



**Student Hackers:
Computer Use Policies, Student Discipline and
Reporting Obligations**

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Google “High School Student Computer Hacking” and sample the array of incidents around the country where student hacking has made headlines. Hacking attempts to change grades receive the most headlines, but student hacking to shut down or slow a district’s system, to change attendance records, or simply to show it can be done are just some of the additional ways student hacking can trigger a required response. The purpose of these materials is to serve as a primer on student discipline procedures in the context of student hacking incidents and to raise potential reporting obligations arising from such incidents.

I. STATUTORY AND REGULATORY FRAMEWORK

No computer hacking incident will be precisely the same. Each, however, should be reviewed in the context of the governing New Hampshire statutes and regulations and applicable District/School policies.

A. Acceptable Use Policies

Acceptable Use Policies are now common within school districts and required by statute. RSA 194:3-d requires every school district to adopt a policy which “outlines the intended appropriate and acceptable use, as well as the inappropriate and illegal use, of the school district computer systems and networks including, but not limited to, the Internet.” Pursuant to the statute, those individuals authorized to access the school districts computer systems or networks “shall assume legal and financial liability” for intentional violations of district policy and intentional damage to the computer system or network. Acceptable Use Policies should set forth potential sanctions for violations of the policy and it is important that such policies are consistent with student discipline policies. *See Appeal of Keelin v. 162 N.H. 38, 47 (2011)* (noting

argument that acceptable use policy limited sanction available for policy violation although rejecting argument as discipline was based on additional violations of student handbook) .

B. Student Discipline Overview: RSA 193:13 & Ed 317

Student hacking/misuse of District computer systems should be handled in the same manner as other disciplinary issues. The governing statute and regulations include RSA 193:13 and Ed 317. The statute and regulation are set forth in full in Appendix I, but the following sets forth just a brief summary.

1. RSA 193:13

RSA 193:13 sets forth the different levels of discipline available to school administrators/school boards.

- First, the superintendent, or a designated representative, may “suspend pupils from school not to exceed 10 school days for gross misconduct or for neglect or refusal to conform to the reasonable rules of the school.” RSA 193:13, 1(a).
- Second, the school board or a designated representative may “following a hearing, continue the suspension for a pupil in excess of 10 school days.” The school board’s designated representative may be the superintendent or any other individual, but may not be the individual who suspended the pupil in the first instance. Any such extended suspension by an individual other than the school board may be appealed to the school board, provided the superintendent receives such appeal in writing within 10 days after the issuance of the decision. RSA 193:13, I (b) &(c).

- Third, the statute, in pertinent part, authorizes the school board to expel any pupil “for gross misconduct, or for neglect or refusal to conform to the reasonable rules of the school, or for an act of theft, destruction, or violence as defined in RSA 193-D:1....” RSA 193:13, II.

2. Ed 317

Ed 317 sets forth the due process procedures for each level of the disciplinary proceedings. Note that while a short term suspension simply requires notice (oral or written) to the student of the charges, an explanation of the evidence against the student, and an opportunity to be heard, a long term suspension, whether before the school board or superintendent, requires a hearing, in accordance with the procedures set forth in the regulations at Ed. 317.05(f)(3)g. In particular, prior written notice to the student and at least one of the student’s parents/guardians, and a written decision which includes the legal and factual basis for any long term suspension must be provided.

C. Reporting Obligations: RSA ch. 193-D & RSA 359-C

Under the Safe School Zones Act (pertinent parts set forth in Appendix II), school employees who have witnessed or who have information from a victim of “an act of theft, destruction, or violence in a safe school zone” must report such act immediately to a supervisor, who must forward such information on to the school principal, who shall file a report with local law enforcement immediately, followed by a written report within 48 hours. *See RSA 193-D:4.* RSA 193-D:1 defines an “act of theft, destruction or violence”, as an act set forth in various criminal statutes. While some of the statutes may be implicated in some instances of computer hacking (i.e. “criminal mischief” (RSA 634:2); theft (RSA 637); or “criminal threatening” (RSA 631:4), significantly, an “act of theft, destruction or violence” does not currently include “computer related offenses” such as set forth in RSA 638:17. Therefore, while schools may

decide to report computer hacking incidents to local law enforcement, the circumstances of each case will dictate whether a particular incident triggers mandatory reporting.

While, currently, reporting to local law enforcement is not strictly required by the Safe School Zones Act, depending on the circumstances of the incident, there may be a reporting obligation, under RSA 359-D:19 & 20, to the State Attorney General with respect to any security breaches of “personal information.” Those statutory provisions are set forth in full in Appendix III. In brief, a “security breach” means the “unauthorized acquisition of computerized data that compromises the security or confidentiality of personal information maintained by a person doing business in the state.” “Personal information” means an individual’s first name or initial and last name in combination with any of the following, when not encrypted:

- (1) social security number;
- (2) driver’s license number or other governmental identification number;
- (3) account number, credit card number, or debit card number, in combination with any required security code, access code or password that would permit access to an individual’s financial account.

If the District becomes aware of a security breach, it must first determine the likelihood that the information has been or will be misused. If the determination is that misuse of the information has occurred or is reasonably likely to occur, or if a determination cannot be made, the District must notify the affected individual as soon as possible and also notify the New Hampshire Attorney General’s Office. *[Sample breach notification notices can be found at <http://doj.nh.gov/consumer/security-breaches/index.htm>.]*

II. A BASIC CHECKLIST FOR RESPONSE TO A STUDENT COMPUTER HACKING INCIDENT.

While consistency in response to student hacking incidents is desired, as noted previously, each computer hacking incident should be addressed on its own merits. Each may

implicate some different school/district policies, different levels of culpability, different reporting requirements, and different levels of discipline. The following basic issues should be considered when faced with a suspected student computer hacking incident:

- **Investigation Team:** The investigation team should include IT personnel who can preserve evidence of the hacking, explain the manner and scope of the incident, and work with the administrator who is the designated primary investigator. Depending on the nature of the breach, outside consultants may need to be retained.
- **Reporting Obligations:** Any reporting obligations need to be assessed early in the process, but also should continue to be assessed as the investigation proceeds.
- **Applicable statutes, regulations, policies:** The applicable statutes and regulations are set forth above, but, in addition to a school district's Acceptable Use Policy, it should be determined whether other school policies apply (student conduct policies; student handbook; harassment; bullying, etc.) To the extent known, the written explanation supporting a short term suspension should designate the applicable policies violated. Similarly, the written decision following a hearing on a long term suspension should clearly set forth all the bases for the decision.
- **Disciplinary Timeline:** The full text of RSA 193:13 and Ed 317, which set forth all of the disciplinary timelines and due process procedures, are set forth in Appendix I. These deadlines can compress quickly. For example, a short term suspension may be imposed for 10 school days. But that suspension cannot be continued to a long term suspension without prior written notice, hearing and a written decision. That prior written notice must include an explanation of the evidence against the student. If the incident triggers a complicated IT investigation and/or where the initial scope of a

computer breach may not be readily apparent, it can be more difficult to comply with the prior written notice requirements. Then, the written decision must include “the legal and factual basis for the conclusion that the pupil should be suspended.” Ed. 317.04(f)(2)c. As that decision may be appealed, it is important that the decision address each basis for the disciplinary action taken.

APPENDIX I

(NH School Disciplinary Statute/Regulation)

193:13. Suspension and Expulsion of Pupils.

I. (a) The superintendent or chief administering officer, or a representative designated in writing by the superintendent, is authorized to suspend pupils from school for a period not to exceed 10 school days for gross misconduct or for neglect or refusal to conform to the reasonable rules of the school.

(b) The school board or a representative designated in writing of the school board is authorized, following a hearing, to continue the suspension of a pupil for a period in excess of 10 school days. The school board's designee may be the superintendent or any other individual, but may not be the individual who suspended the pupil for the first 10 days under subparagraph (a). Any suspension shall be valid throughout the school districts of the state, subject to modification by the superintendent of the school district in which the pupil seeks to enroll.

(c) Any suspension in excess of 10 school days imposed under subparagraph (b) by any person other than the school board is appealable to the school board, provided that the superintendent received such appeal in writing within 10 days after the issuance of the decision being appealed. The school board shall hold a hearing on the appeal, but shall have discretion to hear evidence or to rely upon the record of a hearing conducted under subparagraph (b). The suspension under subparagraph (b) shall be enforced while that appeal is pending, unless the school board stays the suspension while the appeal is pending.

II. Any pupil may be expelled from school by the local school board for gross misconduct, or for neglect or refusal to conform to the reasonable rules of the school, or for an act of theft, destruction, or violence as defined in *RSA 193-D:1*, or for possession of a pellet or BB gun, rifle, or paint ball gun, and the pupil shall not attend school until restored by the local board. Any expulsion shall be subject to review if requested prior to the start of each school year and further, any parent or guardian has the right to appeal any such expulsion by the local board to the state board of education. Any expulsion shall be valid throughout the school districts of the state.

III. Any pupil who brings or possesses a firearm as defined in section 921 of Title 18 of the United States Code in a safe school zone as defined in *RSA 193-D:1* without written authorization from the superintendent or designee shall be expelled from school by the local school board for a period of not less than 12 months.

IV. The local school board shall adopt a policy which allows the superintendent or chief administering officer to modify the expulsion requirements set forth in paragraphs II and III on a case by case basis.

V. Any pupil expelled by a local school board under the provisions of the Gun-Free Schools Act of 1994 shall not be eligible to enroll in another school district in New Hampshire for the period of such expulsion. Nothing in this section shall be construed to prevent the local school district that expelled the student from providing educational services to such students in an alternative setting.

VI. A pupil expelled from school in another state under the provisions of the Gun-Free Schools Act of 1994 shall not be eligible to enroll in a school district in New Hampshire for the period of such expulsion.

VII. For purposes of paragraphs I, II, and III, school board may be either the school board or a subcommittee of the board duly authorized by the school board.

ED 317

317.01 Purpose.

(a) These rules provide the minimum requirements to assure due process and statewide uniformity in the enforcement of *RSA 193:13* and *193-D* relative to disciplinary action of a pupil for:

- (1) Gross misconduct;
- (2) Neglect or refusal to conform to the reasonable rules of the school; or

(3) Possession of:

- a. A pellet gun;
- b. Paint ball gun;
- c. B B gun;
- d. Rifle;
- e. A firearm as defined in 18USC 921; or
- f. Other dangerous weapon.

(4) An act of theft, destruction, or violence in violation of *RSA 193-D:1*, et seq.

(b) These rules also provide a standard that local school boards shall use in adopting and implementing a policy relative to pupil conduct and disciplinary procedures under *RSA 193-D:2*, II.

(c) These rules also link discipline and due process to the requirements of Ed 1109 relative to children with disabilities.

Ed 317.02 Definitions.

(a) "Expulsion" means the permanent denial of a pupil's attendance at school for any of the reasons listed in *RSA 193:13*, II and III.

(b) "Firearm" means "firearm" as defined in section 921 of Title 18 of the US Code;

(c) "Dangerous weapons " means dangerous weapons listed but not limited to those in *RSA 159:16*.

(d) "Gross misconduct" includes, but is not limited to an act which:

- (1) Results in injury to another's person or damage to property;
- (2) Poses a direct threat to the safety of others in a safe school zone; or
- (3) Is identified in *RSA 193-D:1*, I.

(e) "Neglect", in the context of *RSA 193:13*, I and II, means the failure of a pupil to pay attention to an announced, posted, or printed school rule.

(f) "Pupil" means a student in attendance at a school during the school day or during any school sponsored function.

(g) "Refusal", in the context of *RSA 193:13*, I and II means the failure of a pupil to comply with an announced, posted, or printed school rule.

(h) "Safe school zone" means "safe school zone" as defined in *RSA 193-D:1*, II.

(i) "School day" means:

(1) For a pupil who takes the school bus, the time period beginning when a pupil boards the bus in the morning to the time when a pupil disembarks from the bus in the afternoon; and

(2) For a pupil who walks to school or arrives by private car, the time period beginning when the pupil arrives on the school grounds to the time when the pupil leaves the school grounds.

(j) "Superintendent" means the school superintendent or chief administering officer, or a representative designated in writing as authorized under *RSA 193:13*, I.

(k) "Suspension" means the temporary denial of a student's attendance at school for a specific period of time for gross misconduct or for neglect or refusal to conform to announced, posted, or printed school rules.

Ed 317.03 Standard for Expulsion by Local School Board.

(a) A school board which expels a pupil under *RSA 193:13*, II or III, shall state in writing its reasons, including the act leading to expulsion, and shall provide a procedure for review as allowed under *RSA 193:13*, II.

(b) School boards shall make certain that the pupil has received notice of the requirements of *RSA 193-D* and *RSA 193:13* through announced, posted, or printed school rules.

(c) If a student is subject to expulsion and a firearm is involved, the superintendent shall contact local law enforcement officials whenever there is any doubt concerning:

(1) Whether a firearm is legally licensed under *RSA 159*; or

(2) Whether the firearm is lawfully possessed, as opposed to unlawfully possessed, under the legal definitions of *RSA 159*.

(d) If a pupil brings or possesses a firearm in a safe school zone without written authorization from the superintendent, the following shall apply:

(1) The superintendent shall suspend the pupil for a period not to exceed 10 days, pending a hearing by the local board; and

(2) The school board shall hold a hearing within 10 days to determine whether the student was in violation of *RSA 193:13*, III and therefore is subject to expulsion.

Ed 317.04 Disciplinary Procedures.

(a) There shall be the following levels of discipline available to school officials enforcing *RSA 193:13* relative to the suspension and expulsion of pupils:

(1) A short-term suspension pursuant to *RSA 193:13*,I(a) is for a period not to exceed 10 school days;

(2) A long-term suspension pursuant to *RSA 193:13*,I(b)-(c) is for more than 10 days;

(3) An expulsion by the local school board is for a period determined in writing by the board under *RSA 193:13*, II; and

(4) An expulsion by the local school board is for a period of not less than 12 months under *RSA 193:13*, III.

(b) The superintendent or the superintendent's designee shall be authorized to impose a short term suspension.

(c) The school board or its designee shall be authorized to impose a long term suspension, after the imposition of a short-term suspension provided that the designee shall not be the same person who suspended the pupil in (a)(1).

(d) Prior to the imposition of any suspension or expulsion, each school board shall adopt a policy under *RSA 189:15* which prescribes the manner in which the student body shall be informed concerning the content of *RSA 193:13* through announced, posted, or printed school rules.

(e) If the school and school board have met the requirements of paragraph (d) a pupil appealing a local decision to the state board shall not be allowed to claim lack of knowledge of the state law requiring expulsion for bringing or possessing a firearm or other dangerous weapon as defined in these rules.

(f) Due process in disciplinary proceedings shall include, at a minimum, the following:

(1) In a short-term suspension:

a. The superintendent or designee shall inform the pupil at the outset of the meeting of the meeting's purpose including the possibility of a short-term suspension;

b. Oral or written notice of the charges and an explanation of the evidence against the pupil, which may be provided at or before this meeting;

c. An opportunity for the pupil to present his/her side of the story;

d. A written statement to the pupil and at least one of the pupil's parents or guardian explaining any disciplinary action taken against the student;

(2) In a long-term suspension of a pupil:

a. Written communication to the pupil and at least one of the pupil's parents or guardian, delivered in person or by mail to the pupil's last known address, prior to the hearing, of the charges and an explanation of the evidence against the pupil;

b. A hearing in accordance with (f)(3)g.;

c. A written decision which includes the legal and factual basis for the conclusion that the pupil should be suspended;

d. If the hearing was conducted by the school board's designee, the decision may be appealed to the local school board under *RSA 193:13, I*; and

e. If the hearing was conducted by the school board, the decision may be appealed to the state board;

(3) In an expulsion by the local school board, due process shall include the following minimal requirements:

a. A formal hearing shall be held before any expulsion;

b. Such hearing may be held either before or after the short-term suspension has expired and pending the expulsion hearing;

c. If the hearing is held after the expiration of a short-term suspension, the pupil shall be entitled to return to school after the short-term suspension has expired and pending the expulsion hearing, unless the student is still serving a long-term suspension;

d. The school board shall provide written notice to the pupil and at least one of the pupil's parents or guardian, delivered in person or by mail to the pupil's last known address, of the date, time and place for a hearing before the local board;

e. The written notice required by d. above shall include:

1. A written statement of the charges and the nature of the evidence against the pupil; and

2. A superintendent's written recommendation for school board action and a description of the process used by the superintendent to reach his/her recommendation;

f. This notice shall be delivered to the pupil and at least one of the pupil's parents or guardian at least 5 days prior to the hearing;

g. The following hearing procedures shall apply:

1. The pupil, together with a parent or guardian may waive the right to a hearing and admit to the charges made by the superintendent;

2. If the pupil is 18 years of age or older, the concurrence of a parent or guardian shall be unnecessary unless the pupil is subject to a guardianship which would prevent the pupil from waiving the right to a hearing;

3. Formal rules of evidence shall not be applicable, however, school officials shall present evidence in support of the charge(s) and the accused pupil or his/her parent or guardian shall have an opportunity to present any defense or reply;

4. The hearing shall be either public or private and the choice shall be that of the pupil or his parent or guardian; and

5. During the hearing, the pupil, parent, guardian or counsel representing the pupil, shall have the right to examine any and all witnesses;

h. The decision of the school board shall be based on a dispassionate and fair consideration of substantial evidence that the accused pupil committed the act for which expulsion is imposed and that such acts are, in fact, a proper reason for expulsion;

i. The decision shall state whether the student is expelled and the length of the expulsion;

j. If the decision is to expel the pupil the decision shall include the legal and factual basis for the decision including the specific statutory reference prohibiting that act as listed in *RSA 193:13, II*;

k. If the student is expelled, the decision shall state that the expulsion runs until the local school board later reviews it and restores the student's permission to attend school;

l. The decision shall also state any action the student may take to be restored by the board; and

m. The decision shall include a statement that the pupil has the right to appeal the decision to the state board of education.

(g) Notwithstanding any other deadline in Ed 200 all appeals to the state board from school board decisions under (f),(2) and (f)(3) shall be filed within 20 calendar days of receipt of the written decision of the local school board and shall be in accordance with *RSA 541-A* and Ed 200.

APPENDIX II

193-D:1. Definitions.

In this chapter:

I. "Act of theft, destruction, or violence" means an act set forth in the following statutes regardless of the age of the perpetrator:

- (a) Homicide under *RSA 630*.
- (b)(1) Any first or second degree assault under *RSA 631*.
- (2) Any simple assault under *RSA 631:2-a*.
- (c) Any felonious or aggravated felonious sexual assault under *RSA 632-A*.
- (d) Criminal mischief under *RSA 634:2*.
- (e) Unlawful possession or sale of a firearm or other dangerous weapon under *RSA 159*.
- (f) Arson under *RSA 634:1*.
- (g) Burglary under *RSA 635*.
- (h) Robbery under *RSA 636*.
- (i) Theft under *RSA 637*.
- (j) Illegal sale or possession of a controlled drug under *RSA 318-B*.
- (k) Criminal threatening under *RSA 631:4*.

II. "Safe school zone" means an area inclusive of any school property or school buses.

III. "School" means any public or private elementary, secondary, or secondary vocational-technical school in New Hampshire. It shall not include home schools under *RSA 193-A*.

IV. "School employee" means any school administrator, teacher, or other employee of any public or private school, school district, school department, or school administrative unit, or any person providing or performing continuing contract services for any public or private school, school district, school department, or school administrative unit.

V. "School property" means all real property, physical plant and equipment used for school purposes, including but not limited to school playgrounds and buses, whether public or private.

VI. "School purposes" means school-sponsored programs, including but not limited to educational or extra-curricular activities.

193-D:4. Written Report Required.

I. (a) Any public or private school employee who has witnessed or who has information from the victim of an act of theft, destruction, or violence in a safe school zone shall report such act in writing immediately to a supervisor. A supervisor receiving such report shall immediately forward such information to the school principal who shall file it with the local law enforcement authority. Such report shall be made by the principal to the local law enforcement authority immediately, by telephone or otherwise, and shall be followed within 48 hours by a report in writing. If the alleged victim is a student, the principal shall also immediately notify the person responsible for the victim's welfare, as defined in *RSA 169-C:3, XXII*, that a report was made to the local law enforcement authority.

(b) The provisions of subparagraph (a) shall not apply to any simple assault involving pupils in kindergarten through grade 12 if the local school board has adopted a discipline policy which sets forth circumstances under which parents shall be notified of simple assaults.

(c) Each school district, in conjunction with the local law enforcement authority, shall establish a memorandum of understanding for administering the provisions of *RSA 193-D:4*, I(a)-(c).

II. The report required under paragraph I shall include:

(a) The name and home address, if known, of any person suspected of committing an act of theft, destruction, or violence in a safe school zone.

(b) The name and home address, if known, of any witness to the act of theft, destruction, or violence in a safe school zone.

(c) Identification of the act of theft, destruction, or violence as defined in *RSA 193-D:1* that was allegedly committed.

APPENDIX III

(NH Security Breach Statutes)

359-C:19. Definitions.

In this subdivision:

- I.** "Computerized data" means personal information stored in an electronic format.
- II.** "Encrypted" means the transformation of data through the use of an algorithmic process into a form for which there is a low probability of assigning meaning without use of a confidential process or key, or securing the information by another method that renders the data elements completely unreadable or unusable. Data shall not be considered to be encrypted for purposes of this subdivision if it is acquired in combination with any required key, security code, access code, or password that would permit access to the encrypted data.
- III.** "Person" means an individual, corporation, trust, partnership, incorporated or unincorporated association, limited liability company, or other form of entity, or any agency, authority, board, court, department, division, commission, institution, bureau, or other state governmental entity, or any political subdivision of the state.
- IV.** (a) "Personal information" means an individual's first name or initial and last name in combination with any one or more of the following data elements, when either the name or the data elements are not encrypted:
- (1) Social security number.
 - (2) Driver's license number or other government identification number.
 - (3) Account number, credit card number, or debit card number, in combination with any required security code, access code, or password that would permit access to an individual's financial account
- (b) "Personal information" shall not include information that is lawfully made available to the general public from federal, state, or local government records.
- V.** "Security breach" means unauthorized acquisition of computerized data that compromises the security or confidentiality of personal information maintained by a person doing business in this state. Good faith acquisition of personal information by an employee or agent of a person for the purposes of the person's business shall not be considered a security breach, provided that the personal information is not used or subject to further unauthorized disclosure.

359-C:20. Notification of Security Breach Required.

- I.** (a) Any person doing business in this state who owns or licenses computerized data that includes personal information shall, when it becomes aware of a security breach, promptly determine the likelihood that the information has been or will be misused. If the determination is that misuse of the information has occurred or is reasonably likely to occur, or if a determination cannot be made, the person shall notify the affected individuals as soon as possible as required under this subdivision.
- (b) Any person engaged in trade or commerce that is subject to RSA 358-A:3, I shall also notify the regulator which has primary regulatory authority over such trade or commerce. All other persons shall notify the New Hampshire attorney general's office. The notice shall include the anticipated date of the notice to the individuals and the approximate number of individuals in this state who will be notified. Nothing in this section shall be construed to require the person to provide to any regulator or the New Hampshire attorney general's office the names of the individuals entitled to receive the notice or any personal information relating to them. The disclosure shall be made to affected individuals as quickly as possible, after the determination required under this section.
- (c) Any person or business that maintains computerized data that includes personal information that the person or business does not own shall notify and cooperate with the owner or licensee of the information of any breach of the security of the data immediately following discovery, if the personal information was acquired by an

unauthorized person. Cooperation includes sharing with the owner or licensee information relevant to the breach; except that such cooperation shall not be deemed to require the disclosure of confidential or business information or trade secrets.

II. Notification pursuant to paragraph I may be delayed if a law enforcement agency, or national or homeland security agency determines that the notification will impede a criminal investigation or jeopardize national or homeland security.

III. The notice required under this section shall be provided by one of the following methods:

(a) Written notice.

(b) Electronic notice, if the agency or business' primary means of communication with affected individuals is by electronic means.

(c) Telephonic notice, provided that a log of each such notification is kept by the person or business who notifies affected persons.

(d) Substitute notice, if the person demonstrates that the cost of providing notice would exceed \$ 5,000, that the affected class of subject individuals to be notified exceeds 1,000, or the person does not have sufficient contact information or consent to provide notice pursuant to subparagraphs I(a)-I(c). Substitute notice shall consist of all of the following:

(1) E-mail notice when the person has an e-mail address for the affected individuals.

(2) Conspicuous posting of the notice on the person's business website, if the person maintains one.

(3) Notification to major statewide media.

(e) Notice pursuant to the person's internal notification procedures maintained as part of an information security policy for the treatment of personal information.

IV. Notice under this section shall include at a minimum:

(a) A description of the incident in general terms.

(b) The approximate date of breach.

(c) The type of personal information obtained as a result of the security breach.

(d) The telephonic contact information of the person subject to this section.

V. Any person engaged in trade or commerce that is subject to *RSA 358-A:3, I* which maintains procedures for security breach notification pursuant to the laws, rules, regulations, guidances, or guidelines issued by a state or federal regulator shall be deemed to be in compliance with this subdivision if it acts in accordance with such laws, rules, regulations, guidances, or guidelines.

VI. (a) If a person is required to notify more than 1,000 consumers of a breach of security pursuant to this section, the person shall also notify, without unreasonable delay, all consumer reporting agencies that compile and maintain files on consumers on a nationwide basis, as defined by *15 U.S.C. section 1681a(p)*, of the anticipated date of the notification to the consumers, the approximate number of consumers who will be notified, and the content of the notice. Nothing in this paragraph shall be construed to require the person to provide to any consumer reporting agency the names of the consumers entitled to receive the notice or any personal information relating to them.

(b) Subparagraph (a) shall not apply to a person who is subject to Title V of the Gramm, Leach-Bliley Act, *15 U.S.C. section 6801 et seq.*

359-C:21. Violation.

I. Any person injured by any violation under this subdivision may bring an action for damages and for such equitable relief, including an injunction, as the court deems necessary and proper. If the court finds for the plaintiff, recovery shall be in the amount of actual damages. If the court finds that the act or practice was a willful or knowing violation of this chapter, it shall award as much as 3 times, but not less than 2 times, such amount. In addition, a prevailing plaintiff shall be awarded the costs of the suit and reasonable attorney's fees, as determined by the court. Any attempted waiver of the right to the damages set forth in this paragraph shall be void and unenforceable. Injunctive relief shall be available to private individuals under this chapter without bond, subject to the discretion of the court.

II. The New Hampshire attorney general's office shall enforce the provisions of this subdivision pursuant to *RSA 358-A:4*.

III. The burden shall be on the person responsible for the determination under *RSA 359-C:20, I* to demonstrate compliance with this subdivision.