

New Hampshire's post adoption contact/communication statute

170-B:14 Arrangements Between Adoptive and Birth Parents. –

I. Nothing in this chapter shall be construed as encouraging, discouraging, or prohibiting arrangements or understandings reached between the prospective adoptive parents, the birth parents, or the licensed child-placing agency with respect to the post-surrender exchange of identifying or non-identifying information, communication, or contact. Except in cases involving the department as provided in paragraph II, no such arrangement or understanding shall be binding or enforceable at law or in equity.

II. In adoptions involving a child who is under either the legal custody or guardianship of the department, a voluntarily mediated agreement shall be enforceable as provided in this paragraph. The purpose of this paragraph is to facilitate the timely achievement of permanency for children who are in the custody or guardianship of the department by providing an option for the parties to enter into a voluntarily mediated agreement for ongoing communication or contact that is in the best interests of the child, that recognizes the parties' interests and desires for ongoing communication or contact, that is appropriate given the role of the parties in the child's life, and that is legally enforceable by the courts.

(a) Prior to the entry of any adoption decree, the department, prospective adoptive parents, and birth parents may voluntarily participate in a court-approved mediation program in order to reach a voluntarily mediated agreement. If the department is the only party unwilling to participate in mediation, the department shall provide a written explanation of its position to the court, the birth parents, and the prospective adoptive parents. Venue for approval and enforcement of such agreement shall lie in a court of competent jurisdiction that would otherwise issue the termination decree under RSA 170-C. Any breach, modification, or invalidation of the agreement, or any part of it, shall not affect the validity of any surrender of parental rights or the interlocutory or final decree of adoption.

(b) Other people may be invited to participate in the mediation by mutual consent of the department, birth parents, and prospective adoptive parents. However, these invitees shall not be parties to any agreement reached during that mediation.

(c) Mediation proceedings and information relating to those proceedings under this paragraph shall be confidential. Information or the statements of any person participating in the mediation shall not be disclosed or used in any subsequent proceeding. Regardless, evidence that would otherwise be admissible at trial shall not be rendered inadmissible as a result of its use in a mediation proceeding. There shall be no record made of any mediation proceedings under this paragraph, and the mediator shall destroy all of his or her notes immediately after the mediation.

(d) The court shall approve the voluntarily mediated agreement if the court determines that:

(1) The agreement is in the best interests of the child. In making this determination, factors that the court may consider include:

(A) The length of time that the child has been under the actual care, custody, and control of any person other than a birth parent and the circumstances relating thereto.

(B) The desires of the child's birth parents as to custody or residency and the desire of the child as to the child's custody or residency.

(C) The interaction and interrelationship of the child with birth parents, siblings, and any other

person who may significantly affect the child's best interests.

(D) The adjustment to the child's home, school, and community.

(E) The willingness and ability of the birth parents to respect and appreciate the bond between the child and the prospective adoptive parents.

(F) The willingness and ability of the prospective adoptive parents to respect and appreciate the bond between the child and the birth parents.

(G) Any evidence of abuse or neglect of the child.

(H) The recommendations of any guardian ad litem.

(2) The agreement has been entered into knowingly and voluntarily by all parties. An affidavit made under oath shall accompany the agreement affirmatively stating that the agreement was entered into knowingly and voluntarily and is not the product of coercion, fraud, or duress. The affidavit may be executed jointly or separately.

(e) To be approved by the court, a voluntarily mediated agreement shall contain the following statements:

(1) This agreement is entered into pursuant to the provisions of RSA 170-B:14, II.

(2) Any breach, modification, or invalidation of the agreement, or any part of it, shall not affect the validity of the surrender of parental rights or the interlocutory or final decree of adoption.

(3) The parties acknowledge that either the birth or prospective adoptive parents who have entered into the agreement have the right to seek enforcement as set forth in RSA 170-B:14, II(i).

(4) The parties have not relied on any representations other than those contained in the agreement.

The agreement shall be signed by the parties and acknowledged before a notary public as the free act and deed of the parties. If the child is 14 years of age or older, the agreement also shall contain the written assent of the child.

(f) To be enforceable, a voluntarily mediated agreement shall be:

(1) In writing.

(2) Approved by the court prior to the date for entry of any adoption decree.

(3) Incorporated but not merged into any adoption decree, and shall survive as an independent agreement.

(g) A voluntarily mediated agreement under this paragraph need not disclose the identity of the parties to be enforceable; but if an identity is not disclosed, the unidentified person shall designate a resident agent for the purpose of service of process. Failing service on the designated resident agent, the court may order alternative service reasonably calculated to notify the undisclosed party.

(h) A voluntarily mediated agreement shall cease to be enforceable on the date the child turns 18 years of age. The court issuing final approval of the agreement shall have continuing jurisdiction over enforcement of the agreement until the child reaches his or her 18th birthday.

(i) A party to a court-approved voluntarily mediated agreement may seek to modify, enforce, or discontinue the agreement by commencing an equity action in the court that approved the underlying agreement. However, before a court may enter an order requiring modification of, compliance with, or discontinuance of the agreement, the moving party shall certify under oath that he or she has participated, or attempted to participate, in good faith in mediating the dispute giving rise to the action prior to filing the equity action. A court order for modification, enforcement, or discontinuance of the

terms of the voluntarily mediated agreement shall be the sole remedies for breach of the agreement.

(1) In a proceeding under this subparagraph, parties shall not be entitled to the appointment of counsel; provided, however, that the court may appoint a guardian ad litem to represent the interests of the child.

(2) The court may modify the terms of the voluntarily mediated agreement if the court finds by a preponderance of the evidence that there has been a material and substantial change in the circumstances and that the modification is in the best interests of the child. A court-imposed modification of a previously approved agreement may limit, restrict, condition, decrease, or discontinue the sharing of information and/or contact between the birth parents and the child but in no event shall a court-imposed modification serve to expand, enlarge, or increase the amount of contact between the birth parents and the child or place new obligations on the parties to the agreement. The court also may impose appropriate sanctions consistent with its equitable powers but not inconsistent with this section, including the power to issue restraining orders.

(3) If the court finds that an action brought under this subparagraph was wholly insubstantial, frivolous, and not advanced in good faith, the court may award attorneys' fees and costs to the prevailing parties.

(j) Nothing contained in RSA 170-B:14, II shall be construed so as to abrogate the rights of the adoptive parents to make decisions on behalf of the child, except as provided in the court-approved voluntarily mediated agreement.