

CHAPTER 84
HB 388 - FINAL VERSION

8Apr2021... 0923h
4Jun2021... 1890EBA

2021 SESSION

21-0517
06/05

HOUSE BILL **388**

AN ACT relative to changing a pupil's school or assignment because of a manifest educational hardship.

SPONSORS: Rep. Ladd, Graf. 4; Rep. Cordelli, Carr. 4; Rep. Pitre, Straf. 2; Rep. Boehm, Hills. 20; Rep. Shaw, Hills. 16

COMMITTEE: Education

ANALYSIS

 This bill revises the procedures for a change of school or assignment because of manifest educational hardship.

Explanation: Matter added to current law appears in ***bold italics***.
 Matter removed from current law appears ~~[in brackets and struckthrough]~~
 Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

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STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty One

AN ACT relative to changing a pupil's school or assignment because of a manifest educational hardship.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 84:1 School Attendance; Change of School or Assignment; Best Interest of Student. Amend RSA
2 193:3 to read as follows:

3 193:3 Change of School or Assignment; Best Interest of Student.

4 I.(a) The parent or guardian of a student may apply to the superintendent of the student's
5 district of residence if the parent or guardian believes it would be in the best interest of the student
6 to change the student's school or assignment.

7 (b) Upon such request, the superintendent shall schedule a meeting with the parent or
8 guardian, to be held within 10 days of the request.

9 (c) Prior to or at such meeting, the parent or guardian shall make a specific request that
10 the student be re-assigned by the school board to another public school, [ø] public academy, **or an**
11 **approved private school** within the district or to a public school, [ø] public academy, **or an**
12 **approved private school** in another district.

13 (d) At such meeting, the parent or guardian may present documents, witnesses, or other
14 relevant evidence supporting the parent's belief that it is in the best interest of the student to change
15 the student's school or assignment. The superintendent may present such information as he or she
16 deems appropriate.

17 (e) In determining whether it is in the best interest of the student to change the
18 student's school or assignment, the superintendent shall consider the student's academic, physical,
19 personal, or social needs.

20 (f) If the superintendent finds it is in the best of the interest of the student to change the
21 student's school or assignment, the superintendent shall initiate:

22 (1) A change of assignment within the student's current assigned school;

23 (2) The student's transfer to another public school or public academy within the
24 district of residence; or

25 (3) The student's transfer to a public school, [ø] public academy, **or an approved**
26 **private school** in another district.

27 (g) If a student is reassigned as a result of a best interest determination **to a public**
28 **school or public academy**, the superintendents **or administrators** involved in the reassignment
29 shall jointly establish a tuition rate for such student. Some or all of the tuition may be waived by the

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1 superintendent of the receiving district for good cause shown or pursuant to school board policy of
2 the receiving district. The school board of the student's district of residence shall approve the
3 payment of tuition upon the superintendent's finding that is in the best interest of the student to be
4 reassigned. Transportation shall be the responsibility of the parent or legal guardian.

5 (h) *If the student is reassigned as the result of a best interest determination to*
6 *an approved private school, the private school may charge tuition to the parent or may*
7 *enter into an agreement for payment of tuition with the school district in which the child*
8 *resides.*

9 (i) If the superintendent does not find that it is in the best interest of the student to
10 change the student's school or assignment, the parent or guardian may request a hearing with the
11 school board of residence to determine if the student is experiencing a manifest educational hardship
12 under paragraph II.

13 II.(a) "Manifest educational hardship" means that a student has a documented hardship in
14 his or her current educational placement; and that such hardship has a detrimental or negative
15 impact on the student's academic achievement or growth, physical safety, or social and emotional
16 well-being. Such hardship must be so severe, pervasive, or persistent that it interferes with or limits
17 the ability of the student to receive an education.

18 (b) The superintendent shall duly notify the school board that the parent or guardian
19 has requested a manifest educational hardship hearing, upon which the school board shall schedule
20 a hearing to be held no more than 15 days after the request has been received.

21 (c) At such hearing, the parent or guardian may present documents, witnesses, or other
22 relevant evidence supporting their belief that the student is experiencing a manifest educational
23 hardship. The superintendent may present such information as he or she may deem appropriate to
24 assist the school board in reaching its decision. The parties shall have the right to examine all
25 evidence and witnesses.

26 (d) Prior to or at such hearing, the parent or guardian shall make a specific request that
27 the student be re-assigned by the school board to another public school, ~~[or]~~ public academy, *or an*
28 *approved private school* within the district or to a public school, ~~[or]~~ public academy *or an*
29 *approved private school* in another district.

30 (e) The parent or guardian shall have the burden of establishing the presence of a
31 manifest educational hardship by clear and convincing evidence.

32 (f) If the school board finds that the student has a manifest educational hardship, the
33 school board shall grant the parent's or guardian's request to re-assign the student to another public
34 school, ~~[or]~~ public academy *or an approved private school* within the district or to a public school,
35 ~~[or]~~ public academy, *or an approved private school* in another district.

36 (g) If the school board finds that the parent or guardian has not met their burden of
37 proof, the parent or guardian may appeal the local school board decision to the state board of

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1 education. If the state board of education chooses to accept the parent's or guardian's appeal, the
2 state board of education shall schedule hearing on the matter, pursuant to applicable department of
3 education rules.

4 (h) If a student is assigned to attend *a public school or public academy* in another
5 district because of a manifest educational hardship, the district in which the student resides shall
6 pay tuition to the district to which the child is re-assigned. Such tuition shall be computed according
7 to RSA 193:4. The school board of the district in which the student resides shall approve the tuition
8 payment.

9 III. The state board of education may permit such child to withdraw from the school the
10 student currently attends for such time as the state board deems necessary. Children with
11 disabilities as defined in RSA 186-C:2 shall be accorded a due process review pursuant to rules
12 adopted under RSA 186-C:16.

13 III-a.(a) A student reassigned under this section shall be counted in the average daily
14 membership in residence of the student's resident school district. The student's resident district
15 shall forward any tuition payment due to the district to which the student was reassigned.

16 (b) The superintendent of the student's resident school administrative unit shall notify
17 the department of education within 30 days of any reassignment of students under this section.

18 (c) Nothing in this section shall alter or impair the right of a child with a disability, as
19 defined in RSA 186-C:2, to be accorded a due process review pursuant to rules adopted under RSA
20 186-C:16.

21 (d) The total reassignments or transfers in any one school year shall not exceed one
22 percent of the average daily membership in residence of a school district, or 5 percent of the average
23 daily membership in residence of any single school, whichever is greater, unless the school board
24 votes to exceed this limit.

25 (e) The state board of education shall adopt rules, pursuant to RSA 541-A, relative to
26 manifest educational hardship. Each school board shall establish a policy, consistent with the state
27 board's rules, which shall allow a school board, with the recommendation of the superintendent, to
28 take appropriate action including assignment to another public school or public academy within the
29 district or to a public school or public academy in another district.

30 (f) Students re-assigned under this section shall meet the admission requirements of the
31 school to which the student is re-assigned.

32 IV.(a) Any person having custody of a child may apply to enroll that child in a public school
33 or public academy outside the school district in which the person and child reside. If the non-
34 resident school district or public academy agrees to enroll the child it may charge tuition to the
35 parent or may enter into an agreement for payment of tuition with the school district in which the
36 child resides.

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(b) When a child is enrolled pursuant to subparagraph (a), the district in which the child is enrolled shall immediately notify the district in which the child resides of the name, date of birth, address, and grade assignment of the child. This same notification shall be made at the beginning of each school year for which the child is enrolled.

(c) When a child is enrolled pursuant to subparagraph (a), the district in which the child resides shall retain all responsibility for the provision of special education and related services pursuant to RSA 186-C.

(d) The decision by a school district or a public academy to deny enrollment of a non-resident pupil shall not be based, in whole or in part, on whether such pupil is a child with a disability as defined in RSA 186-C:2, I, or a child that requires an accommodation under the Rehabilitation Act of 1973, as amended. ***If a parent or guardian believes the denial was based upon the child's disability, such parent may appeal the decision to the state board of education consistent with the provisions of RSA 21-N:11, III or file a complaint with the state commission for human rights under RSA 354-A:28. The decision of a parent to enroll a child in a chartered public school shall not be subject to the provisions of this section.***

(e) The decision of a parent to enroll a child in a charter school shall not be subject to the provisions of this section.

(f) Disputes related to the provision of special education services under this paragraph shall be governed by RSA 186-C.

V. A placement made by a child's special education team pursuant to that child's individualized education program shall not be deemed a change of school assignment for purposes of this section.

VI. If there is no public school for the child's grade in the resident district, the school board may assign the child to another public school in another school district or to any ~~[nonsectarian]~~ private school that has been approved as a school tuition program by the school board. The school board may execute a contract with an approved ~~[nonsectarian]~~ private school to provide for the education of a child who resides in the school district, and may raise and appropriate money for the purposes of the contract, if the school district does not have a public school at the pupil's grade level and the school board decides it is in the best interest of the pupil.

VII. In this section, "approved as a school tuition program" means a school that has been approved and contracted by the school board to provide students with the opportunity to acquire an adequate education as defined in RSA 193-E:2. Upon approval by the school board, the school shall receive status as an approved school tuition program, shall be deemed in compliance with the provisions of RSA 193-E:3-b, I(a) and (b), and shall qualify as a school approved to provide the opportunity for an adequate education. The school shall be required to submit to the school board an annual student performance progress report in a format selected by the school board, which may include reporting of aggregate achievement data to protect student privacy, and that demonstrates

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1 that students are afforded educational opportunities that are substantially equal in quality to state
2 performance standards for determining an adequate education. A private school that receives
3 tuition program students shall:

4 (a) Comply with statutes and regulations relating to agency approvals such as health,
5 fire safety, and sanitation;

6 (b) Be a ~~nonsectarian~~ school ***approved and contracted by a local public school***
7 ***board to provide students with the opportunity for an adequate education;***

8 (c) Be incorporated under the laws of New Hampshire or the United States; and

9 (d) Administer an annual assessment in reading and language arts, mathematics, and
10 science as defined in RSA 193-C:6 to tuition program students. The assessment may be any
11 nationally recognized standardized assessment used to measure student academic achievement,
12 shall be aligned to the school's academic standards, and shall satisfy the requirements of RSA 193-
13 C:6 for school tuition program students. The school's annual assessment results for tuition program
14 students shall be submitted to the commissioner and school board. If the school enrolls 10 or more
15 publicly-funded tuition program students and if the school's group assessment percentile score for
16 tuition program students is less than the 40th percentile, the commissioner may require a site visit
17 to determine if the school provides the opportunity for an adequate education in accordance with
18 RSA 193-E:3-b. After the third consecutive year of a tuition program school being unable to
19 demonstrate that it provides an opportunity for an adequate education, the school may be subject to
20 revocation of tuition program status.

21 ***VIII. If the student is assigned to an approved private school under the manifest***
22 ***educational hardship determination and the private school agrees to enroll the child, it***
23 ***may charge tuition to the parent or may enter into an agreement for payment of tuition***
24 ***with the school district in which the child resides.***

25 84:2 Contingency. If HB 282 of the 2021 regular legislative session becomes law, RSA 193:3, VI
26 and VII as inserted by section 1 of this act shall not take effect.

84:3 Effective Date. This act shall take effect 60 days after its passage.

Approved: June 18, 2021
Effective Date: August 17, 2021