A PRIMER ON NEW HAMPSHIRE'S JUVENILE JUSTICE LAWS

FOR SPECIAL EDUCATION ADMINISTRATORS

Presented By
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I. New Hampshire's juvenile justice statutes.

A. RSA 169-B – delinquency.

For offenses that would be felonies or misdemeanors if committed by an adult.

B. RSA 169-C – abuse and neglect.

For children who are abused or neglected by parents or other adults.

C. RSA 169-D – child in need of services (CHINS). To qualify as a child in need of services, a juvenile must satisfy both prongs of the following two-prong test.

1. The juvenile must require services; *and*

2. The juvenile:

   a. is "habitually, willfully, and without good and sufficient cause, truant from school."

   b. habitually runs away from home;

   c. repeatedly disregards the reasonable and lawful commands of his or her parents, placing himself/herself or others in unsafe circumstances; or

   d. repeatedly commits offenses that, if committed by an adult, would be "violations" (minor offenses) under the criminal code.

II. Steps in each juvenile justice case.

A. The case begins with a "petition" filed in a state District Court or Family Division Court alleging the factual and legal basis for finding that the child is a delinquent, abused or neglected, or a child in need of services.

B. The court holds a "preliminary hearing" (arraignment) to determine whether there is probable cause to exercise jurisdiction. At this hearing, the court may issue preliminary orders and may order a temporary placement.

C. If the defendant contests the petition, the court conducts an "adjudicatory hearing." This is a trial to determine whether the facts alleged in the petition are true.

D. If the court finds the facts alleged in the petition are true (based on the defendant's admission or an adjudicatory hearing), the court conducts a "dispositional hearing" to select a placement, etc.

E. The court then conducts periodic review hearings.

III. Placement options in juvenile cases.

A. Delinquency cases:

1. A parent's home.

2. The home of "a relative or friend."

3. A foster home, group home, crisis home, or shelter care facility.

4. Incarceration at the Sununu Youth Services Center.[1]

5. "Commitment . . . to the custody of the department of health and human services for the remainder of minority," which "may include, but is not limited to, placement by the department of health and human services at a facility certified for the commitment of minors." RSA 169-B:19 (2010 Supp.).

6. Despite the absence of explicit authority, courts sometimes place delinquents in private residential schools.

[1] The Sununu Youth Services Center, located in Manchester, was formerly known at the New Hampshire Youth Development Center (YDC).

B. Abuse and neglect cases.

1. Permitting the child to remain with a parent.

2. Transferring "legal custody" to a relative, in which case the child presumably lives with that relative.

3. Transferring "legal custody" to a "child placing agency" (e.g., the New Hampshire Division for Children, Youth and Families), which may place the child with a parent, with a relative or friend, in a group home or foster home, etc. RSA 169-C:19 (2010 Supp.).

4. Despite the absence of explicit authority, courts sometimes place abused and neglected children in private residential schools.

C. CHINS cases.

1. Permitting the child to remain with a parent.

2. "Releasing the child in the supervision and care of a relative or suitable adult."

3. "Releasing the child to the custody of the department of health and human services for placement in a foster home, . . . a group home, a crisis home, or a shelter care facility." RSA 169-D:17 (2010 Supp.).

4. Despite explicit authority, courts sometimes place such children in private residential schools.

IV. Legal custody and legal guardianship.

A. In residency disputes, people often inaccurately assert that DCYF has "legal custody" or "legal guardianship."

B. In the absence of a court order to the contrary, parents are automatically a child's legal guardians and have legal custody.

C. A court may award *legal custody* to DCYF (or a nonparent) only in a neglect or abuse case under RSA 169-C, a legal guardianship case under RSA 463, or a termination of parental rights under RSA 170-C.

D. A court may award *legal guardianship* to DCYF (or a nonparent) only in a legal guardianship case under RSA 463 or a termination of parental rights case under RSA 170-C.

V. Funding for services ordered by a juvenile court - generally.

A. Old law (until 1986).

1. The town and county in which the juvenile had a "legal settlement" paid, with a right of reimbursement from the juvenile's parents and other relatives.

2. Spawned disputes over where the juvenile "resided" for purposes of determining legal settlement. E.g., *In re John M. and David C.*, 122 N.H. 1120, 1126-32 (1982).

B. Current system.

1. Controlled by RSA 169-B:40, 169-C:27 and 169-D:29.

2. The N.H. Department of Health and Human Services (DHHS) fronts all costs.

3. The county reimburses DHHS for 25 percent of the costs.

4. DHHS and the county may seek reimbursement from the juvenile's parents (and from "others chargeable by law for the minor's support and necessities"), but only "as may be reasonable and just, based on the person's ability to pay."

5. *This funding scheme motivates DHHS, the county, and parents to identify costs of a court-ordered placement as special education costs that a school district should pay.*

VI. Funding when a juvenile court places a special education student in a private residential school.

A. **Old law (until 1996).**

1. If the school district did not concur with the placement selected by the juvenile court:

a. The school district paid nothing (unless a special education hearing officer ruled against the school district on appeal). *In re*

Todd P., 127 N.H. 792 (1986); *In re Laurie B.*, 125 N.H. 784 (1984).

b. DCYF paid all costs, including tuition, with a right of reimbursement from the county and the juvenile's parents.

2. If the school district concurred with the placement selected by the juvenile court:

a. The funding scheme in the special education statute (RSA 186-C) trumped the funding scheme in the juvenile justice statutes, thereby ensuring that the student received a FAPE at no cost to his or her parents.

(i) RSA 186-C:18, which governed funding for any out-of-district placement, controlled.

(ii) The school district fronted all costs for special education and related services.

(iii) The N.H. Department of Education reimbursed the school district, each fiscal year, for 80 percent of all such costs in excess of 3.5 times the state average per pupil cost.

b. DCYF paid for any costs that did not qualify as special education or related services, with rights of reimbursement from the county and parents.

B. **Current law (since 1996) – "Chapter 402."**

1. If a juvenile court places a special education student in a residential school, the special education *system* (i.e., the school district and the N.H. Department of Education) *automatically* pays for all special education and related services provided by that school, regardless of whether the IEP team concurred with the court-ordered placement. RSA 186-C:19-b (popularly known as "Chapter 402"), as interpreted in *Ashland School District v. DCYF*, 141 N.H. 45 (1996).

a. Each fiscal year, the responsible school district pays for all special education and related services up to three times the state average per pupil cost.

b. The N.H. Department of Education pays for all special education and related services in excess of three times the state average per pupil cost. (The school district does not front these costs.)

c. Any costs other than special education and related services are funded by the juvenile justice system – i.e., by DCYF, with rights of reimbursement from the county and the parents.

d. Whether room and board is funded under the special education system or the juvenile justice system depends on whether the IEP calls for residential placement as a related service. See RSA 186-C:9-a, II.

2. *Ashland* concluded that any instruction at a court-ordered placement amounts to "special education" under Chapter 402, regardless of whether the instruction is consistent with the student's IEP.

3. The N.H. Department of Education interprets Chapter 402 as applying in two situations:

a. when a juvenile court places a special education student in a residential school (thus automatically compelling a school district to pay three times the state average per pupil cost); and

b. when a juvenile court places a special education student in a residential facility that does not provide educational services (such as a group home or foster home) and the responsible school district makes an out-of-district placement in a day school.

C. Chapter 402 helps and hurts school districts.

1. It requires that they pay three times the state average per pupil cost regardless of whether the court-ordered placement was educationally necessary.

2. It caps the school district's annual liability at three times the state average per pupil cost. This contrasts with the catastrophic aid statute, RSA 186-C:18, which requires that the school district front all costs for an out-of-district placement and allows the district to receive partial reimbursement from the state for annual costs that exceed 3.5 times the state average per pupil cost.

Chapter 402 applies, and trumps the catastrophic aid statute, only while a juvenile court case is pending and the placement is court-ordered.

D. If the student does not qualify for special education, school districts pay nothing except as required by RSA 126-A:39, I (discussed in Section XVI-B below).

VII. A juvenile court's powers over school districts.

A. The court has authority to compel the school district to make a decision.

1. The court may join the "legally liable" school district for two limited purposes:

a. To order the school district to "determine" whether the student qualifies as educationally disabled under the special education laws.

b. If the student has already been identified (by a school district) as educationally disabled, to order the school district to "review the services offered or provided under RSA 186-C" (i.e., to review the student's IEP and placement). RSA 169-B:22, 169-C:20, and 169-D:18 (2010 Supp.).

2. Such joinder orders sometimes raise the issue of which district is the responsible school district.

B. The court does *not* have authority to overrule the school district's decisions.

Parents who disagree with the district's decisions must request due process hearings with the N.H. Department of Education under the special education laws. *In re Todd P.*, 127 N.H. 792; *In re Laurie B.*, 125 N.H. 784. *See* RSA 186-C:13, III.

C. A juvenile court may not order a school district to conduct testing.

1. The statutes simply allow the court to order a school district to "determine" whether the student qualifies for special education.

2. In the past:

a. Some school districts made this determination by asking an administrator to review the student's records. If the administrator determined that there was no need to refer the student for special education testing, the team never met.

b. Some school districts treated the joinder order as a referral and automatically conduct a team meeting. The team (which includes parents) decided whether to test and ultimately makes a decision on eligibility.

c. Juvenile courts sometimes ordered school districts to conduct testing, and specified the scope of the testing, regardless of what the team concluded was necessary.

3. The N.H. Board of Education's rules governing special education.

a. "If testing is ordered by a court, the evaluation process shall be completed within the time limit set by the court. If the court fails to provide a time limit, the evaluation process, including a written summary report, shall be completed within 60 days after the receipt of the court's directive. Ed 1107.01(f).

b. This rule is nonsense. The juvenile justice statutes do not empower juvenile courts to order testing and the State Board of Education cannot confer jurisdiction on such courts through rule making.

4. Amendments to the juvenile justice laws enacted in 2008, discussed in Section VIII-A below, confirm that juvenile courts lack jurisdiction to order school districts to conduct testing.

VIII. What should a school district do when joined for a child who has not yet been identified as eligible for special education?

A. "If the court orders the school district to determine whether the minor is a child with a disability, the school district shall make this determination by treating the order as the equivalent of a referral by the child's parents for special education, and shall conduct any team meetings or evaluations that are required under law when a school district receives a referral by a child's parents." RSA 169-B:22, I, 169-C:20, I, 169-D:18, I (2010 Supp.), as amended effective July 1, 2008.

B. This triggers the New Hampshire Board of Education rules governing special education referrals by parents. Those rules require the following:

1. The IEP team must meet within 15 days to consider the referral. Ed 1106.01(d).

2. The IEP team must give the parents written prior notice (within 15 days of the district's receipt of the referral) explaining its disposition of the referral. Ed 1106.01(e).

3. Possible dispositions include:

a. Deciding not to identify the child as eligible for special education.

b. Seeking parental permission to evaluate.

c. Identifying the child as eligible for special education based on existing information.

4. Parents may appeal the IEP team's decision by asking the New Hampshire Department of Education to conduct a "due process hearing." Ed 1106.01(f).

C. The school district should "also report to the court its determination of whether the minor is a child with a disability, and the basis for such determination." RSA 169-B:22, II, 169-C:20, II, 169-D:18, II (2010 Supp.).

1. It is a good idea to file a short report with the court and to attach the written prior notice.

2. Remember to send copies of this report to all parties in the court case.

IX. What should a school district do when joined in a case where the child has already been identified as eligible for special education?

A. Conduct an IEP team meeting to review the child's IEP and placement.

B. Issue a written prior notice at the conclusion of that meeting.

If the parents seek residential placement, the written prior notice should address whether the child qualifies for residential placement under the special education laws (i.e., whether residential placement necessary for the child to receive a free appropriate public education).

C. File a report with the court describing the team's decision.

1. It is a good idea to file a short report with the court and to attach the written prior notice.

2. Remember to send copies of this report to all parties in the court case.

D. "The school district shall make a recommendation to the court as to where the child's educational needs can be met in accordance with the state and federal education laws." RSA 169-B:22, II, 169-C:20, II, 169-D:18, II (2010 Supp.). [2] If

[2] Until 2008, RSA 169-B:22, 169-C:20 and 169-D:18 required that the school district tell the court where the child's educational needs could "best be met." This was anomalous, because the special education laws require that the school district offer (and that the IEP team identify) "an" appropriate special education program, not the "best" program. *Board of Education of Hendrick Hudson School District v. Rowley*, 458 U.S. 176, 198-201 (1982); *G.D. v. Westmoreland School District*, 903 F.2d 942, 950-51 (1st Cir. 1991).

the court does not follow the school district's recommendation, "the court shall issue written findings explaining why the recommendation was not followed." *Id.*

X. Other rights and duties a school district has once joined in a juvenile court case.

A. The school district is entitled to full access to the court records. RSA 169-B:22, II, RSA 169-C:20, II, 169-D:18, II (2010 Supp.).

B. In delinquency and neglect and abuse cases, where a school district has been joined and the child qualifies for special education, the court shall not issue a dispositional order until it reviews the school district recommendation concerning where the child's educational needs can be met. RSA 169-B:16, III(b), 169-C:18, V (2010 Supp.).

C. In delinquency cases, the school district must file any court report at least 5 days in advance of the hearing (unless the court sets some other deadline at the school district's request). RSA 169-B:5-a (2010 Supp.).

D. Juvenile court records are confidential. RSA 169-B:35 (2010 Supp.); RSA 169-C:25 (2010 Supp.); RSA 169-D:25. If a school district plans to disclose juvenile court records to a New Hampshire Department of Education hearing officer, it must:

1. In delinquency and CHINS cases, comply with the notice requirements of RSA 169-B:22, IV, V and 169-D:18, IV, V (2010 Supp.).

2. In neglect and abuse cases, seek a court order pursuant to RSA 169-C:20, IV, V (2010 Supp.).

XI. Practical tips for school districts that are joined as parties in juvenile court cases.

A. Remember, you have been "joined" as a party, not "enjoined."

1. A "joinder" order makes you a party.

2. Do not confuse this with an "injunction," which "enjoins" somebody to refrain from specified action.

B. As a party, you have rights and duties.

1. Attend every hearing in the case, unless excused by the court.

2. Send to the hearing a representative who is familiar with the child's educational needs, performance, and program.

3. When filing documents with the court, simultaneously send copies to all other parties. Note on the document filed with the court that you have done so.

4. Object if all parties other than the school district are invited to meet with the judge.

5. Object if all parties other than the school district negotiate and sign an agreement for the judge to approve as an order, especially if the agreement contains orders against the school district.

6. Make sure that the court and the parties have the correct address for the school district administrator in charge of the case.

7. Date-stamp all incoming legal documents, so that you have a record of when you received them. It also often helps to keep the postmarked envelope.

8. If a party files a motion that you want to contest, file an objection with the court within 10 days of when the court received the motion.

9. If you disagree with a court order, do not simply ignore it. You risk being held in contempt. Instead, file a motion for reconsideration within 10 days after you received the order.

10. Keep the district's copies of juvenile court records in a separate file. Even when the law allows you to disclose ordinary student records to third parties, it may bar you from disclosing juvenile court records.

C. Do not confuse physical custody, legal custody, and guardianship.

1. A court may award legal custody to DCYF (or to somebody else) in a neglect case, but not in a delinquency or CHINS case.

2. A court may award legal guardianship in a guardianship case under RSA 463 or RSA 464-B, but not in a delinquency case under RSA 169-B, a neglect or abuse case under RSA 169-C, or a CHINS case under RSA 169-D.

D. Consider whether the child needs a surrogate parent.

1. According to IDEA 04, a child is entitled to a surrogate parent "whenever the parents of the child are not known, the agency cannot, after reasonable

efforts, locate the parents, or the child is a ward of the state." 20 U.S.C. § 1415(b)(2)(A).

2. IDEA 04 defines "ward of the state" as "a child who, as determined by the State where the child resides, is a foster child, is ward of the State, or is *in the custody of a public child welfare agency."* 20 U.S.C. § 1401(36)(A)(emphasis added).

3. The New Hampshire Department of Education ordinarily appoints surrogate parents. However, if the child is a "ward of the state," IDEA 04 also allows "the judge overseeing the child's care" to appoint a surrogate parent. 20 U.S.C. § 1415(b)(2)(A)(i). See RSA 186-C:14, III(a) (2010 Supp.); N.H. Code of Administrative Rules Ed 1115.

4. If the child is a ward of the state, a school district may conduct an *initial* evaluation (to determine eligibility for special education) *without consent from a parent or a surrogate parent* if:

   a. despite reasonable efforts, the school district cannot discover the whereabouts of the child's parent; or

   b. the rights of the parents have been terminated in accordance with State law; or

   c. "the rights of the parent to make educational decisions have been subrogated by a judge in accordance with State law and consent for an initial evaluation has been given by an individual appointed by the judge to represent the child." 20 U.S.C. § 1414(a)(1)(D)(iii).

XII. Special requirements when a school district files a CHINS petition.

A. *If the child qualifies for special education,* the petition must include "information which demonstrates" that the "legally liable school district" has:

   1. identified the child as eligible for special education; and

   2. reviewed the appropriateness of the child's current IEP and placement and "made modifications where appropriate." RSA 169-D:5, VI.

B. *If the child does <u>not</u> qualify for special education,* the petition must include information "which shows that the legally liable school district has sought to resolve the expressed problem through available educational approaches, that the school district has sought to engage the parents or guardian in solving the problem but they have been unwilling or unable to do so; that the problem remains, and that court intervention is necessary." RSA 169-D:5, V.

XIII. The James O. case.

A. In 1986, the N.H. Disabilities Rights Center filed a class action in federal court on behalf of educationally disabled students involved with New Hampshire's juvenile courts. *James O., et al, v. Marston, et al.* The defendants were state officials and did not include any school districts.

B. In 1991, the U.S. District Court approved a consent decree in that case. The decree established procedures for special education students involved with the juvenile courts.

C. The N.H. Board of Education subsequently adopted rules implementing the consent decree. N.H. Code of Administrative Rules, Ed 1117.

D. The consent decree expired when the court closed the case in 2001, but the State Board of Education rules remain in effect.

E. When approving the consent decree, Judge Stahl stated (orally on the record) that the decree should not be interpreted to exceed what the IDEA requires.

F. The N.H. Board of Education's rules implementing the consent decree may be invalid. They arguably violate RSA 186-C:3-a, I, which prohibits the State Department of Education from demanding that school districts exceed the requirements of RSA 186-C and federal law. They also arguably violate the N.H. Constitution, Part 1, Article 28-a, which prohibits new unfunded state mandates, and RSA 541-A:25, which prohibits state agency rules that amount to new unfunded state mandates.

XIV. Guardians ad litem.

A. Under common law, all courts have inherent authority to appoint a "guardian ad litem" to represent a child when the parents have a conflict of interest or "are unwilling or unable to act in the child's best interests." *In re Lisa G.*, 127 N.H. 585, 587 (1986). This power is confirmed and codified by RSA 464-A:41.

B. "Ad litem" means "for the matter." Unlike a legal guardian, who has authority to represent a child in any legal proceeding, a guardian ad litem represents the juvenile in a single specific proceeding – the case pending before the court that appointed the guardian ad litem.

C. Some juvenile court judges routinely appoint the N.H. Disabilities Rights Center as guardian ad litem for the purpose of securing services through the special education process. This exceeds the court's jurisdiction, because a guardian ad

litem may represent a child only in matters pending before that court. *In re John Doe* (Rochester District Court, Feb. 14, 2007 order).

D. Parents are supposed to represent the child in the special education process. If the student needs a surrogate parent, the N.H. Commissioner of Education may appoint one pursuant to RSA 186-C:14 or, if the child is a ward of the state, the juvenile court may appoint one pursuant to 20 U.S.C. § 1415(b)(2)(A)(i).

E. A foster parent may not represent a child in the special education process unless appointed to do so by the N.H. Commissioner of Education or the N.H. Commissioner of Health and Human Services. RSA 186-C:14-a.

XV. Unbundled legal services.

A. The N.H. Supreme Court recently amended court rules by allowing a lawyer to provide "limited representation" to a client. *E.g.,* Family Division Rule 1.19; District Court Rule 1.3(D)(2); N.H. Rules of Professional Conduct, Rule 1.2.

B. This may prove to be a useful vehicle for attorneys to represent school districts for discrete portions of juvenile court cases.

XVI. Special situations.

A. When a special education student is committed to a county correctional facility or a state-operated facility (such as the State Prison, the Sununu Youth Services Center, or the Anna Philbrook children's unit at the State Hospital), special rules apply regarding school district responsibilities for services and funding. *E.g.,* RSA 186-C:19, 19-a, 20.

B. *Regardless of whether the student qualifies for special education*, if the student receives educational services at a public or private institution "named in or at the direction of the commissioner [of health and human services]," the responsible school district must pay the *state average annual per pupil cost for elementary school students*. RSA 126-A:39, I.

1. This statute does not diminish a school district's responsibilities under the special education laws. It imposes responsibility when the special education laws do not.

2. Under this statute, the responsible school district is the district in which the student's parent or legal guardian resides.

3. The statute seems to apply whenever a student receives education: a) at a state-operated facility; or b) at a court-ordered placement when DCYF is involved.

4. The statute in effect requires that school districts contribute an equitable amount toward the education of nondisabled students placed by juvenile courts in private residential schools.

C. Whenever a juvenile court contemplates making a placement that will require educational services outside the juvenile's "home school district," the court shall notify the home district and give that district an opportunity to send a representative to the placement hearing. RSA 169-B:19, IX, 169-C:18, VIII, 169-C:19, VI, 169-D:14, VI, 169-D:17, VI (2010 Supp.).

1. *These statutes apply to all students, not merely students who qualify for special education.*

2. These statutes allow the school district to make recommendations to the court, but do not compel the school district to make a recommendation.

3. If the court disagrees with the school district's recommendation, it must explain why.

4. The statute contains an exception for emergencies. This exception allows the court to make a placement without seeking a recommendation from the school district, when the placement is necessary to protect the health or safety of the juvenile or the community.

D. If the child qualifies for special education, and *regardless of whether the school district has been joined as a party*, the "sending district shall be notified of a court ordered placement of a child adjudicated under RSA 169-B, 169-C, or 169-D." RSA 186-C:13, III (2010 Supp.).

1. The term "sending district" presumably means the school district that is ultimately liable for special education costs when a court places a minor in a residential facility such as a foster home or group home. See RSA 193:27, IV, 193:29, I.

2. This school district "may submit recommendations to the court concerning the financial impact of the placement on the sending district and the appropriateness of the placement." RSA 186-C:13, III (2010 Supp.).

3. RSA 186-C:13, III (2010 Supp.) is odd. Read literally, allows a school district to recommend placements *after* the court has already made a placement.

4. RSA 186-C:13, III (2010 Supp.) is also redundant. The juvenile justice statutes require that the court join a school district earlier − whenever the court "contemplates a residential placement." RSA 169-B:22, I, 169-C:20, I, 169-D:18, I (2010 Supp.). The juvenile justice statutes also require that the school district, once joined, make a recommendation to the court "as to where the child's educational needs can be met in accordance with state and federal education laws." RSA 169-B:22, II, 169-C:20, II, 169-D:18, II (2010 Supp.).

XVII. The Fostering Connections Act.

A. A federal statute enacted in 2008, the Fostering Connections to Success and Increasing Adoptions Act, encourages juvenile courts to place children with adult relatives instead of "non-related caregiver[s]." 42 U.S.C. § 673(a)(19).

B. As a consequence, New Hampshire juvenile courts are now more frequently placing children with relatives rather than in foster homes.

C. The Fostering Connections Act encourages allowing a child placed in a foster home to remain in the school he or she attended prior to foster placement. 42 U.S.C. § 675(1)(G).

D. RSA 193:28 (2010 Supp.) reflects that policy. According to this statute, when a child lives in a group home or foster home or is placed by DHHS in the home of a relative or friend:

1. The child may attend the public schools of the district the child attended prior to placement if continuing in that district "is in the best interest of the child as determined by the court," provided that:

   a. the foster home or group home is within a reasonable distance of the school to be attended; and

   b. suitable transportation can be arranged without imposing additional transportation costs on a school district or DHHS.

2. The child may attend the public schools of the school district in which the child lives, provided that the child was placed in that district solely for the purpose of enabling the child to attend that district's schools.

XVIII. Legal competence.

A. In a delinquency or CHINS case, a juvenile's attorney may argue that the court lacks jurisdiction because the child is "incompetent."

B. Such defenses are especially likely if the student is disabled.

C. Competency defenses take two forms in juvenile court cases.

1. Was the juvenile competent at the time he or she committed the offense? That is, did the juvenile have the mental capacity to act "purposely or knowingly" when committing the offense?

2. Is the juvenile competent at the time of the trial? That is, does he or she have the mental capacity to assist counsel?

D. The New Hampshire Supreme Court has recently addressed these issues.

1. Incompetence at the time of the crime is a good defense in a delinquency case. *In re Alex C.*, 158 N.H. 525, 969 A.2d 399 (2009).

2. Incompetence to commit the offense is *not* a meritorious defense in a CHINS case. *In re James N.*, 157 N.H. 690, 958 A.2d 988 (2008).

3. In a CHINS case, conducting a trial while the juvenile is incompetent does not violate the due process clauses of the United States and New Hampshire constitutions. *In re Kotey M.*, 158 N.H. 358, 965 A.2d 1146 (2009).

