inconsistently received and documented authorization information. NHED could not verify signature compliance without documented authorization and copies of agreements.
- Performance – There were no procedures to ensure accuracy of federal performance reporting. Neither could NHED demonstrate achievement of outcomes. Assurance that agreements were legally binding and compliant with requirements was necessary for accurate federal reporting. Copies of agreements were also necessary for NHED to understand immediate dispute resolution results, terms and conditions, results of implementation, and additional actions taken to address unimplemented agreements if applicable. Management was unable to determine and report on dispute resolution effectiveness and outcomes without obtaining agreements.
- Required Actions – There were no procedures to review agreements for required enforcement or NHED follow up actions included in terms and conditions. Neither were agreements incorporated into NHED’s monitoring controls to facilitate compliance and enforcement. NHED also did not inventory local level dispute resolution processes and require parties submit applicable agreements for enforcement. As a result, NHED was

noncompliant with requirements, parents were unnecessarily burdened with enforcement responsibilities, and agreements were inconsistently implemented.

- **State Records And Access To Governmental Records Laws** – There were no procedures to ensure NHED retained custody of agreements in accordance with State records law. Agreements were part of a dispute resolution case record, but contractors inconsistently provided records to NHED as required. NHED also did not develop procedures or LEA guidance for releasing agreements as part of a governmental records request also known as a Right-to-Know request. The inclusion of a confidentiality provision or nondisclosure clause did not allow NHED and LEAs to be noncompliant with relevant laws. After deleting personally identifiable information (PII), agreements were public records which had to be provided upon request. However, some LEA special education administrators responding to our survey reported nondisclosure provisions were specifically used to prevent public release of agreements. Other stakeholders also reported difficulties in obtaining information about agreements.

Concerns About Unregulated Agreement Contents

Agreement contents were generally unregulated resulting in stakeholders expressing concerns about the use of certain terms and conditions. At times, agreements contained nondisclosure and non-disparagement clauses or provisions outlining terms in which participants could not disclose details of the agreement or negatively discuss their experience without being subjected to costly penalties. While these were not prohibited, provisions at times contributed to an atmosphere of mistrust and damaged relationships between the parties involved. It also hindered the ability for NHED and legislators to obtain LEA representatives' and parents' opinions on dispute resolution processes. However, the use of nondisclosure clauses could have also helped LEAs and parents reach an agreement. Other stakeholders thought it was possible that fewer disputes would be resolved through alternatives to due process complaints and State complaints if certain terms and conditions were prohibited.

Some parents reported feeling forced or pressured to sign agreements, left with no other options to obtain necessary services, and fearful of retaliation or consequences. Sixteen of 25 parents responding to our survey (64.0 percent) reported they were asked to sign agreements with nondisclosure provisions, 14 (87.5 percent) of which were for mediation. Special education administrators responding to our survey inconsistently knew whether their LEA used nondisclosure provisions in agreements. We found enforceability of certain provisions to be questionable, such as holding minor students accountable to nondisclosure or non-disparagement terms and conditions. Although certain provisions and circumstances surrounding signing agreements raised concerns, parents would have to initiate judicial proceedings to obtain a final ruling on the validity and enforceability of agreements, which many parents reported not having the resources to do.

We requested participant input about dispute resolution processes. NHED and legislators have also requested participant input. However, some parents stated they would not provide information due to nondisclosure clauses and fear of consequences if violated. Our survey response rates and results were negatively affected when we attempted to obtain parent input on dispute resolution processes.

NHED also requested feedback from participants for four of six dispute resolution processes, but response rates were reportedly low. Making process improvements would be difficult without the ability to consistently obtain quality information.

Recommendations:

We recommend NHED management:

- **develop controls to ensure agreements for mediations, neutral conferences, and resolution meetings comply with federal and State requirements;**
- **identify gaps in current monitoring and enforcement practices and develop procedures to effectively monitor agreements, enforce compliance, and implement required enforcement of amendments to IEPs or other follow up actions;**
- **ensure contractors obtain and provide copies of agreements as part of submitting dispute resolution results and case records;**
- **require LEAs provide copies of agreements for resolution meetings and applicable local level dispute resolution process agreements requiring NHED enforcement or follow up actions;**
- **seek legislation, and request necessary rule changes from the State Board of Education, to require and allow for retention of all applicable agreements, including for third party moderated discussions and facilitated IEP team meetings if NHED objectively determines processes are beneficial and should be offered; and**
- **develop procedures for staff, and provide LEAs guidance, for redacting agreements and complying with Right-to-Know requests.**

Additionally, we recommend NHED management consider developing additional optional procedures to expand enforcement responsibilities of agreements, as allowed under federal regulations, which would help alleviate the financial burden placed on parents left to seek enforcement through a court of competent jurisdiction.

We suggest the Legislature consider reviewing usage of agreements, including nondisclosure and non-disparagement clauses, and determine whether State policy changes regulating aspects of agreements would benefit participants and improve dispute resolution processes.

NHED Response:

We concur in part with the recommendations.

NHED makes the following remarks related to the auditors' observations:

During discussions with the auditors, NHED was informed that under the law, NHED has full jurisdiction over local processes—see NH Ed 1122.02 and 1123.17(k)—as such, NHED was encouraged to exercise its full authority to oversee local school district alternative dispute resolution programs. However, to effectuate the NHED's full authority in this area would be taking on a role that NHED has not historically played and would require NHED to create a more robust monitoring system in relation to dispute resolution which may be challenged by school districts.

The BSES would have to evaluate the cost benefit of intervening in agreements between independent parties that have been resolved through its dispute resolution processes. Additionally, there are outstanding questions as to whether NHED, could in fact, legally oversee resolutions which NHED is not party to, at the local level.

NHED management will consider developing additional optional procedures to expand enforcement responsibilities of agreements to alleviate the financial burden on parents; however, any such procedures would likely require legislative authority. This new, additional procedure would most likely require more staff.

BSES and the Governance Unit will work collaboratively to create policies and procedures to develop controls to ensure the enforcement of agreements for mediations, neutral conferences, and resolution meetings, which NHED has access to. BSES has created a new position which will help with the enforcement of agreements.

Timely And Effective Communication

Establishing clear reporting lines for external stakeholders opens two-way communication necessary for effective and fair dispute resolution processes. Under the *Administrative Procedure Act*, all requests, applications, or petitions to NHED had to be sent an initial response within 30 days, and if applicable, a final response within 60 days. Certain dispute resolution process options, such as due process hearing requests and State complaints, had other processing time limits and requirements for publicly releasing final decisions. Management was responsible for ensuring quality information was timely communicated, and that stakeholders were aware of processes or procedures for using lines of communication.

Observation No. 18

Develop A Public Communication System

NHED lacked adequate controls to ensure complaints and public inquiries were fully addressed, and communication to external stakeholders was timely and effective. NHED did not establish an intake process or clear reporting lines for public communication resulting in some requests not being fully addressed and an inability to manage timeliness. Formalizing communication processes for the public, including consistent personal assistance to provide information, could have helped identify and resolve issues, and provide additional opportunities to suggest appropriate special education dispute resolution process options.

Incomplete And Informal Communication Processes

Inquiries were addressed on a case-by-case basis across NHED and inconsistently tracked. In addition to administering four special education dispute resolution processes, other non-special education dispute resolution processes, and managing corresponding contractors, one staff member was responsible for responding to general stakeholder complaints and inquiries as well as providing assistance to help resolve issues. No public communication system was established to ensure this staff member's public communication responsibilities could be fulfilled. Instead, staff

throughout NHED responded to general complaints and inquiries. Some stakeholders reported dissatisfaction or concerns about NHED staff communication such as being directed to multiple staff, timeliness, professionalism, availability, and ability to offer assistance. During our file review, we also observed some communications from the public were internally sent across NHED, such as to staff, directors, and the Commissioner, without a clear understanding of which staff were ultimately responsible for addressing the inquiries.

Certain staff tracked formally filed requests for special education dispute resolution processes in various formats. Other related general requests, concerns, or inquiries were documented only if it was received by the same staff member who maintained a corresponding public communication database. However, instructions for stakeholders to formally file requests and complaints in laws, rules, or guidance materials were unclear, incomplete, or contained outdated information such as references to NHED offices that no longer existed and inaccurate personnel titles. Additionally, although public communication database reports were shared with management weekly, the database was incomplete and limited in its purpose. It was not used to measure communication effectiveness or timeliness, was missing certain inquiries we identified in our file review, and did not include requests or inquiries received by other staff across NHED.

Unaddressed Allegations And Communication Noncompliance

NHED lacked procedures to ensure allegations that were included in filed requests and complaints, but were not applicable to special education dispute resolution processes, were redirected to appropriate staff to address. NHED also inconsistently complied with due process hearing and State complaint communication requirements and did not develop controls to ensure timeliness.

Insufficient Allegation Communications

Communications to parties of due process and State complaints inaccurately and incompletely reflected issues and allegations provided in initial filings. For due process complaints, NHED had to notify parties of hearing scheduling information in writing, including a short plain statement of the issues involved. However, due process hearing notifications contained one or two words such as “placement” or “evaluation” instead of a plain statement of the issues, and did not always reflect all allegations. In one case we reviewed, staff acknowledged issues on the written notifications were not always accurate.

State complaint decisions had to address all allegations in the complaint. In practice, NHED sent a letter to parties verifying the State complaint was received with a description of applicable allegations to be investigated. It did not include specific allegations not applicable to State complaints and final decisions did not address allegations that were not investigated. If additional noncompliance was found, allegations were not completely addressed, or there were non-special education allegations during dispute resolution processes, staff reported a new State complaint could be opened, other dispute resolution process options could be used, or allegations would be redirected to appropriate NHED staff. However, procedures were not formalized, and stakeholders were not adequately informed of these processes. Two State complaint investigation reports we reviewed appeared to identify additional noncompliance, but there was no evidence new complaints were opened. In cases in which non-special education allegations were also filed as

part of either type of complaint, there was no evidence those allegations were redirected to appropriate staff.

Additionally, NHED inconsistently communicated results of corrective actions and State complaint decisions after reconsideration to both parties, and did not communicate implementation results of due process hearing orders to parents, which further hindered transparency and reassurance to the public that founded allegations were fully addressed.

Final Posting And Notification Noncompliance

NHED did not consistently and timely communicate redacted due process hearing decisions. NHED also did not comply with requirements to communicate monitoring and corrective actions resulting from due process hearing or State complaint decisions. After deleting PII, NHED was federally required to transmit findings and due process hearing decisions to the SAC and make both available to the public. However, SAC members reported NHED staff inconsistently informed members of where due process decisions could be found on the website. NHED also lacked procedures to monitor decisions for court appeals to ensure final decisions were communicated as required. Staff and management did not track court-appealed decisions, but one contractor recalled certain due process hearing decisions were overturned.

While due process hearing decisions had to be issued to parties within a federal time limit, NHED did not establish time limits or controls to ensure redacting and publicly posting decisions were timely. We reviewed six decisions and found days between the decision date and date the decision was provided to NHED for redaction ranged from zero to 183 days. In one case wherein we could also determine the posted date, there were 35 days between when NHED was provided the unredacted decision and public posting.

The Commissioner was statutorily required to post to the NHED website and notify superintendents, local school board, and the SAC of due process hearing and State complaint decisions with findings and recommendations for corrective action. Posting and notification requirements included orders for on-site monitoring. The Commissioner also had to notify the SAC of related enforcement findings, remedies, and sanctions. No procedures were developed nor were responsibilities delegated to post and notify appropriate contacts of due process hearing and State complaint monitoring, corrective actions, and enforcement. With the exception of notifying SAC members of posted due process hearing decisions, staff were unaware of these additional responsibilities and requirements were unimplemented.

Changes Ineffectively Communicated

NHED lacked procedures to ensure changes to dispute resolution processes were communicated consistently and effectively to stakeholders. Timely and effectively communicating changes to stakeholders was necessary to help implement requirements, facilitate compliance, and achieve NHED objectives. Although staff and management reported changes to laws, rules, or NHED policies were communicated as necessary, stakeholders indicated it was not always adequate. LEA special education administrators commented NHED cancelled calls with school districts, changes were not effectively communicated, and overall helpful interactions were inconsistent. One

contractor reported, and we also found evidence, that changes to laws or rules were not always timely and clearly communicated. Additionally, NHED did not hold required public hearings when creating or making changes to special education dispute resolution procedures outside of rules. Ineffective communication practices contributed to LEA and contractor noncompliance, and stakeholders not fully understanding dispute resolution process requirements.

Recommendations:

We recommend NHED management:

- **improve on existing communication processes by developing a holistic public communication system with an intake process, clear reporting lines for communication, and procedures for managing external communication;**
- **evaluate staff responsibilities and current communication practices to determine where changes are necessary to improve efficiency and effectiveness;**
- **establish timeliness goals and objectives for redactions, postings, and notifications;**
- **review processes for collecting public communication data throughout NHED;**
- **develop a tracking system which would allow for measuring communication timeliness and effectiveness;**
- **review relevant requirements and ensure responsibilities are delegated appropriately and fulfilled;**
- **ensure all allegations and requests are addressed and communicated as required;**
- **review laws, rules, and guidance materials to identify inconsistencies and ensure NHED dispute resolution filing information is comprehensively updated; and**
- **publicize communication processes.**

NHED Response:

We concur in part with the recommendations.

NHED makes the following remarks related to the auditors' observations:

NHED has processes to address both formal and informal constituent complaints, such as processes for dispute resolution procedures, State complaints, and facilitated IEP meetings. Complaints directed or relevant to the numerous programs administered by NHED are channeled directly to the program for resolution and escalated through the management structure, as appropriate.

The Department of Information Technology has implemented the Sales Force solution for management of complaints that has been implemented at the Governor's Office and the New Hampshire Office of Professional Licensure and Certification. NHED has expressed interest in incorporating this technology into its processes to coordinate constituent responses across the organization.

The Center for Appropriate Dispute Resolution in Special Education (CADRE) has recently just created and launched a National and State Dispute Resolution Data Dashboard, which NHED will consider using to track dispute resolution data in a clear and consistent manner.

NHED has developed a comprehensive website and continues to update, modify, and expand the content of its website to address requests for information and common constituent inquiries. NHED holds trainings annually for constituents, including parents, educators, school board members, community members, and legislators, and provides access to a wide variety of information on its website.

The Governance Unit has implemented a procedure for redactions by Hearing Officers and shall revisit that policy to determine if that policy is consistent with constituent needs while meeting the privacy protections needs of participants.

The Governance Unit posts redacted due process cases on its website. While there is no requirement under federal law for State complaints to be posted on the website, the Governance Unit is reviewing relevant State law, RSA 186-C:5, VI, to determine how NHED can meet its obligation under this section while being mindful of privacy rights pursuant to RSA 91-A.

The Governance Unit and BSES is in the process of creating a Dispute Resolution and Constituent Complaint Policy and Procedure manual to identify and set forth the roles and responsibilities of the Dispute Resolution positions. This document will be reviewed and updated on a consistent basis.

Records And Data Management

Management was responsible for developing and maintaining an efficient records management program for a broad set of records. State law defined a record as any document or recording, regardless of physical form or characteristics, made or received “pursuant to law or in connection with the transaction of official business.” Records had to be retained by the agency and could not be removed or destroyed unless law specified otherwise. Records without permanent or historical value could be destroyed after a retention period of four years. Federal laws and regulations had confidentiality requirements for special education dispute resolution and student records.

Reliable and quality data is essential for measuring performance, accurate reporting, supporting decisions, evaluating risk, and developing strategy. Reliable data cannot be established unless records are adequately maintained.

Observation No. 19

Develop Records Management And Data Controls

Records were incomplete, missing, or not timely provided to NHED. NHED lacked policies and procedures making records management for special education dispute resolution processes ineffective. Dispute resolution processes were tracked in various formats without procedures to ensure information collected was complete and accurate.

Data resulting from deficient records was limited and unreliable. Staff maintained records of dispute resolution processes for which they were responsible for administering. Multiple sources were often required to create a complete record for a dispute resolution process from a mix of hardcopy and electronic documents. Contract requirements did not include clear expectations for timely providing NHED required documentation, which contributed to records management issues. Incomplete and untimely records negatively affected NHED's ability to manage dispute resolution processes and made certain requirements unauditably.

Lack Of Controls For Facilitated IEP Team Meeting Records

NHED lacked controls over facilitated IEP team meeting records. Facilitated IEP team meeting records were electronically stored in one location but were inconsistently organized and incomplete. Management did not establish facilitated IEP team meeting documentation requirements, specify time limits for providing documentation, or develop procedures to ensure documentation was complete and adequate. Although some templates were available for conducting meetings, one contractor reported the previous contractor did not use templates and none were required.

Meeting documentation was inconsistently provided to NHED and untimely with some documentation reportedly not provided until a year after a meeting occurred. In one case we reviewed, a contractor stated certain documents would be destroyed following a meeting, which was noncompliant with State records law. NHED did not collect and maintain facilitated IEP team meeting data. However, any resulting data would have been unreliable and insufficient for supporting decisions and determining outcomes.

Staff reported tracking scheduled meetings, but the total number of actual meetings was unknown due to incomplete records. Based on available records and additional invoices we located, we identified 60 facilitated IEP team meeting requests from State fiscal years (SFY) 2020 through 2022. Of those 60 meetings initially requested:

- 25 (41.7 percent) were missing a documented request, either formal or informal;
- 24 (40.0 percent) had a formal request form;
- seven (11.7 percent) included an email as the request; and
- four (6.7 percent) referenced a request form, but the form was not in the record.

We were able to determine 44 meetings (73.3 percent) occurred from the initial 60 requests but, due to insufficient documentation, could not determine if five meetings (8.3 percent) occurred. In addition to meeting requests and scheduling notifications, a contractor reported creating consistent documentation of an agenda and action plan for all meetings. However, of those 44 meeting records:

- 12 (27.3 percent) lacked an agenda or action plan; and
- two (4.5 percent), and three additional subsequent meetings, lacked any documentation and were only identifiable through their inclusion on an invoice or scheduling notification.

Inadequate Controls Over State Complaint Records

Controls over State complaint records were inadequate. State complaint records were in hardcopy format and relatively organized but incomplete. Management did not establish comprehensive State complaint documentation requirements, formalize time limits for providing documentation, or develop procedures to ensure documentation was complete and adequate. Inadequate controls also contributed to the loss of documentation during staff transitions.

State complaint decisions had to be issued within 60 days of the complaint being filed. Staff relied on contractors to track and maintain documentation as part of their investigation. However, staff and contractors created informal intermediate time limits to provide documentation instead of developing procedures or establishing time limits in rule. Checklists created by previous staff to administer State complaints were not used. Spreadsheets developed to track State complaints were incomplete, unreliable, and insufficient to support decisions and determine outcomes.

We reviewed a judgmental sample of 39 out of 114 State complaints filed during SFYs 2020 through 2022. In 23 of the 39 cases, we requested clarification and missing documentation for 53 individual items. Staff was unable to clarify or locate 40 items (75.5 percent) from our request. Missing individual documentation included:

- investigation documents,
- information to support certain complaint dismissals,
- amended decisions sent to parties after reconsideration,
- evidence corrective action was implemented,
- confirmation corrective action was sufficient,
- follow up on untimely implementation of corrective action,
- letters to parties confirming State complaint closure, and
- relevant internal communications about certain cases.

Inadequate Controls Over Records For Four Other Processes

Controls over records for due process complaints, mediations, neutral conferences, and third party moderated discussions were inadequate. Dispute resolution documentation was inconsistently provided to NHED and untimely.

Records included hardcopy and electronic documentation in various locations and were incomplete. A combination of physical files, emails, and two databases had to be used to create a single case record of a dispute resolution. Management did not establish comprehensive documentation requirements, specify time limits for contractors to provide documentation, or develop procedures to ensure documentation was complete and adequate for these dispute resolution processes. Guidance and checklists developed to assist contractors with documentation compliance were not required or enforced. One contractor reported inconsistently providing records to NHED, and also retaining copies of dispute resolution case documentation for an indefinite amount of time, which was noncompliant with State records law. State law also prohibited NHED from retaining certain mediation and neutral conference records which contributed to inadequate controls and incomplete records.

Further, the primary database was insufficient to monitor and manage these four dispute resolution processes. It was outdated, inadequate for tracking compliance with required time limits, and lacked sufficient information technology support. Some dispute resolutions were incorrectly categorized or not clearly categorized as a non-special education dispute or special education dispute. Related data were limited, unreliable, and insufficient to support decisions and determine outcomes.

Missing Records

We reviewed a judgmental sample of 12 out of 115 due process complaint cases (10.4 percent) and 13 out of 34 mediation requests (38.2 percent) filed from SFYs 2020 through 2022. We also reviewed all three requests for neutral conferences and five requests filed for third party moderated discussions during the same period. We found record issues with all 33 special education dispute resolution cases we reviewed. Records did not consistently support information documented in the primary database management system, or inconsistently contained:

- all participants of the dispute resolution, including parents or guardians, advocates, attorneys, or other knowledgeable individuals;
- forms for requests, agreements to enter a dispute resolution, or authorizations;
- evidence of compliance with federal or statutory time limits, including applicable extensions;
- evidence a dispute resolution process occurred, including applicable resolution meeting sessions;
- written results of the dispute resolution, including applicable agreements; and
- other relevant communications.

Due process hearings were also subject to additional adjudicative process records requirements. We found ten cases (83.3 percent) were missing records required under adjudicative processes such as docket files, motions, objections, orders, rulings, recordings, and evidence submitted.

Untimely Records

We further inventoried electronic files for due process complaint cases during our file review and found eight case records (66.7 percent) had evidence of untimeliness or missing files. In some cases, untimely documentation was provided to NHED only after we requested specific cases for review. On average, untimely files were provided to NHED 315 days past case closure with some files provided as many as 519 days past case closure. Of 278 relevant and unduplicated electronic due process complaint files, we identified:

- 109 (39.2 percent) were untimely, and
- 15 (5.4 percent) were encrypted and could no longer be retrieved due to expired links.

We did not inventory electronic files for the other three dispute resolution processes but identified similar timeliness issues.

Recommendations:

We recommend NHED management:

- review applicable records requirements in federal and State laws and regulations,
- develop and formalize comprehensive policies and procedures for records and data management;
- review existing guidance and checklists, make necessary changes consistent with requirements, and ensure implementation;
- develop and implement additional guidance and checklists for staff and contractors to enforce records requirements and facilitate compliance;
- provide contractors training on documentation requirements and expectations for timely providing documentation;
- evaluate current tracking processes and needs to develop cost-effective systems to track and manage dispute resolution processes; and
- implement processes to periodically assess record completeness and data reliability.

NHED Response:

We concur with the recommendations.

NHED makes the following remarks related to the auditors' observations:

The Governance Unit has procedures for records and data management, but it will assess the adequacy of these procedures. The Governance Unit will also evaluate the current tracking processes to ensure that it is a sufficient system which adequately addresses the needs. It is possible that a new system might be required to meet the needs of the Unit and this could require additional funding for software and training. Presumably, any new such system would include a function by which the processes are periodically reviewed.

The Governance Unit and BSES is in the process of creating an internal Dispute Resolution and Constituent Complaint Policy and Procedure manual to identify and set forth the roles and responsibilities of the Dispute Resolution positions. This document will be reviewed and updated on a consistent basis.

The Governance Unit holds consistent meetings with the Hearing Officers to identify and discuss issues which have arisen during hearings. All Hearing Officers are offered and encouraged to attend Center for Appropriate Dispute Resolution in Special Education (CADRE) training courses. The Governance Unit has and will continue to provide training to the Hearing Officers on the documentation requirements and will set clear expectations for providing documentation in a timely manner.

NHED acknowledges that training and education for records management requirements is necessary and will be implemented with other training opportunities.

Observation No. 20

Improve Management Of Confidential Records

NHED inconsistently complied with federal and State laws for managing confidential records. NHED's ability to effectively manage certain processes was limited due to statutory restrictions or lack of controls.

Inconsistent Deletion Of PII

NHED lacked procedures guiding practices for deleting PII from due process hearing decisions. Deletions or redactions made to decisions were arbitrary and not always limited to PII. Federal regulations defined PII as:

- the name and address of the student, parents, or other family members;
- personal identifiers such as a social security number;
- other indirect identifiers such as the student's date of birth or mother's maiden name; and
- other information that would allow an individual who does not have personal knowledge of the circumstances to identify the student with reasonable certainty.

PII had to be deleted before publicly releasing due process hearing decisions. Public decisions also had to be transmitted to the SAC to help members identify special education issues and unmet educational needs.

General policies for disclosure could not be applied for determining deletion of PII. Federal guidance specified deletion of PII had to be completed by considering the contents of each due process hearing findings and decision to determine which information would make it possible to identify the child. Guidance also recommended the individual completing deletion of PII be familiar enough with the case to consider factors such as the student's disability, size of the school district, and parent's advocacy work in the community.

In practice, NHED implemented an informal policy, contrary to federal guidance, to delete the name of the school district in all decisions unless the case was from Nashua or Manchester school districts. Staff also reported an individual who was familiar with details of the cases did not always complete deletion of PII. Certain hearing officers deleted PII for their decisions, but NHED administrative staff deleted PII for other decisions. NHED staff would reportedly review hearing officer redacted decisions and complete further deletions of PII if necessary. SAC members reported decisions included unnecessary deletions which hindered the SAC's ability to identify special education issues and unmet education needs. Other stakeholders also had concerns about inappropriate redactions and lack of transparency. One hearing officer acknowledged they deleted more information than necessary in some decisions.

We compared all 12 original decisions for SFYs 2020 through 2022 to the publicly released versions and found stakeholder concerns were valid. At times, information was deleted from decisions that did not appear to identify or trace the identity of the student. Other decisions contained inconsistent redactions throughout the decision, some of which included PII.

Conflicting And Unenforced Record Requirements

Conflicting and unclear State laws prevented NHED from retaining mediation and neutral conference records which were necessary to effectively manage processes. Federal law and regulations required discussions during mediation remain confidential. State law imposed confidentiality requirements for neutral conferences. Agreements resulting from both processes had to be written in a legally binding document.

State law further restricted records for mediation and neutral conferences. Since 1990, mediators had to document the date and participants at the meeting if mediation did not result in an agreement. Otherwise, a legally binding agreement had to be documented. No other reported results and record of the mediation could be made. Similar neutral conference requirements were adopted in 1994. Language preventing any other record of the mediation or neutral conference did not clearly limit confidentiality to discussions *during* the meetings for these processes. For example, statutory requirements prohibited NHED from retaining *any* records associated with mediation and neutral conference cases. This included information necessary to manage contractors and ensure compliance with requirements such as general inquiries or communications, scheduling, timeliness, and obtaining participant feedback. However, NHED inconsistently retained statutorily prohibited records.

We reviewed a judgmental sample of 13 mediation cases out of 34 and an additional ten mediation cases scheduled as part of due process from our file review for SFYs 2020 through 2022. Not all requirements for neutral conferences could be reviewed for compliance due to a low population of cases. We also found mediation and neutral conference records to be generally unauditible partially due to State law prohibiting retention of certain records. Additionally, contractors did not always report required results of mediation, as noted below:

- In nine of 13 mediation cases (69.2 percent), results were either not reported, or we could not determine if mediation occurred.
- In seven of ten scheduled mediations as part of due process (70.0 percent), results were either not reported, or we could not determine if the scheduled mediation occurred.

Lack Of Controls Over Student Records

NHED lacked controls over State records for facilitated IEP team meetings. Facilitated IEP team meeting documents were also student records governed by the *Family Educational Rights and Privacy Act*. One contractor used a personal email address to exchange communications and documents during facilitated IEP team meeting processes. Other contractors were provided State-affiliated email addresses to use during dispute resolution processes. NHED could not ensure student records exchanged through a contractor's personal email were secure and managed in compliance with regulatory requirements without establishing effective controls.

Recommendations:

We recommend NHED management:

- **develop procedures guiding practices and provide training for deleting PII from due process hearing decisions;**
- **consider delegating deletion of PII responsibilities to individuals familiar with case details;**
- **implement a formal review process to ensure PII deletion is compliant with requirements;**
- **develop controls over facilitated IEP team meeting records and consider providing a NHED-affiliated email to corresponding contractors; and**
- **seek legislation to remove conflicting mediation and neutral conference record requirements which would allow retaining documentation for effective management of these processes.**

NHED Response:

We concur with the recommendations.

NHED makes the following remarks related to the auditors' observations:

NHED recognizes the importance of identifying and protecting PII. Currently the Hearing Officers have responsibility for the redaction of due process decisions. The Governance Unit will evaluate the creation of a procedures guiding practices to ensure that PII deletion is formalized and comprehensive and consistently applied. The Governance Unit is in the process of developing an internal Dispute Resolution and Constituent Complaint Policy and Procedure manual that identifies and sets forth the roles and responsibilities of the Dispute Resolution position. It is anticipated that this will reiterate the existing responsibility for the Hearing Officers' role in redaction and will include a section on PII redaction responsibilities.

BSES has already provided all relevant dispute resolution contractors with an affiliate email address.

NHED will consider seeking legislative changes necessary to remove conflicting mediation and neutral conference record requirements which would allow retaining documentation for effective mediation and neutral conference management.

**STATE OF NEW HAMPSHIRE
SPECIAL EDUCATION DISPUTE RESOLUTION PROCESSES**

**APPENDIX A
SCOPE, OBJECTIVE, AND METHODOLOGY**

In May 2022, the Fiscal Committee of the General Court adopted a joint Legislative Performance Audit and Oversight Committee recommendation to conduct a performance audit of the New Hampshire Department of Education’s (NHED) special education dispute resolution processes. We held an entrance conference with NHED management in June 2022.

Scope And Objective

We designed the audit to answer the following question:

How effectively did the NHED manage special education dispute resolution processes during State fiscal years 2020 through 2022?

Methodology

To gain an understanding of special education dispute resolution processes and determine if applicable internal controls were properly designed and implemented, we:

- reviewed relevant federal laws, regulations, and guidance interpreting federal regulations;
- reviewed State laws and rules relating to special education dispute resolution, and other relevant laws and rules relating to agency requirements;
- reviewed the NHED website, reports, directives, policies, procedures, manuals, process guides, other relevant guidance, organizational charts, supplemental job descriptions, dispute resolution contracts, and relevant news articles;
- interviewed NHED personnel and dispute resolution contractors for each process;
- surveyed special education administrators and parents who filed, or were party to, a special education dispute during the audit period;
- attended a State Board of Education meeting;
- reviewed State Advisory Committee On The Education Of Children/Students With Disabilities and State Board of Education meeting minutes;
- reviewed audits and evaluations of NHED, other states’ audits and evaluations, and guidance from national organizations; and
- analyzed NHED data and judgmental samples or the population of cases from each dispute resolution process.

To gain an understanding of stakeholders’ experiences with special education dispute resolution processes we:

- surveyed special education administrators and parents who filed or were party to a special education dispute during the audit period,
- conducted telephone interviews with a selection of members from the State Advisory Committee On The Education Of Children/Students With Disabilities,

- reviewed legislative testimony,
- interviewed Parent Information Center personnel, and
- sent questionnaires to external stakeholder organizations.

Data Limitations Effect On Our File Reviews

We encountered data limitations and records management control deficiencies which required us to modify certain file reviews and data collection methods. NHED lacked department-wide tracking of dispute resolution processes. Data was unreliable, not readily available, or did not exist depending on the dispute resolution process. Staff tracked dispute resolution processes in various formats without procedures to ensure information collected was complete and accurate. Multiple sources were often required to create a complete record for a single dispute resolution process. Records did not always contain complete case documentation or support documented transactions or results. Some requirements were not implemented or enforced and could not be audited for compliance. Certain restrictions in State law and inadequate data and records management controls contributed to deficiencies.

These limitations made it difficult for us to assess timeliness, instances of multiple dispute resolution processes used for the same issue, and regulatory compliance in general. Consequently, we qualify our use of, and conclusions that rest upon, the incomplete records we obtained and used in this report. Users of the audit should take into account that NHED data was not complete, but was the only data collected by NHED that could be used to partially assess their performance. We collected file review data between October 2022 and February 2023 to determine compliance with requirements and assess implementation of NHED controls.

State Complaint File Review

We reviewed hardcopy records to determine consistency and compliance with federal law and regulations, administrative rule, contract terms and conditions, and NHED guidance where requirements were not established in law and rule. In July 2022, NHED provided a spreadsheet staff used to manually track State complaints filed during State fiscal years (SFY) 2020 through 2022. We wanted to review files based on a percentage of each category of results represented in the population which included dismissed, withdrawn, suspended, decision, and reconsideration. We judgmentally selected files from each category for a total of 39 out of the 114 State complaints filed during that period. Our sample was not designed to be statistically representative, and we did not intend to project the results to the general population.

Due Process Complaint File Review

We reviewed a combination of hardcopy records, emails, and copies of two databases to determine consistency and compliance with federal law and regulations, State laws and rules, and NHED guidance where requirements were not established in laws and rules. In August 2022, NHED provided data extracted from the primary database which included due process complaints filed during SFYs 2020 through 2022. Staff also provided case numbers for due process complaints containing extensions and challenges to the sufficiency of the complaint to ensure additional requirements could be reviewed for compliance in the sample selection. We wanted to review files

based on a percentage of each category of results represented in the population which included dismissed, settled, withdrawn, mediated, resolved at local level, summary judgment, and decision. We judgmentally selected files from each category for a total of 40 out of the 115 due process complaints filed during that period.

Due to the extensive number of requirements, number of sources necessary to review a single case record, and audit timeliness concerns, we determined it would be more efficient to reduce the sample size to 13 due process complaints filed. However, NHED combined two due process complaints resulting in one decision. Therefore, 12 due process complaint cases were fully reviewed. The final selection of files was based on a percentage of each category of results represented in the population. The reduced sample was sufficient to conclude on management controls for due process complaints. Our sample was not designed to be statistically representative, and we did not intend to project the results to the general population.

We also reviewed due process hearing decisions from an additional seven cases to compare deletion of personally identifiable information practices for all 12 decisions issued during the same period.

Mediation File Review

We reviewed a combination of emails and copies of two databases to determine consistency and compliance with federal law and regulations, State laws and rules, and NHED guidance where requirements were not established in laws and rules. In August 2022, NHED provided data extracted from the primary database which included mediation requests filed during SFYs 2020 through 2022. We wanted to review files based on a percentage of each category of results represented in the population which included mediated, withdrawn, and mediated unsuccessful. We judgmentally selected an initial sample size of 15 out of 36 special education mediation requests filed during that period to review. We amended the sample size after it was determined that two cases were not related to special education. We removed and did not substitute the two nonapplicable cases. The final sample size was 13 out of 34 special education mediation requests. Our sample was not designed to be statistically representative, and we did not intend to project the results to the general population.

Neutral Conference File Review

We reviewed a combination of emails and copies of two databases to determine consistency and compliance with State law and rules, and NHED guidance where there were gaps between requirements in law and rules. In August 2022, NHED provided data extracted from the primary database which included neutral conference requests filed during SFYs 2020 through 2022. We reviewed all three neutral conference special education requests filed during that period. Results are for the population. However, not all requirements could be reviewed for compliance due to a low population of cases.

Third Party Moderated Discussion File Review

We reviewed a combination of emails and copies of two databases to determine consistency and compliance with NHED guidance where requirements were not established in laws and rules. In August 2022, NHED provided data extracted from the primary database which included third party moderated discussion requests filed during SFYs 2020 through 2022. We initially selected all nine third party moderated discussion special education requests filed during that period to review. We amended the selection after it was determined four cases in the population were not related to special education. The remaining five third party moderated discussion special education requests were reviewed. Results are for the population. However, not all requirements could be reviewed for compliance due to a low population of cases.

Facilitated Individualized Education Program Meeting File Review

We reviewed electronic records provided by the NHED to determine consistency; timeliness; and individualized education program (IEP) team meeting compliance with federal regulations, rules, and practices. We also reviewed records to determine consistency with NHED guidance and reported contractor practices where requirements were not established in regulations and rules. Records reportedly represented all facilitated IEP team meetings during the audit period; however, the population was unknown. We identified 60 meeting requests between SFY 2020 and SFY 2022, which resulted in 44 meetings.

Review Of Contractor Payments

We reviewed several transactions from our mediation and neutral conference file reviews to assess relevant controls and determine whether contractor payments documented in the primary database were accurate and supported by case documentation. We judgmentally selected seven transactions for further review based on identified discrepancies between case record documentation and payments documented in the primary database. Invoices for these transactions were also retrieved from NH FIRST, the State's financial management system. Our review was limited in accordance with our audit objectives. We did not request access to the population of contractor payments and case records. Our selection was not statistically representative, and results were not intended to be projected to the general population.

Review Of Federal And State Requirements

We reviewed 1,664 federal and State requirements related to the NHED's six dispute resolution processes, monitoring and enforcement responsibilities, procedural safeguards notices, and model forms to assess the regulatory framework and determine whether relevant controls were properly designed and implemented. These included requirements from:

- 20 USC chapter 33, section 1400 *et seq.*;
- 34 CFR part 300;
- RSA 186-C and RSA 541-A; and
- Ed 200, Ed 1100, and Jus 800.

We assessed NHED procedures and practices against requirements we identified. The analysis was specific to our audit objectives and intended to identify any common deficiencies and areas in which improvements were needed. It was not intended to substitute NHED's need to conduct its own analysis to identify deficiencies and make comprehensive improvements. We provided our analysis to NHED in May 2023.

Uncooperative Local Educational Agencies

Some local educational agencies (LEA) did not provide statutorily required information when we requested. Certain LEAs refused to comply with State law requiring entities authorized to expend State funds to provide information we requested to support our audit objectives. In May 2022, the Legislative Performance Audit and Oversight Committee directed us to contact LEAs and parent participants as part of the audit. NHED did not have complete contact information for the population of participants. We determined contacting LEA special education administrators would be an efficient and effective method to collect necessary information for parent survey distribution. We requested special education administrators provide email addresses of parents who were party to a filed or requested dispute resolution process in their school district during SFYs 2020 through 2022. We received inquiries from LEAs and legal counsel representing LEAs about student privacy and our authority to access parent email addresses. NHED supported our request when staff received inquiries from LEAs or other representatives.

We obtained additional guidance from the U.S. Department of Education and provided relevant information to all LEA representatives. Federal guidance confirmed state auditors were allowed to access requested records for audit purposes. Additionally, State law required political subdivisions and other entities authorized to spend State funds to provide requested information, including confidential and privileged information. Several LEA representatives continued to refuse to provide required information or did not respond to our requests. It was unknown how many LEAs were impacted by questionable legal advice to not provide parent email addresses for audit purposes. LEAs inconsistently understanding the regulatory framework and applicable requirements were issues we also identified in other audit work. Consequently, parent participants may not have all received an opportunity to provide input on special education dispute resolution processes, and we may not have identified all parent issues for consideration bearing on the audit objectives.

Parent Survey

NHED lacked a system to track participants of special education dispute resolution processes. We contacted special education administrators to provide email addresses of parents who participated or were party to a dispute filed during SFYs 2020 through 2022. LEAs inconsistently responded and cooperated with our request resulting in 88 parent email addresses being provided. We supplemented these email addresses with an additional 28 we obtained during our file reviews of due process, mediation, neutral conference, third party moderated discussion, and facilitated IEP team meetings. An additional three email addresses were provided directly by parent participants. Seven of the 119 email addresses obtained were no longer valid at the time of our survey.

In January 2023, we sent a web-based survey link to 112 parents who participated or were party to a dispute filed during the audit period to solicit feedback and determine whether relevant controls were consistently implemented in accordance with requirements. We received 25 complete responses, for a 22.3 percent response rate. Responses were anonymous. However, some parents refused to take the anonymous survey out of fear of potentially violating nondisclosure agreements, or citing legal advice, which impacted results and response rates to an unknown extent.

We combined and simplified similar answers to open-ended questions and presented them in topical categories; multi-part responses were counted in multiple categories where applicable. The results of this survey can be found in Appendix C.

Special Education Administrators Survey

In January 2023, we sent a web-based anonymous survey link to 118 LEA special education administrators listed on the NHED website at the time to solicit feedback and determine whether relevant controls were consistently implemented in accordance with requirements. We received 26 complete responses, for a 22.0 percent response rate. It was unknown whether legal advice also impacted special education administrator participation in the survey. We combined and simplified similar answers to open-ended questions and presented them in topical categories; multi-part responses were counted in multiple categories where applicable. The results of this survey can be found in Appendix D.

Stakeholder Organization Questionnaires

In January 2023, we sent a questionnaire via email to eight organizations providing services to parents and families of children with disabilities, LEAs, and other advocacy organizations. We solicited feedback about services provided, interactions with NHED, and special education dispute resolution processes generally. We received four responses, for a 50.0 percent response rate. We analyzed responses to identify trends or additional evidence for use throughout our report.

Internal Control

According to generally accepted government auditing standards, internal control is defined as a process effected by an entity's oversight body, management, and other personnel that provides reasonable assurance that the objectives of an entity will be achieved. Auditing standards require we identify and determine which, if any, internal control components are significant to the audit. We use the definitions and concepts of internal control from the *Standards for Internal Control in the Federal Government* to conduct performance audits in accordance with auditing standards.

We identified five internal control components and 16 underlying principles that we considered significant to the audit objective.

1. Control Environment – All five principles which require management demonstrate integrity, oversee the internal control system, establish an organizational structure with assigned responsibilities, recruit and retain competent individuals, and evaluate

performance for internal control responsibilities were significant to the audit objective. We found NHED did not consistently establish or adhere to standards of conduct (Observation No. 7); provide adequate oversight of the internal control system (Observation No. 1); establish organizational controls (Observations No. 3 and No. 12); conduct strategic workforce planning assessments, establish training requirements and ensure maintenance of competency for staff or contractors (Observations No. 3, No. 5, and No. 6); or consistently hold individuals accountable for internal control responsibilities (Observations No. 1, No. 3, No. 5, and No. 16).

2. Risk Assessment – All four principles which require management define objectives and identify, analyze, and respond to risks were significant to the audit objective. We found NHED did not define special education dispute resolution process objectives and risk tolerances (Observations No. 2 and No. 15); conduct risk assessments or identify and timely respond to risks such as control deficiencies, staff turnover, conflicts of interests or potential conflicts of interests, fraud, and waste (Observations No. 2, No. 3, No. 7, No. 8, and No. 15); or identify and timely respond to significant changes that impacted operations and the internal control system such as organizational, regulatory, and dispute resolution process changes (Observations No. 3, No. 9, No. 10, and No. 11).
3. Control Activities – Two of three principles which require management design and implement control activities were significant to the audit objective. We found NHED did not develop written policies and procedures and lacked comprehensive controls. Limited controls it did develop were inconsistently implemented (Observations No. 1 and No. 12).
4. Information And Communication – All three principles which require management use and communicate quality information were significant to the audit objective. We found NHED did not ensure data and underlying records were reliable and sufficient to support management decisions (Observations No. 15, No. 19, and No. 20), develop procedures to clearly communicate necessary information internally and externally (Observations No. 13, No. 14, No. 18, and No. 20), formalize procedures to consistently obtain and incorporate stakeholder input (Observation No. 4), and evaluate methods of communication for effectiveness (Observations No. 13 and No. 18).
5. Monitoring – Both principles which require management monitor the internal control system, evaluate results, and timely remediate deficiencies were significant to the audit objective. We found NHED did not monitor and evaluate control activities for performance and process improvements (Observations No. 1, No. 9, No. 10, and No. 17), consistently conduct required assessments and report on dispute resolution performance (Observations No. 8, No. 15, and No. 17), monitor and enforce LEA compliance with requirements (Observation No. 16 and No. 17), and comprehensively and timely address deficiencies, including those from prior audit findings (Observations No. 1, No. 9, No. 10, No. 11, and No. 14).

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**STATE OF NEW HAMPSHIRE
SPECIAL EDUCATION DISPUTE RESOLUTION PROCESSES**

**APPENDIX B
DEPARTMENT OF EDUCATION
DETAILED COMMENTS ON OBSERVATION NO. 5**

Observation No. 5

Develop And Implement Contract Management Controls

We concur with the recommendations.

The following chart reflects contractor trainings during the audit period, including:

Year	Month	Training/Meeting	Subject Matter of Meeting
2019	Oct 8	Meeting/Training	<i>Dear Colleague Letters from USDOE, State Board, SPED, Format, Decisions, Computers</i>
2020	Jan 27	Meeting/Training	<i>Dear Colleague Letters from USDOE, State Board, SPED, Format, Decisions, Computers</i>
2021	Jul-Sep	<i>New Hearing Officer training</i>	<i>Audit/training of several hearings/mediations held by seasoned hearing officers</i>
2021	Oct 21	<i>Hearing Officer Professional Development</i>	<i>Professional Development at national level</i>
2021	Nov 9, 10	<i>CADRE Hearing Officer Training</i>	<i>Professional Development at national level</i>
2022	Feb 1	<i>CADRE outside analysis of SPED decisions (sent by email for training purposes)</i>	<i>National level review/analysis of SPED decisions nation-wide; focus for NH on Findings of Fact and Rulings of Law</i>
2022	May 22	<i>Process discussion SPED with Disability Rights Center rep and parent advocate</i>	<i>Discussion of process concerns, changes to Users' Guide, Supported Decision maker, further ideas for process improvement</i>
2022	May 25	<i>Administrative Hearings: A Review of Virtual Hearing Procedures Used During Pandemic and After</i>	<i>Administrative Hearings: A Review of Virtual Hearing Procedures Used During Pandemic and After</i>

Post-audit, contractors have been provided the following training opportunities.

Year	Month	Training/Meeting	Subject Matter of Meeting
2022	Jul 7	<i>Due Process/Alt Dispute discussion with parent advocates, Disabilities Rights Center</i>	<i>Discussion of process improvement, outreach to parents/districts, development of manual</i>
2022	Jul 12	<i>Due Process/Alt Dispute discussion with parent advocates, Disability Rights Center</i>	<i>Parent guide development, review SPED laws, rules</i>
2022	Aug 2	<i>Due Process/Alt Dispute discussion</i>	<i>Parent guide development, review SPED laws, rules</i>
2022	Sep 15	<i>Due Process/Alt Dispute discussion with parent advocates, Disability Rights Center</i>	<i>Parent guide development, review SPED laws, rules</i>
2022	Oct 27	<i>Due Process/Alt Dispute discussion with parent advocates, Disability Rights Center</i>	<i>Due Process/Alt Dispute discussion with parent advocates, Disability Rights Center</i>
2022	Nov 22	<i>Due Process/Alt Dispute discussion with parent advocates, Disability Rights Center</i>	<i>Due Process/Alt Dispute discussion with parent advocates, Disability Rights Center</i>
2022	Dec 6	<i>Due Process/Alt Dispute discussion with parent advocates, Disability Rights Center</i>	<i>Due Process/Alt Dispute discussion with parent advocates, Disability Rights Center</i>
2022	Dec 22	<i>Due Process/Alt Dispute discussion with parent advocates, Disability Rights Center</i>	<i>Due Process/Alt Dispute discussion with parent advocates, Disability Rights Center</i>
2023	Jan 5	<i>Due Process/Alt Dispute discussion with parent advocates, Disability Rights Center</i>	<i>Due Process/Alt Dispute discussion with parent advocates, Disability Rights Center</i>
2023	Jan 26	<i>Due Process/Alt Dispute discussion with parent advocates, Disability Rights Center</i>	<i>Due Process/Alt Dispute discussion with parent advocates, Disability Rights Center</i>
2023	March 20	<i>Due Process/Alt Dispute discussion with parent advocates, Disability Rights Center</i>	<i>Due Process/Alt Dispute discussion with parent advocates, Disability Rights Center As of October 16, 2023, Guide under review by Chief of Governance Unit</i>

2023	Jul 11-14	CADRE IDEA Administrative Law Judges and Impartial Hearing Officers in Region	Professional Development
2023	Jul-Sep	New Hearing Officer training	Audit/training of several hearings/mediations held by seasoned hearing officer as well as attend first cases of new Hearing Officer
2023	Oct 24	Meeting/Training	SPED, documentation, Legislative update, Joint Motions, Sum Judgments, uploading records, Moderator sessions to Neutral Conferences, etc.

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**STATE OF NEW HAMPSHIRE
SPECIAL EDUCATION DISPUTE RESOLUTION**

**APPENDIX C
SPECIAL EDUCATION DISPUTE RESOLUTION PARENT SURVEY**

In January 2023, we sent a survey link to 112 parents who participated or were party to a filed special education dispute during July 1, 2019, through June 30, 2022. We received 25 complete responses for a 22.3 percent response rate. We combined and simplified similar answers to open-ended questions and presented them in topical categories; multi-part responses were counted in multiple categories where applicable. Some totals in the following tables may not add up to 100 percent due to rounding or where respondents could provide multiple responses to the same question. We also redacted or deleted comments if responses included personally identifiable information or specific case details.

Question 1. Were you a parent/guardian who was a party to at least one special education dispute resolution process at some point between July 1, 2019, and June 30, 2022?		
Answer Options	Count	Percent
Yes	25	100.0%
No	0	0.0%
<i>respondent answered question</i>		25
<i>respondent skipped question</i>		0

Question 2. Which of the following options were you aware of prior to engaging in a State special education dispute resolution process? Please check all that apply.		
Answer Options	Count	Percent
Facilitated individualized education program (IEP) team meeting	17	68.0%
Third party moderated discussion	7	28.0%
Neutral conference	5	20.0%
Mediation	17	68.0%
Due process hearing	20	80.0%
Special education State complaint	17	68.0%
<i>respondent answered question</i>		25
<i>respondent skipped question</i>		0

Question 3. Which State special education dispute resolution process(es) did you participate in at some point from July 1, 2019, through June 30, 2022? Please check all that apply.

Answer Options	Count	Percent
Facilitated IEP team meeting	15	60.0%
Third party moderated discussion	5	20.0%
Neutral conference	2	8.0%
Mediation	17	68.0%
Due process hearing	8	32.0%
Special education State complaint	14	56.0%

respondent answered question **25**
respondent skipped question **0**

Question 4. Does your school district offer a local dispute resolution option? A local dispute resolution process is any process developed by the school or district intended to resolve a special education issue without NHED involvement. This does not include IEP team meetings.

Answer Options	Count	Percent
Yes	6	24.0%
No	10	40.0%
Don't know	9	36.0%

respondent answered question **25**
respondent skipped question **0**

Question 5. Did you participate in a school district's local dispute resolution process at some point from July 1, 2019, through June 30, 2022?

Answer Options	Count	Percent
Yes	5	83.3%
No	0	0.0%
Don't know	1	16.7%

respondent answered question **6**
respondent skipped question **19**

Question 6. Please briefly describe the local dispute resolution process offered by the school district.

Comments	Count
Contacted the superintendent's office.	1
School district was unwilling to provide reasonable accommodations. Accommodations were offered after going through mediation or contacting the superintendent.	2
Defined by NHED. Only required when a parent files for a due process hearing (unless the parties agree to waive it or to use mediation instead).	1
Not educating the child.	1

provided comment **5**

Question 7. How many times did you or the school district initiate a local or State special education dispute resolution process from July 1, 2019, through June 30, 2022?

Answer Options	Count	Percent
1	10	40.0%
2 to 5	10	40.0%
6 to 9	3	12.0%
10 or more	2	8.0%

respondent answered question **25**
respondent skipped question **0**

Question 8. Did you or the school district initiate multiple special education dispute resolution processes for the same issue(s)?

Answer Options	Count	Percent
Yes	9	60.0%
No	4	26.7%
Don't know	2	13.3%

respondent answered question **15**
respondent skipped question **10**

Question 9. Thinking about the most recent issue in which multiple special education dispute resolution processes were used, which of the following processes were used? Please check all that apply.

Answer Options	Count	Percent
Local dispute resolution	2	22.2%
Facilitated IEP team meeting	6	66.7%
Third party moderated discussion	3	33.3%
Neutral conference	2	22.2%
Mediation	6	66.7%
Due process hearing	3	33.3%
Special education State complaint	5	55.6%

respondent answered question **9**
respondent skipped question **16**

Question 10. When did the school or school district provide you with a copy of the procedural safeguards notice (information about the procedural safeguards available to parents of a child with a disability)? Please check all that apply.

Answer Options	Count	Percent
At the time of the initial referral or request for evaluation.	7	28.0%
When I filed a request for due process.	0	0.0%
While I filed a special education State complaint.	1	4.0%
At my request.	1	4.0%
Once every year since my child received their IEP.	12	48.0%
I was never provided a procedural safeguards notice.	0	0.0%
Other - please describe	10	40.0%

respondent answered question **25**

respondent skipped question **0**

Question 10. Text responses, Other - please describe	Count
IEP Meetings	3
Cannot recall when specifically, or from what agency (e.g., school district, NHED, Parent Information Center, etc.), but indeed received and retained a copy of this document, dated December 2011.	1
7 years after I first requested, 2+ years after I reported a qualifying diagnosis from a private eval, and after I obtained a private evaluation with a more severe diagnosis.	1
The district gives me their version of the procedural safeguards which was written by their lawyer. I do get this periodically but there is some factually inaccurate information and I don't think that telling parents to contact the school if they're having problems is an adequate solution as there are already problems and they are aware. I also don't think they provide good info on what parent options are.	1
It was provided every year and at the majority of the meetings involving the dispute, however it was usually and old, out of date copy.	1
At every meeting Schools are/were allowed to modify the procedural safeguards to incorporate their own language make it confusing and inconsistent with the state and federal guidelines.	1
They did not provide it to us but started to provide it to us when we engaged with an attorney. <i>[parts of comment removed due to case specific/personally identifiable details]</i>	1
When they remembered during meetings.	1
My district only sends electronic copies. It is important to note that NH procedural safeguards are missing IDEA components and are written to fragment information. OSEP cautioned states to avoid getting overly creative. Letter to Clayton, 50 IDELR 77 (OSEP 2007). Failure to include mandatory information could amount to a procedural violation of the IDEA.	1

provided comment **10**

Question 11. Did you use an attorney during any of the special education dispute resolution processes?

Answer Options	Count	Percent
Yes	11	44.0%
No	14	56.0%
Don't know	0	0.0%

respondent answered question **25**
respondent skipped question **0**

Question 12. For which special education dispute resolution processes did you use an attorney? Please check all that apply.

Answer Options	Count	Percent
Local dispute resolution	3	25.0%
Facilitated IEP team meeting	6	50.0%
Third party moderated discussion	1	8.3%
Neutral conference	0	0.0%
Mediation	10	83.3%
Due process hearing	4	33.3%
Special education State complaint	2	16.7%

respondent answered question **12**
respondent skipped question **13**

Question 13. Did the school district have an attorney present during any of the special education dispute resolution processes?

Answer Options	Count	Percent
Yes	18	72.0%
No	7	28.0%
Don't know	0	0.0%

respondent answered question **25**
respondent skipped question **0**

Question 14. During which special education dispute resolution process did the school district have an attorney? Please check all that apply.

Answer Options	Count	Percent
Local dispute resolution	4	22.2%
Facilitated IEP team meeting	5	27.8%
Third party moderated discussion	4	22.2%
Neutral conference	1	5.56%
Mediation	15	83.3%
Due process hearing	10	55.6%
Special education State complaint	5	27.8%

respondent answered question **18**
respondent skipped question **7**

Question 15. In your opinion, would having an attorney represent you during certain special education dispute resolution process(es) have been beneficial? Please briefly explain why or why not.	
Comments	Count
Yes, to help parents understand and have someone who specializes in special education laws and processes.	12
Yes, ensures transparency from the school and helps accountability.	8
Yes, but too expensive and unaffordable for most parents/schools use taxpayer money for attorneys.	7
Yes, schools use attorneys (including some at IEP team meetings), which parents feel intimidated/at a disadvantage.	5
Yes, also used an advocate, or used an advocate instead of an attorney.	4
Yes, ensures the process goes smoothly and is resolved quicker than without one.	3
No, too expensive and easier to pay out of pocket for necessary services than hire an attorney. Also had enough educational background to go through mediation without one.	1
No, but would hire one if it became contentious.	1
No, the school district always feels threatened.	1
<i>provided comment</i>	25

Question 16. Did you use an advocate during any of the special education dispute resolution process(es)?		
Answer Options	Count	Percent
Yes	15	60.0%
No	10	40.0%
Don't know	0	0.0%
<i>respondent answered question</i>	25	
<i>respondent skipped question</i>	0	

Question 17. For which special education dispute resolution processes did you use an advocate? Please check all that apply.		
Answer Options	Count	Percent
Local dispute resolution	8	47.1%
Facilitated IEP team meeting	10	58.8%
Third party moderated discussion	4	23.5%
Neutral conference	1	5.9%
Mediation	10	58.8%
Due process hearing	5	29.4%
Special education State complaint	6	35.3%
<i>respondent answered question</i>	17	
<i>respondent skipped question</i>	8	

Question 18. To the best of your knowledge, what were the advocate's qualifications?	
Comments	Count
Licensed/Certified/Trained advocate	5
Relevant/Personal experience	4
Master's degree or higher	4
Former special education/Reading teacher	3
Other qualifications and affiliations related to child development and children with disabilities.	3
I don't recall, but her presence at the IEP meetings seemed to further the resolve of the district not to budge. So we let her go and hired an attorney.	1
Great	1
<i>provided comment</i> 15	

Question 19. Please briefly describe how the advocate assisted you during your special education dispute resolution process(es).	
Comments	Count
One advocate, as a participating healthcare representative with a medical perspective on the matter under dispute. Both advocates, as witnesses to proceedings and consultants pre- and post-proceedings.	1
She helped me to understand the laws and what was a right for my child in the education process of NH, that was too much information for me to understand on my own.	1
Advocate helped with support regarding legal info. Advocate also participated in discussions around the student.	1
Was with us during each piece of the process - meetings, behind the scenes drafting language, etc.	1
My advocate has represented my child as if it was her own child. She has worked around the clock, and I mean all hours submitting laws, documentations, complaints and she also spoke on things when I didn't know about them or how to. She has tried to help the district and I work together for my child's needs. However, [Attorney] fights and violates the law. My advocate writes letters on our behalf and wrote our due process as I didn't know how to and helped me file complaints.	1
The advocate was able to find suitable options for my child at [school] however [school] refused to agree to the same or similar accommodations.	1
She was great however when the school has 4 attorneys working on their case and several district staff it is overwhelming. The advocate is not the problem it is the way parents and children are treated when sticking up for the kids education. The more you fight the less you get, parents are bullied, harassed, suffer retaliation, a form of racism to kids of special needs. School districts should be ashamed of the treatment of these parents and students.	1
Advised me about educational options, walked me through the process of advocating for my child in the public school system, attended school meetings, met with alternate program staff to find options that would best meet my child's needs, worked with the lawyer to prepare for mediation and hearing.	1

She advised us on strategy, informed us on state law and district practices, crafted language for our IEP, represented us at IEP meetings, and consulted for us on obtaining evaluations to measure our child's progress.	1
She wrote the letter to the state and the school. Participate in multiple IEP meetings prior.	1
She held the district accountable to the letter of the law, was neutral, keep emotions cool and levelheaded.	1
Every week she would assist on how to handle the district.	1
She brought up some good points, but she was from [another state], and we were in NH, which was a cause of some disdain/ridicule from the district. (i.e., "that's not how we do things in NH" etc.)	1
During the course of exercising my protected advocacy rights, the advocate guided me through all the malicious compliance the school and (their law firm) continued to engage in, to resolve/negotiate all the procedural and substantive violations my child suffered, and to deal with the retaliation other children and I experienced. As a result of the advocate's help, I was able to defend myself against the district and law firm that attempted to remove my first amendment rights through gag orders and additional confidentiality agreements from birth to death for my child, as well as responsibility for others who knew about my due process complaint.	1
I was lucky to get this advocate as again even advocates are expensive. She did file my due process for us, helped prepare and went to the prehearing and mediation previously. She has continued to advocate for my child's best interest.	1

provided comment **15**

Question 20. Was there a cost to receiving assistance from the advocate?		
Answer Options	Count	Percent
\$0 (no cost)	3	20.0%
\$1 - \$499	1	6.7%
\$500 - \$999	0	0.0%
\$1000 - \$1499	1	6.7%
\$1500 or more	9	60.0%
Don't know	1	6.7%

respondent answered question **15**
respondent skipped question **10**

Question 21. Please rate your satisfaction with the information provided to you by the advocate or advocate's organization.		
Answer Options	Count	Percent
Dissatisfied	0	0.0%
Somewhat Dissatisfied	0	0.0%
Neither Satisfied Nor Dissatisfied	2	13.3%
Somewhat Satisfied	4	26.7%
Satisfied	9	60.0%
Don't know	0	0.0%

respondent answered question **15**

respondent skipped question **10**

Question 22. If you found any of your interactions with an advocate to be less than satisfactory, please describe ways in which the advocate was less than satisfactory. Otherwise, please respond "not applicable."

Comments	Count
I was very dissatisfied with the attorney I had who pushed me to settle even though my student was not getting services in the IEP. I was also dissatisfied with the mediator who was not impartial and pushed me to accept the school deal and promised that things would be added later because he wanted to leave early. I also was charged several thousand dollars for a file review and for the lawyer to sit in mediation to have them bring me back the exact same offer the school had given me before the mediation. The school breaks the law and has no consequences, so they don't care if they don't provide services to the child. There are no consequences for them. They even say stuff like the NHED has no jurisdiction over them.	1
I do not have direct complaints about the service the advocate provided, but the cost is prohibitive, and I was not able to navigate the school system without this support. I have [an educational background in] special education and was stunned to discover how broken and punitive our public school system is.	1
Her knowledge of High School special ed was not as comprehensive. I should have been advised to obtain an attorney.	1
Its unfortunate families need to seek this route and out of pocket expenses can limit a family who doesn't have the funds.	1
Low-income and disability-related organizations in the state ARE LESS THAN SATISFACTORY. Rather than taking on cases, the New Hampshire Disabilities Rights Center (DRC) accepts families' stories and information for grant purposes. DRC cites a lack of staffing, but contracts with EdLaw for cases. This practice is very secretive and selective, and the public is not informed of it. New Hampshire Parent Information Center (PIC) does not support families in any of the dispute resolution processes. PIC has volunteer advocates, yet families have no access to them. NHLA does not take any special education or education issues. The Office of Child Advocate does not take on any special education or education issues.	1
Not applicable	10

provided comment **15**

Question 23. In your opinion, would an advocate have been beneficial during certain special education dispute resolution process(es)? Please briefly explain why or why not.

Comments	Count
Yes, generally beneficial, supports the parents, and some advocate organizations help.	8
Yes, help parents understand and have someone who has knowledge about special education laws and processes.	6
Yes, parents need an advocate or attorney to help ensure transparency from the school and accountability.	6
Maybe, depends on the advocate and their education/background/knowledge.	5
No, it would not have made a difference. Need an attorney and financial resources.	3
No.	1

provided comment **25**

Question 24. Were you asked to sign a nondisclosure agreement after any of the special education dispute resolution processes?

Answer Options	Count	Percent
Yes	16	64.0%
No	7	28.0%
Don't know	2	8.0%

respondent answered question **25**
respondent skipped question **0**

Question 25. During which special education dispute resolution processes were you asked to sign a nondisclosure agreement? Please check all that apply.

Answer Options	Count	Percent
Local dispute resolution	1	6.3%
Facilitated IEP team meeting	1	6.3%
Third party moderated discussion	2	12.5%
Neutral conference	0	0.0%
Mediation	14	87.5%
Due process hearing	2	12.5%
Special education State complaint	0	0.0%

respondent answered question **16**
respondent skipped question **9**

Question 26. Is there anything you would like to share about nondisclosure agreements in the special education dispute resolution processes?	
Comments	Count
Should not be allowed	5
There use do not support transparency/equity/accountability	5
Parents feel threatened or pressured to not share their experience due to fear of the consequences.	3
Schools violate nondisclosure agreements without consequence	2
All dispute resolution processes short of a special education due process hearing favor the interests of the LEA in preparation for a special education due process hearing.	1
We agreed to financial terms for a portion of the award from the due process hearing. Because I would not agree to the language in a non-disclosure agreement, the district has refused to pay and the Hearing Officer's decision has not been implemented.	1
If the schools and NHED are doing their jobs and supporting students and families as they should be these wouldn't be needed.	1
There is already confidentiality in the law and this violates first amendment rights to speak about my experiences as well as barring families from taking further action when services are not followed.	1
We did not sign because we never came to a suitable resolution and ultimately my [child] was taken out of the [school] program.	1
It prevents parents who have been forced to litigate to keep that experience secret. We live in a system that encourages families who can afford it to pull special ed kids out of public school and seek private placement, rather than funding comprehensive services in our public schools. This leaves families without financial means to be faced with ineffective options and it hurts our children.	1
There are dozens, maybe hundreds of families who are in desperate need of the services we received after 2.5 years of advocacy with the aid of an attorney and advocate. We are grateful to have been able to fund these services, but many people are not. Nondisclosure agreements (NDA) prevent families from sharing information that could be vital to other families obtaining a free appropriate public education (FAPE), which their children have been promised by the school districts and guaranteed by federal and state law.	1
I also don't feel it is a good idea to sign as it is harder to get assistance when it is violated since you can't share.	1
It felt odd not to be able to tell our families that we "won" our mediation just two weeks before our Due Process date and that I needed to be vague about the (successful) outcome. I felt that the nondisclosure was needed just so the district wouldn't "look bad" or be embarrassed. The nondisclosure felt childish.	1

Under IDEA, discussions that occur during mediation sessions must remain confidential. 34 C.F.R. § 300.506(b)(6) and (8). Therefore, a parent’s or public agency’s participation in the mediation process may not be conditioned on the party’s agreement to sign a confidentiality pledge. (https://sites.ed.gov/idea/idea-files/policy-letter-july-31-2020-to-anonymous/ . In my mediation, my confidentiality agreement was different from my advocates. This was not discovered until afterward. I notified the NHED that [NHED staff], the mediator, needed to pick up on the differences. I did not agree that there was a need for the mediation agreement when IDEA has a confidential clause already. In my NDA, I had to sign that I would not speak of any of my child's education in the past and in the future, I was held responsible for my child if he/she shared any educational details (past and present), I was held responsible for other individuals who had knowledge of my child's experiences with the school district and the law firm, I could not speak ill of anyone in the district by name or job title, and I would be held responsible for paying back any compensatory funds used if I breached the NDA. I did not agree, and the mediator told me that the NDA was a normal part of the process. It is important to note, that my due process, which I filed, the district had an obligation to fund my IEE request or file for due process, and they ignored their obligation under IDEA.	1
I wasn't allowed to bring the agreement made in mediation to due process, even though it was vital to my case.	1

provided comment **15**

Question 27. Did your dispute result in a decision or agreement requiring the school district to implement changes or corrective action?

Answer Options	Count	Percent
Yes	15	60.0%
No	8	32.0%
Don't know	2	8.0%

respondent answered question **25**
respondent skipped question **0**

Question 28. If your dispute resulted in an agreement with the school, do you know if your agreement was implemented?

Answer Options	Count	Percent
Yes	11	73.3%
No	3	20.0%
Don't know	0	0.0%
Not applicable	1	6.7%

respondent answered question **15**
respondent skipped question **10**

Question 29. If your dispute resulted in a special education State complaint or due process decision requiring the school district to implement changes or corrective action, was the decision fully implemented?

Answer Options	Count	Percent
Yes	5	33.3%
No	7	46.7%
Don't know	2	13.3%
Not applicable	1	6.7%

respondent answered question **15**
respondent skipped question **10**

Question 30. Which of the following actions did you use to attempt to address all or part of the unimplemented decision? Please check all that apply.

Answer Options	Count	Percent
No action taken	0	0.0%
Contacted NHED staff	5	71.4%
Contacted the school district personnel	6	85.7%
Contacted the School Administrative Unit (SAU)	5	71.4%
Contacted the hearing officer or investigator	3	42.9%
Requested a facilitated IEP team meeting, neutral conference	1	14.3%
Filed a new due process or special education State complaint	1	14.3%
Other - please specify	4	57.1%

respondent answered question **7**
respondent skipped question **18**

Question 30. Test responses, Other - please specify	Count
Federal Court review of other portions of the decision.	1
Filed a complaint with the US Department of Education Office of Special Education Programs (OSEP)	1
Continuing to try to fix it. May need to go back to due process or court.	1
Requested multiple IEP meetings	1

provided comment **4**

Question 31. Did the NHED monitor the decision and notify you of the school district's progress in implementing the changes or corrective action?

Answer Options	Count	Percent
Yes	3	25.0%
No	8	66.7%
Don't know	1	8.3%

respondent answered question **12**
respondent skipped question **13**

Question 32. Did a conflict of interest or potential conflict of interest arise involving you or someone in your party during your special education dispute resolution process(es)?		
Answer Options	Count	Percent
Yes	3	12.0%
No	17	68.0%
Don't know	5	20.0%

respondent answered question **25**
respondent skipped question **0**

Question 33. With whom did you or someone in your party have a conflict of interest or potential conflict of interest? Please check all that apply.		
Answer Options	Count	Percent
IEP facilitator	1	33.3%
Moderator	0	0.0%
Neutral	0	0.0%
Mediator	0	0.0%
Hearing officer	0	0.0%
Investigator	0	0.0%
NHED staff	0	0.0%
Other - please specify	3	100.0%

respondent answered question **3**
respondent skipped question **22**

Question 33. Text responses, Other - please specify	Count
Our child's case manager is [their] teacher. That created a huge conflict of interest in that she could not function as an objective party when she was implementing and evaluating the directives of the team. In addition, a number of experts brought in to comment on the evaluations we had paid to have done had a stake in criticizing the results because they are employed by the district.	1
The school district attorney and non attorney lawyer	1
	1

provided comment **3**

Question 34. How did your party or the other party report the conflict of interest or potential conflict of interest?	
Comments	Count
We were not given a venue. This is the first opportunity we have been given to report this conflict of interest.	1
A non-attorney, deployed by the law firm, handled all my emails and made decisions for the IEP team. The attorney of the law firm that employed the non attorney was involved in the due process/mediation, so it seems like a conflict of interest. The law firm for the district provided the NH hearing officers training, so my hearings officer was trained by the attorney involved in my due process	1
We didn't.	1
<i>provided comment</i>	3

Question 35. In your opinion, was the conflict of interest or potential conflict of interest sufficiently addressed?		
Answer Options	Count	Percent
Yes	0	0.0%
No	2	66.7%
Don't know	1	33.3%
<i>respondent answered question</i>	3	
<i>respondent skipped question</i>	22	

Question 36. Please describe ways in which the reported conflict of interest or potential conflict of interest was not sufficiently addressed.	
Comments	Count
The teacher is still the case manager, and to our knowledge these experts continue to exercise biased and excessive influence in IEP meetings. That has not been addressed. <i>[Rest of comment removed due to case specific/personally identifiable details.]</i>	1
I reported the conflict on my evaluation form, provided by the NHED (which I had to request) of the hearing officer in additional pages as the questions on the evaluation did not provide for additional comments or truly address the issues I experienced.	1
<i>provided comment</i>	2

Question 37. How clear were the following NHED public resources in explaining the facilitated IEP team meeting process. If you did not seek information about, or participate in this process, please choose "not applicable."

Answer Options	Unclear	Somewhat unclear	Neither clear nor unclear	Somewhat clear	Clear	Not applicable	Total
Website	5 (20.0%)	7 (28.0%)	0 (0.0%)	4 (16.0%)	2 (8.0%)	7 (28.0%)	25
Manuals and other guides	4 (16.0%)	8 (32.0%)	0 (0.0%)	5 (20.0%)	2 (8.0%)	6 (24.0%)	25
Administrative rules	5 (20.0%)	10 (40.0%)	0 (0.0%)	3 (12.0%)	2 (8.0%)	5 (20.0%)	25
State law	3 (12.0%)	9 (36.0%)	2 (8.0%)	3 (12.0%)	3 (12.0%)	5 (20.0%)	25

respondent answered question **25**

respondent skipped question **0**

Question 38. How clear were the following NHED public resources in explaining the third party moderated discussion process. If you did not seek information about, or participate in this process, please choose "not applicable."

Answer Options	Unclear	Somewhat unclear	Neither clear nor unclear	Somewhat clear	Clear	Not applicable	Total
Website	6 (24.0%)	4 (16.0%)	0 (0.0%)	4 (16.0%)	2 (8.0%)	9 (36.0%)	25
Manuals and other guides	6 (24.0%)	3 (12.0%)	0 (0.0%)	4 (16.0%)	2 (8.0%)	10 (40.0%)	25
Administrative rules	6 (24.0%)	3 (12.0%)	0 (0.0%)	3 (12.0%)	2 (8.0%)	11 (44.0%)	25
State law	5 (20.0%)	3 (12.0%)	1 (4.0%)	3 (12.0%)	2 (8.0%)	11 (44.0%)	25

respondent answered question **25**

respondent skipped question **0**

Question 39. How clear were the following NHED public resources in explaining the neutral conference process. If you did not seek information about, or participate in this process, please choose "not applicable."

Answer Options	Unclear	Somewhat unclear	Neither clear nor unclear	Somewhat clear	Clear	Not applicable	Total
Website	6 (24.0%)	2 (8.0%)	0 (0.0%)	3 (12.0%)	2 (8.0%)	12 (48.0%)	25
Manuals and other guides	6 (24.0%)	2 (8.0%)	0 (0.0%)	2 (8.0%)	2 (8.0%)	13 (52.0%)	25
Administrative rules	6 (24.0%)	2 (8.0%)	1 (4.0%)	2 (8.0%)	2 (8.0%)	12 (48.0%)	25
State law	5 (20.0%)	2 (8.0%)	2 (8.0%)	2 (8.0%)	2 (8.0%)	12 (48.0%)	25

respondent answered question 25

respondent skipped question 0

Question 40. How clear were the following NHED public resources in explaining the mediation process. If you did not seek information about, or participate in this process, please choose "not applicable."

Answer Options	Unclear	Somewhat unclear	Neither clear nor unclear	Somewhat clear	Clear	Not applicable	Total
Website	4 (16.7%)	10 (41.7%)	2 (8.3%)	2 (8.3%)	3 (12.5%)	3 (12.5%)	24
Manuals and other guides	4 (16.7%)	9 (37.5%)	1 (4.2%)	2 (8.3%)	3 (12.5%)	5 (20.8%)	24
Administrative rules	5 (20.8%)	7 (29.2%)	1 (4.2%)	2 (8.3%)	3 (12.5%)	6 (25.0%)	24
State law	4 (16.7%)	7 (29.2%)	3 (12.5%)	3 (12.5%)	2 (8.3%)	5 (20.8%)	24

respondent answered question 24

respondent skipped question 1

Question 41. How clear were the following NHED public resources in explaining due process. If you did not seek information about, or participate in this process, please choose "not applicable."

Answer Options	Unclear	Somewhat unclear	Neither clear nor unclear	Somewhat clear	Clear	Not applicable	Total
Website	5 (20.8%)	4 (16.7%)	2 (8.3%)	5 (20.8%)	3 (12.5%)	5 (20.8%)	24
Manuals and other guides	5 (20.8%)	3 (12.5%)	2 (8.3%)	6 (25.0%)	3 (12.5%)	5 (20.8%)	24
Administrative rules	5 (20.8%)	3 (12.5%)	2 (8.3%)	4 (16.7%)	4 (16.7%)	6 (25.0%)	24
State law	5 (20.8%)	3 (12.5%)	1 (4.2%)	5 (20.8%)	4 (16.7%)	6 (25.0%)	24

respondent answered question 24

respondent skipped question 1

Question 42. How clear were the following NHED public resources in explaining the special education State complaint process. If you did not seek information about, or participate in this process, please choose "not applicable."

Answer Options	Unclear	Somewhat unclear	Neither clear nor unclear	Somewhat clear	Clear	Not applicable	Total
Website	6 (25.0%)	4 (16.7%)	2 (8.3%)	3 (12.5%)	5 (20.8%)	4 (16.7%)	24
Manuals and other guides	5 (20.8%)	4 (16.7%)	3 (12.5%)	6 (25.0%)	3 (12.5%)	3 (12.5%)	24
Administrative rules	5 (20.8%)	4 (16.7%)	2 (8.3%)	6 (25.0%)	4 (16.7%)	3 (12.5%)	24
State law	6 (25.0%)	3 (12.5%)	2 (8.3%)	5 (20.8%)	4 (16.7%)	4 (16.7%)	24

respondent answered question 24
respondent skipped question 1

Question 43. If you found any NHED public information resources to be less than clear, please describe the ways in which NHED public resources were less than clear. Otherwise, please respond "not applicable."

Comments	Count
Difficult to understand or needed expert assistance	9
Unclear how to handle noncompliance by the school district	4
Not comprehensive/No description of procedures or timing is given	4
Parents are at a disadvantage due to the cost/need for an attorney	2
NHED is aligned with the school district needs rather than the child's	2
They all implement them in different ways and say they're right regardless of what is truly intended in the laws and resources.	1
Basically as parents to add to the mess of special education it should not be left up to the parents to do all this crap just give my kid the special education they deserve as a human being. My child has got nothing from the school in 2 years. They are unable to attend because they were hurt at school and the school refuses to keep [them] safe. So now they are home with nothing. Thank you to all the rules and laws and bla bla bla does nothing for my child.	1
I don't have specific complaints, it is a general lack of honesty about how broken the process is. Whether my hearing would result in support for my child was completely dependent on which person was assigned to make the decision. If a particular person is assigned, the district will push for the hearing because they know they will "win" (meaning not have to meet the child's needs). If a different judge is assigned, the district is motivated to find resolution in mediation. That is not explained on [NHED] website or in [NHED] materials. (nor should that be how it all works).	1
The school immediately told us that it would have consequences for our child if we would go that route. It was also explained to us that it would be extremely expensive, during the process our child would not get any support, and that we would not get what we wanted.	1

There was no specific contact person/department to reach out to. I feel stating a specific department would have expedited the process.	1
1. The state complaint findings, our state does not provide transparency or post them, with the redaction of personally identifiable information and publicly displaying school districts. 2. In the due process decision, the public school's names and attorneys are redacted, and the decision does not have a standard operating procedure in writing them (Note one Hearing Officer has been involved in more than 85% of the ones listed) Commissioner had a blanket policy to redact all public school names as to protect the identity of the student. Redaction of public schools and attorney goes against RSA 91-A.	1
Also facilitated meeting we were told there was no one and then suddenly we got someone	1
Not applicable	4

provided comment **24**

Question 44. Did you use other public resources to obtain information for your special education dispute resolution process(es)?

Answer Options	Count	Percent
Yes	13	54.2%
No	11	45.8%

respondent answered question **24**
respondent skipped question **1**

Question 45. Please list the other public resources you used to obtain relevant information.

Comments	Count
Parent Information Center	6
Websites	3
Disabilities Rights Center	2
Wrightslaw.com	2
Office of Civil Rights	2
Community Bridges	1

provided comment **11**

Question 46. For your purposes, were other public resources sufficient?

Answer Options	Count	Percent
Yes	4	30.8%
No	7	53.9%
Don't know	2	15.4%

respondent answered question **13**
respondent skipped question **12**

Question 47. Please describe ways in which public resources were not sufficient.	
Comments	Count
Did not provide answers to all situations/questions	5
Volume of material is overwhelming	2
A mess like everything to do with special education	1
All of these places have too many calls coming in to assist everyone who needs help. Regardless of how desirable a situation is if it is on their mission of the year and if they have additional staff you may receive help.	1
Parent Information Center seems to be only on the school district's side and are not neutral.	1
Selective in cases from Dec Civil rights not easy and no local resources	1
<i>provided comment</i>	9

Question 48. Excluding advocate costs, if applicable, was there a monetary cost for you to participate in special education dispute resolution?		
Answer Options	Count	Percent
Yes	14	58.3%
No	10	41.7%
Don't know	0	0.0%
<i>respondent answered question</i>	24	
<i>respondent skipped question</i>	1	

Question 49. Excluding advocate costs, what costs were associated with your special education dispute resolution process(es)? Next to each of the following processes, please list what you spent money on (e.g., attorney, evaluation, witness fees, copies, etc.) and approximate associated costs. If you were not a party in a certain process, please state "not applicable." You may also list "none" if there were no associated costs.		
Answer Options	Count	Percent
Local dispute resolution	4	30.8%
Facilitated IEP team meeting	6	46.2%
Third party moderated discussion	2	15.4%
Neutral conference	2	15.4%
Mediation	8	61.5%
Due process hearing	4	30.8%
Special education State complaint	4	30.8%
<i>respondent answered question</i>	13	
<i>respondent skipped question</i>	12	

Question 49. Text responses – Associated costs	
Comments	Count
<i>Local Dispute Resolution</i>	
\$200 records copies	1
\$500	1
\$8,000	1
None	1
<i>Facilitated IEP Team Meeting</i>	
\$2.00	1
\$350	1
\$3,500 attorney, evaluations	1
\$15,000	1
None	2
<i>Third Party Moderated Discussion</i>	
\$3,500 attorney and more evaluations	1
\$3,500	1
<i>Neutral Conference</i>	
\$2,500 attorney	1
\$3,500	1
<i>Mediation</i>	
\$3,500	1
\$4,000 attorney, specialized evaluations, copies	1
\$8,000 attorney	1
\$8,700	1
\$10,000	2
\$30,000	1
\$15,000 and more for EA and attorney, \$100,000 for private placement [until dispute resolved]	1
<i>Due Process Hearing</i>	
\$450	1
\$10,000	1
\$60,000 attorney	1
\$70,000	1
<i>Special Education State Complaint</i>	
Data collection, photocopy costs	1
More than \$2.00	1
None	2

provided comment 12

Question 50. Is there anything else you would like to share about your special education dispute resolution process(es) costs?	
Comments	Count
Parents have to fight hard for free and appropriate education.	5
Expensive	5
There is an imbalance between parents having to pay for lawyers and what the school districts have to pay.	3
According to NHED, family legal costs were generally nonrecoverable, irrespective of the outcome of a due process hearing.	1
I have spent well more than \$100,000 on attorney's fees - most families could not afford that. There is a disincentive for school districts to resolve matters and many actively work to harm families, further exacerbating issues. Special education costs are increasing. The Hearing Officer failed to follow established legal precedent which also increased my costs, necessitating review in court.	1
There are no free legal resources. State bar gives no referrals for education. Attorneys demand a huge retainer. DRC doesn't accept any cases and just says stupid stuff like you sound smart, you can act like an attorney (this is illogical and ignorant). They have even sent people in to do pro se representation with zero guidance other than sheets they printed off the website. Legal aid only takes cases related to landlord/tenant and not special ed.	1
Not only did we end up with nothing and no money left but our child does not get any services or schooling from the crooked school district in which we live where their abuse is supported by the NHED and its minutia of rules and laws. My wife and I have worked in public schools [which makes the experience worse]. Also, absolutely sick of the points program, where we are pointed in all directions for help, but no one actually helps. Parents do not have the bandwidth to read all the laws, read all the rules, decipher the timelines and BS. Parents in crisis need immediate solutions not more bs and red tape The passing of HB581 has had little effect. I always [thought] NHED would be the last stop where my child would get what they deserve. I was wrong. I myself and my wife and many other parents are forced to watch their children get older and not get what they need because of some of the issues I have outlined. School district cause heart break, Mine breaks everyday my child gets nothing, and I have no money left to get them what they need. I have little to nothing good to say about the special education in NH and the laws and rules supposedly made to protect children because they certainly do not.	1
The process is not streamlined.	1
This was an awful experience, that ultimately resulted in my child receiving the support needed, but there is nothing to celebrate. My child is in private residential school instead of home with me, because our public school system is broken. Other children are struggling in ineffective placements because of the same broken system.	1
Our advocate costs were \$7,800.00. It's a travesty.	1
It is time to protect the children.	1

It kills me that after literally YEARS of dispute, the district decided to agree to ALL of our requests, all at once, in mediation, just weeks before our Due Process hearing. I'm just sad I had to fight so hard.	1
[School administrator] was the primary problem that we faced when managing our IEP meetings as well as our due process filings.	1
The school district (and their attorney) refused to provide me with an electronic copy of my child's educational records under Family Educational Rights and Privacy Act (FERPA), [and] they wanted to charge me an obscene amount of money. When I finally received his/her educational records (FERPA) there were only a few pages. I had to take time from work without pay.	1

provided comment 13

Question 51. Based on your interaction with NHED contractors (facilitator, moderator, neutral, mediator, hearing officer, investigator) during your special education dispute resolution process(es), how satisfied were you with the following:

Answer Options	Dissatisfied	Somewhat dissatisfied	Neither satisfied nor dissatisfied	Somewhat satisfied	Satisfied	Don't know	Not applicable	Total
Communication	4 (16.7%)	2 (8.3%)	5 (20.8%)	3 (12.5%)	9 (37.5%)	0 (0.0%)	1 (4.2%)	24
Professionalism	3 (12.5%)	2 (8.3%)	3 (12.5%)	2 (8.3%)	12 (50.0%)	1 (4.2%)	1 (4.2%)	24
Timeliness	4 (16.7%)	3 (12.5%)	2 (8.3%)	8 (33.3%)	6 (25.0%)	0 (0.0%)	1 (4.2%)	24
Knowledge	6 (25.0%)	1 (4.2%)	2 (8.3%)	3 (12.5%)	11 (45.8%)	0 (0.0%)	1 (4.2%)	24
Addressed all concerns	8 (33.3%)	2 (8.3%)	1 (4.2%)	3 (12.5%)	9 (37.5%)	0 (0.0%)	1 (4.2%)	24
Complied with federal and State requirements	6 (25.0%)	2 (8.3%)	1 (4.2%)	3 (12.5%)	10 (41.7%)	1 (4.2%)	1 (4.2%)	24

respondent answered question 24

respondent skipped question 1

Question 52. If you found any of your interactions with NHED contractors to be less than satisfactory, please describe ways in which NHED interactions were less than satisfactory. Otherwise, please respond "not applicable."

Comments	Count
Mediator/Hearing officer biased, unethical, or not impartial	5
Mediator was a harsh communicator.	1
As stated above, Hearing Officer failed to follow established legal precedent and the state has failed to follow up on the area where there was an award.	1
The hearing officer however I did not find any issues with.	1
Not good	1
All they ever did was just tell the school to do what they already were not doing in the first place. There needs to be more of a heavier fine/ disciplinary action than just do it.	1
I feel that they did not reach out to speak with me until after the district reached out. This opened me up to uncomfortable conversations with the district without being given a clear understanding of my rights. It would have also been helpful if they provided email follow up of our conversations with resources to support me through the process.	1
Their position on our situation was neutral. So, ultimately they were of no help? The NHED offered no help beyond providing information on what the due process was and everything said get a lawyer. The NHED is on the side of the schools that are keeping our kids out of school and cheating these children out of their education. The only one advocating for the children are the lawyers their family may or may not be able to afford.	1
Not applicable	13

provided comment **24**

Question 53. Based on your interaction with NHED staff during your special education dispute resolution process(es), how satisfied were you with the following:

Answer Options	Dissatisfied	Somewhat dissatisfied	Neither satisfied nor dissatisfied	Somewhat satisfied	Satisfied	Don't know	Not applicable	Total
Communication	4 (16.7%)	1 (4.2%)	4 (16.7%)	3 (12.5%)	8 (33.3%)	1 (4.2%)	3 (12.5%)	24
Professionalism	4 (16.7%)	0 (0.0%)	2 (8.3%)	3 (12.5%)	10 (41.7%)	1 (4.2%)	4 (16.7%)	24
Timeliness	5 (20.8%)	1 (4.2%)	2 (8.3%)	5 (20.8%)	7 (29.2%)	1 (4.2%)	3 (12.5%)	24
Addressed all concerns	6 (25.0%)	1 (4.2%)	1 (4.2%)	4 (16.7%)	8 (33.3%)	1 (4.2%)	3 (12.5%)	24
Complied with federal and State requirements	5 (20.8%)	0 (0.0%)	2 (8.3%)	2 (8.3%)	10 (41.7%)	2 (8.3%)	3 (12.5%)	24

respondent answered question **24**

respondent skipped question **1**

Question 54. If you found any of your interactions with NHED staff to be less than satisfactory, please describe ways in which NHED interactions were less than satisfactory. Otherwise, please respond "not applicable."	
Comments	Count
NHED/Hearing officer /mediator biased or not impartial	4
Rude	2
Would not return calls or provide accurate information	2
Refused to take/investigate complaints	2
NHED staff constantly fail to enforce or make corrections to schools. Three NHED Administrators are either not fulfilling their responsibilities, noncompliant with regulations, or defensive.	1
[NHED staff member] was always polite and answered questions they could, or would point me in the right direction of whom to speak with. The Commissioner would call and tell me I was right but never did anything to help. The Hearing Officer I believe followed the laws and ruled on what he could and dismissed without prejudice what he could not.	1
Lack of professionalism. School staff did not have needed resources.	1
Some of them were very as a matter of fact. We as parents calls upset already so they should be more understanding.	1
The timelines was a concern.	1
As a result of past commissioners making internal changes, the NH School Board Association and the NH Association of Special Education Administrators have both registered state lobbyists who are stakeholders that have removed rights, fragmented access to rights, and (impacted the NH Procedural Safeguards available to families.).	1
They were able to provide info on how things happen. But not able to offer assistance.	1
Told there was no facilitators we were ready to get an attorney we had volumes of documents and recordings from IEP meetings that school was dishonest and non-transparent.	1
Not applicable	15

provided comment **24**

Question 55. Based on your interaction with the local school district during your special education dispute resolution process(es), how satisfied were you with the following:

Answer Options	Dissatisfied	Somewhat dissatisfied	Neither satisfied nor dissatisfied	Somewhat satisfied	Satisfied	Don't know	Not applicable	Total
Communication	15 (62.5%)	5 (20.8%)	2 (8.3%)	1 (4.2%)	1 (4.2%)	0 (0.0%)	0 (0.0%)	24
Professionalism	16 (66.7%)	2 (8.3%)	3 (12.5%)	0 (0.0%)	3 (12.5%)	0 (0.0%)	0 (0.0%)	24
Timeliness	16 (66.7%)	1 (4.2%)	4 (16.7%)	0 (0.0%)	3 (12.5%)	0 (0.0%)	0 (0.0%)	24
Knowledge	16 (66.7%)	0 (0.0%)	3 (12.5%)	2 (8.3%)	3 (12.5%)	0 (0.0%)	0 (0.0%)	24
Addressed all concerns	19 (79.2%)	1 (4.2%)	2 (8.3%)	1 (4.2%)	1 (4.2%)	0 (0.0%)	0 (0.0%)	24
Complied with federal and State requirements	15 (62.5%)	1 (4.2%)	2 (8.3%)	3 (12.5%)	2 (8.3%)	1 (4.2%)	0 (0.0%)	24

respondent answered question 24
respondent skipped question 1

Question 56. If you found any of your interactions with the local school districts to be less than satisfactory, please describe ways in which the local school district interactions were less than satisfactory. Otherwise, please respond "not applicable."

Comments	Count
Unprofessional/unethical/possibly illegal behavior by school district	7
School district did not follow/implement IEP or did not fully implement IEP	6
School district's only interest is to reduce spending/Not interest of child	4
Retaliation/Threats of retaliation	3
School district blocks my calls/communications	2
Decisions are predetermined by school district	2
I'm horrified by [my former] school district. It runs the gamut: coming to meetings not knowing what programs offered or even what city and state they were located in. The program I selected was clearly better suited for my child AND was substantially less expensive	1
I think it's very counter active to put people in multiple meetings year after year if the teachers are not allowed to voice their real opinion about the child's educational need when they know the school district does not have the means to produce or follow through per a child's actual needs.	1
There are too many ways to list how dissatisfied the school district is. They treat my out if district placed child differently than they would if [child] were in district. They force multiple embarrassments to this child so they can "collect data." They don't support [child] appropriately creating an environment where they are an enigma and something to be avoided. [Parts of comment removed due to case specific/personally identifiable details.]	1

SPED director refuses to fully staff the department. Not knowledgeable on the law. Says every sped kid will be in menial labor. Fails to comply with the law. Tries to stop parents from speaking out at school board meetings.	1
She refused the recommendations for applicable schools for my child, including those from her own people. We lost 2 1/2 years of my child's education trying to find schools and bumping between those which seemed okay on the surface but were geared for juvenile delinquents, not intelligent neurodivergent kids.	1
Although we did not have a lawyer to prove it my child's rights were violated by [school] and when I requested copies of communications it was clear to me that they actively tried to circumvent those rights.	1
School district brought Attorney to all meetings and they both consistently told me I had no say it was unilaterally up to the district, told me they didn't agree so I had to move on didn't let me advocate for my child. Discriminated against my child by hiring people only for my [child]'s situation that still wouldn't listen. Made meetings contentious.	1
Until the final outcome of the mediation that the district finally worked with us. Since that time, they have done what we have asked in a timely fashion. But from the fall of 2019 until the fall of 2022 (and to a lesser degree for a few years leading up to 2019), the district repeatedly and persistently resisted our efforts to advocate for services our child needed to receive a free and appropriate public education. Not only did my child not make progress, it is documented my child was regressing. <i>[Rest of comment removed due to case specific/personally identifiable details.]</i>	1
Could not provide any options that would meet my child's needs, but did not say so- instead, sat in a meeting listing off random thoughts about possible places that might take a child of the age and diagnosis, but no certainty about those thoughts. Essentially head scratching and shrugging.	1
As mentioned before, the school district did nothing to prevent failures in the local school to happen again. They pressured us to not go to the state. They were not knowledgeable about specific complex needs, they did not engage with the local school to get past the school records above the table. The previous school district on the other hand was extremely helpful. They ultimately connected with the school and told them what they needed to do, the documents they needed to provide us, and they were not afraid to reach out to the state.	1
Teachers are not trained on time. I meet with the school at the very least 4 times a year.	1
When an administrator calls a child a name for expressing his feelings. There is something wrong with them.	1
Too numerous to write after a years-long dispute.	1
I filed 5 state complaints within 7 years. It is a law-abiding document so there is no excuse.	1

1. The LEA ignores families, so you can not address the unmet needs of your child or meet to work in partnership with your child and the IEP Team.	
2. As I have stated before, the local school districts with their paid memberships into the NH School Board Association, NH Association of Special Education Administrators, NH School Superintendent Association, and the NH Business Administrator Associations receive bundled legal services with law firms that are embedded in the IEP process.	1
The district will do what it takes to make sure they are right. No matter what the complaint is.	1
Not applicable	2
provided comment	24

Question 57. Did you file a request for due process?		
Answer Options	Count	Percent
Yes	13	54.2%
No	11	45.8%
Don't know	0	0.0%
respondent answered question		24
respondent skipped question		1

Question 58. Were you offered a resolution meeting?		
Answer Options	Count	Percent
Yes	10	76.9%
No	2	15.4%
Don't know	1	7.7%
respondent answered question		13
respondent skipped question		12

Question 59. Did you participate in a resolution meeting?		
Answer Options	Count	Percent
Yes	8	80.0%
No - please provide a brief explanation as to why you did not participate.	2	20.0%
respondent answered question		10
respondent skipped question		15

Question 59. Comments	Count
The first due process yes. They violated the mediation agreement, denied my child FAPE. So we filed another due process.	1
It was a mess schools so crooked it didn't matter.	1
provided comment	2

Question 60. Did the resolution meeting occur within 15 calendar days of filing the request for due process?		
Answer Options	Count	Percent
Yes	7	87.5%
No	1	12.5%
Don't know	0	0.0%
<i>respondent answered question</i>		8
<i>respondent skipped question</i>		17

Question 61. Who was present at the resolution meeting? Please check all that apply.		
Answer Options	Count	Percent
Hearing officer	2	25.0%
School district representative (e.g., school personnel)	8	100.0%
School district attorney	4	50.0%
IEP team member	6	75.0%
Parent advocate	4	50.0%
Parent attorney	2	25.0%
Other - please specify	3	37.5%
<i>respondent answered question</i>		8
<i>respondent skipped question</i>		17

Question 61. Text responses, Other - please specify.	Count
Parent, someone who I think maybe was the superintendent	1
The district hired a private lawyer to represent them.	1
Held over zoom, the resolution was recorded, and I am unsure who had access afterward. I was not provided a copy of the recording	1
<i>provided comment</i>	3

Question 62. Did the resolution meeting resolution resolve your special education dispute?		
Answer Options	Count	Percent
Yes	3	37.5%
No	5	62.5%
<i>respondent answered question</i>		8
<i>respondent skipped question</i>		17

Question 63. Is there anything else we should know about your resolution meeting?	
Comments	Count
No, the resolution meeting went smoothly.	2
The purpose of the meeting was to determine what information the parent had for the due process hearing.	2
Position of school district was immovable at this meeting.	1
They should not have had any type of attorney there since I did not	1
We had to have a second resolution meeting. And resolved the issue during mediation as a result of it.	1
Without listing to the specifics, our resolution meeting was because the school district was counting services that were not provided on day my child was absent. We do not feel like this was appropriate. The special education Director said that this was the school policy. This is what led us to filing a due process, because even with mediation meetings, we did not get the school to acknowledge services were not administered.	1
The goal of the LEA's resolution meeting was to avoid resolving the issues or having a meaningful discussion. IEP Team members were silent and did not participate.	1
<i>provided comment</i>	7

Question 64. Is there anything else we should know about your experience with special education dispute resolution processes?	
Comments	Count
Schools violate laws/IEPs/agreements/orders and are not held accountable by the NHED.	6
Parents should not have to fight so hard to get their child the education they were promised in law.	2
Unfortunately, too much to share in this space.	1
Probably, but it is all so very exhausting. There are no winners here, but the kids are definitely losing.	1
I think it's shameful that in this day in age with all money that is available in grants or federal aid, that we can't address this with our children. The school district, who plays a very important role in molding our children. 6 hours a day, 5 days a week, 10 months a year, needs to realize, this effects the whole family as well not just the children. I am happy to say that my child is now learning in an environment that is programmed for [them], education wise. I must say that [they are] still scared by the process we went through to get [them] to where [they are] today, and reminds us all of it frequently. It not only affected [them] emotionally and physically, but our whole family as well. <i>[Rest of comment removed due to case specific/personally identifiable details.]</i>	1

<p>I know you don't see many issues or complaints, that's because they're hidden and protected to the best of the school's ability and they've everything on their side, and parents are left with air and struggling to make a difference in their child's already difficult circumstances only to find that we've nothing left after to continue fighting with. Our sick time and vacation time from work is gone because of all the IEP/504 or other special education meetings. Our finances are reduced because of all those meetings that we have to attend and we don't get paid time off like others. Then our finances are reduced even more because we've to fight with everything we have including funding a lawyer to get the minimum support our children need to even attend school. Our actual functioning reduced because we've already stretched ourselves out to the maximum going to therapy appointments multiple times a week, extra outside of school classes, doctor appointments and researching and learning and looking up law after law after law on our own time because there is no handbook to explain that residential district and receiving district rules and roles and responsibilities. None of this is easy, and it's being placed on families that already have more than most to deal with. So, when you ask why doesn't this seem like an issue think about those families that are actually living this life and what it looks like for them. Maybe try to find where they've the time to even survive, yet somehow, they manage to. Special education programs if you do the research show that a well-supported student will excel and make gains. Our special education system is based not on support but damage. Proving a need for support means failure over and over and over and over for these children in my school district. That is NOT how you create an environment of support, growth and inclusion and that is not what children should be subjected to.</p>	<p>1</p>
<p>There are so many things. I have been through IEP facilitation, state complaint, due process, mediation. I have gone to the school board, the superintendent. There have been numerous complaints filed against the sped director by different parents through different avenues. The process was not impartial. There have been numerous parents who have pointed these issues out.</p>	<p>1</p>
<p>I am very involved in my child's education. I have lost count of how many times members of the IEP team have said how lucky my child is to have a parent so involved. I can't imagine what happens to kids whose parents aren't as aware, don't have the time to be as aware or don't care. The kids must just get trampled over. And even for me being so involved, it was an awful experience.</p>	<p>1</p>
<p>It is no good. So what is the point in have FAPE and IDEA if you allow the schools to fail our children. Then retaliate and make their experience worse to the point they want to kill themselves and leaving parents feeling helpless. Shame on this whole system. There should be laws passed for parents to have free representation and schools to be held accountable.</p>	<p>1</p>
<p>There are way more parents with bad experiences than good despite what the schools say. They LIE.</p>	<p>1</p>
<p>I think I hit the main areas. I hope this survey results in actual change.</p>	<p>1</p>
<p>We did not file a due process complaint because a resolution would have come after graduation</p>	<p>1</p>

Please find a way that parents are not intimidated by the process and the school. We had the money to hire an attorney and put pressure on the principal and the school district. Many parents do not have that opportunity. What we have seen is simply shocking.	1
Process itself was not terrible.	1
The process felt archaic and cumbersome. Knowing that this process is a legal dispute allows the school to stand behind a very, very wide knowledge gap with regards to file for a due process or a resolution meeting. I do not believe that [school administrator] or [school] provides adequate and appropriate tools for parents to understand their students' rights.	1
Attorney fees can be a part of the resolution agreements. Resolution agreements are not written into the IEPs, and IEP Teams need to learn of the agreements. This is a barrier when there is not shared information with the IEP Teams	1
It shouldn't require a family to part with thousands of dollars just to be heard and come to an agreement.	1
When we finally received a facilitator, they were phenomenal for the child. The investigator for the two NHED complaints were honest and found in our favor. The civil rights complaint fold were good.	1

provided comment **18**

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**STATE OF NEW HAMPSHIRE
SPECIAL EDUCATION DISPUTE RESOLUTION**

**APPENDIX D
SPECIAL EDUCATION DISPUTE RESOLUTION
LOCAL EDUCATIONAL AGENCY SURVEY**

In January 2023, we sent a survey link to 118 New Hampshire special education administrators to each complete one survey on behalf of the school district or local educational agency (LEA) they represented. We received 26 complete responses for a 22.0 percent response rate. We combined and simplified similar answers to open-ended questions and presented them in topical categories; multi-part responses were counted in multiple categories where applicable. Some totals in the following tables may not add up to 100 percent due to rounding or where respondents could provide multiple responses to the same question.

Question 1. What is your current job title?	
Comments	Count
Director of Student Services	9
Director of Special Education	5
Director of Special Services	4
Student Services Coordinator/Administrator	3
Director of Pupil Support/Services	2
Assistant Super/Student Services	2
School Psychologist	1
Coordinator of Special Education	1
<i>provided comment</i>	26

Question 2. How many schools do you represent in your current role?	
Comments	Count
1	3
2	2
3	6
4	3
5	1
6	4
7	3
8	2
11	1
18	1
<i>provided comment</i>	26

Question 3. Has your school district(s) developed a local special education dispute resolution process? A local dispute resolution process is any process developed by the school or district intended to resolve a special education issue without New Hampshire Department of Education (NHED) involvement. This does not include individualized education program (IEP) team meetings, or resolution meetings as part of due process.

Answer Options	Count	Percent
Yes	7	26.9%
No	16	61.5%
Don't know	3	11.5%
<i>respondent answered question</i>		26
<i>respondent skipped question</i>		0

Question 4. Did your school district(s) submit the local dispute resolution option(s) to the NHED for review?

Answer Options	Count	Percent
Yes	2	25.0%
No	1	12.5%
Don't know	5	62.5%
<i>respondent answered question</i>		8
<i>respondent skipped question</i>		18

Question 5. Did your school district(s) participate in the local dispute resolution process(es) at some point from July 1, 2019, through June 30, 2022?

Answer Options	Count	Percent
Yes	3	37.5%
No	4	50.0%
Don't know	1	12.5%
<i>respondent answered question</i>		8
<i>respondent skipped question</i>		18

Question 6. Please briefly describe the local dispute resolution process offered by the school or school district.

Comments	Count	
A parent filed a complaint. The complaint was found valid. We fulfilled the corrective action plan.	1	
Reconvening of meetings with additional staff or individuals with knowledge of the student. Providing information to parents of additional resources they could access.	1	
Contact me or the Superintendent to rectify concerns and then follow district policy in regard to resolution.	1	
<i>provided comment</i>		3

Question 7. Which State special education dispute resolution process(es) did your school district(s) participate in at some point from July 1, 2019, through June 30, 2022? Please check all that apply.

Answer Options	Count	Percent
Facilitated IEP team meeting	3	11.5%
Third party moderated discussion	1	3.9%
Neutral conference	0	0.0%
Mediation	11	42.3%
Due process hearing	6	23.1%
Special education State complaint	7	26.9%
None of the above	11	42.3%

respondent answered question **26**
respondent skipped question **0**

Question 8. About how many times was your school district(s) party to a State or local special education dispute resolution process from July 1, 2019, through June 30, 2022?

Answer Options	Count	Percent
1	3	11.5%
2 to 5	10	38.5%
6 to 9	1	3.8%
10 or more	0	0.0%
Not applicable	12	46.2%

respondent answered question **26**
respondent skipped question **0**

Question 9. Did a parent or the school district(s) initiate multiple special education resolution processes for the same issue(s)?

Answer Options	Count	Percent
Yes	1	7.1%
No	11	78.6%
Don't know	2	14.3%

respondent answered question **14**
respondent skipped question **12**

Question 10. Thinking about the most recent issue in which multiple special education dispute resolution processes were used, which of the following processes were used? Please check all that apply.

Answer Options	Count	Percent
Local dispute resolution	1	100.0%
Facilitated IEP team meeting	1	100.0%
Third party moderated discussion	0	0.0%
Neutral conference	0	0.0%
Mediation	0	0.0%
Due process hearing	0	0.0%
Special education State complaint	0	0.0%

respondent answered question **1**
respondent skipped question **25**

Question 11. Did your school district(s) notify the NHED in writing when an IEP educational placement, identification, or evaluation of a student has been rejected by the parent?

Answer Options	Count	Percent
Yes	3	11.5%
No	18	69.2%
Don't know	5	19.2%

respondent answered question **26**
respondent skipped question **0**

Question 12. How often did the NHED communicate descriptions of alternative dispute resolution processes to the parent following the school district's notification? Alternative dispute resolution processes are optional processes that are not due process or special education State complaint.

Answer Options	Count	Percent
Always	1	33.3%
Sometimes	0	0.0%
Never	1	33.3%
Don't know	1	33.3%

respondent answered question **3**
respondent skipped question **23**

Question 13. When both parties agreed to an alternative dispute resolution process communicated by the NHED, how often did the NHED schedule and conduct a conference within 30 days of receiving the notification?

Answer Options	Count	Percent
Always	1	100.0%
Sometimes	0	0.0%
Never	0	0.0%
Don't know	0	0.0%
Not applicable	0	0.0%

respondent answered question **1**
respondent skipped question **25**

Question 14. When did your school district(s) provide parents with a copy of the procedural safeguards notice (information about the procedural safeguards available to parents of a child with a disability)? Please check all that apply.

Answer Options	Count	Percent
At the time of the initial referral or request for evaluation.	23	88.5%
When a parent filed a request for due process.	14	53.9%
When parent filed a special education State complaint.	12	46.2%
At parent request.	18	69.2%
Once every year since a child received their IEP.	24	92.3%
My school district did not provide a procedural safeguards notice.	1	3.9%
Other - please describe	13	50.0%

respondent answered question **26**
respondent skipped question **0**

Question 14. Text responses, Other - please describe:	Count
At every meeting	4
In email correspondence	4
No applicable complaints	3
Provided at time of notice	2
Provided upon determination of eligibility	2
I can only state that this is the expectation for this year as this is my first year in this position.	1
When parents made unilateral decisions, such as placement, or requested an IEE	1

provided comment **13**

Question 15. What did your school district(s) provide to parents as a procedural safeguards notice?		
Answer Options	Count	Percent
The New Hampshire Special Education Procedural Safeguards Handbook available on the NHED's website.	23	92.0%
A document developed by the school district.	2	8.0%
Other - please describe	0	0.0%

respondent answered question **25**

respondent skipped question **1**

Question 16. For which special education dispute resolution process did your school district(s) use attorney representation? Please check all that apply.		
Answer Options	Count	Percent
Local dispute resolution	0	0.0%
Facilitated IEP team meeting	0	0.0%
Third party moderated discussion	0	0.0%
Neutral conference	0	0.0%
Mediation	11	42.3%
Due process hearing	6	23.1%
Special education State complaint	4	15.4%
None of the above	5	19.2%
Not applicable	9	34.6%

respondent answered question **26**

respondent skipped question **0**

Question 17. Did your school district(s) inform the parent of low-cost legal services and other relevant services within the area? Please check all that apply.		
Answer Options	Count	Percent
Yes, when the parent requests the information.	6	23.1%
Yes, when a due process complaint is filed by the parent or school district.	5	19.2%
No, my school district does not inform parents of this information.	4	15.4%
Other - please specify	17	65.4%

respondent answered question **26**

respondent skipped question **0**

Question 17. Text responses, Other - please specify	Count
No disputes/Unnecessary	5
Procedural safeguards	4
Upon request	3
Don't know	3
When necessary	3
Withy every written prior notice	2
Staff need to be trained on this	1
When due process complaint is filed	1
In both cases the parents initiated the filing through their own legal representation.	1

provided comment **17**

Question 18. Please briefly describe the information on low-cost legal services or other relevant services your school district provided.	
Comments	Count
Haven't had to	5
Referral to Disability Rights Center	5
Referral to Parents Information Center	3
Referral to community-based agencies	2
Procedural safeguards	2
Consultation with administration, facilitated IEP meetings, meditation etc.	1
It is on our web site.	1
Not applicable	4

provided comment **22**

Question 19. To the best of your knowledge, how effective were advocates in assisting parents during special education dispute resolution processes?		
Answer Options	Count	Percent
Ineffective	2	7.7%
Somewhat ineffective	0	0.0%
Neither ineffective nor effective	5	19.2%
Somewhat effective	5	19.2%
Effective	3	11.5%
Don't know	11	42.3%

respondent answered question **26**

respondent skipped question **0**

Question 20. Please describe ways in which advocates were less than effective.	
Comments	Count
Advocate not clear on special education process or laws	4
Some advocates disrupt the meetings/create an adversarial environment	4
Advocates provide misinformation to parents	3
Requesting evaluations unrelated to child's disability	1
They spend too much time sharing personal stories and their own needs. Students' needs get lost.	1
Parent had an attorney for mediation not an advocate	1
Advocates often do not tell parents when the request that they have is unreasonable, not applicable, etc. A good advocate will tell a family that. A money hungry, unknowledgeable about SPED, and ineffective one will not.	1

provided comment **12**

Question 21. Has your school district(s) used nondisclosure agreements for any special education dispute resolution process?		
Answer Options	Count	Percent
Yes	9	34.6%
No	9	34.6%
Don't know	8	30.8%

respondent answered question **26**
respondent skipped question **0**

Question 22. During which special education dispute resolution process have nondisclosure agreements been implemented? Please check all that apply.		
Answer Options	Count	Percent
Local dispute resolution	0	0.0%
Facilitated IEP team meeting	0	0.0%
Third party moderated discussion	0	0.0%
Neutral conference	0	0.0%
Mediation	9	100.0%
Due process hearing	3	33.3%
Special education State complaint	1	11.1%
Don't know	0	0.0%

respondent answered question **9**
respondent skipped question **17**

Question 23. Please briefly describe reasons why a nondisclosure agreement would be used during a special education dispute resolution process.	
Comments	Count
Used to ensure all parties remained in confidence the amounts were fair and not to be changed at any point.	1
Parent requested confidentiality due to agreement but allowed certain things to be included in IEP.	1
The result was financial.	1
Legal agreement for confidentiality around staff/student information involved in the concerns raised.	1
Terms of the settlement were not to be made public.	1
Non-disclosure agreements confine communication to those parties who need to the information in order to affect implementation of the agreement. The purpose is to ensure that all parties are mutually respectful of the privacy of the student, emotionality that may have been part of the proceedings (especially for the family) and to ensure that misinformation or skewed information that cannot be refuted by the district due to FERPA regulations is not disseminated.	1
When we agree to a compromise and do not need to move further in the process.	1
Keeps details about the agreement confidential for both parents & school district.	1
To prevent situations where requests for the same resolution are requested by other parents/advocates for situations that are not the same as the resolution pertains to and to eliminate the "but they got it" kind of situation. Not all resolutions apply to every situation.	1

provided comment **9**

Question 24. Did any of your school district's disputes result in a special education State complaint or due process decision requiring the school district to implement changes or corrective action?		
Answer Options	Count	Percent
Yes	5	19.2%
No	10	38.5%
Don't know	2	7.7%
Not applicable	9	34.6%

respondent answered question **26**

respondent skipped question **0**

Question 25. Did the NHED actively monitor the district's implementation of decisions requiring changes or corrective action?		
Answer Options	Count	Percent
Yes	3	60.0%
No	0	0.0%
Don't know	2	40.0%

respondent answered question **5**
respondent skipped question **21**

Question 26. Excluding due process and special education State complaints, did any of your school district's special education disputes result in an agreement requiring the school district to implement changes or corrective action?		
Answer Options	Count	Percent
Yes	3	11.5%
No	12	46.2%
Don't know	2	7.7%
Not applicable	9	34.6%

respondent answered question **26**
respondent skipped question **0**

Question 27. Between July 1, 2019, and June 30, 2022, how often did your school district's special education dispute result in an agreement between the school district and the parent?		
Answer Options	Count	Percent
Always	2	66.7%
Sometimes	0	0.0%
Never	1	33.3%
Don't know	0	0.0%
Never	0	0.0%

respondent answered question **3**
respondent skipped question **23**

Question 28. Did the NHED actively monitor the district's implementation of agreements?		
Answer Options	Count	Percent
Yes	1	33.3%
No	0	0.0%
Don't know	2	66.7%

respondent answered question **3**
respondent skipped question **23**

Question 29. Did the NHED provide your school district(s) with procedures or guidance for addressing conflicts of interest or potential conflicts of interest during special education dispute resolution processes?		
Answer Options	Count	Percent
Yes	5	19.2%
No	16	61.5%
Don't know	5	19.2%
Other - please specify	0	0.0%

respondent answered question **26**
respondent skipped question **0**

Question 30. Please describe the procedures or guidance for addressing conflicts of interest that the NHED provided your school district(s).	
Comments	Count
Teams work closely with parents to reach mutually agreeable decisions. On occasion, central office personnel will work with teams and parents to reach agreement. Outside specialists are often invited to provide feedback or guidance.	1
Use of mediator provided when requested	1
NHED Users' Guide To Administrative Process	1
More around regulation and rules	1
They were available to answer questions through processes.	1

provided comment **5**

Question 31. If your school district(s) used procedures or guidance, other than those provided by the NHED, for addressing conflicts of interest, please describe. Otherwise, respond "not applicable."	
Comments	Count
Legal counsel	1
We work hard to understand parent and student needs and reach agreement	1
I don't know	1
Not applicable	23
<i>provided comment</i>	26

Question 32. Did a conflict of interest or potential conflict of interest arise involving your school district(s) during a special education dispute resolution process(es)?		
Answer Options	Count	Percent
Yes	0	0.0%
No	13	50.0%
Don't know	3	11.5%
Not applicable	10	38.5%
<i>respondent answered question</i>	26	
<i>respondent skipped question</i>	0	

Question 33. With whom did your school district(s) have a conflict of interest or potential conflict of interest? Please check all that apply.	
Answer Options	Count
IEP facilitator	0
Moderator	0
Neutral	0
Mediator	0
Hearing officer	0
Investigator	0
NHED personnel	0
Other - please specify	0
<i>respondent answered question</i>	0
<i>respondent skipped question</i>	26

Question 34. How did your school district(s) report the conflict of interest or potential conflict of interest?	
<i>respondent answered question</i>	0
<i>respondent skipped question</i>	26

Question 35. In your opinion, was the reported conflict of interest or potential conflict of interest sufficiently addressed?	
Answer Options	Count
Yes	0
No	0
Don't know	0

respondent answered question **0**
respondent skipped question **26**

Question 36. Why was the reported conflict of interest or potential conflict of interest not sufficiently addressed?

respondent answered question **0**
respondent skipped question **26**

Question 37. How clear were the following NHED public resources in explaining the facilitated IEP team meeting process? If information was not sought about, or your school district(s) did not participate in this process, please choose "not applicable."							
Answer Options	Unclear	Somewhat unclear	Neither clear nor unclear	Somewhat clear	Clear	Not applicable	Total
Website	3 (11.5%)	2 (7.7%)	0 (0.0%)	2 (7.7%)	5 (19.2%)	14 (53.8%)	26
Manuals and other guides	3 (11.5%)	2 (7.7%)	1 (3.8%)	0 (0.0%)	6 (23.1%)	14 (53.8%)	26
Administrative rules	3 (11.5%)	2 (7.7%)	0 (0.0%)	1 (3.8%)	6 (23.1%)	14 (53.8%)	26
State law	3 (11.5%)	1 (3.8%)	1 (3.8%)	1 (3.8%)	6 (23.1%)	14 (53.8%)	26

respondent answered question **26**
respondent skipped question **0**

Question 38. How clear were the following NHED public resources in explaining the third party moderated discussion process? If information was not sought about, or your school district(s) did not participate in this process, please choose "not applicable."

Answer Options	Unclear	Somewhat unclear	Neither clear nor unclear	Somewhat clear	Clear	Not applicable	Total
Website	3 (12.0%)	1 (4.0%)	0 (0.0%)	3 (12.0%)	3 (12.0%)	15 (60.0%)	25
Manuals and other guides	3 (12.0%)	1 (4.0%)	1 (4.0%)	1 (4.0%)	4 (16.0%)	15 (60.0%)	25
Administrative rules	3 (12.0%)	1 (4.0%)	0 (0.0%)	2 (8.0%)	3 (12.0%)	16 (64.0%)	25
State law	3 (12.0%)	1 (4.0%)	1 (4.0%)	1 (4.0%)	3 (12.0%)	16 (64.0%)	25

respondent answered question **25**

respondent skipped question **1**

Question 39. How clear were the following NHED public resources in explaining the neutral conference process? If information was not sought about, or your school district(s) did not participate in this process, please choose "not applicable."

Answer Options	Unclear	Somewhat unclear	Neither clear nor unclear	Somewhat clear	Clear	Not applicable	Total
Website	3 (12.0%)	1 (4.0%)	0 (0.0)%	2 (8.0%)	3 (12.0%)	16 (64.0%)	25
Manuals and other guides	3 (12.0%)	1 (4.0%)	1 (4.0%)	0 (0.0)%	4 (16.0%)	16 (64.0%)	25
Administrative rules	3 (12.0%)	1 (4.0%)	0 (0.0)%	2 (8.0%)	2 (8.0%)	17 (68.0%)	25
State law	3 (12.0%)	1 (4.0%)	1 (4.0%)	0 (0.0)%	3 (12.0%)	17 (68.0%)	25

respondent answered question **25**

respondent skipped question **1**

Question 40. How clear were the following NHED public resources in explaining the mediation process? If you did not seek information about, or participate in this process, please choose "not applicable."

Answer Options	Unclear	Somewhat unclear	Neither clear nor unclear	Somewhat clear	Clear	Not applicable	Total
Website	3 (12.0%)	2 (8.0%)	2 (8.0%)	5 (20.0%)	4 (16.0%)	9 (36.0%)	25
Manuals and other guides	3 (12.0%)	1 (4.0%)	3 (12.0%)	4 (16.0%)	4 (16.0%)	10 (40.0%)	25
Administrative rules	3 (12.0%)	1 (4.0%)	2 (8.0%)	4 (16.0%)	4 (16.0%)	11 (44.0%)	25
State law	3 (12.0%)	1 (4.0%)	2 (8.0%)	3 (12.0%)	5 (20.0%)	11 (44.0%)	25

respondent answered question **25**

respondent skipped question **1**

Question 41. How clear were the following NHED public resources in explaining due process? If you did not seek information about, or participate in this process, please choose "not applicable."

Answer Options	Unclear	Somewhat unclear	Neither clear nor unclear	Somewhat clear	Clear	Not applicable	Total
Website	2 (8.0%)	2 (8.0%)	2 (8.0%)	2 (8.0%)	5 (20.0%)	12 (48.0%)	25
Manuals and other guides	2 (8.0%)	1 (4.0%)	3 (12.0%)	0 (0.0%)	7 (28.0%)	12 (48.0%)	25
Administrative rules	2 (8.0%)	1 (4.0%)	2 (8.0%)	1 (4.0%)	6 (24.0%)	13 (52.0%)	25
State law	2 (8.0%)	1 (4.0%)	3 (12.0%)	1 (4.0%)	5 (20.0%)	13 (52.0%)	25

respondent answered question **25**

respondent skipped question **1**

Question 42. How clear were the following NHED public resources in explaining the special education State complaint process? If you did not seek information about, or participate in this process, please choose "not applicable."							
Answer Options	Unclear	Somewhat unclear	Neither clear nor unclear	Somewhat clear	Clear	Not applicable	Total
Website	2 (8.0%)	1 (4.0%)	2 (8.0%)	4 (16.0%)	4 (16.0%)	12 (48.0%)	25
Manuals and other guides	2 (8.0%)	1 (4.0%)	3 (12.0%)	2 (8.0%)	5 (20.0%)	12 (48.0%)	25
Administrative rules	2 (8.0%)	1 (4.0%)	2 (8.0%)	3 (12.0%)	4 (16.0%)	13 (52.0%)	25
State law	2 (8.0%)	1 (4.0%)	3 (12.0%)	2 (8.0%)	4 (16.0%)	13 (52.0%)	25

respondent answered question **25**

respondent skipped question **1**

Question 43. If any of the NHED resources were less than clear, please describe the ways in which NHED resources were less than clear. Otherwise, please respond "not applicable."	
Comments	Count
The website is difficult to navigate	1
Not only are things not clear to the reader, they are difficult to find on the website. Nothing is accessible. The website changed and is very difficult to navigate. Everything takes time to review and guidance from an outside reviewer (consultant or attorney).	1
As a new director I would not even know where to find this information and I would be completely reliant on my district's lawyer.	1
The website, while improved over the prior version is still not super user friendly and can be difficult to locate desired resources.	1
They don't review the process in practical terms nor provide any training or support. Nor are they handled in a fair manner (point of view from previous district). NHED staff doesn't understand the how to reasonably calculate FAPE and compensatory education.	1
The NHED website in general is very unclear for students, families and schools.	1
Info buried in the NHED site, hard to find. Not outlined with details about process in any manual or law.	1
Not applicable	18

provided comment **25**

Question 44. Did your school district(s) use other public resources to obtain information on any of the special education dispute resolution process(es)?

Answer Options	Count	Percent
Yes	1	4.0%
No	18	72.0%
Don't know	6	24.0%

respondent answered question **25**

respondent skipped question **1**

Question 45. Please list the other public resources your school district(s) used to obtain relevant information.

Comments	Count
New Hampshire Association of Special Education Administrators	1

provided comment **1**

Question 46. Excluding low-cost attorneys and other relevant resources, did your school district(s) offer parents resources for special education dispute resolution processes?

Answer Options	Count	Percent
Yes	6	24.0%
No	11	44.0%
Don't know	8	32.0%

respondent answered question **25**

respondent skipped question **1**

Question 47. Please describe the resources your school district(s) provided to parents for special education dispute resolution processes.

Comments	Count
Procedural safeguards	2
Parents Information Center	2
Meetings with District Student Services or Special Education Director	1
Facilitated IEP meeting (explanation from the NHED)	1

provided comment **6**

Question 48. Based on your school district's interactions with NHED contractors (facilitator, moderator, neutral, mediator, hearing officer, investigator) during special education dispute resolution process(es), how satisfied were you with the following?								
Answer Options	Dissatisfied	Somewhat dissatisfied	Neither satisfied nor dissatisfied	Somewhat satisfied	Satisfied	Don't know	Not applicable	Total
Communication	0 (0.0%)	0 (0.0%)	0 (0.0%)	1 (4.0%)	13 (52.0%)	1 (4.0%)	10 (40.0%)	25
Professionalism	0 (0.0%)	0 (0.0%)	0 (0.0%)	0 (0.0%)	14 (56.0%)	1 (4.0%)	10 (40.0%)	25
Timeliness	0 (0.0%)	0 (0.0%)	0 (0.0%)	1 (4.0%)	13 (52.0%)	1 (4.0%)	10 (40.0%)	25
Knowledge	0 (0.0%)	0 (0.0%)	0 (0.0%)	2 (8.0%)	12 (48.0%)	1 (4.0%)	10 (40.0%)	25
Addressed all concerns	0 (0.0%)	0 (0.0%)	0 (0.0%)	2 (8.0%)	12 (48.0%)	1 (4.0%)	10 (40.0%)	25
Complied with federal and State requirements	0 (0.0%)	0 (0.0%)	0 (0.0%)	1 (4.0%)	13 (52.0%)	1 (4.0%)	10 (40.0%)	25

respondent answered question **25**
respondent skipped question **1**

Question 49. If your school district(s) found any interactions with NHED contractors to be less than satisfactory, please describe ways in which interactions were less than satisfactory. Otherwise, please respond "not applicable."	
Comments	Count
Overall satisfaction with experience. Had only one mediator one time appear uninterested in moving toward resolution - presented as disinterested and not engaged.	1
Don't know	1
Not applicable	23

provided comment **25**

Question 50. Based on your school district's interactions with NHED staff during or regarding special education dispute resolution process(es), how satisfied were you with the following?								
Answer Options	Dissatisfied	Somewhat dissatisfied	Neither satisfied nor dissatisfied	Somewhat satisfied	Satisfied	Don't know	Not applicable	Total
Communication	2 (8.0%)	0 (0.0%)	1 (4.0%)	1 (4.0%)	11 (44.0%)	1 (4.0%)	9 (36.0%)	25
Professionalism	1 (4.0%)	0 (0.0%)	0 (0.0%)	2 (8.0%)	12 (48.0%)	1 (4.0%)	9 (36.0%)	25
Timeliness	1 (4.0%)	1 (4.0%)	0 (0.0%)	2 (8.0%)	9 (36.0%)	1 (4.0%)	11 (44.0%)	25
Knowledge	2 (8.0%)	1 (4.0%)	1 (4.0%)	1 (4.0%)	10 (40.0%)	1 (4.0%)	9 (36.0%)	25
Addressed all concerns	2 (8.0%)	0 (0.0%)	2 (8.0%)	1 (4.0%)	10 (40.0%)	1 (4.0%)	9 (36.0%)	25
Complied with federal and State requirements	1 (4.0%)	1 (4.0%)	2 (8.0%)	1 (4.0%)	9 (36.0%)	1 (4.0%)	10 (40.0%)	25

respondent answered question **25**

respondent skipped question **1**

Question 51. If your school district(s) found any interactions with NHED staff to be less than satisfactory, please describe ways in which NHED interactions were less than satisfactory. Otherwise, please respond "not applicable."	
Comments	Count
Lack of trained staff, failure to respond (this is beyond just this process), lack of support to school districts, a State Director who does not know or understand the law	1
Staff are polite and kind. Many of the staff do not have experience in the special education process and interpretation of state and federal laws can be flawed. The information system is cumbersome and often drives decisions rather than teams making decisions in the best interest of the student.	1
I don't know	1
No interaction about dispute resolution during the time frame in question.	1
When a parent makes a complaint the Director at the SAU level should be notified so they can communicate with the parent to resolve the issue. Usually, they have dealt with the concern at the building level but have not talked with the Director at the SAU level to resolve it. Let's make this a collaborative process.	1
Not applicable	21

provided comment **25**

Question 52. Did the NHED provide your school district(s) with training on special education dispute resolution processes between July 1, 2019, and June 30, 2022?		
Answer Options	Count	Percent
Yes	0	0.0%
No	20	80.0%
Don't know	5	20.0%

respondent answered question **25**

respondent skipped question **1**

Question 53. For which of the following special education dispute resolution processes did the NHED provide training? Select all that apply.	
Answer Options	Count
Facilitated IEP team meeting	0
Third party moderated discussion	0
Neutral conference	0
Mediation	0
Due process hearing	0
Special education State complaint	0
Don't know	0
Other - please specify	0

respondent answered question **0**

respondent skipped question **26**

Question 54. Was NHED training adequate to be able to understand special education dispute resolution processes?	
Answer Options	Count
Yes	0
No	0
Don't know	0

respondent answered question **0**

respondent skipped question **26**

Question 55. Please describe ways in which training was not adequate.	
<i>provided comment</i>	0

Question 56. How effectively did the NHED inform school districts of changes to special education laws, rules, policies, and practices?		
Answer Options	Count	Percent
Ineffectively	2	8.0%
Somewhat ineffectively	3	12.0%
Neither ineffectively nor effectively	4	16.0%
Somewhat effectively	7	28.0%
Effectively	7	28.0%
Don't know	2	8.0%

respondent answered question **25**

respondent skipped question **1**

Question 57. Please describe ways in which NHED's communication of changes were less than effective.	
Comments	Count
Communication through memorandum only	2
Inconsistent messages	2
Lack of collaboration	1
Webinars/Calls/Meetings frequently canceled	1
Feedback via desk audits only	1
Difficult getting communications in writing	1
Communications change with frequency	1
Communications have improved with new staff	1
We are notified of changes but not always informed of the implications.	1
Untimely responses	1
Would be beneficial to have a statewide training/updates in the summer prior to the start of the new school year.	1
The state does not send out information on rule/law changes. Most of our information about rule/law changes comes from the school district attorneys in their professional updates.	1
More modalities	1
They sent out memos, but often times the memos left remaining questions. Some of the procedures and processes implemented were provided with no actual guidance.	1

provided comment **14**

Question 58. Is there anything else we should know about your school district's experience with the special education dispute resolution processes or the NHED?	
Comments	Count
While there is an outlined process and availability of options that NH should be proud of, the Commissioner will go above the process and at times has overturned hearing officer decisions. He caters to a certain parent population and the State Director follows suit and has said publicly many times she gets her hand slapped when she gives us a different answer or does not get his approval.	1
I think that Dispute Resolution, while not a go-to method, serves a very necessary purpose. Mediation in particular can be a positive and productive tool. Relative to the NHED, specifically, my concerns lie more in the support and respect granted to the Bureau of Special Education. It often feels that Special Education is an afterthought on the part of Department Administration. It appears as though the field is more inconvenient than some members might like. It is something that I have experienced myself when interacting with members of the department outside of the Bureau - a sense of being dismissed. This is an unfortunate reflection on education in New Hampshire. Our students with disabilities have value. Our educators who have dedicated their careers to students with disabilities have value and our administrators and state leaders who support this population have value. The current culture as it represents itself is simple inappropriate and unacceptable.	1
I have been pleased that the Bureau of Special Education reviews complaints to ensure that before resources are expended that the complaint raises a special education matter that is in the jurisdiction of the Department.	1
The NHED did not provide any training in changes.	1
Needs to be more collaborative, not deemed punitive, but that we are working together to solve the issue and come to a mutually agreed upon resolution.	1

provided comment **5**