

CHAPTER 209
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03/18/2021 0740s
03/18/2021 0889s
3Jun2021... 1635h
06/24/2021 1957CofC
06/24/2021 2080EBA

2021 SESSION

21-0933
06/10

SENATE BILL ***147-FN***

AN ACT adopting omnibus legislation relative to student aid, the central registry,
 transportation of students, and special education costs.

SPONSORS: Sen. Kahn, Dist. 10

COMMITTEE: Education

AMENDED ANALYSIS

This bill adopts legislation relative to:

I. Applications for federal student aid.

II. The central registry in the department of education maintaining records of founded reports of abuse and neglect.

III. The transportation of pupils in a contract carrier.

IV. Mitigation of special education costs and a special education risk management association.

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 Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

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1 the requirements of paragraph I if the student has met all other graduation requirements and the
2 principal attests that the school district has made a good faith effort to assist the student or, if
3 applicable, his or her parent or guardian in filing an application or a waiver.

4 2 New Paragraph; State Board of Education; Rulemaking Authority. Amend RSA 186:8 by
5 inserting after paragraph VIII the following new paragraph:

6 IX. Implementing the provisions of RSA 193:26-a.

7 3 New Subparagraph; Delivery of an Adequate Education. Amend RSA 193-E:3, I by inserting
8 after subparagraph (n) the following new subparagraph:

9 (o) The number and percentage of graduating high school students provided in-person
10 school assistance in completing a free application for federal student aid (FAFSA) form.

11 4 Effective Date.

12 I. Sections 1-2 of Part I of this act shall take effect July 1, 2023.

13 II. The remainder of Part I of this act shall take effect upon its passage.

14 PART II

15 Relative to a central registry in the department of education to maintain records
16 of founded reports of abuse and neglect.

17 1 Department of Education; Rulemaking. Amend RSA 21-N:9, II(s) to read as follows:

18 (s) License standards for educational personnel, to include the establishment and
19 implementation of a secure system for conducting criminal background checks pursuant to RSA
20 189:13-a for all first-time applicants listed in this section, ***the establishment and implementation***
21 ***of a secure system for accessing findings of abuse for individuals on the central registry***
22 ***pursuant to RSA 169-C:35***, and educator certification fees for granting licenses to educational
23 personnel, including teachers, paraprofessionals, superintendents, assistant superintendents, special
24 education administrators, business administrators, principals, vocational directors, coordinators of
25 comprehensive health education and services, directors of pupil personnel services, guidance
26 directors, guidance counselors, school psychologists, associate school psychologists, speech-language
27 specialists, social workers, health educators, physical education teachers, consumer and family
28 science teachers, elementary teachers, specialists in assessment of intellectual functioning, school
29 bus drivers and transportation monitors, media supervisors, media generalists, and master teachers
30 as authorized by RSA 186:8 and RSA 186:11, X, professional licenses including beginning educator
31 licenses, experienced educator licenses, and intern authorizations, and other classifications of
32 educators, administrators, specialists, and paraprofessionals necessary to address educational needs
33 as determined by the state board upon the recommendation of the professional standards board
34 pursuant to RSA 186:60.

35 2 Reporting; Central Registry. Amend RSA 169-C:35, I to read as follows:

36 I. There shall be established a state registry for the purpose of maintaining a record of
37 founded reports of abuse and neglect. The registry shall be confidential and subject to rules on

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1 access established by the commissioner of the department under RSA 541-A. *The commissioner of*
2 *the department shall allow the credentialing bureau of the department of education access*
3 *to the records of applicants for purposes of RSA 21-N:9, II(s) and in accordance with RSA*
4 *189:13-c.*

5 3 New Paragraphs; Central Registry. Amend RSA 169-C:35 by inserting after paragraph VII
6 the following new paragraphs:

7 VIII. Upon receipt of a written request from the department of education, credentialing
8 bureau, the department shall provide the department of education with a copy of the notice of
9 finding or court order establishing the finding and resulting individual's name being placed on the
10 central registry.

11 IX. The department of education shall maintain the confidentiality of all division for
12 children, youth, and families records.

13 4 New Section; Teacher Credentialing Criminal History Records Check. Amend RSA 189 by
14 inserting after section 13-b the following new section:

15 189:13-c Credentialing Applicant State Registry Check.

16 I. In this subdivision, "credentialing applicant" means a first-time applicant for a New
17 Hampshire teaching credential.

18 II. The department shall complete a central registry check as established in RSA 169-C:35
19 on each credentialing applicant. The central registry check shall include a check of the department's
20 central registry of founded reports of child abuse under RSA 169-C:35.

21 III. By submitting an application for a teaching credential, an applicant is deemed to have
22 consented to have the department of education check his or her name for findings of abuse on the
23 central registry pursuant to RSA 169-C:35.

24 IV. Any individual whose name has been submitted for this check who has been the subject
25 of finding of abuse, shall be denied a teaching credential by the department.

26 V. The department shall adopt rules, pursuant to RSA 541-A, governing the rights of a
27 credentialing applicant and the ability to appeal a denial of a teaching credential pursuant to a
28 founded report of child abuse under RSA 169-C:35.

29 5 Effective Date. Part II of this act shall take effect January 1, 2022.

30 **PART III**

31 Relative to the transportation of pupils in a contract carrier.

32 1 New Section; Pupils Transported in a Contract Carrier. Amend RSA 189 by inserting after
33 section 6-d the following new section:

34 189:6-e Pupils Transported in a Contract Carrier.

35 I. A school district may contract with a contract carrier of passengers, as defined by RSA
36 376:2, VII, that is designed to transport 16 or more passengers including the operator, to transport
37 pupils to or from school activities. The motor vehicle used by the contract carrier of passengers shall

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1 bear a valid state inspection sticker, comply with applicable provisions of RSA 376, and be operated
2 by a driver who holds a valid commercial driver's license.

3 II. In this section, "school activities" shall include, but is not limited to, sporting events,
4 intramural events, events associated with student clubs or organizations, job training programs,
5 field trips, special education transition services that require travel of at least 150 miles round trip.
6 "School activities" shall not include transportation between home and school.

7 2 Effective Date. Part III of this act shall take effect upon its passage.

8 **PART IV**

9 Relative to additional state aid for special education for certain communities of
10 1,000 or fewer residents and special education risk management association.

11 1 Special Education; State Aid. Amend RSA 186-C:18, III(a) to read as follows:

12 III.(a) The state board of education through the commissioner, department of education,
13 shall distribute aid available under this paragraph as entitlement to such school districts as have a
14 special education pupil for whose costs they are responsible, for whom the costs of special education
15 in the fiscal year exceed 31/2 times the estimated state average expenditure per pupil for the school
16 year preceding the year of distribution. If in any year, the amount appropriated for distribution as
17 special education aid in accordance with this section is insufficient therefor, the appropriation shall
18 be prorated proportionally based on entitlement among the districts entitled to a grant. If there are
19 unexpended funds appropriated under this paragraph at the end of any fiscal year, such funds shall
20 be distributed for court-ordered placements under RSA 186-C:19-b. The state may designate up to
21 \$250,000 of the funds which are appropriated as required by this paragraph, for each fiscal year, to
22 assist those school districts which, under guidelines established by rules of the state board of
23 education, may qualify for emergency assistance [~~for~~] ***to mitigate the impact of*** special education
24 costs. ***The state may designate up to an additional \$250,000 of the funds which are***
25 ***appropriated under this paragraph for each fiscal year for any community of 1,000 or***
26 ***fewer residents to mitigate the impact of special education costs when emergency***
27 ***assistance is necessary to prevent significant financial harm to such district or***
28 ***community.*** Upon application to the commissioner of education, and approval by the commissioner,
29 such funds may be accepted and expended by school districts in accordance with this chapter;
30 provided, however, that if a school district has received emergency assistance funds for certain
31 children with disabilities, it shall not receive special education aid for those same children with
32 disabilities. If any of the funds designated for emergency assistance under this paragraph are not
33 used for such emergency assistance purposes, the funds shall be used to assist school districts in
34 meeting special education cost increases in their special education programs as provided by this
35 paragraph.

36 2 Findings. The general court finds that:

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1 I. Under federal and state law, local school districts are required to provide all children with
2 a free appropriate public education (FAPE).

3 II. The average per student special education cost in 2020 was \$74,000.

4 III. Special education costs are increasing each school year.

5 IV. Only 15 percent of the funds necessary to pay for mandated special education services
6 are provided by the federal government.

7 V. Only 20 percent of the funds necessary to pay for mandated special education services are
8 provided by the state of New Hampshire.

9 VI. The remaining 65 percent of the funds necessary to pay for mandated special education
10 services are borne by local school district taxpayers.

11 VII. Local school district budgets must be finalized prior to the start of the next school year
12 and before the number of special education students and associated services are known.

13 VIII. Consequently, last minute student transfers into the district as well as unforeseen
14 special education services for those students can far exceed the budgets for these services.

15 IX. Districts with smaller tax bases struggle to meet these unexpected special education
16 costs.

17 X. To compensate for lack of funds, districts may compromise the quality and quantity of the
18 services provided to our children. Consequently, our children do not get the services they need to
19 enable them to grow to their fullest potential.

20 XI. To compensate for lack of funds, districts often move money from programming in one
21 area to provide mandated funding in the areas of special education.

22 XII. To ensure that all our children receive and enjoy their basic right to a public education,
23 it is a valid public purpose that the general court may promote mechanisms that provide special
24 education funding stability to local school districts.

25 XIII. Recognizing the risk, some districts in the state purposely create non-lapsing special
26 education capital reserve accounts as “rainy-day” funds.

27 3 Purpose. The purpose of this act is to:

28 I. Provide the legal mechanisms necessary to create and maintain a special education cost
29 recovery pool.

30 II. Permit local school districts to voluntarily join a risk pool of the type outlined in RSA 5-B
31 which may self-insure or include an insurance agreement to be offered within the pool to members.

32 III. Minimize the state regulatory oversight of the pool.

33 IV. Provide legal protections to the local school districts that enter into pool agreements.

34 V. Provide local school districts with information necessary to:

35 (a) Understand the extent of special education aid coverage available to them.

36 (b) Understand the methods used to determine policy premiums.

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1 (c) Compare past special education costs borne by the district with the cost of pool
2 coverage.

3 (d) Make informed decisions prior to each year's school district budget formation.

4 (e) Promote the general welfare by providing districts with options to cover
5 unanticipated special education costs.

6 (f) Recognize the need to protect student privacy by maintaining control over student
7 data by the department of education.

8 4 New Subparagraph; Pooled Risk Management. Amend RSA 5-B:3 by inserting after
9 subparagraph (g) the following new subparagraph:

10 (h) Unanticipated special education cost recovery.

11 5 New Chapter; Pooled Risk Management for Unanticipated Special Education Cost Recovery.
12 Amend RSA by inserting after chapter 186-C the following new chapter:

13 **CHAPTER 186-D**

14 **SPECIAL EDUCATION RISK MANAGEMENT ASSOCIATION**

15 186-D:1 Definitions. In this chapter:

16 I. "Cost predictor spreadsheet tool" means an actuary-designed tool that can be used to
17 predict future school district special education obligations based on past claims analysis.

18 II. "Risk pool" means a non-lapsing reserve account held by the state treasurer from which
19 all cost recovery funding is derived. The account held by the treasurer may be funded by member
20 school district assessments, insurance proceeds, interest, or other sources.

21 III. "RSA 5-B special education cost recovery association" means a voluntary group of at
22 least 5 school districts that form an association under the RSA 5-B risk pool provision specifically to
23 deal with special education cost recovery.

24 IV. "RSA 5-B special education cost recovery association governing board" means a group of
25 at least 5 superintendents elected from the association members.

26 V. "Unanticipated special education cost recovery" means the program providing school
27 districts with expanded pathways to recover those costs that are directly associated with special
28 education provided to students assigned to the school district and payable under RSA 186-C:18 that
29 occur after school budgets are fixed.

30 186-D:2 Risk Management Association. No fewer than 5 school districts, by resolution of their
31 governing bodies and upon an affirmative vote of the inhabitants of each of the districts, may form
32 an RSA 5-B special education cost recovery association under the laws of this state to develop and
33 administer a risk management program for the purpose of recovering unanticipated costs of special
34 education. The members of the association may agree to pool self-insurance reserves, risks, claims,
35 losses, and the expenses of administrative services associated with them. Each district shall be
36 represented by its superintendent, or designee. The members of the association shall elect a
37 governing board from among the members. The RSA 5-B special education cost recovery association

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1 governing board shall consist of no fewer than 5 member superintendents, or designees, with
2 diversity in terms of district size and geographic region represented. Each board member shall serve
3 one 3-year term and may only serve one term in each 9 year period. The chairperson of the
4 governing board shall be chosen by the board. Minutes of each meeting shall be kept and made
5 available to the public. There shall be one 2-week period annually, to be decided by the governing
6 board, when new districts shall be allowed to join the association.

7 186-D:3 Duties of the Department of Education. The department shall:

8 I. Provide all school districts with materials to facilitate the formation of an association
9 under RSA 186:D:2.

10 II. Update the department website to include the name of each special education cost
11 recovery association with contact information, current membership, a description of the risk pool
12 association, and the advantages and disadvantages of the program.

13 III. Gather current student data regarding claims and costs which shall be redacted to
14 exclude, to the greatest extent possible, personal student information for all requests for proposals.

15 IV. Arrange one or more educational opportunities for interested school districts. Topics
16 shall include but not be limited to: risk pools, risk calculators, premium predictors, required
17 information for actuarial calculations, the effects of claims on future premiums, and the advantages
18 and disadvantages of using insurance products to achieve the goals of the association.

19 V. Annually assist the risk pool governing board by calculating the unreimbursed special
20 education amounts to be paid to the risk pool member districts from the risk pool funds held by the
21 state treasurer.

22 186-D:4 Requests for Proposals.

23 I. The department of education shall be the sole drafter of requests for proposals in order to
24 protect all student privacy provisions. Proposals shall be submitted no later than June 30 and shall
25 require a contract duration of not less than 3 years. The proposals shall be for the purpose of
26 soliciting bids with actuarial firms specifying:

27 (a) Annual cost, based on actuarial calculations, of self-funding a reimbursement pool
28 including individual cost structure for each school district's unreimbursed costs directly associated
29 with special education provided to students assigned to the school district and payable under RSA
30 186-C:18.

31 (b) The bids may also indicate recommendations for options that exist for using
32 insurance products, including re-insurance, to achieve the same result as the self-insurance risk pool
33 along with the advantages and disadvantages of each. The commissioner of the department of
34 education may grant bidders access to data, including claims history, to the extent necessary to
35 achieve accuracy of the annual cost. All data shall be protected under signed confidentiality
36 agreements and shall be devoid of sensitive personal student information to the extent possible. The
37 department of education shall impose a one month deadline after issuance of the request for

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1 proposals to receive bids. Any bids received by the department after the deadline shall be returned
2 to the sender unopened and shall not be considered for acceptance. The department shall specify the
3 minimum threshold for bid acceptance. Acceptance criteria shall include, but not be limited to,
4 weighted factors such as insurance coverage, financial stability of the proposing insurance carrier,
5 bond rating of the company, and insurance maintenance costs in any not included in the premiums.
6 The bids that meet the minimum threshold shall then be ranked by the department based on the bid
7 premium costs for each level of insurance coverage specified in the request for proposals.

8 II. The governing board of the association shall select the most qualified proposal. The
9 board shall decide whether to self-fund or provide insurance products, or both, to the members and
10 shall notify the department of education which shall then notify the selected bidder.

11 III. If the decision is to purchase an insurance product each member district shall be notified
12 and shall be responsible for its share of the premium. Should the insurance agreement require a
13 vote at town meeting, a majority vote of those present and voting shall be required to approve the
14 agreement. The association shall be responsible for informing each member school district of the
15 process and timing of the billing, the handling of late premiums, the lapsing of premiums, and the
16 adjudication process in case of disputes.

17 IV. If the decision is to self-fund, the association board shall provide each member with an
18 outline indicating, at minimum, the cost for the district and the risk pool reimbursement period,
19 which shall be not more than 3 months after the state has reimbursed each school district in the
20 association for the final portion of special education state aid under RSA 186-C:18. Any eligible
21 special education expenses incurred by a member school district that were not reimbursed by the
22 state and were not reimbursed by a purchased insurance product through the association shall be
23 reimbursed by the risk pool to the full extent permitted by the risk pool governing agreement.

24 V. The selected bidder shall create or update a cost predictor spreadsheet tool so all the
25 school districts may develop budgets and test various situations to arrive a reasonable special
26 education expense prediction. Specific situations built into the spreadsheet shall include, but not be
27 limited to, full or limited state funding and changes in student population or cost trends. The
28 spreadsheet shall be able to determine rates and district contributions for membership in the risk
29 pool with additional data updates possible to maintain accuracy. The department of education may
30 limit the usage or sharing of the spreadsheet if they solely determine that student privacy may be
31 compromised. The spreadsheet tool and each subsequent revision shall be the sole property of the
32 department of education.

33 VI. All costs associated with the establishment of the risk pool including filing fees, requests
34 for proposals, education and training for prospective members of the association, and the actuarial
35 services and cost predictor spreadsheet tool shall be the responsibility of the department of
36 education for the first 5 years after the effective date of this chapter.

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1 VII. All costs associated with the administration of the risk pool after the filing fees are paid
2 and all costs after the initial 5 year period shall be the responsibility of the association governing
3 board. The governing board may pay those costs from the risk pool fund and shall adjust member
4 district yearly charges to reflect the administration costs by separate line item.

5 VIII. Risk pool funds shall be held in a non-lapsing account by the state treasurer. The
6 governing body may withdraw the funds only by written request with signed board approval. The
7 fund withdrawals shall be kept to a minimum number each year. Funds shall only be removed for
8 payment of unreimbursed costs of all member districts and for administrative costs.

9 IX. The risk pool may be terminated by a resolution of the association governing board and
10 notification to the secretary of state, the department of education, and the state treasurer. All funds
11 shall be distributed to the districts after a professional audit to determine the rightful share.
12 Disputes may be directed to the attorney general.

13 6 Effective Date. Part IV of this act shall take effect 60 days after its passage.

Approved: August 10, 2021

Effective Date:

Pt. I eff. I. Sec1&2 eff July 1, 2023

II. Rem. eff. August 10, 2021

Pt. II eff. January 1, 2022

Pt. III eff. August 10, 2021

Pt. IV eff. October 9, 2021

