

## MEMORANDUM

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**DATE:** October 31, 2016

**TO:** Honorable Margaret Wood Hassan, Governor  
Honorable Shawn N. Jasper, Speaker of the House  
Honorable Chuck W. Morse, President of the Senate  
Honorable Paul C. Smith, House Clerk  
Honorable Tammy L. Wright, Senate Clerk  
Michael York, State Librarian

**FROM:** Dr. P. Alan Pardy, Chairman  
apardy@nhasea.org

**SUBJECT:** Final Report on RSA 186-C:30, HB 126, Ch. 120:1, Laws of 2016  
Commission to Study Issues Relating to Students Receiving Special  
Education Services While Attending a Chartered Public School

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Pursuant to RSA 186-C:30, enclosed please find the Final Report of the Commission to Study Issue Relating to Students Receiving Special Education Services While Attending a Chartered Public School.

If you have any questions or comments regarding this report, please do not hesitate to contact me.

I would like to thank those members of the Commission who were instrumental in this study. I would also like to acknowledge all those who testified before the Commission and assisted in our study.

Enclosure

**Report from the**  
Commission to Study Issues  
Relating to Students Receiving Special Education Services  
While Attending a Chartered Public School



Date: 10/24/2016

*Commission established pursuant to RSA 186-C:30*

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Acronyms used in this report:

- ♦ *DOE means Department of Education*
- ♦ *LEA means local education agency and means the resident school district.*
- ♦ *FAPE means free appropriate public education.*
- ♦ *LRE means least restrictive environment.*

## Background

HB 1128, *“An Act establishing a committee to study issues related to students receiving special education services while attending a chartered public school”*, was signed by the Governor on July 28, 2014. The committee’s charge was to “study issues related to services mandated under Section 504 of the Rehabilitation Act of 1973 and special education services for students who attend a chartered public school, including responsibility for funding and provision of special education services in a manner that ensures that children with disabilities have an equal opportunity to enroll and fully participate in a chartered public school and to receive all services in the child’s individualized education plan.”

As a result of HB 1128, it was determined that there should be a broader commission to study issues and recommend findings related to students receiving special education services while attending chartered public schools. HB 126, *“An Act establishing a commission to study issues related to students receiving special education services while attending a chartered public school”*, introduced the following year, was signed by the Governor on June 11, 2016 (the full text of HB 126 may be found in Appendix A). The commission was established through an amendment to RSA 186-C.

The commission was made up of a broad and diverse group of stakeholders, in accordance with the requirements established in RSA 186-C:30, I. Members included representatives from the general court, and one or more representatives from the NH Department of education, NH School Administrators Association, NH Council on Developmental Disabilities, NH Association of Special Education Administrators, Disability Rights Center – NH, NH Council of School Attorneys, Parent Information Center, NH School Boards Association, and NH Public Charter School Association, administrators/directors from chartered public schools, and parents, including parents of children with disabilities attending chartered public schools. A majority of commission members were in attendance at each meeting. Contact information for commission members may be found in Appendix B. Appendix B also includes names of presenters to the commission, and guests.

The duties of the commission are detailed in RSA 186-C:30, II:

The commission shall study issues relating to students receiving special education services while attending a chartered public school, including but not limited to the following:

- (a) The provision of special education services to students attending chartered public schools, including the nature and amount of such services, how such services should be provided, and where such services should be provided;
- (b) The nature of communications between the chartered public school and the local education agency, including the involvement of a chartered public school in the individualized education plan meetings;
- (c) The funding for children in need of special education services who are attending a chartered public school and whether such funding is sufficient to ensure a free and appropriate public education;
- (d) The nature of the legal relationship between the local education agency and the chartered public school; and
- (e) Any other issues which the commission deems relevant to the objective of the study.

The Commission held meetings between August 13, 2015 and September 19, 2016. A subgroup was designated to consolidate input from all commission members and develop an initial draft of the report.

Materials/data and input from stakeholders that informed the work of the Commission, as well as supporting documentation are included in the report’s appendices.

## Executive Summary

The *Commission to Study Issues Relating to Students Receiving Special Education Services While Attending a Chartered Public School* was pleased to find that in most instances, school district administrators, administrators of chartered public schools, and parents of children with disabilities are able to work together to ensure that the special education needs of children with disabilities who are attending chartered public schools are met.

The Commission's work was guided by an overall commitment to ensuring that students with disabilities should have equal access to chartered public schools as do students without disabilities.

*The Commission consistently heard, from diverse stakeholders, that "when it works, it works well". Credit was given to school districts and chartered public schools that are committed to working together to meet the needs of children with disabilities who are enrolled in chartered public schools. While no one expressed that everything is working well 100% of the time, the overarching theme was that the child is the priority.*

Funding issues were the most-often cited concern by representatives from both school districts and public chartered schools. LEA Administrators who spoke to the Commission reported that they often incur additional costs in serving children with disabilities attending chartered public schools. Under the current system, the state has designated the resident LEA for each student with a disability as the entity responsible for the provision of FAPE for that student. In addition to costs, other concerns raised by LEAs regarding the current model included the need and ability to replicate services at charter schools, and difficulties in monitoring the provision of FAPE at a setting where the LEA has limited opportunity for direct oversight or control. Two Commission members questioned the constitutionality of the current system. Areas of concern from representatives of chartered public schools and parents of children with disabilities attending chartered public schools included practices that discourage children with disabilities from enrolling in chartered public schools, the need for safeguards to ensure that children with disabilities do not unilaterally have services reduced or eligibility for special education terminated once the child enrolls in a chartered public school. Additionally, it was noted that clear procedures for ensuring that the child's parent and the chartered public school have a role in determining how and where services are provided to a child with a disability who is attending a charter school so that the disruption in the student's school day is minimized would be helpful.

While this report includes several recommendations focused on the area of funding, the lack of consistent and comprehensive data made it impossible for the Commission to reach conclusions and make substantive recommendations related to funding. Once the necessary data becomes available, further study focused on the funding issue may be warranted.

The Commission identified several areas where a new or different approach, additional resources, or revisions in legislation, process, policy, or forms/documents/reports, along with updated data-collection and more effective use of the data collected will streamline the process, provide clarity and minimize the misinterpretation of the requirements under which chartered public schools and school districts operate in order to ensure the provision of a free appropriate public education (FAPE) in the least restrictive environment (LRE) in accordance with State and Federal requirements. The development and dissemination of user-friendly materials and training for all stakeholder groups is a recommendation crossing several areas of the Commission's charge.

The Commission also determined that comprehensive data, detailed in our findings and recommendations, is an important factor in achieving positive outcomes for children with disabilities who are attending chartered public schools. Areas where chartered public schools are experiencing challenges are not being identified in a formal way so that the chartered public schools can be provided with additional resources or targeted technical assistance. Areas where outcomes indicate that chartered public schools are utilizing best practices resulting in positive outcomes for children with disabilities are also not being recognized so that they can be broadly replicated by other chartered public schools and district public schools throughout the state.

## **FINDINGS AND RECOMMENDATIONS**

*Unless otherwise noted, the findings and recommendations listed below received the endorsement of an overwhelming majority (more than 75%) of members present.*

### **FINDINGS RELATED TO COST / FINANCE / FUNDING:**

1. NH has adopted a hybrid model for providing special education services to children with disabilities who are attending chartered public schools that is atypical, with the LEA being responsible for ensuring the provision of a FAPE (providing and funding special education and related services to children with disabilities from their school district who are attending chartered public schools).
2. While comprehensive data is not currently available, LEA administrators who provided input to the Commission reported that they often incur additional costs in providing special education and related services to a child with a disability who is attending a chartered public school. We know that there are also times when LEAs can realize cost savings (e.g. when an LEA does not have its own public high school, or when the environment at a charter school results in a child, such as a child with anxiety, needing fewer services).
3. One factor that was cited for the additional costs of providing special education and related services to children with disabilities attending chartered public schools is the inability to take advantage of economies of scale.
4. The overall State and Federal funding provided for special education poses challenges for LEAs in meeting their obligation to provide a FAPE to all eligible children with disabilities, including children with disabilities attending chartered public schools.

### **RECOMMENDATIONS RELATED TO COST / FINANCE / FUNDING:**

1. Additional, targeted funding should be provided to LEAs when they incur additional costs (as calculated using a consistent formula) in serving children with disabilities attending chartered public schools.
2. NH DOE provide model language and a memorandum detailing how chartered public schools and LEAs can share information within the constraints of FERPA, so that LEAs can share personnel when more than one LEA has a child with disabilities attending the same chartered public school and the children's needs could be met by the same service provider.
3. NH DOE and NH DHHS determine a way to fund travel time and costs for school district personnel who are serving children with disabilities at a chartered public school, particularly when the charter school is outside of the child's resident LEA's boundaries (e.g. by working within or modifying the State Plan for the Medicaid to Schools program or other funding mechanisms).

### ***The following recommendations were also considered the Commission:***

1. The current funding system for special education at chartered public schools should be maintained.  
[8 members in support / 5 members opposed]
2. Through legislation, provide additional / targeted funding for chartered public schools to enable them to assume the responsibility for providing and overseeing the provision of FAPE to children with disabilities attending chartered public schools. A specific mechanism was not identified.  
[6 members in opposition / 4 members in support]
3. Establish a process to enable chartered public schools to assume the responsibility for providing and overseeing the provision of FAPE to children with disabilities attending chartered public schools.  
[7 members in opposition / 5 members in support]

### **FINDINGS RELATED TO DATA:**

1. The lack of data, including data regarding the costs related to providing special education and related services to children with disabilities attending chartered public schools, and data about outcomes of such children, is problematic.
2. The current system, including through data, of monitoring/overseeing the provision of special education and related services at chartered public schools is insufficient.

### **RECOMMENDATIONS RELATED TO DATA:**

1. DOE collect data, including through the existing MS-25 report, to demonstrate the actual cost differential between providing FAPE to an individual child with a disability in a district public school and providing the same services to the child when he/she is attending a chartered public school.
2. NH DOE, LEAs and charter schools collect data specifically related to the performance of children with disabilities, on factors related to the indicators in the DOE's State Performance Plan and Annual Performance Report, to identify areas where charter schools are achieving outcomes substantially higher or lower than the state average, and identify reasons that may explain the differences.

### **FINDINGS RELATED TO THE MODEL FOR SERVING CHILDREN WITH DISABILITIES ATTENDING CHARTER SCHOOLS:**

1. In most instances, school district administrators, administrators of chartered public schools, and parents of children with disabilities are able to work together to ensure that the special education needs of children with disabilities who are attending chartered public schools are met. Processes are generally working well for children with disabilities attending or considering enrolling in a chartered public school, LEAs, and the State Education Agency.
2. RSA 194-B:11, III says, "... At the meeting, the IEP team shall determine how to ensure the provision of a free and appropriate public education in accordance with the child's IEP. ...". This includes the specific location where the services are to be provided; as stated in IDEA, US DOE regulations 34 CFR 300.320 (a)(7), the IEP, developed by the IEP team, includes, "... the anticipated frequency, location, and duration of [the child's special education and related] services and modifications".
3. The Commission supported the establishment of a permanent and dedicated state-funded position of a full-time chartered public school officer at the NH DOE. According to the purpose statement in the bill, "The chartered public school program officer position under this act provides statewide administrative oversight, support, and guidance to ensure the chartered public school education program, including the delivery of special education services, complies with state and federal requirements. The Commission was pleased with the signing during its tenure of SB 483, an *Act establishing the position of chartered public school program officer in the department of education*, effective 7/1/2017. One of the chartered public school program officer's responsibilities is to "work closely with the resident school districts and chartered public schools to assure appropriate support for students with disabilities".
4. SB 483, *Act establishing the position of chartered public school program officer in the department of education*, has an effective date of 7/1/2017. The legislature should allocate monies to fully fund this position.
5. The Commission consistently heard from diverse stakeholders, "when it works, it works well". Credit was given to school districts and chartered public schools that are committed to working together to ensure that the needs of the child with a disability are met.

## **RECOMMENDATIONS RELATED TO THE MODEL FOR SERVING CHILDREN WITH DISABILITIES ATTENDING CHARTER SCHOOLS:**

1. The Commission recommends that the entity responsible for the provision and oversight of FAPE should receive the funding to allow them to meet that responsibility.
2. The list of options (RSA 194-B:11, III(b)) for how and where special education and related services are provided should be maintained.
3. Revise RSA 194-B:11, III(b) to read, “When a child is enrolled by a parent in a chartered public school, the local education agency of the child's resident district shall convene a meeting of the individualized education program (IEP) team and shall invite a representative of the chartered public school to that meeting **as a participating member of the IEP team**. At the meeting, the IEP team shall determine how to ensure the provision of a free and appropriate public education in accordance with the child's IEP. ...”
4. Amend RSA 194:31-a to read, “Student Records. – All elementary and secondary educational institutions including academies, private schools and public schools shall, upon request of a private school, **a chartered public school**, or a school district as authorized by a parent, student, or former student, furnish a student record to any elementary or secondary educational institution. There shall be no charge for any record furnished pursuant to this section”. Reference this amended statute in RSA 194-B.
5. Through legislation, and as needed, rulemaking, develop a process for LEAs and chartered public schools to use to eliminate interruptions in special education and related services when a child with a disability who is attending a chartered public school moves from one LEA to another during the school year.
6. Through a FY memo and the Procedural Safeguards handbook, the NH DOE will caution that the option selected for the provision of services shall not result in the child’s school day being reduced below the minimum established by Ed 306.18, unless the IEP team, which includes the representative of the chartered public school, determines otherwise.
7. DOE clarify that IEP team members may participate in IEP team meetings through alternate means, including telephone or video conferencing.
8. NH DOE explain through a FY memo and in the Procedural Safeguards handbook how existing dispute resolution options may be used by chartered public schools, LEAs and/or parents to resolve disputes about how and where services are provided.
9. NH DOE explain that when a child with a disability applies for, or enrolls in, a chartered public school, the child’s special education or related services may not be reduced or removed unless the IEP team, which includes a representative from the chartered public school, determines that such a change is appropriate. The decision and the reason for the change in eligibility or in the nature or extent of the child’s special education or related services shall be included in the written prior notice.
10. NH DOE include in a FY memo, in the Procedural Safeguards handbook, and in the NH DOE’s Special Education Policy and Procedures Manual, a clear prohibition on a charter school denying the enrollment of a child on the basis of the child’s disability, on a LEA having policies, procedures or actions that discourage parents from choosing to enroll their child with a disability in a chartered public school or that encourage parents “opt their child out” of special education while the child is attending a chartered public school, or that unilaterally reduce a child’s special education and/or related services once the child enrolls in a chartered public school, as well as the steps that the NH DOE will take in response to any such actions. Include in each document, information about processes that parents may use when they allege that a chartered public school or LEA has violated their/their child’s rights (e.g. discouraged the child’s attendance at the charter school, reduced or terminated the child’s services, or failed to implement the IEP).



11. Whenever a charter school or school district become aware that the family of a child with a disability has chosen to enroll their child with a disability in a chartered public school, or the family is considering enrolling their child in a chartered public school, both the chartered public school and the school district shall provide notification to the family of the family's right to receive special education services to the maximum extent appropriate. A model notification form shall be developed by the NH Department of Education and distributed to chartered public schools and school districts in the state. The notice shall be tailored to protect the child's rights during and following the enrollment process, and shall include information about the right of the family to give or deny consent to any decision of the local educational agency to reduce or change the special education or related services received by the child.
12. To assist LEAs and chartered public schools in providing FAPE to students with disabilities attending charter schools, the NH Association of Special Education Administrators, NH Chartered Public Schools Association, NH School Administrators' Association, and NH School Boards' Association should work together to draft and disseminate model forms, including a model contract or MOU for LEAs and chartered public schools to use when a LEA is contracting with a chartered public school to provide direct services. Some of the items the form(s) may include are: specific services to be provided and the frequency, duration and location of each service, the entity responsible for providing each service, the type/certification/licensure of the individual providing the service, and any documentation procedures and requirements.

***FINDINGS RELATED TO MONITORING AND ACHIEVING QUALITY OUTCOMES:***

1. Staff of chartered public schools and LEAs, as well as, for relevant topics, parents, will benefit from training, technical assistance and/or mentoring on topics, including rights, roles, responsibilities, procedures, collaboration and best practices.
2. There is currently no mechanism that is either effective or used consistently to identify and disseminate best practices, including those developed by chartered public schools and school district public schools, that help chartered public schools and school districts meet the needs of children with disabilities who are attending chartered public schools.

***RECOMMENDATIONS RELATED TO MONITORING AND ACHIEVING QUALITY OUTCOMES:***

1. The NH DOE should provide or identify sources for training (related to serving children with disabilities who are attending charter schools) that charter schools and LEAs have identified as needs.
2. NH DOE convene and utilize a stakeholders' group (on a short- or long-term basis) to provide feedback and input on the provision of special education services at chartered public schools in NH. One of the tasks of the stakeholders' group is to determine a mechanism or mechanisms for identifying and disseminating best practices to help chartered public schools and school districts meet the needs of children with disabilities who are attending charter schools, including practices that minimize the impact on budgets and staffing.


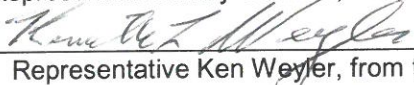
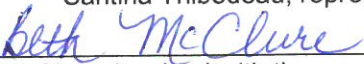


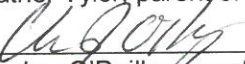
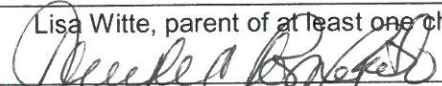

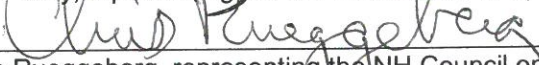

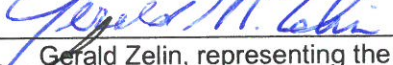
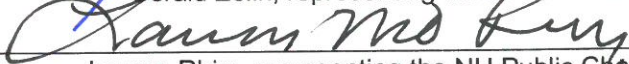

## Resources

- NH RSAs that govern special education services at charter schools
- *NH Rules for the Education of Children with Disabilities*
- Previous [Commission] meeting minutes and presenters
- NH Department of Education
- NH Bureau of Special Education
- The NH Alliance for Public Charter Schools
- NH Association of Special Education Administrators
- NH School Administrators Association
- NH DOE Bureau of Special Education publications and resources including numbered memorandums and training materials.
- The National Center for Special Education in Charter Schools
- Each charter school's application that outlines how the school will coordinate with the school district for "matters pertaining to any required special education programs or services including method of compliance with federal and state laws pertaining to children with disabilities." **[RSA194-B:3 II (n)]**
- School districts and charter schools who do work collaboratively to find solutions for special education services.
- A NH DOE stakeholders group could provide feedback and input on special education services at NH charter schools.
- State Advisory Committee on the Education of Children with Disabilities (RSA 186-C:3-b, II) includes "a representative of a chartered public school, appointed by the governor", but that slot has often been unfilled).

## Signature Page

*Commission Members are listed by order of the category they represent, as listed in the authorizing statute*

✓ if submitting  
minority report

	Date	✓ if submitting minority report
 Representative Rick Ladd, member from the House Education Committee	10/17/16	—
Representative Mary Gorman, from the House Education Committee	Date	—
 Representative Ken Weyler, from the House Finance Committee	10/17/16	—
Senator John Reagan, from the Senate	Date	—
Santina Thibedeau, representing the NH Department of Education	Date	—
 Beth McClure, involved with the management or operation of a chartered public school	10/17/16	—
 Karin Cevasco, Director involved with management or operation of a chartered public school	10/17/16	—
 EXECUTIVE DIRECTOR, MULL FALLS CHARTER SCHOOL Meryl Levin, involved with the management or operation of a chartered public school	10/17/16	—
Heather Tyler, parent of at least one child attending a chartered public school.	Date	—
 Christopher O'Reilly, parent of at least one child attending a chartered public school.	10-17-16	—
Lisa Witte, parent of at least one child attending a chartered public school.	Date	—
 Jennifer Pomykato, representing the New Hampshire School Administrators Association	10/17/16	—
 P. Alan Pardy, representing the NH Association of Special Education Administrators	10/17/16	✓
 Chris Rueggeberg, representing the NH Council on Developmental Disabilities	10/17/16	—
 Michael Skibbie, Esq, representing the Disabilities Rights Center-NH	10/17/16	—
 Gerald Zelin, representing the NH Council of School Attorneys	10/17/2016	✓
 Lauren Rhim, representing the NH Public Charter School Association	10/17/16	—
Barrett Christina, representing the NH School Boards Association	Date	—
 Bonnie Dunham, representing the Parent Information Center	10/17/2016	—
Christina D'Allesandro, parent of a child with a disability	Date	—
Paloma Sylvan, parent of a school-age child	Date	—

## **Minority Report(s)**

*Any minority reports submitted by Commission members are included on the following pages*

## Minority Report to HB 126

### The Commission to Study Issues Related to Students Receiving Special Education Services while Attending a Chartered Public School (RSA186-C:30)

#### Representative Mary Gorman

As indicated by the August 31, 2016 minutes, the majority of the Commission present voted not to include a chart depicting the State's base adequacy payments to district schools and charter schools in the final report. The rationale being base adequacy is not relevant to the charge of studying SPED issues of children attending a charter school.

The minority disagrees.

One of the duties of the commission is to "study the funding for children in need of special education services who are attending a chartered public school and whether such funding is sufficient to ensure a free and appropriate public education."

Analysis of funding for children with an IEP in a charter school is incomplete without the examination of funding for an adequate education as determined by the State.

Funding for special education in NH begins with the State's responsibility to define and to fund an adequate education for all students.

Base adequacy is the State's fiscal responsibility to provide an adequate education to all pupils whether in a district school or charter school. Charters are awarded an additional grant of \$2,036 for each pupil who is a resident in attendance. In 2017, charter schools will receive an additional \$1,000 per pupil as established by HB 563. Payment to district schools will remain the same.

#### Adequacy Payment per Pupil for Grades 1-12

	2015	2016*	2017**
<b>District schools</b>	\$3,498.30	\$3,561.27	\$3,561.27
<b>Charter schools</b>	\$5,498.30	\$5,597.27	\$6,597.27
<b>Charter/District</b>	157%	157%	185%

\*CPI adjustment

\*\*As established by HB 563

This additional money to charter schools per pupil provides added resources for their programs which include students with an IEP. Special education does not occur in a vacuum. Special education services are to be conducted in the least restricted environment. Ideally, this is in the integrated classroom. All children, including those with an IEP, benefit from the increased dollars awarded to charter schools on a per pupil basis.

A common miscalculation is to compare adequacy payments to charter schools to the average cost per district public school pupil. It is a comparison of two unrelated quantities.

Adequacy refers to the State's fiscal responsibility to provide an adequate education to all pupils whether in a district school or charter school. Adequacy per pupil at a district school is \$3,561.27. Adequacy per pupil at a charter school is \$6,597.27.

The average cost per district public school pupil is \$14,001 statewide. It represents the sum of all current expenses-including special education for charter schools- from all funding sources, e.g. state & federal revenues, and property taxes (which are raised locally and stay locally) of every school district associated with their daily operations less transportation, food service revenue, and out of district placement divided by the ADM in attendance statewide. It is an intermediate figure or middle position on a scale of evaluation of all towns and their costs per pupil from Franklin at \$10,000 to Errol at \$30,000. **It is not a sum paid to districts by the State.**

*Note: ADM is Average Daily Membership*

Commission to Study Issues  
Relating to Students Receiving Special Education  
Services  
While Attending a Chartered Public School

Minority Report  
October 2016

The Department of Education (DOE) would like to recognize the members of the Commission for all their efforts towards the development of this Report. The DOE can endorse some of the recommendations within the report. However, many of the recommendations seem short sighted on the impact to parents and students with disabilities who attend Charter Schools.

Throughout the report there are recommendations that include modifying the Procedural Safeguards handbook. The Procedural Safeguards handbook is a document based on the Individuals with Disabilities Education Act 2004 Subpart E--Procedural Safeguards; Due Process Procedures for Parents and Children. Procedural safeguards are an integral part of IDEA's requirements. They represent guarantees for parents and their child with disabilities, as well as offer both school and parents a variety of options for resolving any disagreements.

The DOE disagrees with the following recommendation:

**Commission Recommendation:** Through a FY memo and the Procedural Safeguards handbook, the NH DOE will caution that the option selected for the provision of services shall not result in the child's school day being reduced below the minimum established by Ed 306.18, unless the IEP team, which includes the representative of the chartered public school, determines otherwise.

**DOE Explanation:** IDEA's purpose for Procedural Safeguards is to have a variety of options for resolving disagreements. This recommendation is not about disagreements but rather to caution parents. The DOE is not certain how to "caution that the option selected for the provision of services shall not result in the child's school day being reduced below the minimum established by Ed 306.18, unless the IEP team, which includes the representative of the chartered public school, determines otherwise."

**DOE Recommendation:** The DOE would recommend revising RSA 186:C to address this recommendation. The legislative process would allow an opportunity for the public through a public hearing to give testimony and information so that intent of this recommendation can be captured.

**Commission Recommendation:** NH DOE explain through a FY memo and in the Procedural Safeguards handbook how existing dispute resolution options may be used by chartered public schools, LEAs and/or parents to resolve disputes about how and where services are provided.

**DOE Explanation:** The Procedural Safeguards outline how LEA and parents can resolve disputes as outlined in IDEA. Currently, there is no legislative process for when LEA and chartered schools have a special education dispute or chartered public schools and parents have a dispute.

**DOE Recommendation:** The DOE would recommend revising RSA 186:C to address this recommendation through a state process. The legislative process would allow an opportunity for the public through a public hearing to give testimony and information so that intent of this recommendation can be captured.

**Commission Recommendation:** NH DOE include in a FY memo, in the Procedural Safeguards handbook, and in the NH DOE's Special Education Policy and Procedures Manual, a clear prohibition on a charter school denying the enrollment of a child on the basis of the child's disability, on a LEA having policies, procedures or actions that discourage parents from choosing to enroll their child with a disability in a chartered public school or that encourage parents "opt their child out" of special education while the child is attending a chartered public school, or that unilaterally reduce a child's special education and/or related services once the child enrolls in a chartered public school, as well as the steps that the NH DOE will take in response to any such actions. Include in each document, information about processes that parents may use when they allege that a chartered public school or LEA has violated their/their child's rights (e.g. discouraged the child's attendance at the charter school, or reduced or terminated the child's services).

**DOE Explanation:** This recommendation has several processes that the DOE should implement. First, the DOE should establish a statement that prohibits a charter school denying the enrollment of a child on the basis of the child's disability, on a LEA having policies, procedures or actions that discourage parents from choosing to enroll their child with a disability in a chartered public school or that encourage parents "opt their child out" of special education while the child is attending a chartered public school, or that unilaterally reduce a child's special education and/or related services once the child enrolls in a chartered public school. Secondly, to establish a dispute resolution mechanism that parents may use when they allege that a chartered public school or LEA has violated their/their child's rights (e.g. discouraged the child's attendance at the charter school, or reduced or terminated the child's services). Currently, there are mechanisms in place when a parent alleges that LEA has violated their child's rights which are outlined in IDEA and the Procedural Safeguards.

**DOE recommendation:** Currently, there is no federal or state legislative process for when a Charter school has violated a child's right for special education. The DOE would recommend revising RSA 186:C to address this recommendation. The legislative process would allow an opportunity for the public through a public hearing to give testimony and information so that intent of this recommendation can be captured.

**Commission Recommendation:** DOE clarify that IEP team members may participate in IEP team meetings through alternate means, including telephone or video conferencing.

**DOE Explanation:** Pursuant to CFR 300.322 and CFR 300.328, other methods or alternative means is based on the participation of the LEA and parent. Since there is no federal regulation, state statute or administrative rules that govern chartered public school staff using alternative methods, the DOE has not basis to clarify what does not exist.

**DOE Recommendation:** The DOE would recommend revising RSA 186:C to address this recommendation. The legislative process would allow an opportunity for the public through a public hearing to give testimony and information so that intent of this recommendation can be captured.



**Commission Recommendation:** Whenever a charter school or school district become aware that the family of a child with a disability has chosen to enroll their child with a disability in a chartered public school, or the family is considering enrolling their child in a chartered public school, both the chartered public school and the school district shall provide notification to the family of the family's right to receive special education services to the maximum extent appropriate. A model notification form shall be developed by the NH Department of Education and distributed to chartered public schools and school districts in the State. The notice shall be tailored to protect the child's rights during and following the enrollment process, and shall include information about the right of the family to give or deny consent to any decision of the local educational agency to reduce or change the special education or related services received by the child.

**DOE Explanation:** The DOE is aware that there is no requirement of a traditional public school to inform parents when enrolling their child with an IEP that they have a right to receive special education services to the maximum extent appropriate. However, this recommendation would recommend that the DOE create such a statement. The recommendation would also instruct the DOE to create a model form in which to deliver this information.

**DOE Recommendation:** Since there is no federal regulation, state statute or administrative rule that govern a notice of this nature, DOE has no basis to the content of the model form nor to the requirements of when and how the notice must be provided to the parent. The DOE would recommend revising RSA 186:C to address this recommendation. The legislative process would allow an opportunity for the public through a public hearing to give testimony and information so that intent of this recommendation can be captured.

We Commission members concur with this Minority Report.

Date: 10/25/2016

By: Virginia M. Barry  
[sign name here]

Virginia M. Barry, Ph.D.  
[print name here]

Date: \_\_\_\_\_

By: \_\_\_\_\_  
[sign name here]

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Date: \_\_\_\_\_

By: \_\_\_\_\_  
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[print name here]

**Commission to Study Issues Relating to Students  
Receiving Special Education Services  
While Attending a Chartered Public School**

*Commission established pursuant to New Hampshire Revised  
Statutes Annotated 186-C:30*

**October 2016**

**MINORITY REPORT**

## Conclusions and Recommendations

Reconciling RSA 194-B:11, III with the special education laws is like trying to pound a square peg into a round hole. School districts, charter schools, and parents usually manage to round off the corners through compromise and good will. However, those compromises mask flaws that always lurk underneath and sometimes rise to the surface.

RSA 194-B:11, III is flawed on three levels.

The first level involves the basic outline of the statute. Federal law expects the State, not school districts, to provide special education for children with disabilities attending charter schools like New Hampshire's charter schools. RSA 194-B:11, III, in contrast, imposes programmatic and financial responsibility for special education on the school district in which the charter school student resides. This is irrational and unfair, since the school district has no control over the charter school. The current regime also increases costs for school districts, which violates Part 1, Article 28-a of the New Hampshire Constitution.<sup>1</sup>

For elaboration on those points, see Appendix B attached hereto.

We recommend that the legislature repeal RSA 194-B:11, III and insert in its place a system that tracks federal law. The new statute should make the State, not school districts, responsible for special education at charter schools.

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<sup>1</sup>The average annual per pupil cost for educating a child with disabilities is approximately twice the current average annual per pupil cost for educating a child who is not disabled. (Appendix C attached hereto, pp. 3-4.) Today, New Hampshire's average annual per pupil cost is approximately \$15,000 for nondisabled children and approximately \$30,000 for children with disabilities.

When a child with disabilities attends a charter school, the New Hampshire Department of Education gives the school district only \$1,856 in differentiated adequacy aid to help defray that student's special education costs. RSA 194-B:11, I(b)(1) as amended by N.H. Laws of 2016, Chapter 22; RSA 198:40-a, III.

Testimony and written statements the Commission received indicate that school districts occasionally save money when a special education student transfers from a district school to a charter school. This arises in at least two circumstances: (1) when the student needs fewer special services at the charter school due to the smaller size of classes there; or (2) when a school district does not operate its own schools and ordinarily pays tuition for every resident student to attend another district's public schools. In the latter situation, if the student transfers to a charter school, the district of residence avoids paying basic tuition and must fund only special education.

In the absence of such special circumstances, it is generally more expensive for a school district to provide special education and related services to students attending charter schools than to provide special education and related services to students attending the district's own schools. This is attributable in part to economies of scale available within the district's schools. The school district also incurs increased transportation costs, for students and/or itinerant staff, when parents chose to place a child with disabilities at a charter school located far from home.

The Commission lacked enough data to conclude with *certainty* that the current system increases costs for New Hampshire school districts *as a whole*. Our sense is that the current system does increase the net cost for school districts as a whole. It is clear, from the information we received, that RSA 194-B:11, III increases net costs for many school districts, such as Manchester and Newmarket, and thereby violates Part 1, Article 28-a *for them*.

The second level involves the statute's details. Portions of RSA 194-B:11, III are sloppily written. Even if the legislature decides to keep the current outline of the statute, some language in the statute should be tightened. See Appendix A attached hereto for specific recommendations

Third, RSA 194-B:11, III conflicts with RSA 186-C, New Hampshire's special education statute. RSA 186-C:9 and :10 contemplate that school districts will provide or fund special education at state-approved special education programs. RSA 186-C:5, I(a) establishes a mechanism for any school, *including a charter school*, to obtain such program approval.

No New Hampshire charter school has applied for program approval under RSA 186-C, not even ones that recruit children with disabilities or that have large numbers of students with disabilities.

Appendix A includes a proposal to require that any charter school with a large number of special education students obtain program approval. This will guarantee quality control. It will also empower the State Department of Education to set the rates an approved charter school charges school districts for special education and related services.

## Response to Majority Report

We disagree with portions of the Majority Report that rely on the premise that special education, being a "right," is portable and that portability is boundless.

For example, Medicaid may create a "right" to public funding for a medical procedure. Does that give a patient the right to public funding for medical costs and transportation if the patient chooses a hospital in Paris, France, when the procedure can be competently performed in a hospital close to home?

The Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution prohibits *unreasonable discrimination* against students with disabilities.<sup>2</sup> Courts have held this gives every student with disabilities the following rights: (1) to attend a public school; and (2) to receive services that cost at least as much as the school's average annual per pupil cost for nondisabled children.<sup>3</sup> Courts have rejected the notion that the U.S. Constitution guarantees appropriate *special* education.<sup>4</sup>

The federal Individuals with Disabilities Education Act (IDEA) goes further, by creating a right to *special* education. A school district fulfills its duties under the IDEA when it offers a

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<sup>2</sup> *City of Cleburne v. Cleburne Living Center*, 473 U.S. 432 (1985).

<sup>3</sup> *Doe v. Laconia Supervisory Union No. 30*, 396 F.Supp. 1291 (D.N.H. 1975); see *Mills v. Board of Education of the District of Columbia*, 348 F.Supp. 866, 876 (D.D.C. 1972).

<sup>4</sup> *E.g.*, *Gallagher v. Pontiac School District*, 807 F.2d 75 (6th Cir. 1986); *Davis v. Maine Endwell Central School District*, 542 F.Supp. 1257 (N.D.N.Y. 1982).

“free appropriate public education” (FAPE) in its own public schools. (See Appendix C attached hereto, pp. 8-9.)

The IDEA does not require public funding for an unnecessarily expensive or distant school. Nor does Fourteenth Amendment equal protection require that a state’s school choice statute guarantee public funding for *special* education outside a student’s home district when a FAPE is available within the home district.<sup>5</sup>

We ardently support public education. Like everyone else on the Commission, we would like every child to receive the best possible public education.

On the other hand, we recognize that public resources are finite. The more money a school district spends on a student with disabilities attending a charter school, the less money the school district has to educate disabled and nondisabled children attending its own public schools.

Those cost considerations should motivate the legislature to set reasonable limits on what the public must spend for *specialized* services when a parent chooses to send a child with disabilities to a charter school while a FAPE is available at less cost within the resident district’s schools.

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<sup>5</sup> *Clark v. Banks*, 193 Fed.Appx. 510 (6th Cir. 2006).

*We Commission members concur with this Minority Report.*

Date: Oct. 21, 2016

By: Gerald M. Zelin  
[sign name here]

Gerald M. Zelin  
[print name here]

Date: Oct. 24, 2016

By: P. A. Pardy  
[sign name here]

P. ALAN PARDY  
[print name here]

Date: October 25, 2016

By: Barrett M. Christina  
[sign name here]

Barrett M. Christina  
[print name here]

Date: \_\_\_\_\_

By: \_\_\_\_\_  
[sign name here]

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[print name here]

Date: \_\_\_\_\_

By: \_\_\_\_\_  
[sign name here]

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[print name here]

## APPENDIX A

### Proposed Statutory Amendments

1. Amend RSA 194-B to provide that, whenever a charter school applies to the State Board of Education for approval or to renew approval:
  - (a) the State Board shall provide written notice to the superintendent of schools for the district in which the charter school is located; and
  - (b) the school district shall then have an opportunity to submit written comments before the State Board makes a decision on the application.
2. Amend RSA 194-B by adding that, if over 25 percent of a charter school's students qualify for special education, the school must first obtain approval under RSA 186-C:5 to operate as a special education program.
3. Amend RSA 186-C:7-c by authorizing the State Department of Education to set the rate a charter school may charge school districts when the charter school provides special education or related services.

#### **Explanation:**

RSA 194-B:11, III(b) requires that the district of residence provide special education and related services to a student with disabilities attending a charter school. Options listed in that statute include shuttling the student between the charter school and the district's own schools, paying the charter school to provide the services, sending school staff to the charter school, or providing the services at a neutral site.

The trend has been for school districts to pay charter schools, especially when the charter school is located far from the district where the student resides. This is because: (1) shuttling students raises transportation costs and often disrupts their school day; and (2) sending school district employees to charter schools likewise raises transportation costs and often fractures the employee's work day.

RSA 186-C:7-c, II currently directs the State Department of Education to set rates each *private* state-approved special education school may charge school districts for special education and related services.

4. Amend RSA 194-B:8, I, regarding prohibited forms of discrimination.

This statute currently provides as follows: “A chartered public school shall not discriminate nor violate individual civil rights in any manner prohibited by law. *A chartered public school shall not discriminate against any child with a disability as defined in RSA 186-C.* A chartered public school shall provide due process in accordance with state and federal laws and rules.” (Emphasis added.)

The italicized language should be deleted and replaced with the following: “A chartered public school shall not discriminate on the basis of disability against any child with a disability as defined in RSA 186-C.”

**Explanation:**

RSA 194-B:8, I currently prohibits a charter school from discriminating against a child who qualifies for special education, even when the discrimination is reasonable and *is unrelated to the fact that the child qualifies for special education.*

The language of Section 504 of the Rehabilitation Act of 1973 provides a more reasonable model. Section 504 says, “No otherwise qualified individual with a disability . . . shall, *solely by reason of her or his disability*, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.” 29 U.S.C. § 794(a) (emphasis added).

5. Amend RSA 194-B:6 to immunize school districts from liability for a charter school’s acts or omissions regarding implementation of the special education laws.

RSA 194-B:6 currently states: “No host, sending, or receiving district shall be held liable for *damages* in an action to recover for: (a) bodily injury, personal injury, or property damage as defined in RSA 507-B:1, or (b) for failure to educate pupils, where such actions arise out of the establishment or operation of a chartered public school.” (Emphasis added.)

Courts have held that claims for compensatory education are not damage claims. This is because an award of compensatory education directs a school district to provide *services* going forward, to make up for services the student missed in the past, not *monetary compensation* for physical or economic injury.

6. Amend RSA 194-B:11, III(a)-(b) as follows (by removing the struck-through language and by adding the italicized language):

“(a) *The fact that a child with disabilities attends a chartered public school does*



*not relieve the district of residence of its duty to offer a free appropriate public education under RSA 186-C. In accordance with current department of education standards, While a child with disabilities under RSA 186-C attends a chartered public school, the funding and educational decision-making process for children with disabilities attending a chartered public school shall be the joint responsibility of the resident district and the chartered public school. both of which shall retain all current options available to the parent and to the school district. The district of residence shall ordinarily be obligated to fund the cost of special education, related services, supplementary aids and services, transition services, vocational education, and transportation within the limits set forth in paragraph (b)(6) below, while the chartered public school shall ordinarily be obligated to fund the cost of accommodations, modifications, and courses that satisfy the child's transition service needs.*

(b) When a child is enrolled by a parent in a chartered public school, the local education agency of the child's resident district shall convene a meeting of the individualized education program (IEP) team and shall invite a representative of the chartered public school to that meeting. *The chartered public school shall send at least one representative to that meeting. At the meeting, the IEP team shall determine offer a "charter school IEP" that assumes the child will continue to be enrolled at the chartered public school, that offers a free appropriate public education to the extent feasible given the parent's decision to enroll the child in the chartered public school, and that clearly identifies for each element of the IEP which entity (the school district or the chartered public school) is responsible for funding and implementing that element of the IEP. how to ensure the provision of a free and appropriate public education in accordance with the child's IEP. The child's IEP, including but not limited to special education, and related services, accommodations, modifications, supplementary aids and services, supports for school personnel, transition services, transition services needs, and vocational education, shall be provided using any or all of the methods listed below starting with in the least restrictive appropriate environment:*

- (1) The resident district may send staff to the chartered public school; or
- (2) The resident district may contract with a service provider to provide the services at the chartered public school; or
- (3) The resident district may provide the services at the resident district school; or
- (4) The resident district may provide the services at the service provider's location; or
- (5) The resident district may contract with a chartered public school to

provide the services; and

(6) If the child *due to his or her disability* requires transportation to and/or from the chartered public school before, after, or during the school day in order to receive special education and related services as provided in the IEP, the child's resident district shall provide transportation for the child, *except that the resident district shall not be required to transport the child beyond the resident district's boundaries.*"

**Explanation:**

- A. The IDEA requires that an IEP include more than special education and related services. An IEP must also include modifications, accommodations, supplementary aids and services, supports for school personnel, and (starting no later than age 16) transition services. 20 U.S.C. § 1414(d)(1)(A)(IV), (VIII); 34 C.F.R. § 300.320. New Hampshire law adds that an IEP also include vocational education and, if the child is age 14 or older, transition service needs (which means courses to prepare a child for life after elementary and secondary school). N.H. Code of Admin. Rules, Ed 1109.01(a)(10, (11).
- B. Modifications, accommodations, transition service needs, and supports for school personnel are ordinarily not expensive.
- C. Modifications, accommodations, and supports for school personnel tend to permeate the school day. It is unreasonable to expect a school district, which has no control over the charter school, to be responsible for ensuring that the charter school implements those portions of the IEP.
- D. The clause "in accordance with current department of education standards" in RSA 194-B:11, III(a) is nonsense. That clause has been in the statute since 1995 when RSA 194-B was first enacted. Back in 1995, the New Hampshire Board of Education's special education rules were entitled "State Standards," but they said nothing about charter schools. The State Board of Education's special education rules are still silent on charter schools.
- E. 194-B:11, III(b) currently speaks of placement in the "least restrictive environment." The IDEA requires that the responsible public educational agency provide special education in the least restrictive "*appropriate*" environment. 20 U.S.C. § 1412(a)(5)(A); 34 C.F.R. § 300.114(a)(2). We recommend amending RSA 194-

B:11, III(b) by inserting “appropriate.”

F. The IDEA categorizes transportation as a “related service,” which a school district must provide when “required to assist a child with a disability to benefit from special education.” 20 U.S.C. § 1401(26)(A). School districts ordinarily provide transportation to students with disabilities when: (a) the student has a disability that makes it difficult or impossible to walk to school (transportation based on disability *per se*); (b) the student’s disability interferes with transportation on a regular school bus (again transportation based on disability *per se*); or (c) the school district assigns the child to a distant out-of-district school because it cannot provide appropriate special education in its own public schools (transportation based on distance *per se*). When a parent enrolls a student with disabilities in a distant charter school where special education will be provided, the parent may argue that transportation is necessary for the student to access special education (transportation based on distance *per se*), even though a free appropriate public education is available in the resident district’s schools. Our proposed amendments to RSA 194-B:11, III(b)(6) restrict the distance of publicly-funded transportation and rule out publicly-funded transportation when the need for transportation arises solely from the location of the charter school as distinguished from the child’s disability *per se*. However, these amendments should be coordinated with RSA 194-B:2, V, which addresses transportation for charter school students in general, in order to avoid discrimination based on the fact that a student qualifies for special education.

7. Amend RSA 194-B:11, III(c) as follows (by removing the struck-through language and by adding the italicized language):

~~“(c) Consistent with section 5210(1) of the Elementary and Secondary Education Act and section 300.209 of the Individuals with Disabilities Education Act, when~~  
*When a parent enrolls a child with a disability in a chartered public school, the child and the child's parents shall retain all rights under federal and state special education law, including the child's right to be provided with have a free and appropriate public education available, which includes all of the special education and related services included in the child's IEP. The child's resident district shall have the responsibility, including financial responsibility, to ensure the provision of the special education and related services in the child's IEP, and the chartered public school shall cooperate with the child's resident district in the provision of the child's special education and related services.”*

**Explanation:**

- A. Section 5210(1) of the ESEA merely defines the term “charter school.” The ESEA says nothing about special education at charter schools.
- B. The reference to section 300.209 of the IDEA is nonsense and dishonest. The IDEA contains no such section. The U.S. Department of Education’s regulations implementing the IDEA, at 34 C.F.R. § 300.209(d), impose responsibility on the State, not on school districts, when a student attends a charter school that is not operated by a school district and that is not an LEA.
- C. The IDEA does not confer a right to “be provided” with a FAPE. It requires that every child with disabilities in a participating state have a FAPE “available.” 20 U.S.C. § 1412(a)(1)(A). Parents remain free to spurn a FAPE by opting out of special education or by enrolling their child in a school that does provide a FAPE.
- D. My proposed amendments to RSA 194-B:11, III(a) and (b), set forth in Section 6 of this memorandum, allocate responsibility for services while a special education child attends a charter school.

8. Add the following as RSA 194-B:11, III(d) and (e)

*“(d) In the event of a disagreement over what to include in a child’s charter school IEP, or over the allocation of responsibility to implement or fund any element of that IEP, the parent, school district, or charter school may initiate an impartial due process hearing pursuant to the Individuals with Education Disabilities Act, 20 U.S.C. § 1415, and the hearing officer shall have jurisdiction over the school district, the chartered public school, and the State Department of Education.*

*“(e) If a parent refuses to allow the chartered public school to disclose relevant information to the school district in which the student resides, or refuses to allow representatives of that school district to observe their child in chartered public chartered school, the school district shall have no responsibility for the child’s special education while the child attends the chartered public school until the parents cooperate by allowing the disclosure of relevant information and by allowing such observation.”*

APPENDIX B

**Special Education at New Hampshire  
Charter Schools: An Update**

By

**Gerald M. Zelin, attorney**

August 1, 2012

New Hampshire Association of Special Education  
Administrators

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Meredith, N.H.

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## Special Education at New Hampshire Charter Schools: An Update

By Gerald M. Zelin  
August 1, 2012

### I. Senate Bill 300.

On June 11, 2012, Governor Lynch signed Senate Bill 300, which thereby became N.H. Laws of 2012, Chapter 185.

SB 300 amends New Hampshire's charter school statute, RSA 194-B. All of the provisions in SB 300 take effect on August 10, 2012.<sup>1</sup>

Prior to SB 300, RSA 194-B:11, III provided as follows:

"In accordance with current department of education standards, the funding and educational decision-making process for children with disabilities attending a chartered public school shall be the responsibility of the school district and shall retain all current options available to the parent and to the school district."

SB 300 changes "responsibility of the *school* district" to "responsibility of the *resident* district."<sup>2</sup>

More importantly, SB 300 adds the following to RSA 194-B:11, III.

1. When a parent enrolls a child with disabilities at a charter school, the child and the parent retain all rights under the federal and state special education laws, "including the child's right to be *provided* with a free appropriate public education, which includes all of the special education and related services included in the child's IEP."<sup>3</sup>

<sup>1</sup> N.H. Laws of 2012, Chapter 185:3 (emphasis added).

<sup>2</sup> RSA 194-B:11, III(a) (emphasis added).

<sup>3</sup> RSA 194-B:11, III(c).

NOTES

2. “The child’s resident district shall have the responsibility, including financial responsibility, to *ensure* the provision of the special education and related services in the child’s IEP.” <sup>4</sup>
3. The charter school “shall cooperate with the child’s resident district in the provision of the child’s special education and related services.” <sup>5</sup>
4. The school district in which the student resides shall convene an IEP team meeting and shall invite a representative of the charter school to attend. <sup>6</sup>
5. At this IEP team meeting, the school district shall “determine how to *ensure* the *provision of a free and appropriate public education* in accordance with the child’s IEP.” <sup>7</sup>
6. SB 300 recognizes the following options (or any combination thereof) for the school district to provide *special education and related services* to students attending charter schools:
  - Send school district staff to the charter school.
  - Provide services in the district’s own schools.
  - Contract with a third party to provide services at the charter school.
  - Contract with a third party to furnish services at the third party’s site.

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<sup>4</sup> RSA 194-B:11, III(c) (emphasis added).

<sup>5</sup> RSA 194-B:11, III(c).

<sup>6</sup> RSA 194-B:11, III(b).

<sup>7</sup> RSA 194-B:11, III(b) (emphasis added).

## NOTES

- Pay the charter school to provide services.<sup>8</sup>
7. When selecting the location under # 6, the school district must “start . . . with the least restrictive environment.”<sup>9</sup>
  8. “If the child requires transportation to and/or from the public chartered school before, after, or during the school day in order to receive special education and related services as provided in the IEP, the child’s resident district shall provide transportation for the child.”<sup>10</sup>

Point 8 is perhaps the most controversial provision in SB 300. In practice it may require that school districts transport all or most students with disabilities to and from their charter schools.

Point 8 will have that impact because Points 2, 5, and 6 demand that school districts provide special education and related services *somewhere* to every student with disabilities attending a charter school. If the school district provides any special education or related services *at* the charter school, Point 8 will require that the district transport the child *between home and the charter school*. If the district provides any special education or related services in its own public schools, Point 8 will compel the district to transport the student *between the charter school and the district’s own school building*.

The cost of transporting a student to and from a charter school located outside of the school district can be enormous, as explained in Section V of this paper.

SB 300 also amends RSA 194-B:8, I. That provision has long read as follows:

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<sup>8</sup> RSA 194-B:11, III(b)(1)-(5).

<sup>9</sup> RSA 194-B:11, III(b). The bill, as originally passed by the Senate, presumed that a charter school is the least restrictive environment. The House then amended the bill by removing that presumption and the Senate ultimately acquiesced to the House amendment. A presumption that a charter school is the least restrictive environment might have compelled the provision of special education and related services *at* the charter school.

<sup>10</sup> RSA 194-B:11, III(b)(6).



NOTES

“A chartered public school shall not discriminate nor violate individual civil rights in any manner prohibited by law. A chartered public school shall not discriminate against any child with a disability as defined in RSA 186-C.”

SB 300 adds the following at the end of that paragraph:

“A chartered public school shall provide due process in accordance with state and federal laws and rules.”

This clause had its genesis during public hearings conducted by the Joint Legislative Oversight Committee on Charter Schools and the Senate Education Committee. During those hearings, Attorney Patrick O’Day complained that charter schools were not providing due process before suspending or expelling students.

Unfortunately, the authors of SB 300 were imprecise and what they wrote was somewhat circular. To make matters worse, Mr. O’Day’s purpose was forgotten once the bill reached the House. According to the House Education Committee’s report on SB 300, this addition to RSA 194-B:8, I requires that charter schools “provide due process in the provision of special education and related services to children with disabilities.”

Lastly, SB 300 neither amends nor mentions RSA 194-B:6, which provides as follows:

“No host, sending, or receiving district shall be held liable for damages in an action to recover for: (a) bodily injury, personal injury, or property damage as defined in RSA 507-B:1; or (b) for failure to educate pupils, where such actions arise out of the establishment or operation of a chartered public school.”

This provision, which has long been part of the charter school statute, immunizes school districts from liability for money damages, but provides no immunity from other sorts of legal proceedings.

## II. Federal Law.

Supporters of SB 300 insisted that the provisions aimed at school districts merely require what federal law already demands. That claim is false.

## NOTES

The federal Individuals with Disabilities Education Act (IDEA) directs participating states to make a free appropriate public education (FAPE) “available” to all children with disabilities.<sup>11</sup> However, parents remain free to spurn those services. If a school district offers a FAPE in its own public schools and parents choose to enroll their child elsewhere, the IDEA does not compel the school district to follow the child.

The IDEA also allows school districts to provide special education and related services in a cost-effective manner. For example, if several deaf students live in a school district that operates multiple schools, the district may insist that all of those students receive their special education at a single school. This harnesses economies of scale and spares the district the expense of hiring one interpreter for each school.<sup>12</sup>

Before considering what the IDEA says about charter schools, it is important to note that every New Hampshire charter school is a separate non-profit corporation independent of any school district.<sup>13</sup> This contrasts with some other states where school districts operate charter schools.

The IDEA addresses only the latter category of charter schools. If a student with disabilities attends a charter school *operated by a school district*, the district must serve that child in the same manner as the district would serve a child with disabilities attending one of the district’s other schools.<sup>14</sup> This duty includes providing special education and related services “on site at the charter school,” but only “to the same extent to which the local educational agency has a policy or practice of providing such services on the site to its other public schools.”<sup>15</sup>

<sup>11</sup> 20 U.S.C. § 1412(a)(1)(A). A FAPE consists of appropriate special education and related services provided at no cost to parents and in accordance with an individual education program (IEP) written by an IEP team. 20 U.S.C. § 1401(9)(D). An IEP is appropriate if it is reasonably calculated to confer “some” educational benefit. *Board of Education of Hendrick Hudson School District v. Rowley*, 458 U.S. 176 (1982). The IDEA does not require the “most” appropriate program that will enable a child to reach his or her full potential. *Id.*

<sup>12</sup> *Barnett v. Fairfax County School Board*, 927 F.2d 146 (4th Cir. 1991), cert. denied, 502 U.S. 859 (1991).

<sup>13</sup> RSA 194-B:1, III.

<sup>14</sup> 20 U.S.C. § 1413(a)(5)(A).

<sup>15</sup> *Id.*

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Thus, even when a school district operates a charter school, the district may insist that a student receive special education services at one of the district's other public schools if it would be more expensive to duplicate those services at the charter school.

For guidance on public charter schools *not operated by school districts*, we must turn to the U.S. Department of Education's regulations implementing the IDEA. These regulations address two such categories of charter schools: (1) those that qualify as local education agencies (LEAs); and (2) those that do not.<sup>16</sup>

If a charter school qualifies as an LEA, it is responsible for providing and funding special education.<sup>17</sup> New Hampshire charter schools do not qualify as LEAs. In 2002 and 2003, the state legislature defeated attempts to categorize them as LEAs.

New Hampshire charter schools fall into the final category. They are neither LEAs nor operated by school districts.

According to the U.S. Department of Education's regulations, when a student attends a charter school of the sort that exists in New Hampshire, the *state department of education* is responsible for ensuring that all IDEA "requirements" are met.<sup>18</sup> These regulations add that the State may assign "initial responsibility . . . to another entity," but that the state department of education "must maintain the ultimate responsibility for ensuring compliance with this part."<sup>19</sup>

Alas, the federal regulations do not explain exactly what those IDEA "requirements" include.

Since the IDEA is a federal grant statute, the "rule of clear statement" applies. Any ambiguities in the statute or regulations must be interpreted narrowly to avoid imposing unanticipated

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<sup>16</sup> 34 C.F.R. § 300.209(c), (d).

<sup>17</sup> 34 C.F.R. § 300.209(c).

<sup>18</sup> 34 C.F.R. § 300.209(a), (d)(1).

<sup>19</sup> 34 C.F.R. § 300.209(d)(2).

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burdens on participating states.<sup>20</sup> Federal law does not explicitly require that students attending New Hampshire charter schools receive special education and related services *at* their charter schools. Federal law does not unambiguously demand that students with disabilities *receive* special education and related services *anywhere* while attending New Hampshire charter schools.

Thus, the State of New Hampshire probably fulfills its duty under federal law if a FAPE remains available in the resident district's schools.

More importantly, *whatever rights federal law confers on children with disabilities attending New Hampshire charter schools, it imposes responsibility on the State, not school districts, to fulfill those rights.* SB 300 exceeds the requirements of federal law by shifting duties from the State to school districts.

The legislature went to absurd lengths to deny that SB 300 goes beyond federal law.

For example, RSA 194-B:11, III(c), inserted by SB 300, opens with the phrase, "Consistent with section 5210(1) of the Elementary and Secondary Education Act and section 300.209 of the Individuals with Disabilities Act ...." Those citations to federal law are nonsense. Section 5210(1) of the ESEA simply defines the term "charter school." Section 300.209 of the IDEA does not exist. The authors of SB 300 presumably had in mind a U.S. Department of Education regulation implementing the IDEA, 34 C.F.R. § 300.209. That regulation imposes responsibility on the State, not on school districts, when a student with disabilities attends a charter school of the sort that operates in New Hampshire.<sup>21</sup>

The House Education Committee engaged in a similar ruse when explaining the transportation provision in SB 300. According to that Committee's report to the House, SB 300

"clarifies the well established law that special education students attending a charter school will be provided the transportation services specified in their IEP by the resident school district."

<sup>20</sup> *Arlington Central School District v. Murphy*, 548 U.S. 291, 126 S.Ct. 2455, 2458-59 (2006).

<sup>21</sup> 34 C.F.R. § 300.209(d).

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In fact, no such “well established law” exists. The IDEA requires that a school district provide transportation as a related service when *necessary* for a student to benefit from special education<sup>22</sup> However, no federal law or reported decision compels a school district to provide transportation to a student attending a charter school not operated by the district, when a complete and appropriate special education program remains available in the district’s own public schools.

### III. New Hampshire Law Prior to SB 300.

New Hampshire’s charter school statute, as originally enacted in 1995, addressed special education in RSA 194-B:11, III. Immediately before the enactment of SB 300, this provision read as follows:

- “In accordance with current department of education standards,
- the funding and educational decision-making process for children with disabilities attending a chartered public school
- shall be the responsibility of the school district
- and shall retain all current options available to the parent and to the school district.”<sup>23</sup>

It was unclear what this language meant. For example, the only “standards” at the time were the New Hampshire Board of Education’s rules governing special education, entitled the “State Standards.” Those rules were silent on charter schools, but they required that a school district fund special education only at a placement selected by the IEP team (or by a hearing officer on appeal from the team’s decision).

The gibberish in RSA 194-B:11, III proved inconsequential from 1995 until 2003, because only one charter school was created during that period. Until 2003, RSA 194-B:3 required that any charter school gain approval from the school district in which it was located before the State Board of Education could grant a charter.

In 2002, the legislature passed a bill allowing the State Board to grant a charter without local approval. Governor Shaheen vetoed that bill and the legislature failed to override her veto.

<sup>22</sup> 20 U.S.C. §§ 1401(26)(A), 1414(d)(1)(A)(i)(IV).

<sup>23</sup> RSA 194-B:11, III (bullets added).

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Governor Shaheen's veto message pointed to RSA 194-B:11, III, which could be read as requiring that a school district provide special education *at* a charter school even if the district offered a FAPE in its own public schools. She concluded that this outcome would raise school district costs in violation of Part 1, Article 28-a of the New Hampshire Constitution, which prohibits the legislature from imposing new unfunded state mandates on cities, towns, and school districts.

The legislature passed a similar bill in 2003, which Governor Benson signed.

During floor debates on that bill, Senator O'Hearn, one of the bill's primary sponsors, denied that RSA 194-B:11, III would increase local costs.

SENATOR ESTABROOK: Okay, so the resident district, under the operation of the school board, will have the responsibility for developing and implementing a special educational plan for special education students attending a charter school, which they do not control?

SENATOR O'HEARN: That is correct. . . . Private schools can also take advantage of special education facilities at the school. . . . [I]f the IEP says you have to have a quiet classroom away from a door and away from a window, *it can't be implemented in the residence*, but will be *implemented in the charter school*. If the IEP says that they need speech pathology, the child will be *brought back to the residence school* for the speech pathology.<sup>24</sup>

When referring to private school students, Senator O'Hearn apparently had in mind RSA 193:1-c, New Hampshire's dual enrollment statute. RSA 193:1-c allows students attending private schools or home education programs to take classes in public schools for part of the day.

Senator O'Hearn seemed to be saying that RSA 194-B:11, III gave students with disabilities attending charter schools a right to receive special education and related services by visiting their district's public schools during or after regular school hours. She also seemed to say that RSA 194-B:11, III did not compel a school district to provide special education and related services *at* a charter school, unless the district was unable to provide a FAPE in its own schools and the IEP team agreed to place the student at the charter

<sup>24</sup> *N.H. Senate Journal* (2003), p. 1867 (emphasis added).

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school.

Several statutes bolstered Senator O’Hearn’s interpretation of RSA 194-B:11, III.

- RSA 186-C:10 requires that school districts offer a FAPE at a program approved by the State Department of Education for the provision of special education. Since 2008, RSA 186-C:5, I(a) has allowed charter schools to apply for program approval. However, no charter school has yet sought such approval.
- RSA 198:40-a, the “educational adequacy statute,” offers school districts certain sums annually for each student attending local public schools. This adequacy aid includes an extra \$1,856 annually for each special education student.<sup>25</sup> The charter school statute redirects all adequacy aid, including the \$1,856 for special education, to a charter school in which the student enrolls.<sup>26</sup> It makes little sense to deprive school districts of these funds if they must continue to offer a FAPE to students attending charter schools. However, it makes even less sense to divert this money from the school district to the charter school, if the district must provide services *at* the charter school while the district could provide these same services at less cost in its own schools.
- RSA 541-A:39, I requires that a state agency considering an application that “directly affects” a municipality give the municipality notice and an opportunity to be heard. If RSA 194-B:11, III required that school districts provide special education and related services *at* charter schools, thereby increasing local costs, the State Board of Education should have notified school districts of each charter school application. The State Board has not notified school districts of charter school applications.

<sup>25</sup> RSA 198:40-a, III.

<sup>26</sup> RSA 194-B:11, I(b).

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In practice, many school districts did more than RSA 194-B:11, III required. The charter school statute allows this. Many school districts voluntarily provided some level of special education and related services at charter schools, even though they could have provided a FAPE in their own public schools. However, those districts often stopped short of writing complete IEPs or providing a full FAPE for students attending charter schools.

As noted above, SB 300 does not repeal RSA 194-B:11, III discussed above. Instead, SB 300 changes one word in that paragraph<sup>27</sup> and then adds numerous paragraphs.

Those new paragraphs in SB 300 are much more prescriptive than the prior statute or past practice. For example, SB 300 requires that the district of residence provide an IEP premised on enrollment at the charter school, a FAPE while the student is enrolled in the charter school, and transportation to and from the charter school.

#### **IV. What were the Forces behind SB 300?**

SB 300 emerged from public hearings conducted during the autumn of 2011 by the Joint Legislative Oversight Committee on Charter Schools.

During hearings conducted by that Committee, as well as later hearings by the House and Senate Education Committees on SB 300, representatives from charter schools made the following points:

- The vast majority of school districts work cooperatively with charter schools by offering to provide special education and related services either at the charter school or at the district's schools using the dual enrollment model.
- A few school districts refused to offer special education and related services at any location to students with disabilities enrolled in charter schools. They also refused to meet with representatives of local charter schools. Those were the evils that

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<sup>27</sup> SB 300 changes "shall be the responsibility of the school district" to "shall be the responsibility of the resident district."



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required correction.

- New Hampshire charter schools do not have the financial capacity to provide special education and related services. They receive less public funding than charter schools in other states. The money they receive, which all comes from the New Hampshire Department of Education, barely covers the cost of regular education.<sup>28</sup>

Transportation was not a big issue during these committee hearings.

Republicans control the state legislature and the New Hampshire Republican Party's platform strongly supports school choice. Even Democrats were swayed by the argument that students with disabilities should have the same "right" as other children to attend charter schools.<sup>29</sup>

With the State already facing a financial crisis, the Legislature was not inclined to appropriate State funds to support special education at charter schools. The easy solution was to downshift costs to school districts by asserting that federal law requires this.

Lurking in the background is the fact that the number of charter schools in New Hampshire will soon increase dramatically.<sup>30</sup> The State Legislature recently lifted a moratorium on the creation of new charter schools. The New Hampshire Department of Education recently received a grant from the federal government providing seed money for the creation of new charter

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<sup>28</sup> New Hampshire pays charter schools annually for each student in attendance: a) the adequacy aid the state would have paid the district for that student; and b) an additional \$2,000. The adequacy aid tied to each student is at least \$3,450 annually, but increases for some categories of students. RSA 194-B:11, I(b), 198:40-a, I-III.

<sup>29</sup> These arguments glossed over the fact that special education is special. It is different and more costly than regular education. School districts harness economies of scale when they provide special education and related services in their own schools; a single professional can work at once with many students. Those economies are lost when a school district must hire or send staff to work with a single student at a distant charter school.

<sup>30</sup> During the 2011-12 school year, approximately a dozen charter schools operated in New Hampshire. Their enrollment included approximately 165 IDEA-eligible children.

schools.

Lastly, many New Hampshire charter schools do not have admission standards. Federal law allows charter schools, magnet schools, and other “school choice” programs to reject students who are not a good fit, provided that such discrimination is not based on disability *per se*.<sup>31</sup> Yet some New Hampshire charter schools accept all applicants, including students with disabilities for whom the charter school may be grossly inappropriate.

That trend is reinforced by RSA 194-B:8, I, which states, “A chartered public school shall not discriminate against any child with a disability as defined in RSA 186-C.” This New Hampshire statute, read literally, bars a charter school from discriminating in any way against a student who happens to qualify for special education, even if the discrimination is based on something other than the disability.

## V. Some Initial and Tentative Observations, Questions, and Concerns

Reconciling special education with charter schools is like trying to fit a square peg into a round hole. Special education is hyper-regulated. Charter schools are relatively unregulated. The rationale for their existence is that freedom from government regulation will encourage innovation.

Much of SB 300 simply codifies current practice and Senator O’Hearn’s vision of how RSA 194-B:11, III should operate. SB 300 makes it clear that a child with disabilities who attends a charter school does not forfeit eligibility under the special education laws. SB 300 requires that the school district’s IEP team meet with parents and representatives of the charter school to determine what special education and related services the school district will provide while the student is enrolled at a charter school and where those services will be provided.

<sup>31</sup> *E.g.*, *C.O. v. Portland Public Schools*, 679 F.3d 1162 (9th Cir. 2012); *Clark v. Banks*, 193 F.Appx. 510, 214 Ed. Law Rep. 534 (6th Cir. 2006). For example, the Americans with Disabilities Act and Section 504 of the Rehabilitation Act prohibit discrimination against “otherwise qualified” people with disabilities. A student is not “otherwise qualified” if he or she cannot benefit from the charter school or if the charter school would have to substantially modify its program for the student to benefit. *See Southeastern Community College v. Davis*, 442 U.S. 397 (1979).

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Significantly, SB 300 does not explicitly require that the school district provide special education and related services *at* the charter school. Thanks to the House amendment, services at the charter school are simply one option among many.

SB 300 deviates from Senator O’Hearn’s vision in other ways.

For example, SB 300 invites parents to argue that the charter school is the least restrictive environment and that the school district consequently must provide services there.

Federal law and court decisions interpreting federal law encourage placement in the least restrictive environment. However, they allow placement in more restrictive environments when: a) the least restrictive environment is inappropriate; or b) a more restrictive environment is less costly.

RSA 194-B:11, III(b), as amended by SB 300, directs the team to “start[ ] with the least restrictive environment.” What does “start” mean? Must the IEP team select the least restrictive environment. Or must the team simply begin deliberations by considering the least restrictive environment?

What is the least restrictive environment? Is it the charter school, the district’s schools, or somewhere else? The U.S. Department of Education’s regulations list many factors for identifying the least restrictive environment. These include, for example, the school’s distance from home, whether the student is educated with nondisabled classmates, and whether the student would have attended that school if he or she did not have a disability.<sup>32</sup> Some of these factors may favor placement at the charter school while others may favor placement in the district’s schools.

SB 300 seemingly requires that the school district, when writing an IEP, assume from the outset that the student will attend the charter school for at least part of the day. The IEP must be constructed to conform to that fact.

This turns special education law on its head. Ordinarily, a school district writes an IEP based on the student’s unique needs

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<sup>32</sup> 34 C.F.R. §§ 300.114(a)(2), 300.116(b)(3), (c).

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and then offers a placement capable of implementing the IEP.

The process required by SB 300 is especially perverse if the charter school is utterly inappropriate for the child. Must the district pour great resources into making the charter school appropriate? What if no amount of special education and related services will make that school appropriate?

An IEP usually includes more than special education and related services. It also often includes accommodations and modifications, some of which must be provided throughout the school day. Examples include preferential seating, multi-sensory teaching, extra time on tests, etc. What if the charter school cannot, or will not, implement those accommodations and modifications?

SB 300 imposes “responsibility” on the district of residence “to *ensure* the provision of the special education and related services in the child’s IEP.”<sup>33</sup> Does this relieve the district of responsibility for ensuring the provision of other services listed in the IEP, such as accommodations and modifications?

How can a school district “ensure” the provision of special education and related services at a charter school over which it has no control? Perhaps the only way to do so will be to provide those services with school district personnel in the district’s own buildings.

Courts have held that a school district must offer an IEP reasonably calculated to confer meaningful educational benefits. What if the child fails to make progress at the charter school, yet parents insist that the child remain there? How can the district offer “appropriate” special education and related services under those circumstances?

RSA 186-C:10 still requires that school districts offer special education at programs approved by the State Department of Education for the provision of special education. If a charter school does not operate a state-approved special education program, how do you reconcile SB 300 with RSA 186-C:10? Does RSA 186-C:10 compel the district to offer special education in its own buildings rather than at the charter school? If the district provides or funds special education at the charter school, will those expenses qualify for State catastrophic aid under RSA 186-C:18?

<sup>33</sup> RSA 194-B:11, II(c) (emphasis added).

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What if parents refuse permission for the charter school to disclose information to the school district, or refuse permission for school district personnel to observe the student at the charter school? How can the district write an IEP, or offer appropriate special education and related services at any location, without information on the student and the charter school?

SB 300's most extreme provision is RSA 194-B:11, III(b)(6), the transportation clause. It reads as follows:

"If the child requires transportation to and/or from the chartered public school before, after, or during the school day in order to receive special education and related services as provided in the IEP, the child's resident district shall provide transportation for the child."

This transportation requirement may prove to be a "Catch-22." If a school district offers any special education or related services at the charter school, it may have to transport the child between home and the charter school. If the district offers any special education or related services in its own buildings, it may have to transport the student between the charter school and the district's buildings.

When considering these transportation requirements, remember that parents may select a charter school located outside the district's boundaries. Nothing prevents them from selecting a charter school located far from home. Moreover, within any single district, different parents may send their children to different charter schools.

Also remember that the New Hampshire Board of Education's and the New Hampshire Department of Safety's rules demand that school districts, when transporting students, use licensed school bus drivers and vehicles licensed as school buses. This can be very expensive, costing \$10,000 to \$30,000 annually per student, depending on the distance and how many children ride in the vehicle.

## VI. Is SB 300 unconstitutional?

Part 1, Article 28-a of the New Hampshire Constitution, popularly known as "Con Con 2," provides as follows:

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“The state shall not mandate or assign any new, expanded or modified programs or responsibilities to any political subdivision in such away as to necessitate additional local expenditures by the political subdivision unless such programs or responsibilities are fully funded by the state or unless such programs or responsibilities are approved for funding by a vote of the local legislative body of the political subdivision.”

This amendment, which became effective in 1984, restricts both the state legislature and state agencies such as the New Hampshire Board of Education.

Part 1, Article 28-a embodies the principal that, in order for a democracy to work, voters need to know whether incumbent lawmakers should be applauded or booted out. The debates surrounding adoption of Article 28-a emphasize that such accountability is best achieved when legislators who take credit for new programs simultaneously take responsibility for the costs.

“What you have got going in the State of New Hampshire right now is a situation where there is no truth in spending, although there may be truth in lending. What happens now is that authority is not united with fiscal responsibility. . . . [T]he legislature would rather enact the program and pass the cost back to the locality. That, I suggest to you is voting the program and burying the cost. That is political hypocrisy.”<sup>34</sup>

“Other speakers here will, and other speakers here have [.] given you the details of those programs that legislators love to vote for, but hate to pay for. The Legislature loves to go on record for the handicapped children, the mentally retarded, the mentally ill, the new juvenile laws, new school costs. I wish to go on record in favor of all of the above, but, and I say again, but who pays the bills. . . . [I]f you wish to mend the many problems facing our towns, then you must be willing to spend. There is an old expression, put your money where your mouth is. This Resolution, if passed, will force each and every member of the General Court to put their money where their mouth is.”<sup>35</sup>

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<sup>34</sup> Journal of the Constitutional Convention, June 26, 1984, p. 322 (Delegate Gross).

<sup>35</sup> Journal of Constitutional Convention, June 26, 1984, p. 326 (Delegate Susan Tardiff).

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Simply put, SB 300 is unconstitutional insofar as it increases local costs. However, a school district wishing to raise that defense will need to create and preserve evidence documenting those increased costs.

Whether SB 300 increases costs will vary from district to district. Two real life examples illustrate this point.

*The first example* involved a school district that does not operate its own high school. It paid tuition for resident students to attend a public academy located in a neighboring district.

One of those students was severely disabled. The school district paid the public academy tuition reflecting the high cost of special education. The school district also hired a one-on-one paraprofessional to work with the student throughout the school day and provided related services by sending its speech/language therapist to the public academy to work with the student one-on-one.

The parents in example 1 then enrolled their child at a charter school located in another nearby town. The parents drove their child to the charter school. The school district agreed to hire a full-time one-on-one paraprofessional to work with the student at the charter school. The school district also agreed to provide speech/language therapy at the charter school. The parents accepted these services and provided transportation at their own expense.

This arrangement actually saved the resident district money. It cost the district no more to provide special education and related services at the charter school than at the public academy. The district actually saved money, because it no longer had to pay tuition to the public academy. The State, not the school district, paid tuition for the student to attend the charter school.

Of course, whether SB 300 violates Part 1, Article 28-a in this district will depend on more than the costs and savings in any single case. The district will need to calculate the costs and savings for all of its students attending charter schools before it can determine SB 300's net effect.

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A *second example* represents the opposite, but perhaps more common, extreme. In this case, the district of residence operated its own high school. The district offered the student an IEP to be implemented at that school. The IEP called for: a) regular education classes with a *shared* paraprofessional; b) small special education classes for reading and math; and c) group counseling with the school psychologist.

The parents then enrolled the student at a charter school located outside of the district. They demanded that the district implement at the charter school all of the services in the aforementioned IEP.

This arrangement would have drastically increased the district's costs. The staff assigned to work with the student in small groups at the district's high school would continue to work there, with the other students in those same small groups. The district would have to hire new staff to work with the student at the charter school.

To make matters worse, the district in the second example had three other similar students with disabilities attending charter schools. They did not all attend the same charter school. All of the charter schools were located outside the district's boundaries. It cost the district nothing extra to transport these students from home to the district's own schools. It would cost the district tens of thousands of dollars to transport them to and from their respective charter schools.

For that second district, SB 300 probably embodies a new unfunded state mandate that violates Part 1, Article 28-a.



## APPENDIX C

### SPECIAL EDUCATION IN NEW HAMPSHIRE – SOME BASIC FACTS

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#### 1. *What laws govern?*

Four sets of laws govern special education in New Hampshire:

- The Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §§ 1400, et seq. This federal statute was enacted in 1975, but most provisions did not take effect until 1978. The statute has been “reauthorized” and amended several times, most recently by the Individuals with Disabilities Education Improvement Act of 2004 (IDEIA).
- The U.S. Department of Education regulations implementing the IDEA, codified at 34 C.F.R. Part 300. These rules were amended in August 2006 in response to the 2004 revisions to the IDEA.
- New Hampshire’s special education statute, RSA 186-C.
- The New Hampshire Board of Education’s rules, N.H. Code of Administrative Rules Chapter Ed 1100. These rules were rewritten in 2008 to comply with 2004 amendments to the IDEA.

#### 2. *Is the IDEA a federal mandate?*

- Yes and no. It depends on how you define the term “mandate.”
- Participation in the IDEA is optional. The statute attaches strings to federal funds. It applies only to states that apply for and receive federal IDEA funds. In this regard, the IDEA is different from many federal

statutes, such as laws protecting civil rights or regulating interstate commerce, which automatically apply throughout the nation.

- The federal Unfunded Mandates Reform Act, which erects special procedural hurdles when Congress considers enacting an unfunded mandate, explicitly excludes statutes that attach conditions to federal financial assistance.<sup>1</sup> The federal government has accordingly concluded that the Unfunded Mandates Reform Act does not extend to the IDEA.<sup>2</sup>
- Although the IDEA is not a mandate as defined in the Unfunded Mandates Reform Act, it is a mandate in another sense. Once a state elects to participate in the IDEA, the state (and all school districts in the state) must comply with the conditions set forth in the federal special education laws. Those conditions are often termed “mandates.”<sup>3</sup>
- Lured by the prospect of substantial federal grants, every state elected to participate in the IDEA. Congress promised that by the early 1980’s each participating state would receive, annually per special education child, an amount equal to 40 percent of the national average per pupil cost.<sup>4</sup> However, Congress never appropriated even half of that promised amount.<sup>5</sup>

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<sup>1</sup> 2 U.S.C. § 658(5)(A)(i)(1).

<sup>2</sup> E.g., Congressional Budget Office, *Economic and Budget Issue Brief*, January 6, 2005, p. 1; *Letter to Cook*, 23 IDELR 830 (U.S. Dept. of Educ., Office of Special Education Programs, 1995).

<sup>3</sup> “[T]he label ‘mandate’ is often applied to obligations that states assume voluntarily in order to qualify for federal funds.” Patricia T. Northrop, Note, *The Constitutional Insignificance of Funding for Federal Mandates*, 46 Duke Law Journal 903, 903 n. 2 (1997), quoted with approval in *School District of City of Pontiac v. Secretary of U.S. Dept. of Education*, 512 F.3d 252, 268 (6th Cir. 2008).

For example, the U.S. Supreme Court recently summarized the IDEA as follows: “As a condition of receiving funds, a school district must comply with IDEA’s *mandates*.” *Winkelman v. Parma City School District*, 127 S.Ct. 1994, 1998 (2007) (emphasis added).

<sup>4</sup> Some say that Congress promised to defray 40 percent of the cost of *special education*. That is incorrect. The base line – the national average annual per pupil cost – reflects the cost of educating all students, not the cost of special education for disabled students.

<sup>5</sup> E.g., American Association of School Administrators, IDEA Funding Coalition, “IDEA Funding: Time for Congress to Live Up to the Commitment” (March 2006).

The American Recovery and Reinvestment Act of 2009 (ARRA) includes federal “stimulus” grants for special education, which raise the total federal contribution under the IDEA to approximately 27 percent of the national average annual per pupil cost. However, *this did not truly increase the federal contribution toward the cost of providing special education*. First, the stimulus funds are only temporary, available for fiscal years 2009 and 2010. Second, in the absence of a waiver, the stimulus funds may not be used to reduce state and local expenditures for special education. As a consequence, the stimulus funds were spent primarily on temporary and discretionary projects, such as staff development and technology, rather than on services necessary to comply with the IDEA.

### 3. *What are the costs of complying with the IDEA?*

- The average annual per pupil cost for special education students is approximately twice the average annual per pupil cost for nondisabled students. Studies conducted over the years have consistently reached that conclusion.<sup>6</sup>
- It is often said that the average per pupil cost for *special education* is not much higher than the average per pupil cost for regular education. That statistic is accurate, but misleading. Most disabled students receive *both special education and regular education*.
- Currently, the average annual per pupil cost for regular education students is approximately \$10,000. Educating the average special education student costs approximately twice that amount – about \$20,000 annually.
- The public is largely misinformed regarding the amount being spent on special education.

“The 28th annual Phi Delta Kappa/Gallup Poll of the Public’s Attitudes Toward the Public Schools . . . shows that most members of the general public think spending on special education should be maintained or increased. . . . Although Phi Delta Kappa says it costs at least 100 percent more to educate a special education

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<sup>6</sup> E.g., American Association of School Administrators, IDEA Funding Coalition, “IDEA Funding: Time for Congress to Live Up to the Commitment” (March 2006), note 2 (“Based on a 2002 study by the Special Education Expenditure Project, Chambers, Parrish, et al, educating a special education student costs an average of 1.9 times as much as a regular education student”); Chambers, Perez, Socias, Shkolnik, and Esra, “Educating Students with Disabilities: Comparing Methods for Explaining Expenditure Variation,” American Association for Research, *Special Education Expenditure Project, Report 7* (May 2004), p. 5 (“In 1999-2000, schools in the U.S. were spending an average of \$6,556 to educate a student without disabilities. At the same time, schools were spending an average of \$12,639 on each student eligible for special education.”); President’s Commission on Excellence in Special Education, *A New Era: Revitalizing Special Education for Children and Their Families* (2002), p. 31 (when enacting the IDEA, Congress “believed the cost of special education was approximately twice the cost of regular education,” and “[t]he U.S. Department of Education now estimates that as a nation, we are spending about 90 percent (1.9 times) more on the average eligible student for special education than we do on the average general education student with no special needs”); Chambers, Parrish, Lieberman, and Wolman, “What Are We Spending on Special Education in the U.S.?” *Center for Special Education Finance Brief*, Brief No. 8 (February 1998), p. 2 (“The most recent national study of special education expenditures . . . suggests that expenditures on the average student with disabilities is about 2.28 times the average expenditure on a regular education student”); Chaikind, Danielson, and Brauen, “What Do We Know About the Costs of Special Education? A Selected Review,” *The Journal of Special Education*, Vol. 26, No. 4, p. 344 (1993) (surveying the literature and concluding that the per pupil cost for educating students with disabilities is approximately 2.3 times the cost of educating nondisabled students).

student than other students, only 7 percent of those polled estimated such a figure. Most respondents estimated the increase to be between 20 percent and 60 percent.”<sup>7</sup>

In the past, the New Hampshire Board of Education has reinforced those misconceptions.<sup>8</sup>

**4. *How much does the federal government pay?***

- For the 2007-08 school year, New Hampshire is receiving \$46,074,469 from the federal government under Part B of the IDEA. (Part B covers students ages 3 to 21.)<sup>9</sup>
- 31,399 New Hampshire students ages 3 to 21 qualify for special education.<sup>10</sup>
- Thus, New Hampshire receives from the federal government \$1,467 annually per special education student under IDEA Part B.<sup>11</sup>

**5. *How much do school districts and the New Hampshire Department of Education pay?***

- In New Hampshire, school districts front all costs for special education.
- New Hampshire school districts receive most of the state’s share of federal IDEA funds, approximately \$1,300 annually per special education student.
- If a special education student’s program costs a school district more than

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<sup>7</sup> “Americans Unaware of Special Education Costs, Poll Says,” *The Special Educator*, Vol. 12, Issue 4 (Sept. 13, 1996), p. 2.

<sup>8</sup> For example, in 1996 the New Hampshire Board of Education’s Special Education Task Force reported that 11.7 percent of all New Hampshire students qualify for special education and that the costs of “educating” these students represents “13.4% of total statewide expenditures on education.” N.H. Board of Education, *Special Education Task Force Report (January 31, 1996)*, p. 93. But what the Task Force depicted as the cost of educating these students was, in fact, merely the cost of special education. The Task Force overlooked that most students with disabilities receive both regular education and special education. In other words, the Task Force Report confused the cost of *special education* with the cost of *educating* students with disabilities.

<sup>9</sup> N.H. Dept. of Education, Bureau of Special Education, *Federal Funds Distribution* (Sept. 5, 2007).

<sup>10</sup> N.H. Dept. of Education, *Statewide Census by Disability as of December 2006* (Oct. 14, 2007).

<sup>11</sup> \$46,074,469 divided by 31,399 = \$1,467.

3.5 times the state average annual per pupil cost, the State Department of Education is supposed to reimburse the school district for 80 percent of the “excess costs” (i.e., 80 percent of the costs exceeding 3.5 times the state average per pupil cost).<sup>12</sup> For the 2007-08 school year, 3.5 times the state average annual per pupil cost is \$36,317. However, the State legislature does not always appropriate enough to reimburse school districts at the full 80 percent level.

- Thus, assuming that the State pays its full share, a school district *ultimately* funds: 1) the first \$36,317 of a student’s annual program costs; and b) 20 percent of the annual program costs that exceed \$36,317.

## 6. *Who qualifies for special education?*

- In order to qualify for special education, a student must: a) have one of the disabilities listed in the special education laws; and b) “need” special education.<sup>13</sup>
- In New Hampshire, qualifying students receive special education from age 3 to age 21 or until receipt of a bona fide high school diploma, whichever occurs first.<sup>14</sup> This exceeds federal law, which requires that New Hampshire school districts provide special education beginning at ages 5 or 6.<sup>15</sup>
- Nationally, 11.47 percent of all students ages 6 through 17 receive special education.<sup>16</sup> In New Hampshire, the figure is 12.53 percent.<sup>17</sup> The percentages vary from school district to school district depending on socio-economic factors and other variables. For example, in Rochester,

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<sup>12</sup> RSA 186-C:18. If a student’s costs exceed 10 times the state average per pupil cost, the State Department of Education is supposed to reimburse the school district for all costs in excess of 10 times the state average per pupil cost. RSA 186-C:18, III (b), (c).

<sup>13</sup> 20 U.S.C. § 1401(3)(A); RSA 186-C:2, I.

<sup>14</sup> RSA 186-C:2, I, 186-C:9.

<sup>15</sup> The IDEA requires that a state offer special education to students younger than age 6 only if the state offers regular education to students below age 6. 20 U.S.C. § 1412(a)(1)(B)(i). In New Hampshire, school districts provide regular education beginning at ages 5 or 6, depending on whether the district operates a public kindergarten.

<sup>16</sup> U.S. Dept. of Education, Office of Special Education and Rehabilitative Services, Office of Special Education Programs, *27th Annual (2005) Report to Congress on the Implementation of the Individuals with Disabilities Education Act* (hereafter “27th Annual Report to Congress”), Vol. 2, page 69, published in September 2007, reporting statistics from the Fall of 2003.

<sup>17</sup> *Ibid.*

New Hampshire, 24 percent of all students qualify for special education.<sup>18</sup>

- Since the average special education student costs approximately twice as much to educate as the average regular education student, IDEA-eligible students receive over 20 percent of the total public spending on elementary and secondary education.<sup>19</sup>
- The federal special education statute, as originally proposed, focused on children with severe disabilities such as mental retardation, deafness, blindness, serious emotional disturbances, etc. However, in the course of passing the statute, Congress added students with “specific learning disabilities,” a category that consists primarily of children with reading disabilities (dyslexia). The IDEA also includes students who are “other health impaired,” a category that encompasses the growing population of children diagnosed with Attention Deficit Hyperactivity Disorder (ADHD).
- Consequently, many students who qualify for special education have relatively mild disabilities.
- Nationally, the total population of students eligible for special education falls into the following categories (based on *primary* disability):

Specific learning disabilities	47.4%
Speech or language impairments	18.7%
Mental retardation	9.6%
Emotional disturbance	8.0%
Other health impairments	7.5%
All other disabilities combined	8.8% <sup>20</sup>

The percentages are similar in New Hampshire, except that our rate of students with mental retardation is less than half the national average and our rate of students with other health impairments is more than double the national average.<sup>21</sup>

## 7. *Where do these students receive their education?*

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<sup>18</sup> Testimony of Sharon Pray delivered at the New Hampshire Board of Education’s October 10, 2007 public hearing.

<sup>19</sup> E.g., President’s Commission on Excellence in Special Education, *supra*, p. 30.

<sup>20</sup> U.S. Dept. of Education, *27th Annual Report to Congress*, Vol. 1, p. 30.

<sup>21</sup> U.S. Dept. of Education, *27th Annual Report to Congress*, Vol. 2, pp. 69-71.

- According to the most recent statistics published by the U.S. Department of Education, New Hampshire’s special education students receive their education in the following environments:

75.03 percent attend regular public schools and spend less than 21 percent of their school time outside of regular education classrooms.

17.15 percent attend regular public schools and spend between 21 and 60 percent of their school time outside of regular education classrooms.

3.35 percent attend regular public schools and spend more than 60 percent of their school time outside of regular education classrooms.

0.08 percent attend special public day schools.

2.66 percent attend private day schools.

0.15 percent attend public residential facilities.

1.36 percent attend private residential facilities.

0.21 percent receive their education at home or in hospitals.<sup>22</sup>

- New Hampshire’s rate of special education placements in private residential schools – 1.36 percent – far exceeds the national average, which is 0.37 percent.<sup>23</sup> Among the 50 states, only Connecticut and South Dakota have a higher rate of placements at private residential schools.<sup>24</sup> Such schools typically cost between \$50,000 and \$200,000 annually per student.

8. ***Is the income or wealth of a student’s parents relevant?***

- No.
- The IDEA requires that participating states offer every educationally disabled child a *free* appropriate public education. The term “free” means

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<sup>22</sup> U.S. Dept. of Education, *27th Annual Report to Congress*, Vol. 2, p. 180.

<sup>23</sup> *Ibid.*

<sup>24</sup> *Ibid.*

at no cost to the student's parents.<sup>25</sup>

- Unlike many social welfare programs, the IDEA does not include a “means test.” Parents are not required to make any financial contribution, regardless of their income or wealth.

## 9. *What does the IDEA require?*

- The heart of the IDEA is the requirement that participating states offer every child with a disability a “free appropriate public education” (FAPE).<sup>26</sup> This includes special education (specially designed instruction) and related services necessary for a child to benefit from special education, provided in the least restrictive environment appropriate for the child's needs.<sup>27</sup>
- Since the population of children with disabilities is so diverse, the IDEA establishes a process for determining on an individualized basis what is appropriate for each child. A team that includes parents and school district representatives meets at least once annually to write or review an individualized education program (IEP) for each eligible child. The IEP recites the child's current levels of performance, annual goals, and the services a school district will provide, in addition to other information required by state and federal law.<sup>28</sup>
- If parents and the school district cannot reach agreement at an IEP team meeting, either party may seek an administrative “due process” hearing.<sup>29</sup> In New Hampshire, such hearings are conducted by the State Department of Education, which contracts with lawyers in private practice to serve as hearing officers.<sup>30</sup> Either party may appeal the hearing officer's decision to Superior Court or U.S. District Court.<sup>31</sup>
- When adjudicating disputes over a child's IEP, a court or hearing officer

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<sup>25</sup> 20 U.S.C. § 1401(9)(A).

<sup>26</sup> 20 U.S.C. § 1412(a)(1)(A).

<sup>27</sup> 20 U.S.C. §§ 1401(9), 1412(a)(5)(A).

<sup>28</sup> 20 U.S.C. §§ 1401(9)(D), 1414(d).

<sup>29</sup> 20 U.S.C. § 1415(f)(1)(A).

<sup>30</sup> RSA 21-N:4, III; N.H. Code of Administrative Rules, Ed 1128.24(b), (c).

<sup>31</sup> 20 U.S.C. § 1415(i)(2)(A); *Petition of Darlene W.*, 124 N.H. 238, 469 A.2d 1307 (N.H. Supreme Court, 1983).



must consider two factors:

- 1) Was the IEP developed in accordance with the procedures set forth in the IDEA?
  - 2) Is the IEP “reasonably calculated to enable the child to receive educational benefits”?<sup>32</sup>
- The IDEA requires “an” appropriate program that will yield “some educational benefit.” The law does not guarantee the “most appropriate” program that will enable a child with disabilities to reach his or her full potential.<sup>33</sup>
  - On the other hand, a school district must provide whatever special education and related services a child with disabilities needs in order to receive a FAPE, no matter how expensive those services may be.
  - In addition to the primary requirements described above, the special education laws impose scores of secondary requirements on participating states and school districts. Printed in small type, the IDEA is 113 pages long.<sup>34</sup> The U.S. Department of Education’s IDEA regulations are 115 pages long.<sup>35</sup> The U.S. Department of Education’s explanatory comments to those regulations are 213 pages long.<sup>36</sup> The New Hampshire Board of Education’s rules implementing those laws are 252 pages long (including quotations from the federal regulations).<sup>37</sup>

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<sup>32</sup> *Board of Education of Hendrick Hudson School District v. Rowley*, 458 U.S. 176, 206-207, 102 S.Ct. 3034, 73 L.Ed.2d 690 (U.S. Supreme Court, 1982).

<sup>33</sup> *Rowley*, 458 U.S. at 198-203; *Lenn v. Portland School Committee*, 998 F.2d 1083, 1086 (1st Cir. 1993).

<sup>34</sup> 20 U.S.C. §§ 1400-1482, as published in *2007 United States School Laws and Rules* (edited by Michael Levin, published by Thomson/West), Volume 1, pp. 137-249.

<sup>35</sup> 34 C.F.R. §§ 300.1-300.818 and accompanying appendices, as published in *2007 United States School Laws and Rules, supra*, Volume 2, pp. 567-682.

<sup>36</sup> *Federal Register*, Vol. 71, No. 156 (August 14, 2006), pp. 46540-46753.

<sup>37</sup> *New Hampshire Rules for the Education of Children with Disabilities*, Ed 1101.01-1137.04, as published in 2002 by the N.H. Dept. of Education.

**Appendix A**  
**HB 126,**  
**amending**  
**RSA 186-C:30**

**CHAPTER 120**  
**HB 126 – FINAL VERSION**

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2015 SESSION

15-0112

04/01

**HOUSE BILL 126**

AN ACT establishing a commission to study issues related to students receiving special education services while attending a chartered public school.

SPONSORS: Rep. Heath, Hills 14; Rep. Myler, Merr 10; Rep. Harris, Rock 9; Rep. Frazer, Merr 13; Sen. Stiles, Dist 24

COMMITTEE: Education

TITLE XV – EDUCATION

CHAPTER 186-C

SPECIAL EDUCATION

186-C:30 Commission Established.

I. There is established a commission to study issues related to students receiving special education services while attending a chartered public school. The membership of the commission shall be as follows:

- (a) Three members from the house of representatives, 2 of whom shall serve on the education committee, and one of whom shall serve on the finance committee, appointed by the speaker of the house of representatives.
- (b) One member from the senate, appointed by the senate president.
- (c) The commissioner of the department of education, or designee.
- (d) Three members who are involved with the management or operation of a chartered public school, appointed by the governor.
- (e) Three members who are parents with at least one child attending a chartered public school, appointed by the governor.
- (f) One member from the New Hampshire School Administrators Association, appointed by the association.
- (g) One member from the New Hampshire Association of Special Education Administrators, appointed by the association.
- (h) One member from the New Hampshire Council on Developmental Disabilities, appointed by the council.

- (i) One member from the Disabilities Rights Center-NH, appointed by the center.
- (j) One member from the New Hampshire Council of School Attorneys, appointed by the council.
- (k) One member from the New Hampshire Public Charter School Association, appointed by the association.
- (l) One member from the New Hampshire School Boards Association, appointed by that association.
- (m) One member from the Parent Information Center, appointed by that organization.
- (n) One parent of a child who is disabled, appointed by the governor.
- (o) One parent of a school-age child, appointed by the governor.

II. The commission shall study issues relating to students receiving special education services while attending a chartered public school, including but not limited to the following:

- (a) The provision of special education services to students attending chartered public schools, including the nature and amount of such services, how such services should be provided, and where such services should be provided.
- (b) The nature of communications between the chartered public school and the local education agency, including the involvement of a chartered public school in the individualized education plan meetings.
- (c) The funding for children in need of special education services who are attending a chartered public school and whether such funding is sufficient to ensure a free and appropriate public education.
- (d) The nature of the legal relationship between the local education agency and the chartered public school.
- (e) Any other issue which the commission deems relevant to the objective of the study.

III. Legislative members of the commission shall receive mileage at the legislative rate when attending to the duties of the commission.

IV. The department of education and house committee research staff shall provide clerical, administrative, and research services to the commission as may be needed.

V. The members of the commission shall elect a chairperson from among the members. The first meeting of the commission shall be called by the first-named house member. The first meeting of the commission shall be held within 30 days of the effective date of this section. Nine members of the commission shall constitute a quorum.

VI. The commission shall report its findings and any recommendations for proposed legislation to the speaker of the house of representatives, the president of the senate, the house clerk, the senate clerk, the governor, and the state library on or before November 1, 2016.

**Source.** 2015, 120:1, eff. June 8, 2015.

**Appendix B**  
**Commission Membership, Attendance**  
**Meeting Participants, including Guests, and Presenters**

**Membership of the Commission to Study Issues Relating to Students  
Receiving Special Education Services while Attending a Chartered Public School – RSA 186-C:30, I**

<b>Membership Categories from Statute</b>	<b>Representative</b>	<b>Contact Information</b>
(a) Three members from the house of representatives, 2 of whom shall serve on the education committee, and one of whom shall serve on the finance committee, appointed by the speaker of the house of representatives.	Rep. Rick Ladd (Education Committee)	Telephone – (603) 989-3268 Email – <a href="mailto:Ladd.nhhouse@charter.net">Ladd.nhhouse@charter.net</a>
	Rep. Mary Gorman (Education Committee)	Telephone – (603) 886-1652 Email – <a href="mailto:mqgorman@comcast.net">mqgorman@comcast.net</a>
	Rep. Kenneth Weyler (Finance Committee)	Telephone – (603) 642-3518 (h) (603) 778-5225 (w) Email – <a href="mailto:kweyler@aol.com">kweyler@aol.com</a>
(b) One member from the senate, appointed by the senate president.	Senator John Reagan	Telephone – (603) 463-5945 Email – <a href="mailto:John.reagan111@gmail.com">John.reagan111@gmail.com</a>
(c) The commissioner of the department of education, or designee.	Santina Thibedeau and Michelle Gauthier	Telephone – (603) 271-3741 Email – <a href="mailto:santina.thibedeau@doe.nh.gov">santina.thibedeau@doe.nh.gov</a> Email – <a href="mailto:Michelle.Gauthier@doe.nh.gov">Michelle.Gauthier@doe.nh.gov</a>
(d) Three members who are involved with the management or operation of a chartered public school, appointed by the governor.	Beth McClure, Director Strong Foundations Charter School	Telephone – (603) 225-2715 (603) 943-5273/660-6630 (c) Email – <a href="mailto:BMcClure@sfnh.org">BMcClure@sfnh.org</a>
	Karin Cevasco, Director Gate City Charter School	Telephone – (603) 660-6630 (c) Email – <a href="mailto:cevascok@gccs-nh.org">cevascok@gccs-nh.org</a>
	Meryl Levin, Director Mill Falls Charter School	Telephone – (603) 232-5176 (school #) Email – <a href="mailto:m.levin@igc.org">m.levin@igc.org</a>
(e) Three members who are parents with at least one child attending a chartered public school, appointed by the governor.	Heather Tyler	Telephone – (603) 595-0204 Email – <a href="mailto:Hetyler@gmail.com">Hetyler@gmail.com</a>
	Christopher O'Reilly	Telephone – (603) 313-4623 Email – <a href="mailto:chrisjoreilly@gmail.com">chrisjoreilly@gmail.com</a>
	Lisa Witte	Telephone – (603) 903-8745 Email – <a href="mailto:lwitte@mrsd.org">lwitte@mrsd.org</a>
(f) One member from the New Hampshire School Administrators Association, appointed by the association.	Jennifer Pomykato	Telephone – (603) 225-3230 (603) 225-3225 Email – <a href="mailto:jennp@nhsaa.org">jennp@nhsaa.org</a>
(g) One member from the NH Association of Special Education Administrators, appointed by the association.	P. Alan Pardy (Chair of the Commission)	Telephone – (603) 496-2166 / (603) 224-7555 Email – <a href="mailto:apardy@nhasea.org">apardy@nhasea.org</a>
(h) One member from the New Hampshire Council on Developmental Disabilities, appointed by the council.	Chris Rueggeberg	Telephone – (603) 271-2336 (603) 271-1156 Email – <a href="mailto:Robert.Rueggeberg@ddc.nh.gov">Robert.Rueggeberg@ddc.nh.gov</a>
(i) One member from the Disabilities Rights Center-NH, appointed by the center.	Michael Skibbie, Esq.	Telephone – (603) 228-0432 (w) (603) 225-2077 (fax) Email – <a href="mailto:mikes@drcnh.org">mikes@drcnh.org</a>
(j) One member from the NH Council of School Attorneys, appointed by the council.	Gerald Zelin	Telephone – (603) 433-3317 Email – <a href="mailto:GZelin@dwmlaw.com">GZelin@dwmlaw.com</a>
(k) One member from the New Hampshire Public Charter School Association, appointed by the association.	Lauren Rhim, Exec. Director National Center for Special Ed in Charter Schools	Telephone – (301) 655-1992 Email – <a href="mailto:lmrhim@ncsecs.org">lmrhim@ncsecs.org</a>
(l) One member from the NH School Boards Association, appointed by that association.	Barrett Christina or Dean Michener	Telephone – (603) 228-2061 E-mail – <a href="mailto:bchristina@nhsba.org">bchristina@nhsba.org</a> E-mail – <a href="mailto:deanm@nhsba.org">deanm@nhsba.org</a>
(m) One member from the Parent Information Center, appointed by that organization.	Bonnie Dunham	Telephone – (603) 224-7005 / 860-5445 Email – <a href="mailto:bdunham@picnh.org">bdunham@picnh.org</a>
(n) One parent of a child who is disabled, appointed by the governor.	Christina D'Allesandro	Telephone – (603) Email – <a href="mailto:cdallesandro@googlemail.com">cdallesandro@googlemail.com</a>
(o) One parent of a school-age child, appointed by the governor.	Paloma Sylvan	Telephone – (603) 686-2881 Email – <a href="mailto:psylvan@sylvanworks.com">psylvan@sylvanworks.com</a>
Note: Previously, Cheryl McDonough (interested in serving) informally served under the category of (d), and Kathy Rago (interested in serving) informally served under the category of (e). Eileen Mullen sometimes attends representing DHHS.		

**Attendance of the Commission to Study Issues Relating to Students Receiving Special Education Services while Attending a Chartered Public School**

- Page 1 -

Membership Categories from Statute (appointed by the governor unless otherwise noted)	Representative	Attendance at Meetings (2015)								
		8/13	9/2	9/14	9/28	10/5	10/19	11/12	12/10	1/14
(a) Three members from the house of representatives, two of whom shall serve on the education committee, and one of whom shall serve on the finance committee, appointed by the speaker of the house of representatives	Rep. Rick Ladd (Education)	X	X	X	X	X	X	X	X	-
	Rep. Mary Gorman (Education)	X	X	X	X	X	X	X	X	X
	Rep. Kenneth Weyler (Finance)	X	X	X	X	X	X	X	X	X
(b) One member from the senate, appointed by the senate president	Senator John Reagan	X	X	X	X	X	X	-	-	-
(c) The commissioner of the department of education, or designee	Santina Thibedeau – and/or – Michelle Gauthier		X	X	X	-	-	X	X	X
			X	X	X			X	X	X
(d) Three members who are involved with the management or operation of a chartered public school	Beth McClure, Director		X	X	X	X	X	X	X	X
	Karin Cevasco, Director		X	X	X	X	X	X	X	X
	Meryl Levin, Director							X	X	X
(e) Three members who are parents with at least one child attending a chartered public school	Heather Tyler				X	X	-	X	X	X
	Christopher O'Reilly			X	X	X	-	X	X	X
	Lisa Witte							-	X	X
(f) One member from the NH School Administrators Association, appointed by the association	Jennifer Pomykato	X	X	X	X	X	X	X	X	-
(g) One member from the NH Association of Special Education Administrators, appointed by the association	P. Alan Pardy (Chair of the Commission)	X	X	X	X	X	X	X	X	X
(h) One member from the NH Council on Developmental Disabilities, appointed by the council	Chris Rueggeberg	X	X	X	X	X	X	X	X	X
(i) One member from the Disabilities Rights Center-NH, appointed by the center	Michael Skibbie, Esq.	X	X	X	X	X	X	X	X	X
(j) One member from the NH Council of School Attorneys, appointed by the council.	Gerald Zelin	X	X	X	X	X	X	X	X	X
(k) One member from the NH Public Charter School Association, appointed by the association.	Lauren Rhim, Exec. Dir. National Ctr. for Sp. Ed in Charter Schools		-	X	X	X	X	-	-	X
(l) One member from the NH School Boards Association, appointed by that association.	Dean Michener – or – Barrett Christina	X	X	X	X	X	X	X	X	X
										-
(m) One member from the Parent Information Center, appointed by that organization.	Bonnie Dunham*	X	X	X	X	X	-	X	X	X
(n) One parent of a child who is disabled	Christina D'Allesandro		X	X	X	-	X	X	-	X
(o) One parent of a school-age child	Paloma Sylvan				X	X	-	X	-	-
Other –NH Department of Health & Human Services	Eileen Mullen		X	X	X	-	-	-	X	X

**Attendance of the Commission to Study Issues Relating to Students Receiving Special Education Services while Attending a Chartered Public School  
- Page 2 -**

Membership Categories from Statute (appointed by the governor unless otherwise noted)	Representative	Attendance at Meetings (2016)									
		2/29	4/11	6/6	7/17	8/15	8/31	9/18	9/26	10/3	10/17
(a) Three members from the house of representatives, two of whom shall serve on the education committee, and one of whom shall serve on the finance committee, appointed by the speaker of the house of representatives	Rep. Rick Ladd (Education)	X	X	-	-	X	X	X	-	X	X
	Rep. Mary Gorman (Education)	X	X	X	X	X	X	-	X	X	X
	Rep. Kenneth Weyler (Finance)	X	X	X	X	X	X	X	X	X	X
(b) One member from the senate, appointed by the senate president	Senator John Reagan	-	-	X	-	X	-	-	-	-	-
(c) The commissioner of the department of education, or designee	Santina Thibedeau – and/or – Michelle Gauthier	X	X	-	-	-	X	X	-	X	X
		-	-	-	-	-	-	-	-	-	-
(d) Three members who are involved with the management or operation of a chartered public school	Beth McClure, Director	X	X	X	X	X	X	X	X	X	X
	Karin Cevasco, Director	-	X	X	-	X	-	-	X	X	X
	Meryl Levin, Director	X	X	X	-	-	-	-	X	X	X
(e) Three members who are parents with at least one child attending a chartered public school	Heather Tyler	-	X	X	-	-	-	-	X	-	-
	Christopher O'Reilly	X	X	X	X	X	-	-	-	X	X
	Lisa Witte	-	-	X	X	X	X	-	-	X	-
(f) One member from the NH School Administrators Association, appointed by the association	Jennifer Pomykato	X	X	-	X	X	X	-	X	X	X
(g) One member from the NH Association of Special Education Administrators, appointed by the association	P. Alan Pardy (Chair of the Commission)	X	-	X	X	X	X	X	X	X	X
(h) One member from the NH Council on Developmental Disabilities, appointed by the council	Chris Rueggeberg	X	X	X	X	X	X	X	X	X	X
(i) One member from the Disabilities Rights Center-NH, appointed by the center	Michael Skibbie, Esq.	X	X	X	X	X	X	X	X	X	X
(j) One member from the NH Council of School Attorneys, appointed by the council.	Gerald Zelin	X	X	X	X	X	X	X	X	X	X
(k) One member from the NH Public Charter School Association, appointed by the association.	Lauren Rhim, Exec. Dir. National Ctr. for Sp. Ed in Charter Schools	X	X	X	-	X	X	X	X	-	X
(l) One member from the NH School Boards Association, appointed by that association.	Dean Michener – or – Barrett Christina	X	-	-	-	-	-	-	-	-	-
		-	-	X	X	-	X	-	-	X	X
(m) One member from the Parent Information Center, appointed by that organization.	Bonnie Dunham	X	X	X	X	-	X	X	X	X	X
(n) One parent of a child who is disabled	Christina D'Allesandro	-	X	-	-	-	-	-	-	-	-
(o) One parent of a school-age child	Paloma Sylvan	-	-	-	-	-	-	-	-	-	-
Other –NH Department of Health & Human Services	Eileen Mullen	-	-	-	-	-	-	-	-	-	-



**Attendance of the Commission to Study Issues Relating to Students  
Guests and Presenters (in alphabetical order for each meeting)**

Meeting Date	Guests	Presenters
8/13/2015		
9/2/2015	Rep. John Balcom, house education committee Rep. Ralph Boehm, house education committee Michael Brimley, NH public radio Bridget Brown, NH department of education Caitlin Davis, NH department of education Matt Southerton, charter school advocate Eileen Mullen, NH department of health and human services	
9/14/2015	Michael Brimley, NH public radio Bridget Brown, NH department of education Cheryl McDonough, Great Bay ELearning Charter School Jean Parsons, special education administrator Eileen Mullen, NH department of health and human services	
9/28/2015	Michael Brimley, NH public radio Bridget Brown, NH department of education Cheryl McDonough, Great Bay ELearning Charter School Kathleen Rago, parent of a child attending a charter school Matt Southerton, charter school advocate Eileen Mullen, NH department of health and human services	Jen Freitas, special education coordinator Jean Parsons, special education administrator Nash Reddy special education administrator
10/5/2015	Kathleen Rago, parent of a child attending a charter school	Mary Beth Goodell, special education administrator Kathleen Rago, parent of a child attending a charter school Paloma Sylvan, parent of a child attending a charter school Heather Tyler, parent of a child attending a charter school

Meeting Date	Guests	Presenters
10/19/2015	Bridget Brown, NH department of education	
11/12/2015	Janice Arcarro, special education administrator Bridget Brown, NH department of education Kathleen Rago, parent of a child attending a charter school Matt Southerton, charter school advocate	Dan Courter, Maine State Billing Service Dr. Freeman, school administrator Lisa Morrisette, NH department of education
12/10/2015	Bridget Brown, NH department of education Bill Duncan, NH State board of education Diana Fenton, NH department of education Tim Koumrian, school administrator Matt Southerton, charter school advocate Eileen Mullen, NH department of health and human services	Karen Cevasco, director of a chartered public school Caitlin Davis, NH department of education Michelle Gauthier, NH department of education Meryl Levin, director of a chartered public school Beth McClure, director of a chartered public school
1/14/2016	Christine Breen, special education administrator Bridget Brown, NH department of education Caitlin Davis, NH department of education Matt Southerton, charter school advocate Eileen Mullen, NH department of health and human services	Bill Duncan, NH State board of education Tom Raffio, NH State board of Education
2/29/2016	Janice Arcarro, special education administrator Christine Breen, special education administrator Bridget Brown, NH department of education Sarah Fox, NH department of health and human services	
4/11/2016	Matt Southerton, charter school advocate	
6/6/2016	Caitlin Davis, NH department of education Matt Southerton, charter school advocate	

Meeting Date	Guests	Presenters
7/17/2016		Janice Arcarro, retired special education administrator Christine Breen, special education administrator
8/15/2016	Caitlin Davis, NH department of education	
8/31/2016	Matt Southerton, Charter school advocate Representative Daniel Eaton	
9/18/2016	Matt Southerton, Charter school advocate	
9/26/2016	Matt Southerton, Charter school advocate	
10/3/2016	Matt Southerton, Charter school advocate Representative Daniel Eaton	
10/17/2016	Representative Daniel Eaton Caitlin Davis, NH department of education	

## **Appendix C**

# **Laws, Regulations, and Key Policy Documents Regarding the Education of Children with Disabilities Attending Chartered Public Schools**

### **Contents of Appendix C:**

- Chapter 194-B:11 Chartered Public Schools; Funding
- “Laws Regarding Special Education and Charter Schools” by Gerald Zelin
- Verbatim text of U.S. Dept. of Education IDEA regulations addressing placement in the least restrictive environment, 34 C.F.R. §§ 300.114 - 300.120
- IDEA provision encouraging mainstreaming, 20 United States Code (U.S.C.) §1412 – Excerpt provided by Gerald Zelin
- RSA 186-C:15 Length of School Year.
- Ed 306.18 (excerpt from the minimum standards) School Year.
- SB 483 An act establishing the position of chartered public school program officer in the department of education
- Clark v. Banks case summary – excerpt from WestLaw provided by Gerald Zelin
- Bureau of Special Education FY '13 Memo #10 re: “Chartered Public School: Funding Amended RSA 194-B: 11 III ~ Questions and Answers
- Credentialing of Special Education Teachers and Related Service Providers – Information Provided by the NH Department of Education
- OSEP Letters Regarding Chartered Public Schools and Special Education:
  - Letter to Ms. Debra Farmer, dated April 4, 2003
  - Letter to Dr. Susan Barnes, dated December 18, 2003
  - Letter to Mr. Lawrence C. Gloeckler, dated August 8, 2003
- Dear Colleague Letter on Chartered Public Schools, dated May 14, 2014

**TITLE XV**  
**EDUCATION**  
**CHAPTER 194-B**  
**CHARTERED PUBLIC SCHOOLS**  
**Section 194-B:11**  
**(up-to-date as of July 1, 2016)**

**194-B:11 Chartered Public Schools; Funding.** – Chartered public schools shall be funded as follows:

I. (a) There shall be no tuition charge for any pupil attending a charter conversion school located in that pupil's resident district. Funding limitations in this chapter shall not be applicable to charter conversion schools located in a pupil's resident district. For a chartered public school authorized by the school district, the pupil's resident district shall pay to such school an amount equal to not less than 80 percent of that district's average cost per pupil as determined by the department of education using the most recent available data as reported by the district to the department. For pupils resident in this state who attend full-time a chartered public school authorized by a school district other than the pupil's resident school district, the state shall pay tuition pursuant to RSA 198:40-a directly to the chartered public school for such pupil. Nothing in this subparagraph shall alter or modify the funding of the Virtual Learning Academy Charter School.

(b)(1) Except as provided in subparagraph (2), for a chartered public school authorized by the state board of education pursuant to RSA 194-B:3-a, the state shall pay tuition pursuant to RSA 198:40-a, I, II, and II-a plus an additional grant of \$2,036 for the Virtual Learning Academy Charter School and \$3,036 for all other chartered public schools directly to the chartered public school for each pupil who is a resident of this state in attendance at such chartered public school. Beginning July 1, 2017 and every biennium thereafter, the department of education shall adjust the per pupil amount of the additional grant based on the average change in the Consumer Price Index for All Urban Consumers, Northeast Region, using the "services less medical care services" special aggregate index, as published by the Bureau of Labor Statistics, United States Department of Labor. The state shall pay amounts required pursuant to RSA 198:40-a, III directly to the resident district.

(2) For an online chartered public school which receives its initial authorization to operate from the state board of education pursuant to RSA 194-B:3-a on or after July 1, 2013, the state shall pay tuition pursuant to RSA 198:40-a directly to the online chartered public school for each pupil who is a resident of this state in attendance at such chartered public school. In this subparagraph, "online chartered public school" means a chartered public school which provides the majority of its classes and instruction on the Internet.

(c) The commissioner of the department of education shall calculate and distribute chartered public school tuition payments as set forth herein. The first payment shall be 30 percent of the per pupil amount multiplied by the number of eligible pupils present on the first day of the current school year. Such payment shall be made no later than 15 days after the department of education receives the attendance report. The December 1 payment shall be 30 percent of the per pupil amount multiplied by the membership on November 1, and the March 1 payment shall be 30 percent of the per pupil amount multiplied by the membership on February 1. To calculate the final payment, the commissioner of the department of education shall multiply the per pupil amount by the average daily membership in attendance for the full school year, and subtract the total amount of the first 3 payments made. The remaining balance shall be the final payment. Eligible chartered public schools shall report membership in accordance with RSA 189:1-d. In this subparagraph, "membership" shall be as defined in RSA 189:1-d, II. Tuition amounts shall be prorated on a per diem basis for pupils attending a school for less than a full school year.

(d) The source of funds for payments under this section shall be moneys from the education trust fund established in RSA 198:39.

(e) The commissioner of the department of education shall submit a report to the fiscal committee of the general court for each payment made in a fiscal year by the state to a chartered public school pursuant to subparagraph (c). For each chartered public school, the report shall contain the name and address of the school, the amount of the payment, and the number of students currently enrolled at the school. Each report shall be submitted no later than 30 days after the payment date specified in subparagraph (c).

II. A school district lacking a meaningful basis to determine average expenditure per pupil may use statewide average figures as determined by the department of education for the purposes of this chapter.

III. (a) In accordance with current department of education standards, the funding and educational decision-making process for children with disabilities attending a chartered public school shall be the responsibility of the resident district and shall retain all current options available to the parent and to the school district.

(b) When a child is enrolled by a parent in a chartered public school, the local education agency of the child's resident district shall convene a meeting of the individualized education program (IEP) team and shall invite a representative of the chartered public school to that meeting. At the meeting, the IEP team shall determine how to ensure the provision of a free and appropriate public education in accordance with the child's IEP. The child's special education and related services shall be provided using any or all of the methods listed below starting with the least restrictive environment:

(1) The resident district may send staff to the chartered public school; or

(2) The resident district may contract with a service provider to provide the services at the chartered public school; or

(3) The resident district may provide the services at the resident district school; or

(4) The resident district may provide the services at the service provider's location; or

(5) The resident district may contract with a chartered public school to provide the services; and

(6) If the child requires transportation to and/or from the chartered public school before, after, or during the school day in order to receive special education and related services as provided in the IEP, the child's resident district shall provide transportation for the child.

(c) Consistent with section 5210(1) of the Elementary and Secondary Education Act and section 300.209 of the Individuals with Disabilities Education Act, when a parent enrolls a child with a disability in a chartered public school, the child and the child's parents shall retain all rights under federal and state special education law, including the child's right to be provided with a free and appropriate public education, which includes all of the special education and related services included in the child's IEP. The child's resident district shall have the responsibility, including financial responsibility, to ensure the provision of the special education and related services in the child's IEP, and the chartered public school shall cooperate with the child's resident district in the provision of the child's special education and related services.

IV. Federal or other funding available in any year to a sending district shall, to the extent and in a manner acceptable to the funding source, be directed to a chartered public school in a receiving district on an eligible per pupil basis. This funding shall include, but not be limited to, funding under federal Chapters I and II of Title II, and Drug-Free Schools, in whatever form the funding is available in any year. This paragraph shall not apply to funding available to school districts under the federal Individuals with Disabilities Education Act.

IV-a. The commissioner of the department of education shall apply for all federal funding available to chartered public schools under the No Child Left Behind Act, Title I of the Elementary and Secondary Education Act, or other federal source of funds. The commissioner shall expend any such funds received in a manner acceptable to the funding source.

V. (a) A sending district may provide funds, services, equipment, materials or personnel to a chartered public school, in addition to the amounts specified in this section in accordance with the policies of the sending school district.

(b) A chartered public school may accept pupils at tuition rates at less than the amounts established by this chapter.

(c) A chartered public school, other than a charter conversion school, shall accept an otherwise eligible out-of-district pupil regardless of that pupil's sending district's tuition amount.

VI. A chartered public school may receive financial aid, private gifts, grants, or revenue as if it were a school district. A chartered public school shall not be compelled to accept funding from any source.

VII. No school building aid under RSA 198:15-a through 15-h shall be awarded to a chartered public school for the purpose of acquiring land or buildings, or for constructing, reconstructing, or improving the chartered public school, unless the building is owned by the school district, under lease to the chartered public school, and such lease does not include an option to purchase the building. A charter conversion school shall be eligible for school building aid.

VIII. [Repealed.]

IX. [Repealed.]

X. There shall be an appropriation in the fiscal year beginning on July 1, 2003 for the establishment of chartered public schools under this section. Chartered public schools which are eligible for grants under this program shall match funds provided by the state through private contributions in order to receive funding that exceeds the state's average per pupil cost for the grade level weight of the pupil. State funds shall be provided in addition to any other sums provided by the state. Grants under this section shall be administered and determined by the state board of education which shall have the authority to develop a grant application, written procedures and criteria used to determine eligibility for grants, and procedures for the administration of grants by recipients, including reporting requirements. The total grants provided under this program shall not exceed the amount of money appropriated in the budget, or transferred, or provided by gift or grant to the state for this purpose.

XI. Any money appropriated in the budget for matching chartered public school grants that remains unused after the department of education issues matching grants to eligible recipients under paragraph X shall be used to provide a one-year transitional grant to public school districts that have lost pupils as a result of the establishment of a chartered public school, and have paid tuition to the chartered public school in cash pursuant to subparagraph IX(a). For the first year in which a public school pupil leaves the public school and enrolls in a chartered public school, the school district that loses the pupil shall be eligible for a chartered public school transitional grant beginning July 1, 2004 and every fiscal year thereafter, in an amount per pupil equal to the amount determined in RSA 198:41. Such transitional grants shall be administered by the state board of education which shall have the authority to determine eligibility and the amount of money to be awarded to school districts under this section, subject to the amount appropriated in the budget.

**Source.** 1995, 260:6. 1997, 334:15. 1998, 268:4. 1999, 17:58, VI. 2003, 273:2, 3. 2005, 257:15, 17, 18. 2006, 301:1, 4, 7, eff. June 19, 2006. 2008, 173:12, eff. July 1, 2009; 274:27, eff. July 1, 2008; 274:36, eff. Sept. 5, 2008; 354:1, 4, eff. Sept. 5, 2008. 2009, 241:7, eff. Sept. 14, 2009. 2011, 224:154, eff. July 1, 2011; 228:2, eff. June 29, 2011; 258:1, eff. July 1, 2011. 2012, 185:1, eff. Aug. 10, 2012. 2013, 144:63, eff. July 1, 2013. 2015, 276:193, 259, eff. July 1, 2015; 276:194, eff. July 1, 2016. 2016, 22:1, 2, eff. June 24, 2016; 262:2, eff. June 24, 2016 at 12:01 a.m.; 262:4, eff. July 1, 2016 at 12:01 a.m.

# **Laws Regarding Special Education at Charter Schools**

**By: Jerry Zelin**

**September 1, 2015, Revised September 2, 2015**



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CHAPTER 120  
HB 126 – FINAL VERSION

04/09/2015 1145s  
6May2015... 1719EBA

2015 SESSION

15-0112  
04/01

HOUSE BILL            **126**

AN ACT                establishing a commission to study issues related to students receiving special education services while attending a chartered public school.

SPONSORS:            Rep. Heath, Hills 14; Rep. Myler, Merr 10; Rep. Harris, Rock 9; Rep. Frazer, Merr 13; Sen. Stiles, Dist 24

COMMITTEE:          Education

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ANALYSIS

This bill establishes a commission to study issues related to students receiving special education services while attending a chartered public school. This bill is a result of the study committee established in 2014, 266.

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



CHAPTER 120  
HB 126 – FINAL VERSION  
- Page 2 -

1 council.

2 (k) One member from the New Hampshire Public Charter School Association, appointed  
3 by the association.

4 (l) One member from the New Hampshire School Boards Association, appointed by that  
5 association.

6 (m) One member from the Parent Information Center, appointed by that organization.

7 (n) One parent of a child who is disabled, appointed by the governor.

8 (o) One parent of a school-age child, appointed by the governor.

9 II. The commission shall study issues relating to students receiving special education  
10 services while attending a chartered public school, including but not limited to the following:

11 (a) The provision of special education services to students attending chartered public  
12 schools, including the nature and amount of such services, how such services should be provided, and  
13 where such services should be provided.

14 (b) The nature of communications between the chartered public school and the local  
15 education agency, including the involvement of a chartered public school in the individualized  
16 education plan meetings.

17 (c) The funding for children in need of special education services who are attending a  
18 chartered public school and whether such funding is sufficient to ensure a free and appropriate  
19 public education.

20 (d) The nature of the legal relationship between the local education agency and the  
21 chartered public school.

22 (e) Any other issue which the commission deems relevant to the objective of the study.

23 III. Legislative members of the commission shall receive mileage at the legislative rate when  
24 attending to the duties of the commission.

25 IV. The department of education and house committee research staff shall provide clerical,  
26 administrative, and research services to the commission as may be needed.

27 V. The members of the commission shall elect a chairperson from among the members. The  
28 first meeting of the commission shall be called by the first-named house member. The first meeting  
29 of the commission shall be held within 30 days of the effective date of this section. Nine members of  
30 the commission shall constitute a quorum.

31 VI. The commission shall report its findings and any recommendations for proposed  
32 legislation to the speaker of the house of representatives, the president of the senate, the house clerk,  
33 the senate clerk, the governor, and the state library on or before November 1, 2016.

34 120:2 Repeal. RSA 186-C:30, relative to the commission to study issues related to students  
35 receiving special education services while attending a chartered public school, is repealed.

36 120:3 Effective Date.

**CHAPTER 120**  
**HB 126 – FINAL VERSION**  
**- Page 3 -**

- 1           I. Section 2 of this act shall take effect November 1, 2016.
- 2           II. The remainder of this act shall take effect upon its passage.
- 3
- 4   Approved: June 8, 2015
- 5   Effective Date: I. Section 2 shall take effect November 1, 2016
- 6           II. Remainder shall take effect June 8, 2015

**N.H. Constitution, Part I, Article 28-a, regarding unfunded state mandates**

“The state shall not mandate or assign any new, expanded or modified programs or responsibilities to any political subdivision in such a way as to necessitate additional local expenditures by the political subdivision unless such programs or responsibilities are fully funded by the state or unless such programs or responsibilities are approved for funding by a vote of the local legislative body of the political subdivision.”

# TITLE XV EDUCATION

## CHAPTER 194-B CHARTERED PUBLIC SCHOOLS

### Section 194-B:1

**194-B:1 Definitions.** – In this chapter:

I. "Average cost per pupil" means the total of education expenditures in a particular district and at the elementary, middle/junior, and high school levels, less tuition, transportation, capital outlays, and net debt service, as compiled by the department of education. Kindergarten cost shall be calculated at 1/2 the cost of elementary school.

II. "Board of trustees" means the governing body of a chartered public school authorized by the state board of education to supervise and control the chartered public school.

III. "Chartered public school" means an open enrollment public school, operated independent of any school board and managed by a board of trustees. A chartered public school shall operate as a nonprofit secular organization under a charter granted by the state board and in conformance with this chapter.

IV. "Charter conversion school" means a public school which has been authorized to become a chartered public school. That school continues to be managed by the school board until and unless fully authorized to become a chartered public school in accordance with the provisions of RSA 194-B:3.

V. "Host school district" means the school district in which the chartered public school is physically located.

VI. "Open enrollment public school" or "open enrollment school" means any public school which, in addition to providing educational services to pupils residing within its attendance area or district, chooses to accept pupils from other attendance areas within its district and from outside its district.

VII. "Parent" means a parent, guardian, or other person or entity having legal custody of a child or, in the case of a child with a disability, a surrogate parent who has been appointed in accordance with state or federal law.

VIII. "Pupil" means any child who is eligible for attendance in public schools in New Hampshire, and who lives with a parent.

IX. "Receiving district" means the school district to which a pupil is sent to attend a chartered public school.

X. "Resident district" means the school district in which the pupil resides.

XI. "School board" means the district school board.

XII. "Sending district" means the school district in which the pupil resides.

XIII. "State board" means the state board of education.

XIV. "Teacher" means any individual providing or capable of providing direct instructional services to pupils, and who meets requirements prescribed in the Elementary and Secondary Education Act and the Individuals With Disabilities Education Act.

**Source.** 1995, 260:6, eff. July 1, 1995. 2008, 274:22, 23, eff. July 1, 2008; 354:1, eff. Sept. 5, 2008. 2009, 241:2, eff. Sept. 14, 2009.

### Section 194-B:1-a

**194-B:1-a Statement of Purpose.** – It is the purpose of this chapter to:

- I. Promote and encourage the establishment and operation of chartered public schools in New Hampshire.
- II. Encourage school districts to allow chartered public schools.
- III. Encourage the establishment of public charter schools with specific or focused curriculum, instruction, methods, or target pupil groups.
- IV. Improve pupil learning and increase opportunities for learning.
- V. Exempt charter schools from state statutes and rules, other than where specified, to provide innovative learning and teaching in a unique environment.
- VI. Enhance professional opportunities for teachers.
- VII. Establish results-driven accountability for public charter schools and require the measurement of learning.
- VIII. Make school improvement a focus at the school level.
- IX. Encourage the establishment of public charter schools that meet the needs and interests of pupils, parents, communities, regions, and the state as a whole.

**Source.** 1997, 334:1. 2004, 222:1, eff. June 11, 2004. 2009, 241:3, eff. Sept. 14, 2009.

### Section 194-B:2

**194-B:2 Chartered Public Schools; Establishment; Parental Choice; Admission.** –

- I. Any school district legislative body may vote to designate one or more of its schools as a chartered public school.
- II. Every chartered public school shall make available information about its curriculum and policies to all persons, and parents and pupils considering enrollment in that school.
- III. There shall be no application fee for pupil admission to any chartered public school.
- IV. All chartered public schools shall accept qualified pupils from any school district. A pupil who meets the admission requirements of a chartered public school, and who is a resident of the district where the school is located, shall be given absolute admission preference over a nonresident pupil. Once admitted and unless expelled, chartered public school pupils need not reapply for admission for subsequent years.
- V. Attendance at a chartered public school for the purposes of transportation shall not constitute assignment under the provisions of RSA 189:6 and RSA 189:8. Pupils who reside in the school district in which the chartered public school is located shall be provided transportation to that school by the district on the same terms and conditions as provided for in RSA 189:6 and RSA 189:8 and that transportation is provided to pupils attending other public schools within that district. However, any added costs for such transportation services shall be borne by the chartered public school.
- VI. Upon approval by each of the district's legislative bodies and after a public hearing, 2 or more school districts may consolidate otherwise eligible resident pupils into one applicant pool for the purposes of an admissions lottery for designated chartered public schools.
- VII. A chartered public school may be physically located outside the district establishing it, but shall be deemed within the school district for purposes of RSA 194-B.

**Source.** 1995, 260:6, eff. July 1, 1995. 2008, 354:1, eff. Sept. 5, 2008. 2009, 241:4, eff. Sept. 14, 2009.

### Section 194-B:3



**194-B:3 Chartered Public Schools; Establishment; Application; Amendment; Procedure. –**

I. (a) Except as otherwise provided in law, chartered public schools shall be fully exempt from state laws and rules which otherwise apply to public or nonpublic schools, or local school boards or districts. Notwithstanding the foregoing, chartered public schools shall have all the rights and privileges of other public schools.

(b) A chartered public school's board of trustees shall have full authority to determine the chartered public school's organization, methods, and goals.

II. Except as expressly provided in this chapter, the duty and role of the local school board relative to the establishment of a chartered public school shall be to approve or disapprove the proposed chartered public school application based upon whether or not the proposed application contains in specific detail the following required elements:

(a) Educational mission.

(b) Governance and organizational structure and plan.

(c) Methods by which trustees and their terms are determined.

(d) General description and proposed or potential location of facilities to be used, if such information is available.

(e) Maximum number, grade or age levels, and, as applicable, other information about pupils to be served.

(f) Curriculum that meets or exceeds state standards in the subject areas offered.

(g) Academic and other learning goals and objectives.

(h) Achievement tests to be used to measure pupil academic and other goal achievement including, but not limited to, objective and age-appropriate measures of literacy and numeracy skills, including spelling, reading, expository writing, history, geography, science, and mathematics.

(i) For schools offering high school grade levels, graduation requirements sufficient to ensure that the school has provided an adequate education for its pupils.

(j) Staffing overview, including qualifications sought for professionals and paraprofessionals.

(k) Personnel compensation plan, including provisions for leaves and other benefits, if any.

(l) Pupil transportation plan, including reasonable provision from the chartered public school's own resources for transportation of pupils residing outside the district in which the chartered public school is physically located.

(m) Statement of assurances related to nondiscrimination according to relevant state and federal laws.

(n) Method of coordinating with a pupil's local education agency (LEA) responsible for matters pertaining to any required special education programs or services including method of compliance with all federal and state laws pertaining to children with disabilities.

(o) Admission procedures.

(p) Philosophy of pupil governance and discipline, and age-appropriate due process procedures to be used for disciplinary matters including suspension and expulsion.

(q) Method of administering fiscal accounts and reporting, including a provision requiring fiscal audits and reports to be performed by an independent certified public accountant.

(r) Annual budget, including all sources of funding, and a projected budget for the next 2 years.

(s) School calendar arrangement and the number and duration of days pupils are to be served pursuant to RSA 194-B:8, III.

(t) Provision for providing continuing evidence of adequate insurance coverage.

(u) Identity of consultants to be used for various services, if known, or the qualifications or certifications of consultants not identified by name.

(v) Philosophy of parent involvement and related plans and procedures.

(w) A plan to develop and disseminate information to assist parents and pupils with decision-making about their choice of school.

(x) A global hold-harmless clause which states:

The chartered public school, its successors and assigns, covenants and agrees at all times to indemnify and hold harmless the (school district), any other school district which sends its students to the chartered public school, and their school boards, officers, directors, agents, employees, all funding districts and sources, and their successors and assigns, (the "indemnified parties") from any and all claims, demands, actions and causes of action, whether in law or in equity, and all damages, costs, losses, and expenses, including but not limited to reasonable attorneys' fees and legal costs, for any action or inaction of the chartered public school, its board, officers, employees, agents, representatives, contractors, guests and invitees, or pupils.

(y) Severability provisions and statement of assurance that any provision of the chartered public school contract found by competent authority to be contrary to applicable law, rule, or regulation shall not be enforceable.

(z) Provision for dissolution of the chartered public school including disposition of its assets or amendment of its program plan.

(aa) In the case of the conversion of a public school to a charter conversion school, provision for alternative arrangements for pupils who choose not to attend and teachers who choose not to teach at the chartered public school.

(bb) A plan for the education of the school's pupils after the chartered public school may cease operation.

(cc) In addition to an application, each chartered public school applicant, in consultation with the local school board, shall prepare a proposed contract. The contract shall include, but shall not be limited to, the following elements:

- (1) Purpose.
- (2) Written policies.
- (3) Authority of trustees.
- (4) Reporting, fiscal accounting and fiscal audits to be performed by a certified public accountant.
- (5) Contract agreements.
- (6) Indemnification.
- (7) Secular orientation.
- (8) Non-discrimination.
- (9) Health and safety.
- (10) Enrollment.
- (11) Attendance.
- (12) Availability of services.
- (13) Assessment of pupils.
- (14) Tuition and funding.
- (15) Property ownership.
- (16) Records.
- (17) Severability in accordance with subparagraph (y) above.
- (18) Assignment of contract.
- (19) Insurance.
- (20) Revocation.
- (21) Amendment.
- (22) Renewal.
- (23) Entire agreement.
- (24) Location, which shall be identified prior to submission to the legislative body.

(dd) An outline of the proposed accountability plan which clarifies expectations for evaluating the school's program and which contains an acknowledgement that a full accountability plan shall be

developed and ready to implement prior to the date of opening.

III. (a) [Repealed.]

(b) Proposed applications and contracts to establish a chartered public school shall be presented by July 1 of the year preceding intended operation of the chartered public school by its prospective board of trustees to the school board of the district in which the chartered public school intends to be located. The school board shall hold at least one public hearing on the application prior to September 15.

(c) By September 15 of the given year, the school board shall have completed its review of the proposed application and shall have granted or denied its approval. In its review the school board shall grant or deny the proposed application, using as its criteria whether or not the proposed application and contract contain and address the elements required under RSA 194-B:3, II. The school board reserves the right to suggest amendments or additions to the proposed application as it deems necessary to assure its completeness and compliance with this chapter. The school board shall forward the proposed application and contract, along with its approval or denial and a written statement specifying any areas deemed deficient, to the state board and to the applicant's prospective board of trustees.

(d) By December 31 of the given year, the state board shall have reviewed the proposed application and shall grant or deny the proposed application, using as its criteria whether or not the proposed application contains and addresses the elements required under RSA 194-B:3, II. The state board reserves the right to suggest amendments or additions to the proposed application as it deems necessary to assure its completeness and compliance with this chapter. Application disapprovals shall include a written statement specifying areas deemed deficient. The state board shall promptly notify the prospective board of trustees and the school board of its decision in writing. For any applicant chartered public school whose proposed application is deemed complete and is approved by the state board, the state board shall issue a charter enabling the formation and operation of the chartered public school.

(e) The state board shall submit 2 copies of the approved contract to the clerk of the school district who shall make the contract available for inspection by the voters of the school district. The school board shall submit a warrant article to the school district legislative body for ratification or denial without amendment. The ratification question shall be placed on the warrant of the next special or annual school district meeting and shall take the following form:

"Shall the district raise and appropriate the necessary funds and ratify the proposed contract between the \_\_\_\_\_ chartered public school and the \_\_\_\_\_ school district, for a period of 5 years for initial adoption or for a period of 7 years for renewal, with a first year annual appropriation of \$ \_\_\_ per student not to exceed \$ \_\_\_ which shall be approved by the voters in the district operating budget? The first year total financial impact of a 'yes' vote on this question is estimated by the school board at \$ \_\_\_.

\_\_\_\_\_ Yes \_\_\_\_\_ No

In districts without annual meetings, the legislative body shall have final authority to ratify or deny the state board approved contract. A ratified contract grants final authority for the chartered public school to operate for the life of its contract and to receive school district funds.

(f) The school's contract shall become effective July 1 immediately following ratification by the legislative body. Upon approval by the legislative body, contracts shall be for a 5-year term beginning on July 1 immediately following ratification by the legislative body.

IV. (a) The chartered public school's prospective board of trustees may appeal a denial by a school

board under RSA 194-B:3, III(c) to the state board by September 30 of the given year.

(b) The state board shall conduct a review of the proposed chartered public school application, using review standards as specified under RSA 194-B:3, II. The state board shall be authorized to suggest amendments or additions to the proposed application to both parties including, but not limited to, deficiencies identified by the local school board and the trustees, as the state board deems necessary to assure its completeness and compliance with this chapter. Application disapprovals by the state board shall include a written statement specifying areas deemed deficient or in the case of approval on appeal, the reasons for such action to both parties. The state board shall promptly notify the prospective board of trustees and the school board of its decision in writing.

(c) For any applicant chartered public school whose entire proposal is complete and is approved by the state board on appeal from denial by a school board, the state board shall issue a charter enabling the formation and operation of the chartered public school.

(d) To complete the process by which an applicant chartered public school may be approved on appeal from a school board denial, RSA 194-B:3, III(e), (f) and (g) must also be followed.

V. Persons or entities eligible to submit an application to establish a chartered public school shall include:

(a) A nonprofit organization including, but not limited to, a college, university, museum, service club, or similar entity.

(b) A group of 2 or more New Hampshire certified teachers.

(c) A group of 10 or more parents.

VI. (a) Any existing public school may by a vote of the school board become a charter conversion school, provided that, in addition to all other requirements of this chapter for establishment of a chartered public school:

(1) A majority of its prospective teachers vote by ballot to approve such conversion in a district with more than one school, or 2/3 of the teachers so vote in a single school district.

(2) The school superintendent and principal both provide their approval in writing.

(b) All pupils attending a school which successfully converts to charter status shall be eligible for admission to such chartered public school.

VII. Neither a school board nor the state board shall accept an application to form a chartered public school from state approved nonpublic schools, including those which may reorganize in any form.

VIII. Home education programs established pursuant to RSA 193-A shall not be eligible to be a chartered public school.

IX. A chartered public school which has not initiated operation within 2 years of the issuance of its charter shall submit a progress report to the state board and school board. The state board may withdraw its approved charter if substantial progress has not been made toward opening the chartered public school.

X. A school's charter may be renewed in the same manner that a new chartered public school is formed, except that a school's renewal term shall be for a period of 5 years.

XI. (a) A charter grantee may apply to the school board for amendment to its application and contract, which shall be granted or denied within 30 days at the school board's discretion. The school board shall notify the school in writing of the decision to grant or deny the proposed amendment, providing reasons for the decision. An approved amended contract shall be promptly signed by the school board within one month of approval.

(b) A charter grantee may appeal the denial of a proposed application and contract amendment to the state board. The state board shall review the proposed amendment and within 30 days shall notify the school and the school board in writing of the decision to grant or deny the amendment, providing reasons for the decision.

(c) Within one month of receipt of a notice of approval from the state board on appeal from a

school board denial, the school board shall promptly execute the proposed amended contract.

(d) When executed by the school board, an appealed amended application and contract shall be submitted promptly to the school district legislative body for subsequent ratification or denial without amendment, which decision shall be final. The ratification question shall be placed on the warrant of the next special or annual school district meeting. In districts without annual meetings, the legislative body shall have final authority to ratify or deny the proposed amended application and contract.

XII. For specific periods of time and for good cause shown, a school board and the state board may waive any deadlines applying in this section to their respective actions. A school board and the state board may provide technical assistance to improve a chartered public school's application or to speed the approval process. An applicant whose proposed application is not approved by a school board or by the state board shall be granted the opportunity to present a revised application for reconsideration.

XIII. The board of trustees of a chartered public school may acquire real property by lease, purchase, lease with purchase option, gift, or otherwise at any time prior to receiving a charter.

**Source.** 1995, 260:6. 1997, 334:2-9. 1998, 268:1. 1999, 101:1-5. 2004, 222:2, 3, 6. 2005, 257:15. 2007, 270:3, eff. June 29, 2007. 2008, 274:24, 31, eff. July 1, 2008; 354:1, eff. Sept. 5, 2008. 2009, 241:15, 16, II, III, eff. Sept. 14, 2009. 2010, 265:2, eff. Jan. 1, 2011. 2012, 199:5, eff. Aug. 12, 2012.

### **Section 194-B:3-a**

#### **194-B:3-a Chartered Public School Approval by State Board of Education. –**

I. The state board of education may grant charter status to applicants that meet the requirements of this chapter.

II. The proposed chartered public school application shall be presented for approval directly to the state board of education by the applicant for the prospective chartered public school. The content of such application shall conform to the requirements set forth in RSA 194-B:3, II(a)-(bb) and (dd). The department of education shall notify an applicant of any missing information within 10 days of the initial filing. The applicant shall file any missing information before the department reviews the application.

III. The department of education may forward the proposed application to the applicant, along with a written statement detailing any suggested amendments or modifications.

IV. The state board of education shall either approve or deny an application using reasonable discretion in the assessment of the elements set forth in RSA 194-B:3, II, (a)-(bb) and (dd). Lack of state funding alone shall not constitute grounds for the denial of an application. Approval of an application constitutes the granting of charter status and the right to operate as a chartered public school. The state board of education shall notify all applicants of its decision in writing, and shall include in any notice of denial a written statement specifying any areas deemed deficient, the reasons for the denial, and explaining that the applicant may reapply under RSA 194-B:3 or under this section in a subsequent year.

V. (a) The following provisions of law shall not apply to chartered public school applications proposed under this section, or to chartered public schools granted approval for operation under this section:

- (1) RSA 194-B:3, II(cc).
- (2) RSA 194-B:3, III-IV.
- (3) RSA 194-B:3, XI.
- (4) RSA 194-B:15, II.

(b) Except as provided in this paragraph, the provisions of RSA 194-B shall apply to chartered public schools approved for operation by the state board of education under this section.

(c) [Repealed.]

**Source.** 2003, 273:1. 2004, 222:4, 5, eff. June 11, 2004. 2008, 354:1, eff. Sept. 5, 2008. 2009, 241:5, eff. Sept. 14, 2009. 2011, 228:1, eff. June 29, 2011. 2013, 144:62, eff. July 1, 2013. 2014, 61:1, eff. July 26, 2014.

### **Section 194-B:4**

**194-B:4 Chartered Public Schools and Open Enrollment Schools; Procedure for Adoption and Rescission; Limitations.** – [Repealed 2009, 241:16, I, eff. Sept. 14, 2009.]

### **Section 194-B:5**

#### **194-B:5 Chartered Public Schools; Authority and Duties of Board of Trustees.** –

I. Unless otherwise provided in this chapter, the board of trustees of a chartered public school, upon issuance of its charter, shall have general supervisory control and authority over the operations of the chartered public school.

II. No greater than 25 percent of the membership of a school board, or one member, whichever number is greater, may simultaneously serve as members of the board of trustees of a charter or charter conversion school. No greater than 25 percent of the membership of the board of trustees of a charter or charter conversion school, or one member, whichever is greater, may simultaneously serve as members of any school board. A chartered public school board of trustees shall include no fewer than 25 percent or 2 parents of pupils attending the chartered public school, whichever is greater. Teachers of a chartered public school may serve on its board of trustees.

III. Notwithstanding RSA 194-B:1, III, an established chartered public school shall be a corporation, which shall be registered with the secretary of state after receiving approval under this chapter but before its first day of actual operation, with authority necessary or desirable to carry out its charter program including, but not limited to, the following:

(a) To adopt a name and corporate seal, provided that any name selected shall include the words "chartered public school."

(b) To sue and be sued, but only to the same extent and upon the same conditions that a town can be sued.

(c) To acquire real property from public or private sources by lease, by lease with an option to purchase, or by gift for use as a school facility, provided that such acquisition is consistent with established school purposes.

(d) To receive and disburse funds for school purposes.

(e) To make contracts and leases for the procurement of services, equipment, and supplies, provided that:

(1) If the board of trustees intends to procure substantially all educational services under contract with another person or entity, the terms of such a contract shall be provided in an addendum in the school's contract.

(2) The state board and the school board shall not approve any such contract terms, the purpose or effect of which is to avoid the prohibition in this chapter against chartered public school status for nonpublic schools.

(f) To incur temporary debt in anticipation of receipt of funds.

(g) To solicit, accept, manage, and use any grants or gifts, provided that such activities are consistent with established school purposes.

(h) For chartered public schools that have been in operation for 5 or more years, to incur long-term debt for the purpose of purchasing buildings or land, or for new construction or renovations to existing buildings. The state shall not be liable for any debt or other financial obligation incurred under this subparagraph.

(i) To have such other powers that are available to a business corporation formed under RSA 293-A and that are not inconsistent with this chapter.

IV. The board of trustees shall report to the school board at least quarterly for public information purposes only, regarding the progress of the chartered public school's achievement of its stated goals. The chartered public school shall solicit advice from the school board. The school board and the chartered public school shall adopt mutually acceptable content requirements for the quarterly report which shall include, but not be limited to, a financial statement. During the pilot program in RSA 194-B:20, the school board shall forward the trustees' reports with its evaluation to the state board and the legislative oversight committee.

IV-a. [Repealed.]

V. A chartered public school and the host school district are encouraged to enter into mutually advantageous contractual relationships resulting in the sharing of transportation, instructional, athletic, maintenance, and other services and facilities.

VI. The meetings and proceedings of the board of trustees shall be held in public session pursuant to RSA 91-A:2, except for those meetings or proceedings designated as nonpublic sessions as defined in RSA 91-A:3, II.

VII. Any member of a chartered public school board of trustees who also serves as an employee, agent, or board member of any for-profit entity with whom the chartered public school contracts for goods or services shall make public disclosure of such fact and shall recuse oneself from any business the chartered public school may have with the for-profit entity. Any contract executed in violation of this paragraph shall be voidable at the discretion of the commissioner of the department of education. A member of a chartered public school board of trustees who executes a contract in violation of this paragraph may be held personally liable to the chartered public school for any damages caused by such contract.

**Source.** 1995, 260:6. 1998, 268:2. 2003, 273:4, 6, 7, III. 2004, 222:7. 2006, 301:3, eff. June 19, 2006. 2008, 354:1, eff. Sept. 5, 2008. 2012, 119:1, eff. Aug. 4, 2012.

### Section 194-B:6

**194-B:6 Chartered Public Schools; Liability.** – No host, sending, or receiving district shall be held liable for damages in an action to recover for: (a) bodily injury, personal injury, or property damage as defined in RSA 507-B:1, or (b) for failure to educate pupils, where such actions arise out of the establishment or operation of a chartered public school.

**Source.** 1995, 260:6. 1998, 268:3, eff. July 1, 1998. 2008, 354:1, eff. Sept. 5, 2008.

### Section 194-B:7

**194-B:7 Chartered Public Schools; Secular or Nonsecular Determination.** – For purposes of determining whether a proposed chartered public school is a prohibited religious school, the following 3-part test set forth by the United States Supreme Court shall be used.

I. The school shall have a secular purpose.

II. The school's "primary effect" shall neither advance nor prohibit religion.

III. The school shall not foster "excessive entanglement" between the school and religion.

**Source.** 1995, 260:6, eff. July 1, 1995. 2008, 354:1, eff. Sept. 5, 2008.

### Section 194-B:8

**194-B:8 Chartered Public Schools; Requirements; Options. –**

I. A chartered public school shall not discriminate nor violate individual civil rights in any manner prohibited by law. A chartered public school shall not discriminate against any child with a disability as defined in RSA 186-C. A chartered public school shall provide due process in accordance with state and federal laws and rules.

II. A chartered public school shall comply with all applicable state and federal health and safety laws, rules, and regulations.

III. A chartered public school shall provide instruction for at least the number of days required by state law. A chartered public school shall comply with compulsory attendance laws as provided in RSA 189:1, 189:1-a, and 193:1. Innovative scheduling resulting in at least that number of attendance hours required under RSA 186-C:15, 189:1, 189:1-a, and 193:1 and current state board attendance rules shall be encouraged.

IV. A chartered public school providing the only available public education services at a specific grade level in a school district shall offer those educational services to all resident pupils of that grade level.

V. At least annually and near the end of each school year, a chartered public school shall evaluate the educational progress of each pupil, as specified in RSA 194-B:3, II(h). Such evaluation shall include, but not be limited to, the New Hampshire statewide education improvement and assessment program, as provided in RSA 193-C. The cost of the state assessment program shall be borne by the state.

VI. A chartered public school may be located in part of an existing public school building, in space provided on a private work site, in a public building, or any other suitable location. A chartered public school may own, lease, or rent its own space, or utilize space based on other innovative arrangements.

VII. (a) A chartered public school may contract for services with any private or public entity including, but not limited to, private and public schools or districts, except for teaching services which may not be obtained from a nonpublic school.

(b) All contracted services shall be defined by purchase order or written contract in advance of such service being provided.

(c) Any contractor shall provide proof of adequate professional liability insurance.

(d) Subcontracts for teaching services with nonpublic schools are prohibited.

**Source.** 1995, 260:6, eff. July 1, 1995. 2008, 274:25, 26, eff. July 1, 2008; 274:34, 35, eff. Sept. 5, 2008; 354:1, eff. Sept. 5, 2008. 2012, 185:2, eff. Aug. 10, 2012.

**Section 194-B:9****194-B:9 Chartered Public Schools; Pupil Selection; Enrollment; Separation. –**

I. Except as provided for under RSA 194-B:8, IV:

(a) Chartered public schools may set maximum enrollment as they deem appropriate.

(b) Chartered public schools may limit enrollment to specific grade or age levels, pupil needs, or areas of academic focus including, but not limited to, at-risk pupils, vocational education pupils, mathematics, science, the arts, history, or languages.

(c)(1) Chartered public schools may select pupils on the basis of aptitude, academic achievement, or need, provided that such selection is directly related to the academic goals of the school.

(2) If the number of otherwise eligible applicants to a particular chartered public school exceeds that school's maximum published enrollment, that school shall use lottery selection as a basis for admission.

(3) If the number of otherwise eligible applicants to chartered public schools located inside and outside the school district exceeds that district's published maximum percentage of pupils authorized



to attend such schools, the district shall use lottery selection as a basis for pupil eligibility, and in accordance with RSA 194-B:2, IV.

II. A pupil may withdraw from a chartered public school at any time and enroll in a public school where the pupil resides, except that no pupil shall change schools more than once each school year. That pupil's local school board may waive this limitation after a hearing.

III. A pupil may be suspended or expelled from a chartered public school based on criteria determined by the board of trustees consistent with the advice of the principal and teachers and in conformance with RSA 193:13. No public school shall be obligated to enroll an expelled pupil.

IV. For the purpose of this chapter, any resident pupil enrolled in a chartered public school is to be considered reassigned to the chartered public school for purposes of school attendance.

**Source.** 1995, 260:6. 1997, 334:12, 13, eff. June 23, 1997. 2008, 354:1, 3, eff. Sept. 5, 2008. 2009, 241:6, eff. Sept. 14, 2009.

### **Section 194-B:10**

#### **194-B:10 Chartered Public Schools; Reporting Requirements. –**

I. Each chartered public school shall provide one copy of its annual report to the state board and to its local school board. This report shall also be available to any person who expressly requests it.

II. A chartered public school shall provide at its own expense an annual financial audit and report to the state board and the school board complying with any current format and content requirements imposed upon a public school. The report shall include the number of pupils served by the school and their respective tuition rates and a discussion of progress made towards the achievement of the school's academic and other goals set forth in its charter.

III. To ensure compliance with its application and contract and applicable law, a chartered public school shall be subject to a first year program audit by the department of education or its agent, and shall be subject to a program audit by the department of education at least once every 3 years thereafter.

IV. A summary version of any annual and periodic reports required in this chapter shall be provided to the parent or guardian of each pupil enrolled at a chartered public school and shall be made available to the legislative body.

V. A representative of a chartered public school shall attend and be prepared to report at and answer questions during relevant portions of the annual school district budget process.

**Source.** 1995, 260:6. 1997, 334:14, eff. June 23, 1997. 2008, 354:1, eff. Sept. 5, 2008. 2013, 144:64, eff. July 1, 2013.

### **Section 194-B:11**

**194-B:11 Chartered Public Schools; Funding. –** Chartered public schools shall be funded as follows:

I. (a) There shall be no tuition charge for any pupil attending a charter conversion school located in that pupil's resident district. Funding limitations in this chapter shall not be applicable to charter conversion schools located in a pupil's resident district. For a chartered public school authorized by the school district, the pupil's resident district shall pay to such school an amount equal to not less than 80 percent of that district's average cost per pupil as determined by the department of education using the most recent available data as reported by the district to the department. For pupils resident in this state who attend full-time a chartered public school authorized by a school district other than the pupil's resident school district, the state shall pay tuition pursuant to RSA 198:40-a directly to the

chartered public school for such pupil. Nothing in this subparagraph shall alter or modify the funding of the Virtual Learning Academy Charter School.

(b)(1) Except as provided in subparagraph (2), for a chartered public school authorized by the state board of education pursuant to RSA 194-B:3-a, the state shall pay tuition pursuant to RSA 198:40-a plus an additional grant of \$2,000 directly to the chartered public school for each pupil who is a resident of this state in attendance at such chartered public school.

(2) For an online chartered public school which receives its initial authorization to operate from the state board of education pursuant to RSA 194-B:3-a on or after July 1, 2013, the state shall pay tuition pursuant to RSA 198:40-a directly to the online chartered public school for each pupil who is a resident of this state in attendance at such chartered public school. In this subparagraph, "online chartered public school" means a chartered public school which provides the majority of its classes and instruction on the Internet.

(c) The commissioner of the department of education shall calculate and distribute chartered public school tuition payments as set forth herein. The first payment shall be 30 percent of the per pupil amount multiplied by the number of eligible pupils present on the first day of the current school year. Such payment shall be made no later than 15 days after the department of education receives the attendance report. The December 1 payment shall be 30 percent of the per pupil amount multiplied by the membership on November 1, and the March 1 payment shall be 30 percent of the per pupil amount multiplied by the membership on February 1. To calculate the final payment, the commissioner of the department of education shall multiply the per pupil amount by the average daily membership in attendance for the full school year, and subtract the total amount of the first 3 payments made. The remaining balance shall be the final payment. Eligible chartered public schools shall report membership in accordance with RSA 189:1-d. In this subparagraph, "membership" shall be as defined in RSA 189:1-d, II. Tuition amounts shall be prorated on a per diem basis for pupils attending a school for less than a full school year.

(d) The source of funds for payments under this section shall be moneys from the education trust fund established in RSA 198:39.

II. A school district lacking a meaningful basis to determine average expenditure per pupil may use statewide average figures as determined by the department of education for the purposes of this chapter.

III. (a) In accordance with current department of education standards, the funding and educational decision-making process for children with disabilities attending a chartered public school shall be the responsibility of the resident district and shall retain all current options available to the parent and to the school district.

(b) When a child is enrolled by a parent in a chartered public school, the local education agency of the child's resident district shall convene a meeting of the individualized education program (IEP) team and shall invite a representative of the chartered public school to that meeting. At the meeting, the IEP team shall determine how to ensure the provision of a free and appropriate public education in accordance with the child's IEP. The child's special education and related services shall be provided using any or all of the methods listed below starting with the least restrictive environment:

- (1) The resident district may send staff to the chartered public school; or
- (2) The resident district may contract with a service provider to provide the services at the chartered public school; or
- (3) The resident district may provide the services at the resident district school; or
- (4) The resident district may provide the services at the service provider's location; or
- (5) The resident district may contract with a chartered public school to provide the services; and
- (6) If the child requires transportation to and/or from the chartered public school before, after, or during the school day in order to receive special education and related services as provided in the IEP, the child's resident district shall provide transportation for the child.

(c) Consistent with section 5210(1) of the Elementary and Secondary Education Act and section 300.209 of the Individuals with Disabilities Education Act, when a parent enrolls a child with a disability in a chartered public school, the child and the child's parents shall retain all rights under federal and state special education law, including the child's right to be provided with a free and appropriate public education, which includes all of the special education and related services included in the child's IEP. The child's resident district shall have the responsibility, including financial responsibility, to ensure the provision of the special education and related services in the child's IEP, and the chartered public school shall cooperate with the child's resident district in the provision of the child's special education and related services.

IV. Any federal or other funding available in any year to a sending district shall, to the extent and in a manner acceptable to the funding source, be directed to a chartered public school in a receiving district on an eligible per pupil basis. This funding shall include, but not be limited to, funding under federal Chapters I and II of Title II, and Drug-Free Schools, in whatever form the funding is available in any year.

IV-a. The commissioner of the department of education shall apply for all federal funding available to chartered public schools under the No Child Left Behind Act, Title I of the Elementary and Secondary Education Act, or other federal source of funds. The commissioner shall expend any such funds received in a manner acceptable to the funding source.

V. (a) A sending district may provide funds, services, equipment, materials or personnel to a chartered public school, in addition to the amounts specified in this section in accordance with the policies of the sending school district.

(b) A chartered public school may accept pupils at tuition rates at less than the amounts established by this chapter.

(c) A chartered public school, other than a charter conversion school, shall accept an otherwise eligible out-of-district pupil regardless of that pupil's sending district's tuition amount.

VI. A chartered public school may receive financial aid, private gifts, grants, or revenue as if it were a school district. A chartered public school shall not be compelled to accept funding from any source.

VII. No school building aid under RSA 198:15-a through 15-h shall be awarded to a chartered public school for the purpose of acquiring land or buildings, or for constructing, reconstructing, or improving the chartered public school, unless the building is owned by the school district, under lease to the chartered public school, and such lease does not include an option to purchase the building. A charter conversion school shall be eligible for school building aid.

VIII. [Repealed.]

IX. [Repealed.]

X. There shall be an appropriation in the fiscal year beginning on July 1, 2003 for the establishment of chartered public schools under this section. Chartered public schools which are eligible for grants under this program shall match funds provided by the state through private contributions in order to receive funding that exceeds the state's average per pupil cost for the grade level weight of the pupil. State funds shall be provided in addition to any other sums provided by the state. Grants under this section shall be administered and determined by the state board of education which shall have the authority to develop a grant application, written procedures and criteria used to determine eligibility for grants, and procedures for the administration of grants by recipients, including reporting requirements. The total grants provided under this program shall not exceed the amount of money appropriated in the budget, or transferred, or provided by gift or grant to the state for this purpose.

XI. Any money appropriated in the budget for matching chartered public school grants that remains unused after the department of education issues matching grants to eligible recipients under paragraph X shall be used to provide a one-year transitional grant to public school districts that have lost pupils as a result of the establishment of a chartered public school, and have paid tuition to the chartered

public school in cash pursuant to subparagraph IX(a). For the first year in which a public school pupil leaves the public school and enrolls in a chartered public school, the school district that loses the pupil shall be eligible for a chartered public school transitional grant beginning July 1, 2004 and every fiscal year thereafter, in an amount per pupil equal to the amount determined in RSA 198:41. Such transitional grants shall be administered by the state board of education which shall have the authority to determine eligibility and the amount of money to be awarded to school districts under this section, subject to the amount appropriated in the budget.

**Source.** 1995, 260:6. 1997, 334:15. 1998, 268:4. 1999, 17:58, VI. 2003, 273:2, 3. 2005, 257:15, 17, 18. 2006, 301:1, 4, 7, eff. June 19, 2006. 2008, 173:12, eff. July 1, 2009; 274:27, eff. July 1, 2008; 274:36, eff. Sept. 5, 2008; 354:1, 4, eff. Sept. 5, 2008. 2009, 241:7, eff. Sept. 14, 2009. 2011, 224:154, eff. July 1, 2011; 228:2, eff. June 29, 2011; 258:1, eff. July 1, 2011. 2012, 185:1, eff. Aug. 10, 2012. 2013, 144:63, eff. July 1, 2013.

### **Section 194-B:12**

**194-B:12 Chartered Public Schools; Budgets.** – That portion of a school district's estimated expenditures on chartered public school tuition shall be shown as a separate line item in a school district's budget.

**Source.** 1995, 260:6, eff. July 1, 1995. 2009, 241:8, eff. Sept. 14, 2009.

### **Section 194-B:13**

#### **194-B:13 Chartered Public Schools; Operations; Curriculum.** –

- I. A chartered public school shall operate in accordance with its charter.
- II. The internal form of governance of a chartered public school shall be determined by the school's charter.
- III. The board of trustees, in consultation with teachers and the principal, shall determine the chartered public school's curriculum and develop the school's annual budget.
- IV. The board of trustees shall be considered the public employer for the purpose of collective bargaining.

**Source.** 1995, 260:6, eff. July 1, 1995. 2008, 354:1, eff. Sept. 5, 2008.

### **Section 194-B:14**

#### **194-B:14 Chartered Public Schools; Employees.** –

- I. Employees of chartered public schools shall be considered public employees for the purpose of collective bargaining.
- II. (a) Any teacher may choose to be an employee of a chartered public school, in which case such teacher shall have the rights of a teacher in public education to join or organize collective bargaining units.
  - (b) Bargaining units at a chartered public school shall be separate from other bargaining units.
  - (c) No chartered public school teacher shall be a member of more than one bargaining unit.
  - (d) A teacher who serves as a member of the board of trustees of a chartered public school in which that teacher is an employee may not participate in or vote as a member of the board on collective bargaining matters.
  - (e) A teacher in a chartered public school shall have withdrawn from any bargaining unit with

which that teacher may have been previously affiliated.

III. A public chartered public school may choose to participate in the state teacher retirement system, and service in a public chartered public school shall be deemed creditable service under RSA 100-A:4.

IV. The teaching staff of a chartered public school shall consist of a minimum of 50 percent of teachers either New Hampshire certified or having at least 3 years of teaching experience.

**Source.** 1995, 260:6. 2003, 273:8, eff. July 1, 2003. 2008, 354:1, eff. Sept. 5, 2008.

### **Section 194-B:15**

#### **194-B:15 Chartered Public Schools; Grievance Procedure. –**

I. Individuals or groups may complain to a chartered public school's board of trustees concerning any claimed violation of the provisions of the school's application and contract.

II. If, after presenting their complaint to the trustees, the individuals or groups believe their complaint has not been adequately addressed, they may submit their complaint to the school board, which shall investigate such complaint and make a determination. School board decisions with respect to grievances may be appealed to the state board.

III. [Repealed.]

**Source.** 1995, 260:6. 1997, 334:16. 2003, 273:5, eff. July 1, 2003; 273:7, II, eff. July 1, 2013. 2008, 354:1, eff. Sept. 5, 2008.

### **Section 194-B:16**

#### **194-B:16 Charter Revocation; Probation. –**

I. Written petition to the state board to revoke a school's charter may be requested by the parent of any pupil currently attending that chartered public school, or by the school board of a host or receiving school district.

II. After reasonable notice has been provided to all affected parties, the state board may revoke a school's charter prior to the expiration of its term under the following circumstances:

(a) The school commits a material violation of any of the conditions, standards, or procedures set forth in its charter application and contract.

(b) The school fails to meet generally accepted standards for fiscal management.

(c) The school significantly violates the law.

(d) The school makes a material misrepresentation in its application or contract application.

(e) The school becomes insolvent or financially unstable.

III. Before revoking a school's charter, the state board shall consult with the school board and the board of trustees on the development and implementation of a remedial plan.

IV. The state board may place a chartered public school on probationary status for up to one year to allow the implementation of a remedial plan, after which, if the plan is unsuccessful, the charter shall be revoked.

V. Nothing contained in this section shall prevent the state board from immediately revoking a school's charter in circumstances posing extraordinary risk of harm to pupils.

VI. By the end of its final contract year, the chartered public school shall meet or exceed the objective academic test results or standards and goals as set forth in its application. If the school does not meet these results or standards and goals, it shall not be eligible for renewal of its charter.

VII. If a school's charter expires or is revoked, the school shall be dissolved under the provisions of its charter application and contract. If the contract provisions are silent or ambiguous as to disposition

of any asset of the school, such asset shall revert to the school district in which the chartered public school is located at no cost to that district, subject to the school district's acceptance of the asset. Under no circumstances shall the school district be liable for any obligations of the dissolved chartered public school.

VIII. If a school's charter expires or is revoked, the parent of a pupil attending that school may apply to any other chartered public school eligible to receive tuition under the provisions of this chapter adopted by the school district. The pupil's sending district shall not be relieved of its obligation to educate that pupil in accordance with the district's policies.

**Source.** 1995, 260:6. 1997, 334:17-19, eff. June 23, 1997. 2008, 354:1, eff. Sept. 5, 2008. 2009, 241:9, eff. Sept. 14, 2009.

### **Section 194-B:17**

#### **194-B:17 State Board; Duties. –**

I. The state board of education shall establish guidelines and criteria consistent with this chapter to be used by applicants in drafting a chartered public school contract and by school boards to determine whether or not an applicant's chartered public school contract proposal conforms with the intent of this chapter.

II. The state board shall publish sample chartered public school contract agreements. There shall be no requirement that any of the terms and conditions of such sample agreements be adopted by any chartered public school, other than as specified in this chapter.

III. The state board shall disseminate information to the public on ways to form, convert, and operate a chartered public school.

IV. The state board shall adopt uniform statewide annual deadlines and procedures for pupil enrollment applications and school and parental enrollment decisions for chartered public schools.

V. The state board shall develop procedures and guidelines for revocation and renewal of a school's charter.

VI. The state board shall convene one or more working committees to study and make recommendations regarding the implementation and effectiveness of chartered public schools. The recommendations shall be provided to the legislative oversight committee in RSA 194-B:21.

VII. The state board shall ensure, through its process of granting new chartered public school charters, that, on a statewide basis, the operation of chartered public schools does not result in illegal discrimination against any category of pupils.

VIII. The state board shall annually report to the joint legislative oversight committee established in RSA 194-B:21 regarding chartered public school approvals and denials for the preceding 12 months and the reasons for such approvals or denials.

**Source.** 1995, 260:6. 2004, 222:8, eff. June 11, 2004. 2008, 354:1, eff. Sept. 5, 2008. 2009, 241:10, 11, eff. Sept. 14, 2009.

### **Section 194-B:18**

**194-B:18 State Board Rulemaking Authority. –** The state board shall be authorized to adopt rules, under RSA 541-A, to permit administration of the provisions of this chapter.

**Source.** 1995, 260:6, eff. July 1, 1995.

### **Section 194-B:19**

**194-B:19 Provisions Controlling; Voting. –**

I. The provisions of this chapter shall be controlling over any other contradictory or inconsistent provisions of law.

II. All votes and decisions in this chapter shall be determined by majority, unless otherwise specified.

**Source.** 1995, 260:6, eff. July 1, 1995.

**Section 194-B:20**

**194-B:20 Pilot Program. –** [Repealed 1995, 260:9, eff. July 1, 2000.]

**Section 194-B:21****194-B:21 Oversight Committee; Report. –**

I. There is hereby established a joint legislative oversight committee. The committee shall jointly meet at least once a year and shall monitor the effect of this chapter, make recommendations for any legislative changes with respect thereto, and make recommendations to the legislature to reduce the scope of, ease the administration of, simplify the compliance with, and, where appropriate, recommend to the legislature elimination of regulations and reduction of the amount of paperwork required. The committee shall include 3 senators appointed by the president of the senate, 3 members of the house appointed by the speaker of the house, and one member of the state board appointed by the chairperson of the state board who shall serve as a nonvoting member in an advisory capacity.

II. The committee shall submit a written report of its findings and recommendations to the president of the senate, the speaker of the house, and the chairpersons of the house and senate education committees on November 1 of each year, except for the year 2000, when the report shall be submitted on July 1.

**Source.** 1995, 260:6, eff. July 1, 1995. 2008, 274:28, eff. July 1, 2008.

**Section 194-B:22**

**194-B:22 Severability. –** If any provision of this chapter, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect the other provisions or applications of the chapter which can be given effect without the invalid provisions or applications and to this end the provisions of this chapter are severable.

**Source.** 1995, 260:6, eff. July 1, 1995.

# TITLE XV EDUCATION

## CHAPTER 186-C SPECIAL EDUCATION

### Section 186-C:1

**186-C:1 Policy and Purpose.** – It is hereby declared to be the policy of the state that:

I. All children in New Hampshire be provided with equal educational opportunities. It is the purpose of this chapter to ensure that all children with disabilities have available to them a free appropriate public education in the least restrictive environment that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living.

II. The rights of children with disabilities and parents of such children are protected.

III. Local school districts, the department of education, and other public agencies or approved programs provide for the education of all children with disabilities.

**Source.** 1981, 352:2. 1990, 140:2, X. 1998, 177:1. 2002, 158:1. 2003, 215:3, eff. Aug. 30, 2003. 2008, 274:31, eff. July 1, 2008; 302:34, eff. Jan. 1, 2009.

### Section 186-C:2

**186-C:2 Definitions.** – In this chapter:

I. "Child with a disability" means any person 3 years of age or older but less than 21 years of age who has been identified and evaluated by a school district according to rules adopted by the state board of education and determined to have an intellectual disability, a hearing impairment including deafness, a speech or language impairment, a visual impairment including blindness, an emotional disturbance, an orthopedic impairment, autism, traumatic brain injury, acquired brain injury, another health impairment, a specific learning disability, deaf-blindness, multiple disabilities, or a child at least 3 years of age but less than 10 years of age, experiencing developmental delays, who because of such impairment, needs special education or special education and related services. "Child with a disability" shall include a child ages 18 to 21, who was identified as a child with a disability and received services in accordance with an individualized education program but who left school prior to his or her incarceration, or was identified as a child with a disability but did not have an individualized education program in his or her last educational institution.

I-a. "Developmentally delayed child" means a child at least 3 years of age or older, but less than 10 years of age, who, because of impairments in development, needs special education or special education and related services, and may be identified as being developmentally delayed provided that such a child meets the criteria established by the state board of education.

I-b. "Division" means the division of educational improvement, department of education.

II. "Approved program" means a program of special education that has been approved by the state board of education and that is maintained by a school district, regional special education center, private organization, or state facility for the benefit of children with disabilities, and may include home instruction provided by the school district.



III. "Individualized education program" means a written plan for the education of a child with a disability that has been developed by a school district in accordance with rules adopted by the state board of education and that provides necessary special education or special education and related services within an approved program.

IV. "Special education" means instruction specifically designed to meet the unique needs of a child with a disability.

V. (a) "Related services" means:

(1) Suitable transportation to all children with disabilities whose individualized education program requires such transportation. The school district may board a child as close to the place where instruction is to be furnished as possible, and shall provide transportation, if required by the child's individualized education program, from the place where the child is boarded to the place of instruction; and

(2) Such developmental, corrective, and other supportive services as are specifically required by an individualized education program to assist a child with a disability to benefit from special education; and

(3) Services necessary for a child with a disability to benefit from special education and when placement in a residential facility has been made by the legally responsible school district in order to comply with RSA 186-C:9, or when placement has been ordered by a hearings officer or by a court of competent jurisdiction on appeal, pursuant to rules adopted by the state board of education under RSA 186-C:16, IV.

(b) "Related services" shall not include medical services unless such services are necessary for purposes of diagnosis and evaluation.

VI. "Functionally blind" means a pupil who has:

(a) Visual acuity of 20/200 or less in the better eye with the use of the best correction for any refractive error, or a limited field of vision in which the widest diameter of the visual field subtends an angle no greater than 20 degrees.

(b) A medically indicated expectation of visual deterioration.

(c) A functional limitation resulting from a medically diagnosed visual impairment which restricts the child's ability to read and write standard print at levels expected of other children of comparable ability and grade level.

VII. "Parent" means:

(a) A natural or adoptive parent of a child who has legal custody of the child;

(b) A guardian of a child, but not the state when the state has legal guardianship of the child;

(c) A person acting in the place of a custodial parent or guardian of a child, if no other custodial parent or guardian is available, who is designated in writing to make educational decisions on the child's behalf by such parent or guardian;

(d) A surrogate parent who has been appointed in accordance with RSA 186-C:14; or

(e) A foster parent of a child who has been appointed in accordance with RSA 186-C:14-a.

**Source.** 1981, 352:2. 1990, 140:2, X. 1991, 80:1. 1993, 108:1. 1994, 379:12. 1997, 89:1; 114:1. 1998, 177:2. 1999, 107:1. 2002, 205:1. 2003, 215:1, eff. Aug. 30, 2003. 2008, 52:20, eff. July 11, 2008; 274:29 to 31, 33, eff. July 1, 2008; 302:35 eff. Jan. 1, 2009.

### Section 186-C:3

#### **186-C:3 Division of Educational Improvement; Special Education; Programs and Services. –**

The department shall hire and assign such personnel or contract for services to perform responsibilities required under state or federal special education law, including, but not limited to, monitoring, compliance, and technical assistance and support to school districts. Special education

services of the division of educational improvement shall be fully coordinated and integrated with the department's general curriculum and instruction activities.

**Source.** 1981, 352:2. 1985, 269:3. 1994, 379:13, eff. June 9, 1994. 2008, 302:3, eff. Jan. 1, 2009.

### **Section 186-C:3-a**

#### **186-C:3-a Duties. –**

I. The division shall help school districts meet their responsibilities under this chapter and under federal law regarding the education of children with disabilities.

I-a. The special education program of the department of education shall develop and analyze information on issues and problems of regional and statewide importance and on assisting school districts in dealing with these issues and problems. The department shall ensure that the regulation and monitoring of school district activities shall not exceed what is necessary for compliance with this chapter and with state and federal law regarding the education of children with disabilities.

II. The department of education shall collect, organize, and analyze data and information about programs, conditions, instruction, and trends in special education in the state. In addition, the department shall be responsible for monitoring and maintaining information about national and regional trends, instructions and issues affecting special education in New Hampshire. The department shall make this information available to the districts and use this information to:

- (a) Assess the needs of school districts for assistance in carrying out their responsibilities for educating children with disabilities;
- (b) Identify cost effective and appropriate alternative programs that meet the needs of children with disabilities;
- (c) Focus resources on students requiring extensive services;
- (d) Develop cost and service level benchmarks for special education in New Hampshire which may be used as reference points by districts to measure the effectiveness of their programs in meeting goals and objectives of the individualized education program; and

(e) Develop and promote evidence-based practices supporting the education of children with disabilities in the least restrictive environment, provided that:

(1) If children with disabilities are being placed in out-of-district programs solely due to a lack of qualified personnel, the department shall develop and implement strategies to help address the shortage and increase the capacity of local education agencies to serve children in the schools they would attend if not disabled.

(2) The department shall identify disproportionate representation in out-of-district programs and provide focused technical assistance to help the identified school districts serve children with disabilities in the least restrictive environment.

II-a. (a) In addition to the requirements of paragraph II, the department of education shall annually submit a report to the commissioner of the department and the state board of education that:

(1) Shows the identification of children with disabilities analyzed according to the following criteria: age and grade level, and number and percentage of the total number of children with disabilities in each disability category.

(2) Includes expenditures for special education as reported to the department of education by school districts and state and federal revenues for special education received by school districts.

(3) Shows the annual progress and compliance on the state's performance plan required by 20 U.S.C. section 1416(b), 20 U.S.C. section 1412(a)(15), and 20 U.S.C. section 1416(a)(3).

(4) Shows the progress and compliance with the requirements in the No Child Left Behind Act of 2001, 20 U.S.C. section 6311(b), and RSA 193-E:3 and RSA 193-H:2 with respect to children with disabilities.

(b) These findings shall be reported for the state and for each school district. The commissioner shall make this report available upon request to all legislators, school officials from school districts, school administrative units, cooperative schools, AREA schools, and the general public, and shall make it available in an easily accessible format on the department of education website. In preparing such reports, the department of education shall not disclose personally identifiable information.

III. The department of education shall provide technical assistance and information to the school districts so that the districts may effectively and efficiently identify, clarify and address their specific responsibilities under state and federal special education laws. This assistance shall include the provision of mediation services to resolve special education disputes and the provision of expertise regarding specific educationally disabling conditions. Whenever technical assistance of a specialized nature, beyond that available in the department, is required, the department shall assume a leadership role in identifying sources of such assistance in other state agencies, the federal government, volunteer services or the private sector.

IV. The department of education shall administer those federal and state funding programs for special education assigned to it by law. The department shall also make recommendations to the state board regarding management systems, standard definitions and procedures in order to provide uniform reporting of special education services and expenditures by school districts and school administrative units.

V. The department of education shall monitor the operations of local school districts, regional special education centers, chartered public schools, and private organizations or state programs for the benefit of the education of children with disabilities regarding compliance with state and federal laws regarding the education of students with disabilities. The department's monitoring, regulatory oversight, and program approval shall be structured and implemented in a prudent manner and shall not place an excessive administrative burden on local districts. The department and districts shall approach monitoring and regulation in a constructive, cooperative manner, while also ensuring accountability for failing to meet standards and ensuring that the special education needs of children with disabilities are met.

VI. [Repealed.]

VII. (a) Granite State high school shall submit a plan for department approval to be adopted by November 1, 2009, to meet the special education needs of persons incarcerated in the state prison system.

(b) Each county correctional facility shall designate one person who shall serve as the contact person in all matters related to special education. This person shall:

(1) Provide, on a weekly basis, a list of incarcerated inmates up to the age of 21 who are eligible to receive special education;

(2) Provide the school district with access to the incarcerated inmates with disabilities for the purpose of providing special education to ensure a free and appropriate public education; and

(3) Provide time and space within the correctional facility to allow the school district to provide instruction and any special education and related services pursuant to the person's individualized education program.

(c) County correctional facilities shall be monitored according to the standards set forth in any interagency agreements between the department of education and each county correctional facility.

(d) Granite State high school shall comply with the requirements in RSA 194:60 and shall be monitored in 2010 and subject to onsite monitoring at least annually through 2013.

**Source.** 1985, 269:3. 1987, 345:7. 1990, 140:2, X, XII. 1994, 379:14, 24, V. 1997, 232:1. 1998, 68:1, eff. July 11, 1998. 2008, 302:36, eff. Jan. 1, 2009. 2010, 184:1, eff. Aug. 20, 2010. 2011, 231:4, eff. June 29, 2011.

### Section 186-C:3-b

#### **186-C:3-b Advisory Committee; Purpose; Membership; Terms; Duties; Meetings. –**

I. In accordance with the provisions of 20 U.S.C. section 1412(a)(21) and 34 C.F.R. sections 300.167-300.169, there is established an advisory committee on the education of children/students with disabilities to advise the commissioner of education on issues relating to special education, and to promote communication and cooperation among individuals involved with students with disabilities. In addition, the committee shall review the federal financial participation and the level of state funding to determine their impact on the programs and delivery of services to children/students with disabilities.

II. The committee shall be composed of individuals involved in, or concerned with, the education of children with disabilities. A majority of the committee membership shall be composed of individuals with disabilities or parents of children with disabilities. The committee membership shall be as follows:

- (a) Individuals with disabilities or parents of children with disabilities, appointed by the governor.
- (b) Two members of the house education committee, appointed by the speaker of the house.
- (c) Two members of the senate education committee, appointed by the president of the senate.
- (d) One representative of a vocational, community, or business organization concerned with the provision of transition services to children/students with disabilities, appointed by the governor.
- (e) One state education official, appointed by the governor.
- (f) One local educational official, who shall be an administrator, appointed by the governor.
- (g) Two teachers, one of whom shall be a special education teacher, appointed by the governor.
- (h) One representative of the department of health and human services involved in the financing or delivery of special education or related services to children with disabilities, recommended by the commissioner of the department of health and human services, and appointed by the governor.
- (i) One representative of the Disabilities Rights Center, recommended by the Disabilities Rights Center and appointed by the governor.
- (j) One representative of the Parent Information Center, recommended by the Parent Information Center and appointed by the governor.
- (k) Two individuals with disabilities who may have received special education services, one of whom may be a high school student, appointed by the governor.
- (l) One administrator of a public special education program, appointed by the governor.
- (m) One representative of an institution of higher education that prepares special education and related services personnel, appointed by the governor.
- (n) One representative of a private school approved for special education, appointed by the governor.
- (o) One representative of a chartered public school, appointed by the governor.
- (p) One individual representing children with disabilities who are home-schooled, appointed by the governor.
- (q) One representative from the department of corrections, and one representative from a county correctional facility, both of whom are responsible for administering the provision of special education or special education and related services, appointed by the governor.
- (r) A state and a local educational official who are responsible for performing activities under subtitle B of title VII of the McKinney-Vento Homeless Assistance Act, 42 U.S.C. section 11431, et seq, appointed by the governor.
- (s) A representative from the department of health and human services responsible for foster care, recommended by the commissioner of the department of health and human services and appointed by the governor.

III. (a) Committee members shall be appointed to staggered 2-year terms, and members may

succeed themselves.

(b) A chairperson shall be selected by a majority of the committee members on an annual basis.

IV. The committee shall:

(a) Advise the department of education regarding unmet needs within the state in the education of children/students with disabilities.

(b) Provide an annual report to the governor and the state legislature on the status of education of students with disabilities in New Hampshire.

(c) Comment publicly on the state plan and rules or regulations proposed for issuance by the state regarding the education of children/students with disabilities.

(d) Assist the state in developing and reporting such information and evaluations as may assist the U.S. Secretary of Education in the performance of responsibilities under 20 U.S.C. section 1418 of the Individuals with Disabilities Education Act.

(e) Advise the department of education in developing corrective action plans to address findings identified in federal monitoring reports.

(f) Advise the department of education in developing and implementing policies relating to the coordination of services for children/students with disabilities.

V. The committee shall meet at least quarterly or as often as necessary to conduct its business.

VI. The department of education shall provide administrative support for the committee.

**Source.** 1994, 114:1. 1995, 310:149. 1998, 201:1. 2001, 286:19. 2006, 191:2, eff. July 29, 2006. 2008, 302:36, eff. Jan. 1, 2009; 354:2, eff. Sept. 5, 2008.

### **Section 186-C:4**

**186-C:4 Comprehensive State Special Education Plan.** – [Repealed 1994, 379:24, VI, eff. June 9, 1994.]

### **Section 186-C:5**

#### **186-C:5 Program Approval, Monitoring, and Corrective Action.** –

I. (a) The state board of education shall adopt rules establishing a process and standards for the approval and monitoring of programs of education that are maintained by school districts, regional special education centers, and private organizations or state facilities for the benefit of children with disabilities, including chartered public schools, home-based programs and alternative schools or programs; except, however, that approval of education programs for the special district established in RSA 194:60 shall be pursuant to the standards set forth in the interagency agreements between the department of corrections and the department of education.

(b) The division of educational improvement of the department of education, through its program approval and monitoring process shall determine if a district is making diligent efforts to resolve personnel shortages that result in children with disabilities being placed out of district.

II. The purpose of program approval and monitoring is to ensure that the programs specified in paragraph I comply with applicable federal and state law, including standards related to improving educational results and functional outcomes.

III. Program approval and monitoring shall utilize professionally recognized program evaluation and other verification methods to ensure reliable and valid findings and corrective actions. The department shall develop and apply standards and procedures to determine whether each program specified in paragraph I complies with the requirements of applicable federal and state law. Such standards shall give considerable weight to rigorous benchmarks or performance outcomes and indicators required by federal and state law most relevant to achieving educational results and

functional outcomes. Program approval and monitoring shall also include, but not be limited to the following components and processes:

(a) Reporting of outcome or indicator data by school district and non-district programs to the department in a manner and frequency as the department shall determine.

(b) Development and application of methods to ensure the accuracy of all such data including data as entered in student records and as transmitted to the department, to include necessary on-site verification of data.

(c) Determinations by the department as to whether the reported data complies with such standards.

(d) On-site monitoring to further evaluate noncompliance, verify accuracy of data, assess the adequacy of the corrective action plans and their implementation, or other purposes as the department may determine, which may include:

(1) Regular or periodic monitoring.

(2) Special on-site monitoring required as part of the resolution or remediation of a complaint under 34 C.F.R. sections 300.151-152, or based on reliable information received indicating that there is reason to believe that there is noncompliance with standards.

(3) Random or targeted visits which may be unannounced when the department determines that an unannounced visit is needed.

(e) Program monitoring, including the on-site monitoring components, shall use multiple program evaluation techniques in accordance with professionally recognized standards and to achieve the purposes set forth in paragraphs I-III, including, but not limited to, random sampling stratified as necessary to cover discrete sites or programs such as alternative programs or schools.

(f) Program approval and monitoring personnel or teams, which shall be knowledgeable in research-based education, special education practices, professionally recognized program evaluation practices, the Individuals with Disabilities Education Act, and state special education laws and which shall receive appropriate training to participate in the monitoring process. Such personnel or teams for on-site monitoring shall consist of at least one of each of the following: an educator, an educational administrator, and a parent who resides in another school district, who shall receive mileage reimbursement. The department may determine that for certain on-site visits less than a full team is necessary. The department directly or by contract shall develop and train a group of parents on the requisites needed to carry out the monitoring duties. Where volunteers or contracted personnel are used for the non-parent team slots, attempts shall be made to use or balance teams with personnel from non-school district sources such as qualified individuals from higher education. Educators and educational administrators that are used (1) may not review schools in school districts in which they are employed or have been employed in the previous 2 years and (2) may not be from schools which in the current or prior 3 years have been the subject of mandatory technical assistance under subparagraph V(e)(2) or any of the interventions in subparagraphs V(e)(3)-(12). The department shall make available sufficient funds for stipends or similar financial remuneration, in addition to expense reimbursements to ensure that teams have a diversity of perspectives and high quality professional membership. The department of education may contract with an individual or organization which has the requisite expertise and skill to perform the monitoring activities, and who is otherwise independent from school district and non-school district programs in New Hampshire. This subparagraph shall not be construed to preclude individuals who may have performed sporadic or occasional contract or volunteer work for school district or non-school district programs.

IV. The department shall issue a report granting full or conditional approval, or denying, suspending, or revoking approval prior to the expiration of the existing program approval which shall include:

(a) Findings detailing exemplary characteristics and strengths of each program and each instance of noncompliance and failure to meet performance outcome or indicator measures in accordance with

standards set forth in paragraph III.

(b) Recommendations for actions needed to correct noncompliance or failure to meet performance outcome or indicator measures.

(c) School districts and non-district programs may appeal decisions granting conditional approval or denying, suspending, or revoking approval pursuant to paragraph VII.

(d) The department may issue reports outside of the regular approval process directing school districts or non-school district programs to take any of the actions set forth in paragraph V.

V. (a) The provisions of this paragraph shall be enforced subsequent to the issuance of an order resulting from a complaint investigated, a due process hearing, or a monitoring activity pursuant to rules adopted under RSA 541-A.

(b) At the conclusion of the time limit specified for the school district, public agency, private provider of special education, or other non-school district based program to have completed the corrective action specified in the orders of compliance, the administrator of the bureau of special education of the department of education shall forward to the commissioner of the department of education a written report indicating the extent to which the agency took corrective action to achieve compliance with state and federal law.

(c) In the event the written report shows that the school district, public agency, private provider of special education, or other non-school district based program has not complied with orders issued by the department, the commissioner of the department of education shall give the written notice of the enforcement action to be taken.

(d) When taking enforcement action, the commissioner of the department of education shall consider:

- (1) The severity and length of noncompliance.
- (2) Whether a good faith effort was made to correct the problem.
- (3) The impact on children who are entitled to a free appropriate public education.
- (4) Whether the nature of the noncompliance is individual or systemic.

(e) Enforcement action shall include but not be limited to:

- (1) Corrective action plan development, implementation, and monitoring.
- (2) Voluntary and mandatory technical assistance as determined by the department.
- (3) Mandatory targeted professional development as determined by the department.
- (4) Directives ordering specific corrective or remedial actions including compensatory education.
- (5) Targeting or redirecting the use of federal special education funds in the areas of concern.
- (6) Formal referral to the bureau of credentialing in the department of education for review of compliance with professional licensure or certification requirements.
- (7) Ordering the cessation of operations of discrete programs operated by a school district, collaborative program, private provider of special education, public academy, or state facility for the benefit of children with disabilities.
- (8) A review of programs which may include a desk audit, scheduled on-site reviews, and unannounced on-site reviews, to ensure compliance. The frequency of the program reviews may, at the discretion of the department, take place weekly, monthly, or quarterly.
- (9) Requiring redirection of federal funds to remediate noncompliance of more than one year.
- (10) Ceasing payments of state or federal special education funds to the school district or other public agency until the department of education determines the school district or other public agency is in compliance.
- (11) Ordering, in accordance with a final state audit report, the repayment of misspent or misapplied state and/or federal funds.
- (12) In the case of a school district or other public agency, referring the matter to the department of justice for further action.

(13) In the case of a private provider of special education or other non-school district based program, ordering all school districts with students placed in the private provider of special education to relocate the students for whom each district is responsible to other programs or facilities that are in compliance with state and federal law.

VI. The commissioner shall notify the superintendent and local school board, and post findings and corrective actions recommended on the department Internet website. The commissioner shall also notify the advisory committee on the education of children/students with disabilities of the findings, remedies, and sanctions.

VII. The department shall adopt rules for the school district appeals process for corrective actions imposed under subparagraphs V(a)(5)-(11).

VIII. The commissioner shall employ or contract with a sufficient number of qualified personnel to carry out the activities enumerated in this section, including but not limited to managing, analyzing, and verifying data, coordinating and staffing on-site monitoring teams, preparing reports, including findings and corrective actions, and determining, monitoring, or supervising corrective actions and sanctions.

IX. The department, with input from the advisory committee on the education of children/students with disabilities, shall select and contract with an independent, nationally recognized organization in program evaluation and quality assurance to evaluate in 2010, 2015, and decennially thereafter, the effectiveness of the program approval and monitoring system, including whether it is carrying out activities in RSA 186-C:5 in an efficient manner. Such organization shall submit recommendations for any improvements to the commissioner, the state board of education, the governor, and the general court within 90 days of completing the program evaluation. On or before September 1, 2013, the department shall submit a written response to the report submitted by the organization that conducted the 2012 independent evaluation. The written response shall include a detailed plan for how the department will address the areas identified as needing improvement and the recommendations made in the initial evaluation required under this section. The written response shall include specific steps the department plans to take, along with a timeline for each step. The written response shall also provide an explanation for any actions the department will not implement or complete during the plan's timeframe. On or before December 30, 2013 and June 30, 2014, the department shall submit a report of its progress toward completing its plan. The plan and reports shall be submitted to the governor, to the chairpersons of the senate and house committees with jurisdiction over education policy, to the state advisory committee for the education of children with disabilities established in RSA 186-C:3-b, and to the state board of education. For the 2015 evaluation, the department shall invite the same organization that conducted the 2012 evaluation to respond to a request for proposals. The 2015 evaluation shall include feedback on the steps the department has taken in response to the recommendations in the 2012 report. The department shall provide unimpeded access to all documents requested by the organization, except as otherwise required by law.

**Source.** 1981, 352:2. 1990, 140:2, X. 1998, 270:2, eff. July 1, 1999. 2008, 274:31, eff. July 1, 2008; 302:39, eff. Jan. 1, 2009. 2013, 226:1, eff. Sept. 13, 2013.

### **Section 186-C:6**

**186-C:6 Census.** – [Repealed 1994, 134:2, eff. July 22, 1994.]

### **Section 186-C:7**

**186-C:7 Individualized Education Programs.** –

I. The development of an individualized education program for each child with a disability shall be



the responsibility of the school district in which the child resides or of the school district which bears financial responsibility for the child's education.

II. The parents of a child with a disability have the right to participate in the development of the individualized education program for the child and to appeal decisions of the school district regarding such child's individualized education program as provided in rules adopted in accordance with RSA 541-A by the state board of education.

III. Each child's individualized education program shall include short-term objectives or benchmarks unless the parent agrees that they are not necessary for one or more of the child's annual goals.

**Source.** 1981, 352:2. 1985, 269:5. 1987, 345:1, 4. 1990, 140:2, X; 162:4. 1992, 238:2. 1994, 379:20. 1998, 177:6, eff. Aug. 14, 1998. 2008, 274:29-32, eff. July 1, 2008; 302:40, eff. Jan. 1, 2009.

### **Section 186-C:7-a**

#### **186-C:7-a Interagency Agreement for Special Education. –**

I. The commissioner of the department of education, the state board of education, and the commissioner of the department of health and human services shall, consistent with applicable state and federal law, enter into an interagency agreement for the purposes of:

(a) Meeting the multi-service agency needs of children with disabilities in an efficient and effective manner and without delays caused by jurisdictional or funding disputes;

(b) Providing for continuity and consistency of services across environments in which children function; and

(c) Ensuring well-planned, smooth, and effective transitions from early intervention to special education and from special education to postsecondary life.

II. This agreement shall address programs and services for children with disabilities, provided, funded, or regulated by the department and local school districts, and the department of health and human services and its local counterparts, the district offices, the area agencies, and the community mental health centers.

III. The agreement shall address the functions set forth in paragraph I including, but not limited to:

(a) Defining the specific populations to be served.

(b) Identifying and describing the services available through each agency.

(c) Describing the specific programmatic and financial responsibilities of each department, and its divisions, bureaus, and local counterparts.

(d) Estimating the costs of, and source of funds for, all services to be provided by each department.

(e) Implementing methods to ensure prompt and timely initiation of services, including criteria for determining agency responsibility for service provision and payment, which shall include:

(1) A provision permitting a parent or agency, believing that it is not responsible for the services at issue, to request the participation of another potentially responsible agency, provided that in the case of an agency request, the parent or child who has reached majority has been advised of his or her appeal rights and the parent or child, as applicable, consents to the participation of the other agency.

(2) The procedure and criteria, when more than one agency is involved, for determining who should provide and pay for the needed services, such criteria to include a requirement that the school district is responsible to provide and pay for all special education, related services, supplemental aids and services, and accommodations for children with disabilities, unless:

(A) Medicaid is responsible or the department of health and human services or another agency is required to pay; or

(B) Another agency agrees to pay voluntarily or pursuant to an agreement; or

(C) The service is primarily non-educational in nature, involving only care or custodial activities and serves no educational purpose, and does not pertain to curriculum or individualized skills or behavior change or development aimed at enabling a child to function in the school, workplace, home, and community, and are neither related services, supplementary aides, and services, or as defined by state or federal law.

(3) A procedure for dispute resolution, including a provision for binding dispute resolution, which may be initiated by any participating agency, parent, guardian, educational surrogate, or child who has reached the age of majority to determine whether or not the child is entitled to the services in dispute, when service entitlement by all agencies is in dispute, and which agency is responsible to pay and provide the service, when agency financial and programmatic responsibility is in dispute.

(4) When there is a dispute as to financial or programmatic responsibility, a provision that the local school district shall provide the service or otherwise ensure that the service is provided, subject to the local school district's right of reimbursement if another agency is found responsible.

(f) Consistent with federal and state privacy laws, provisions for state and local educational and health and human service agencies to share and exchange necessary child and program specific information and data.

IV. [Repealed.]

V. Nothing in this section shall require:

(a) A parent, guardian, or child to pay for services provided by a local school district or other local or state public educational program, if the services are educational in nature or are otherwise required by the Individuals with Disabilities Education Act, 20 U.S.C. section 1400 et seq.

(b) A local school district to provide any educational services beyond those required under the Individuals with Disabilities Education Act, 20 U.S.C. section 1400 et seq., or this chapter.

(c) The department of health and human services to provide services not otherwise required by other state or federal laws.

**Source.** 1985, 269:5. 1990, 140:2, X. 1998, 195:1, eff. June 18, 1998. 2008, 274:31, eff. July 1, 2008; 302:41, eff. Jan. 1, 2009. 2012, 264:1, I, eff. Aug. 17, 2012.

### **Section 186-C:7-b**

**186-C:7-b Braille Instruction for Functionally Blind Pupils.** – In developing the individualized education program for a functionally blind pupil, there shall be:

I. A presumption that proficiency in Braille reading and writing is essential for the pupil's satisfactory educational progress. Every functionally blind pupil shall be entitled to Braille reading and writing instruction unless all members of the pupil's special education team concur that instruction in Braille or the use of Braille is not appropriate for the pupil.

II. Instruction in Braille shall be provided by a teacher certified by the state department of education to teach pupils with visual impairment.

III. An initial learning media assessment by a teacher certified in the education of pupils with visual impairment shall be conducted. This assessment shall be conducted every 3 years and reviewed annually.

**Source.** 1997, 114:2, eff. July 1, 1997.

### **Section 186-C:7-c**

**186-C:7-c Rate Setting. –**

I. The division of educational improvement of the department of education shall ensure that each school district develops approved programs for children with disabilities in the school district.

II. The division of educational improvement of the department of education shall set an approved rate for private providers of special education services pursuant to RSA 21-N:5, I(h).

III. Such rates shall be sufficient to reflect costs and expenses of comparable or similar programs in the region or state and sufficient to provide children with disabilities with a free appropriate public education.

IV. No provider shall charge the department of education or any school district in this state an amount in excess of the rate established by the division of educational improvement of the department of education.

**Source.** 2008, 302:8, eff. Jan. 1, 2009.

**Section 186-C:8****186-C:8 Collaborative Programs. –**

I. School districts or school administrative units, or both, may enter into cooperative agreements in order to provide approved programs for educating children with disabilities. The state board of education, when appropriate because of a low incidence of a disabling condition, high cost of services, or scarcity of trained personnel, shall encourage such cooperative agreements and shall serve as a source of information, advice and guidance to school districts, school administrative units, or both.

II. The state board of education, together with representatives of neighboring states, shall study the feasibility of interstate agreements for the provision of services to children with disabilities.

**Source.** 1981, 352:2. 1985, 269:6. 1990, 140:2, X, XII, eff. June 18, 1990. 2008, 274:31, eff. July 1, 2008; 302:42, eff. Jan. 1, 2009.

**Section 186-C:9**

**186-C:9 Education Required. –** Each child who is determined by the local school district, or special school district established under RSA 194:60, as having a disability in accordance with RSA 186-C:2 and in need of special education or special education and related services shall be entitled to attend an approved program which can implement the child's individualized education program. Such child shall be entitled to continue in an approved program until such time as the child has acquired a regular high school diploma or has attained the age of 21, whichever occurs first, or until the child's individualized education program team determines that the child no longer requires special education in accordance with the provisions of this chapter.

**Source.** 1981, 352:2. 1990, 140:2, X. 1998, 270:3, eff. July 1, 1999. 2008, 302:42, eff. Jan. 1, 2009.

**Section 186-C:9-a**

**186-C:9-a Educationally Related Services. –** [Repealed 2008, 302:33, I, eff. Jan. 1, 2009.]

**Section 186-C:10**

**186-C:10 Responsibility of School District.** – A school district shall establish an approved program or programs for children with disabilities, or shall enter into cooperative agreements with other districts to provide approved programs for children with disabilities, or shall pay tuition to such an approved program maintained by another school district or by a private organization.

**Source.** 1981, 352:2. 1990, 140:2, X, eff. June 18, 1990. 2008, 274:31, eff. July 1, 2008; 302:43, eff. Jan. 1, 2009.

### **Section 186-C:11**

**186-C:11 Transportation.** – [Repealed 2008, 302:33, II, eff. Jan. 1, 2009.]

### **Section 186-C:12**

**186-C:12 Federal Assistance.** – The state board of education is authorized to cooperate with the federal government or any agency of the federal government in the development of any plan for the education of children with disabilities and to receive and expend, in accordance with such plan, all funds made available to the state board of education from the federal government or any of its agencies, from the state, or from other sources. The school districts of the state are authorized to receive, incorporate in their budgets, and expend for the purposes of this chapter such funds as may be made available to them through the state board of education from the federal government or any of its agencies.

**Source.** 1981, 352:2. 1990, 140:2, X, eff. June 18, 1990. 2008, 274:31, eff. July 1, 2008; 302:44, eff. Jan. 1, 2009.

### **Section 186-C:13**

**186-C:13 Liability for Expenses.** –

I. All expenses incurred by a school district in administering the law in relation to education for children with disabilities in need of special education and related services shall be paid by the school district where the child resides, except as follows:

(a) When a child with a disability in need of special education and related services is placed in a home for children or health care facility as defined in RSA 193:27, the liability for expenses for such child shall be determined in accordance with RSA 193:29.

(b) When a child with a disability in need of special education and related services is placed in a state facility, the liability for expenses for such child shall be determined in accordance with RSA 186-C:19.

II. For the purposes of meeting the financial obligation for expenses incurred under this chapter, a school district may exceed its annual budget to the extent of additional special education aid which the district has actually received from the state after the annual school district budget was approved.

III. No school district shall be required to pay the expenses of the education program of a child adjudicated under RSA 169-B, 169-C, or 169-D except as provided by RSA 186-C. The sending district shall be notified of a court ordered placement of a child adjudicated under the provisions of RSA 169-B, 169-C, or 169-D, and may submit recommendations to the court concerning the financial impact of the placement on the sending district and the appropriateness of the placement.

IV. When a child is enrolled pursuant to 193:3, IV, the district in which the child resides shall retain the liability for expenses as set forth in this section.

**Source.** 1981, 352:2; 568:142; 574:6. 1982, 39:1. 1985, 313:2; 368:3. 1990, 140:2, X. 1998, 177:3, eff. Aug. 14, 1998. 2008, 274:30, 31, eff. July 1, 2008; 302:45, eff. Jan. 1, 2009. 2010, 316:3, eff. Sept. 11, 2010.

### **Section 186-C:14**

#### **186-C:14 Surrogate Parents. –**

I. Purpose. The purpose of this section is to protect the educational rights of eligible children with disabilities.

II. Definitions. The following words as used in this section shall be construed as follows:

(a) "Surrogate parent" shall mean a person appointed to act as a child's advocate in place of the child's biological or adoptive parents or guardian in the educational decision-making process.

(b) "Educational decision-making process" shall include identification, evaluation, and placement as well as the hearing, mediation, and appeal procedures.

(c) [Repealed.]

(d) [Repealed.]

III. Determining Need.

(a) When a child with a disability, as defined in RSA 186-C:2, needs special education and the parent or guardian of the child is unknown or after reasonable efforts cannot be located, or the child is in the legal custody of the division of children, youth, and families, the commissioner, or designee, may appoint a surrogate parent who shall represent the child in the educational decision-making process, provided that for a child in the legal custody of the division of children, youth, and families, a judge overseeing the child's case pursuant to the Individuals With Disabilities Education Act, 20 U.S.C. section 1415(b)(2)(A)(i), may appoint a surrogate parent.

(b) In the case of a child who is an unaccompanied youth as defined in the McKinney-Vento Homeless Assistance Act, 42 U.S.C. section 11434a(6), the school district shall appoint a surrogate parent pursuant to this section.

IV. Appointment of Surrogate. Appointment of a surrogate parent under this section shall be effective until the child reaches 18 years of age, and may be extended by order of the commissioner until the child graduates from high school or reaches 21 years of age, whichever occurs first. If the surrogate parent resigns, dies or is removed, the commissioner of the department of education or designee, or the court with jurisdiction over the child's case, may appoint a successor surrogate parent in the same manner as provided in paragraph III.

V. Right of Access. When a surrogate parent is appointed, the surrogate parent shall have the same right of access as the natural parents or guardian to all records concerning the child. These records shall include, but not be limited to, educational, medical, psychological and health and human service records.

VI. Limited Liability. No surrogate parent appointed pursuant to the provisions of paragraph III or IV shall be liable to the child entrusted to the surrogate parent or the parents or guardian of such child for any civil damages which result from acts or omissions of such surrogate parent which may arise out of ordinary negligence. This immunity shall not apply to acts or omissions constituting gross, willful, or wanton negligence.

VII. Rules. The state board of education shall adopt rules necessary for the administration of the provisions of this section.

**Source.** 1981, 352:2. 1986, 223:16. 1988, 172:1-3. 1990, 140:2, X. 1996, 195:1. 1998, 177:4. 2002, 158:2, 3. 2004, 99:3, eff. Jan. 1, 2005. 2008, 274:30, 31, eff. July 1, 2008; 302:46, eff. Jan. 1, 2009.

### **Section 186-C:14-a**

**186-C:14-a Foster Parent Representation of Foster Children With Disabilities. –**

I. A foster parent or parents may be appointed by the commissioner of the department of education that he or she has the knowledge and skills to represent the child adequately in services or designee, or by the director of a child placing agency licensed under RSA 170-E that has placed the child with the foster parent or parents, to make educational decisions on behalf of a foster child for the duration of the foster placement, provided that:

(a) The birth parents' parental rights have been terminated by a court of law or by death; and

(b) Each such foster parent:

(1) Is in an ongoing, long-term parental relationship with the child, as determined by the commissioner of the department of education or the child placing agency;

(2) Is willing to make the educational decisions required of parents under state and federal law;

(3) Has no interest that would conflict with the interests of the child; and

(4) Has demonstrated to the satisfaction of the commissioner of the department of education that he or she has the knowledge and skills to represent the child adequately in educational decision-making.

II. A foster parent appointment pursuant to this section shall supersede the appointment of a surrogate parent under RSA 186-C:14.

III. A foster parent acting as a parent shall have the same right of access as the birth parents or guardians to all records concerning the child. These records shall include, but are not limited to, educational, medical, psychological, and health and human service records.

IV. No foster parent appointed to act in the capacity of a parent under this section shall be liable to the child entrusted to the foster parent or the parents or guardian of such child for any civil damages which result from acts or omissions of such foster parent which may arise out of ordinary negligence. This immunity shall not apply to acts or omissions constituting gross, willful, or wanton negligence.

V. The state board of education shall adopt rules, pursuant to RSA 541-A, necessary for the implementation of this section.

**Source.** 2002, 205:2. 2004, 99:3, eff. Jan. 1, 2005. 2008, 302:14, 15, 16, eff. Jan. 1, 2009.

**Section 186-C:15****186-C:15 Length of School Year. –**

I. The length of the school year and school day for a child with a disability shall be the same as that provided by the local school district for a child without a disability of the same age or grade, except that the local school district shall provide an approved program for an extended period when the child's individualized education program team determines that such services are necessary to provide the child with a free appropriate public education.

II. The length of the school year and school day for a preschool child with a disability shall be determined by the child's individualized education program team and shall not be governed by the school district's school calendar. A free appropriate public education shall be provided to a preschool child with a disability as of the child's third birthday and when the child's individualized education program team determines that services are necessary to provide a free appropriate public education to the child.

**Source.** 1981, 352:2. 1990, 140:2, X, eff. June 18, 1990. 2008, 274:30, eff. July 1, 2008; 302:47, eff. Jan. 1, 2009.

**Section 186-C:16**

**186-C:16 Rulemaking.** – The state board of education shall adopt rules, pursuant to RSA 541-A, and consistent with the provision of a free appropriate public education, relative to:

- I. Developing individualized education programs;
- II. Approving and monitoring special education programs;
- III. Reporting the number of children with disabilities in a school district;
- IV. Requesting administrative due process hearings and appealing a final administrative decision;
- V. Determining eligibility for participation in approved programs;
- VI. Appointing surrogate parents;
- VII. Determining the length of the school year for children with disabilities; and
- VIII. Other matters related to complying with provisions of this chapter.

**Source.** 1981, 352:2. 1990, 140:2, X. 1992, 114:1, eff. June 30, 1992. 2008, 274:31, eff. July 1, 2008; 302:48, eff. Jan. 1, 2009.

### **Section 186-C:16-a**

**186-C:16-a Special Education Hearing Officers.** – Hearing officers appointed by the department of education to hear special education impartial due process appeals shall have the authority to compel the attendance of witnesses in accordance with RSA 516:1 including issuing subpoenas for parents who are representing themselves. Any costs incurred in issuing a subpoena shall be the responsibility of the party requesting the subpoena, unless otherwise determined by the hearing officer. The state board of education may adopt rules pursuant to RSA 541-A to implement the provisions of this section, including guidelines to be used for consideration by the hearing officers in determining the responsibility of costs of the subpoena. Nothing in this section shall prohibit any justice from issuing a subpoena for such hearing in accordance with RSA 516:3.

**Source.** 1991, 325:1, eff. Jan. 1, 1992.

### **Section 186-C:16-b**

#### **186-C:16-b Due Process Hearing; Appeal.** –

I. Any action against a local school district seeking to enforce special education rights under state or federal law shall be commenced by requesting an administrative due process hearing from the department of education within 2 years of the date on which the alleged violation was or reasonably should have been discovered.

II. Notwithstanding the provisions of paragraph I, any action against a local school district to recover the costs of a unilateral special education placement shall be commenced by requesting an administrative due process hearing from the department of education within 90 days of the unilateral placement.

III. Where the parent, legal guardian or surrogate parent has not been given proper written notice of special education rights pursuant to 20 U.S.C. section 1415(d), including notice of the time limitations established in this section, such limitations shall run from the time notice of those rights is properly given. The department of education shall make available a model notice of rights which school districts may use as one means of complying with this paragraph.

IV. An appeal from a final administrative decision in a special education due process hearing to a court of competent jurisdiction pursuant to 20 U.S.C. section 1415(i)(2)(A) shall be commenced within 120 days from receipt of the final decision. All such decisions shall be sent certified mail, return receipt requested.

V. An action pursuant to 20 U.S.C. section 1415(i)(3) seeking reimbursement for attorney's fees or

seeking reimbursement for expert witness fees shall be commenced within 120 days from receipt of the final decision in accordance with RSA 186-C:16-b, IV. All such decisions shall be sent certified mail, return receipt requested.

(a) The court may award reimbursement to a parent of a child with a disability for expert witness fees incurred as part of a due process complaint at which the parent was the prevailing party and when the court determines that a school has not acted in good faith in developing or implementing a child's individualized education program, including appropriate placement.

(b) The court may deny or reduce reimbursement of expert witness fees if the hearing officer determines:

(1) The expert witness was not a necessary component to the parent's complaint.

(2) The expert witness fee exceeds an amount that is reasonable, given the type and location of the service provided and the skill, reputation, and experience of the expert witness.

(3) The parent, or the parent's attorney, did not provide notice to the school district of their intent to have the expert witness participate in the due process hearing.

VI. Where a unilateral placement has been made, without the school district of residence being offered a reasonable opportunity to evaluate the child and to develop an individualized education program, reimbursement may not be sought for any costs incurred until the school district is given an opportunity to evaluate the child and develop an individualized education program.

**Source.** 1992, 114:2, eff. June 30, 1992. 2008, 274:32, eff. July 1, 2008; 302:19, eff. Jan. 1, 2009.

### **Section 186-C:16-c**

#### **186-C:16-c Rules Exceeding State or Federal Minimum Requirements. –**

I. Whenever the state board of education proposes to adopt or amend any special education rule which exceeds the minimum requirements of state or federal law, the state board shall, in addition to the provisions of RSA 541-A, issue a report of all such proposed rules which meets the following requirements:

(a) For each rule or proposed rule contained in the report, the state board shall include the rule number, the nature of the rule, any state minimum requirement exceeded, any federal minimum requirement exceeded, and the reasons for exceeding those minimum requirements.

(b) The report shall be issued to the chairpersons of the house and senate education committees.

(c) A copy of the report shall be distributed to the superintendent of each school district in the state.

II. By December 1 of each year, the commissioner of the department of education shall issue a report of all special education rules, proposed or adopted, which exceed the minimum requirements of state or federal law. This report shall meet the requirements of paragraph I.

**Source.** 2012, 210:1, eff. June 13, 2012.

### **Section 186-C:17**

**186-C:17 Limitation of Provisions. –** Nothing in this chapter shall be construed as authorizing any public official, agent, or representative, in carrying out any of the provisions of this chapter to take charge of any child over the objection of either of the parents of such child, or of the person standing in loco parentis to such child except pursuant to a proper court order.

**Source.** 1981, 352:2, eff. July 1, 1981.



### Section 186-C:18

#### 186-C:18 State Aid. –

I. [Repealed.]

II. [Repealed.]

III. (a) The state board of education through the commissioner, department of education, shall distribute aid available under this paragraph as entitlement to such school districts as have a special education pupil for whose costs they are responsible, for whom the costs of special education in the fiscal year exceed 3 1/2 times the estimated state average expenditure per pupil for the school year preceding the year of distribution. If in any year, the amount appropriated for distribution as catastrophic special education 186-C:18 aid in accordance with this section is insufficient therefor, the appropriation shall be prorated proportionally based on entitlement among the districts entitled to a grant. If there are unexpended funds appropriated under this paragraph at the end of any fiscal year, such funds shall be distributed for court-ordered placements under RSA 186-C:19-b. The state may designate up to \$250,000 of the funds which are appropriated as required by this paragraph, for each fiscal year, to assist those school districts which, under guidelines established by rules of the state board of education, may qualify for emergency assistance for special education costs. Upon application to the commissioner of education, and approval by the commissioner, such funds may be accepted and expended by school districts in accordance with this chapter; provided, however, that if a school district has received emergency assistance funds for certain children with disabilities, it shall not receive catastrophic special education aid for those same children with disabilities. If any of the funds designated for emergency assistance under this paragraph are not used for such emergency assistance purposes, the funds shall be used to assist school districts in meeting catastrophic cost increases in their special education programs as provided by this paragraph.

(b) The school district shall be liable for 3- 1/2 times the estimated state average expenditure per pupil for the school year preceding the year of distribution, plus 20 percent of the additional cost, up to 10 times the estimated state average expenditure per pupil for the school year preceding the year of distribution.

(c) The department of education shall be liable for 80 percent of the cost above the 3- 1/2 times the estimated state average expenditure per pupil for the school year preceding the year of distribution, up to 10 times the estimated state average expenditure per pupil for the school year preceding the year of distribution. The department of education shall be liable for all costs in excess of 10 times the estimated state average expenditure per pupil for the school year preceding the year of distribution.

IV. The state shall appropriate an amount for each fiscal year to assist special education programs that are statewide in their scope, and that meet the standards for such programs established by the state board of education. Funds under this paragraph shall be administered and distributed by the state board of education through the commissioner.

V. The state board of education shall adopt rules pursuant to RSA 541-A relative to:

(a) Prescribing the forms to be used to apply for any benefit covered by any other subparagraph of this paragraph;

(b) Administering and distributing aid;

(c) [Repealed.]

(d) School districts applying for catastrophic aid under paragraph III;

(e) School districts identifying catastrophic costs under paragraph III;

(f) Establishing standards for statewide special education programs under paragraph IV.

VI. The state board of education shall distribute through the commissioner:

(a) Catastrophic aid payments under paragraph III on or before January 1, provided that school districts shall annually submit their catastrophic costs for the immediately preceding school year to

the state board of education by July 31. The state board of education shall then verify the cost and distribute the appropriate amounts for the previous year on or before January 1 of each year.

(b) Aid to statewide special education programs under paragraph IV.

VII. In Cheshire county, upon request of such a school district and upon approval by the county convention, the county may raise and appropriate funds to pay a portion of such costs for special education under this section.

VIII. A school district shall raise, appropriate and expend funds, reflecting the total cost in meeting catastrophic special education student costs as provided under RSA 186-C:18, including the school district and department of education liability. A school district may issue reimbursement anticipation notes as provided for in RSA 198:20-d to be redeemed upon receipt of reimbursement from the state. The department of education shall be liable for the cost of the school districts borrowing of any funds for special education student costs over 3- 1/2 times the estimated state average expenditure per pupil for the school year preceding the year of distribution.

IX. When a student for whom a district receives state aid for special education under this section transfers to another school district during the school year, both the district liability and the reimbursement under this section shall be prorated among such districts. This proration shall be based upon the number of school days that the student was a resident of each district.

X. Unexpected special education costs incurred by a school district which are eligible for reimbursement from the state pursuant to RSA 186-C:18, III and which could not be identified prior to the adoption of the local district budget shall be exempt from the provisions of RSA 32:8, RSA 32:9 and RSA 32:10.

XI. (a) The state board of education, through the commissioner of the department of education, shall distribute to school districts the lesser of 3.5 percent or \$1,000,000 in catastrophic aid funds appropriated in the fiscal year, to establish or support school district-based programs for children with disabilities who have been in out-of-district programs in the previous school year. Funds shall be distributed to school districts as reimbursement for the establishment or support of such programs and shall be applied to the greater of the following:

(1) Supplemental costs incurred by the school district for educating the child within a local school district program; or

(2) The amount the school district received to educate the child in an out-of-district program, with the school district receiving in year one, 70 percent of the catastrophic aid the school district received from the previous school year, which would constitute the base year; in year 2, 50 percent of the catastrophic aid the school district received during the base year, and in year 3, 30 percent of the catastrophic aid the school district received during the base year.

(b) The state board of education shall adopt rules, pursuant to RSA 541-A, establishing procedures pursuant to this paragraph for reimbursement to school districts.

**Source.** 1981, 352:2. 1982, 39:11. 42:63. 1985, 244:6-8, 15, X; 320:1. 1987, 294:5, 6. 1988, 222:1. 1989, 357:1, 2. 1990, 140:2, X. 1992, 238:1, 3. 1996, 195:2. 1998, 243:1. 1999, 341:1, 2. 2001, 56:1. 2003, 215:2, eff. Aug. 30, 2003. 2008, 274:31, eff. July 1, 2008; 302:21, eff. Jan. 1, 2009. 2011, 224:227, eff. July 1, 2011.

## Section 186-C:19

### 186-C:19 Children With Disabilities in Certain State Facilities. –

I. For a child with a disability in a state facility, the school district responsible for selecting and funding the child's special education or special education and related services shall be as follows:

(a) If such child is in the legal custody of the parent, the school district in which the child's parent resides shall be the liable school district.

(b) If such child is not in the legal custody of the parent, or if the parent resides outside the state, the school district in which the child most recently resided other than in a state facility, home for children or health care facility as defined in RSA 193:27 shall be the liable school district.

(c) For the purposes of this section a parent shall not have legal custody if legal custody has been awarded to some other individual or agency, even if that parent retains residual parental rights. An award of legal custody by a court of competent jurisdiction, in this state or any other state, shall determine legal custody under this section.

II. For a child with a disability in a state facility, the responsible school district shall be liable for all expenses incurred in administering the law in relation to children with disabilities.

III. Nothing in paragraphs I or II of this section shall diminish the responsibility of the financially liable school district as defined in paragraphs I and II to develop and implement an individualized education program or to fulfill its obligations under other sections of this chapter for a child with a disability in a state facility, regardless of whether such child was initially placed by a school district, the parent or some other agent.

IV. "State facility" as used in this section means any state operated facility for children and youth with disabilities.

**Source.** 1982, 39:2. 1985, 195:7; 241:3; 355:1, 2. 1988, 107:5. 1990, 140:2, X, eff. June 18, 1990. 2008, 274:30 to 33, eff. July 1, 2008; 302:49, eff. Jan. 1, 2009.

### **Section 186-C:19-a**

#### **186-C:19-a Children with Disabilities at the Youth Development Center, County Correctional Facilities and the Youth Services Center. –**

I. For a child with a disability at the youth development center or county correctional facilities, or who is placed at the youth services center maintained by the department of health and human services while awaiting disposition of the court following arraignment pursuant to RSA 169-B:13, the school district responsible for the development of an individualized education program and the child's special education expenses shall be as follows:

(a) If such child is in the legal custody of the parent, the school district in which the child's parent resides shall be responsible.

(b) If such child is not in the legal custody of the parent or if the parent resides outside the state, the school district in which the child most recently resided other than in a state institution, home for children or health care facility as defined in RSA 193:27 shall be responsible.

(c) For the purposes of this section a parent shall not have legal custody if legal custody has been awarded to some other person or agency, even if that parent retains residual parental rights. An award of legal custody by a court of competent jurisdiction, in this state or in any other state, shall determine legal custody under this section.

II. The school district liability for educational expenses for a child with a disability in the youth development center or county correctional facilities, or who is placed in the youth services center while awaiting disposition of the court following arraignment pursuant to RSA 169-B:13, shall not exceed the state average elementary cost per pupil, as determined by the state board of education for the preceding school year.

**Source.** 1983, 458:10. 1985, 241:4. 1987, 402:24. 1990, 3:57, 58; 140:2, X. 1994, 212:2. 1995, 181:9. 1997, 337:1. 1998, 270:4. 2001, 286:19, eff. Sept. 14, 2001. 2008, 274:30-32, eff. July 1, 2008.

### **Section 186-C:19-b**

**186-C:19-b Liability for Children With Disabilities in Certain Court Ordered Placements. –**

I. (a) As used in this section "children in placement for which the department of health and human services has financial responsibility" means all children receiving special education or special education and related services whose placements were made pursuant to RSA 169-B, 169-C, or 169-D, except children at the youth development center and children placed at the youth services center maintained by the department of health and human services while awaiting disposition of the court following arraignment pursuant to RSA 169-B:13.

(b) In the case of an out-of-district placement, the appropriate court shall notify the department of education on the date that the court order is signed, stating the initial length of time for which such placement is made. This subparagraph shall apply to the original order and all subsequent modifications of that order.

II. The school district liability for expenses for special education or for special education and related services for a child with a disability in placement for which the department of health and human services has financial responsibility shall be limited to 3 times the estimated state average expenditure per pupil, for the school year preceding the year of distribution. The liability of a school district under this section shall be prorated if the placement is for less than a full school year and the district shall be liable for only the prorated amount. This section shall not limit a school district's financial liability for children who receive special education or special education and related services in a public school or program identified in RSA 186-C:10.

(a) Any costs of special education or special education and related services in excess of 3 times the estimated state average expenditure per pupil for the school year preceding the year of distribution shall be the liability of the department of education. Costs for which the department of education is liable under this section shall be paid to education service providers by the department of education. The department of education shall develop a mechanism for allocating the funds appropriated for the purposes of this section.

(b) The department of health and human services shall be liable for all court-ordered costs pursuant to RSA 169-B:40, 169-C:27, and 169-D:29 other than for special education or special education and related services.

(c) The department of education shall distribute special education payments under subparagraph II(a) within 60 days of receipt of invoice from the school district. School districts shall submit education service providers costs to the department within 30 days of receipt of such costs. The department shall then verify the cost and distribute the appropriate amounts to the education service provider.

III. The department of education shall by rules adopted under RSA 541-A establish the rates charged by education service providers to the department of education or to school districts for children with disabilities in placement for which the department of health and human services has financial responsibility.

IV. The department of education is authorized to receive and take appropriate action on complaints regarding the failure to provide necessary special education or special education and related services to children with disabilities in placement for which the department of health and human services has financial responsibility.

V. All appropriations made for the purposes of funding court-ordered placements shall be nonlapsing.

**Source.** 1986, 223:15. 1987, 402:25. 1990, 3:59; 140:2, X; 162:2. 1991, 324:4. 1992, 238:5. 1994, 212:2. 1995, 181:10; 308:20; 310:181. 2001, 286:19. 2005, 10:1, eff. July 2, 2005. 2008, 274:30, 31, 33, eff. July 1, 2008.

**Section 186-C:20**

**186-C:20 Special Education Program of the Youth Services Center. –**

I. Notwithstanding the provisions of any other law to the contrary, the expenses for a child with a disability receiving services at the special education program at the youth services center maintained by the department of health and human services shall be the responsibility of the liable school district so assigning the child. Such a school district shall pay the rate established for the special education program of the center.

II. The special education program of the center shall receive all the moneys paid under this section and is authorized to receive and expend such funds to operate the program. Such expenditures shall be subject to the approval of the legislative fiscal committee.

**Source.** 1982, 39:2. 1985, 195:8. 1990, 3:60; 140:2, X. 1994, 212:2. 1995, 181:11. 2001, 286:19, eff. Sept. 14, 2001. 2008, 274:30, eff. July 1, 2008; 302:50, eff. Jan. 1, 2009.

**Section 186-C:21**

**186-C:21 Executive Planning Commission on Special Education. –** [Repealed 2011, 231:2(5), eff. Dec. 31, 2011.]

**Section 186-C:22**

**186-C:22 Development of In-state Services for Severely Emotionally Disturbed Children. –** [Repealed 2007, 328:3, eff. July 1, 2007.]

**Alternative Dispute Resolution****Section 186-C:23****186-C:23 Alternative Dispute Resolution. –**

I. In order to encourage informal resolution of differences of opinion regarding the provision of special education, the following methods of alternative dispute resolution shall be available to parents and school districts:

- (a) Neutral conference.
- (b) Mediation.
- (c) Facilitated individualized education program meeting.

II. To assist parents and schools, this subdivision requires the local education agency to notify the department of education in writing that an individualized education program, educational placement, identification, or evaluation of a child has been rejected by the parent, and establishes a 30-day period for discussion beginning on the date such notice is received by the department of education.

Immediately following notification, the department shall communicate to the parent a description of the alternative dispute resolution process. While the use of these informal resolution procedures is strongly encouraged, it is not mandatory for either party. If this option is chosen by both parties, the department shall, during the 30-day period, schedule and conduct an alternative dispute resolution conference. The conference shall not be used to delay a due process hearing; however, both parties may agree to postpone the hearing pending a resolution.

III. Alternative dispute resolution proceedings shall be confidential and shall not impair the right of the participants to demand a due process hearing. Information, evidence, or the admission of any party shall not be disclosed or used in any subsequent proceeding. Statements made and documents prepared by a party, attorney, or other participant in aid of such proceeding shall be privileged and

shall not be disclosed. In addition, the parties shall not introduce into evidence in any subsequent proceeding the fact that there was an alternative dispute resolution proceeding or any other matter concerning the conduct of such proceedings. The authority of the department of education in alternative dispute resolution proceedings initiated under this section shall be limited to the provisions of paragraphs I and II.

IV. There shall be no record made of any alternative dispute resolution proceedings.

V. Evidence that would otherwise be admissible in a due process hearing or in a subsequent court hearing shall not be rendered inadmissible as a result of its use in an alternative dispute resolution proceeding.

**Source.** 1990, 162:1. 1994, 223:2. 2005, 10:2, eff. July 2, 2005. 2008, 302:20, eff. Jan. 1, 2009.

### **Section 186-C:23-a**

#### **186-C:23-a Local School District Alternative Dispute Resolution Programs. –**

I. Each school district in New Hampshire is encouraged to develop options for alternative dispute resolutions which can be utilized at the local district level. A plan outlining these methods may be submitted to the department of education for review. The department shall provide technical assistance at the request of the school districts in developing and implementing these alternative dispute resolution options.

II. Local school districts and parents are encouraged to submit to the department of education information relating to methods of alternative dispute resolution which have proven to be effective. Pursuant to RSA 21-N:6, VII, the department shall develop a system whereby such information can be collected, compiled, and disseminated to local school districts.

**Source.** 1994, 223:3, eff. May 27, 1994.

### **Section 186-C:23-b**

#### **186-C:23-b Neutral Conference. –**

I. Neutral conference shall consist of an informal, abbreviated presentation of case facts and issues by the parties to a neutral who is responsible for reviewing the strengths and weaknesses of the case and issuing a recommendation. If the neutral conference is selected, the department of education shall provide the parties with resumes of 5 neutrals. The parties shall agree to the selection of one neutral to preside at the conference. Following such selection, the department shall schedule the neutral conference and shall provide the parties with the neutral's name and address, the time, date, and place of the neutral conference, and the date by which the parties shall furnish the neutral with required information and documentation.

II. (a) Not less than 5 days prior to the neutral conference, the parties shall submit to the neutral and exchange a summary of the significant aspects of their case. The parties shall attach to the summary copies of all documents on which they rely. Such summaries shall be not more than 4 pages.

(b) Parties shall not communicate with the neutral concerning their case.

(c) At the neutral conference, the parties shall be present and shall have authority to authorize settlement.

(d) If the neutral deems it necessary, such neutral may request additional written information prior to the conference from either party. At the neutral conference, the neutral may address questions to the parties and shall allow each party no more than 30 minutes to complement their written summaries with a brief oral statement. The conference shall be limited to not more than 2 hours.

(e)(1) At the conclusion of the oral statements, the neutral shall issue an oral opinion to the

parties. The opinion shall contain a suggested settlement or disposition and the reasons therefor.

(2) If the neutral conference results in agreement, the conclusions shall be incorporated into a written binding agreement signed by each party.

(3) If the neutral conference does not result in agreement, the neutral shall document only the date and the participants at the meeting. No other record of the neutral conference shall be made. The neutral shall not be called as a witness at any additional proceedings in the specific case in which such neutral participated.

(4) The neutral shall advise the department of education that the neutral conference has taken place.

III. (a)(1) The neutral who presides at a conference shall have experience with children with disabilities and shall have knowledge of special education law, rules, and regulations.

(2) The neutral shall not have personal knowledge of the student or involvement with the school district.

(3) [Repealed.]

(b) Upon receipt of notice of appointment in a case, the neutral shall disclose any circumstances likely to create a conflict of interest, the appearance of a conflict of interest, a reasonable inference of bias, or to prevent the process from proceeding as scheduled. If the neutral withdraws, has a conflict of interest, or is otherwise unavailable, another shall be appointed by the commissioner of education.

(c) The participants and counsel shall recognize that the neutrals shall not be acting as legal advisors or legal representatives.

IV. The department of education shall evaluate the effectiveness of the alternative dispute resolution procedures annually and shall report its findings to the State Advisory Council required by the Individuals with Disabilities Education Act.

**Source.** 1994, 223:3. 1997, 89:2, eff. Aug. 2, 1997. 2008, 302:27, eff. Jan. 1, 2009.

## Section 186-C:24

### 186-C:24 Mediation; Procedure. –

I. When disputes arise under this chapter, mediation shall be available through the office of the commissioner, department of education. Mediation shall be provided in accordance with the following:

(a) Attempts to resolve conflicts between the parent or parents and a school district are encouraged.

(b) Either party may be accompanied and advised at mediation by individuals with special knowledge or training with respect to the needs of children with disabilities. At least 5 days prior to the mediation conference, the mediator shall contact the parties to determine whether either party will be accompanied by an individual with special knowledge or training and shall notify the other party if such an individual will be in attendance.

II. Mediation shall be provided as follows:

(a) A request for mediation shall be made in writing by either party to the commissioner of education. The mediation request shall specify the issue or issues in dispute and the relief sought;

(b) A mediation conference shall be conducted within 30 calendar days after receipt of a written request at which time:

(1) Issues shall be determined;

(2) Options explored; and

(3) Mediation attempts made within New Hampshire law.

(c) The role of the mediator shall be:

(1) To facilitate communication.

(2) To define the issues and explore alternatives.

(3) To remain neutral.

(d) The mediation conference shall be:

(1) Informal; and

(2) Held at a time and place reasonably convenient and mutually agreeable to the parties in the dispute.

(e) If the mediation results in agreement, the conclusions shall be incorporated into a written binding agreement signed by each party. If the mediation does not result in agreement, the mediator shall document the date and the participants at the meeting. No other record of the mediation shall be made. The mediator shall not be called as a witness in any additional proceedings in the specific case that the mediator mediates.

(f) The mediator may terminate the mediation after at least one meeting if in the mediator's judgment the parties are not making progress toward resolving the issue or issues in dispute.

(g) Pending the outcome of mediation, no change shall be made to a pupil's classification, program or placement, unless both parties agree to the change.

III. The commissioner shall:

(a) Appoint impartial mediators.

(b) Assure that mediators receive appropriate training.

(c) Assign mediators on a regional basis.

**Source.** 1990, 162:1. 1996, 195:3, eff. Aug. 2, 1996. 2008, 302:28, eff. Jan. 1, 2009.

## **Medicaid to Schools Program**

### **Section 186-C:25**

#### **186-C:25 Medicaid to Schools Program Established. –**

I. There is established within the department of health and human services a Medicaid reimbursement program to be known as the "Medicaid to schools" program providing medical assistance for covered services furnished to children with disabilities. The purpose of the program is to seek Medicaid reimbursement for services provided by local school districts and school administrative units to children with disabilities which are reimbursable under federal law but which were previously fully funded by such districts or administrative units. The program shall be voluntary and is designed to assist children with disabilities by maintaining them in their own homes and communities. This subdivision is intended to provide Medicaid funding for services which, in the absence of such funding, nevertheless qualify as special education or related services under this chapter. It is not the intention of this subdivision to increase school district responsibility or liability beyond what is required by other sections of this chapter.

II. Eligible services may be provided to children with disabilities and may include, but shall not be limited to, the following:

(a) Screening, evaluation, and diagnostic services.

(b) Speech pathology and audiology.

(c) Occupational and physical therapy.

(d) Any other service which qualifies as a special education or related service under RSA 186-C or federal law and which also qualifies for reimbursement under Medicaid as a covered service.

III. Services provided under this subdivision shall:

(a) Offer the least restrictive setting for children receiving the services.

(b) Be provided to children in conformity with any medical criteria necessary for Medicaid



reimbursement.

(c) Be in addition to any special education program as defined in the New Hampshire Rules for the Education of Children with Disabilities.

(d) Be provided only after obtaining informed parental consent.

IV. The commissioner of the department of health and human services, after consultation with the commissioner of the department of education, shall adopt rules, pursuant to RSA 541-A, relative to:

(a) State plans and reimbursement procedures necessary for local school districts or school administrative units to receive appropriate Medicaid reimbursement for eligible services under paragraph II of this section that are provided or paid for by school districts or school administrative units. Such rules shall recognize the financial obligation of the department of health and human services, and that any disputes between the department of health and human services and a school district or school administrative unit regarding whether such reimbursement is required shall be resolved pursuant to RSA 186-C:7-a.

(b) Monitoring mechanisms to ensure that services provided under this subdivision meet the requirements of paragraph III of this section. Monitoring responsibilities shall be consistent with the jurisdiction of the different departments.

(c) A financial mechanism by which the federal mandatory matching requirement is met through collection, or other means, of 50 percent of the cost of allowable services from local school districts and/or school administrative units.

V. The commissioner of the department of health and human services, after consultation with the commissioner of the department of education, shall adopt rules, pursuant to RSA 541-A, relative to further defining services eligible for medicaid reimbursement under this subdivision.

VI. New Hampshire local school districts or school administrative units shall be the enrolled Medicaid providers for the purpose of administration and billing.

**Source.** 1990, 272:1. 1995, 310:151, eff. Nov. 1, 1995. 2008, 302:26, eff. Jan. 1, 2009.

### **Section 186-C:26**

**186-C:26 Eligible Services.** – [Repealed 2008, 302:33, III, eff. Jan. 1, 2009.]

### **Section 186-C:27**

**186-C:27 Rulemaking.** – [Repealed 2008, 302:33, IV, eff. Jan. 1, 2009.]

### **Section 186-C:28**

**186-C:28 Enrolled Providers; Administration and Billing.** – [Repealed 2008, 302:33, V, eff. Jan. 1, 2009.]

## **Medicaid-Funded Services**

### **Section 186-C:29**

**186-C:29 Medicaid-Funded Services.** –

I. Medicaid-funded services that are provided as part of a child's individualized education program (IEP) shall be provided for the sole purpose of enabling the child to benefit from special education or to receive a free and appropriate public education. If a child receives Medicaid-funded services as part

of the child's special education program and also receives the same or similar medical services outside of his or her special education program, the services that are provided outside of the child's special education program shall not be considered to be duplicative provided such services are medically necessary and not inconsistent with federal Medicaid law. Medicaid-funded services that are provided as part of a child's individualized education program shall not be considered to be duplicative services if the child receives the same or similar medical services outside of his or her special education program, provided both services are medically necessary and not inconsistent with federal Medicaid law.

II. Services are considered to be Medicaid-funded if they are funded in full or in part by Medicaid.

III. Medicaid providers, managed care providers, or private providers receiving full or partial payment through Medicaid shall not require a parent to provide a copy of a child's individualized education program as a prerequisite to determining if a child is eligible for Medicaid-funded services that are not being provided as part of a child's individualized education program.

IV. Upon request from the state Medicaid agency or its agent, the local education agency shall provide a list of related services specified in the child's IEP that are eligible for Medicaid reimbursement.

**Source.** 2014, 211:1, eff. Sept. 9, 2014.

**RSA 541-A:39 Notice to Municipalities.**

“I. In addition to any other requirements imposed by this chapter, each agency shall give notice to and afford all affected municipalities reasonable opportunity to submit data, views, or comments with respect to the issuance of a permit, license, or any action within its boundaries that directly affects the municipality. Such actions shall include those which may have an effect on land use, land development, or transportation; those which would result in the operation of a business; or those which would have an immediate fiscal impact on the municipality or require the provision of additional municipal services.

II. Each agency shall give notice by first class mail to the town or city clerk.

III. In the event of emergency circumstances which require prompt attention, prior notice or opportunity to comment shall not be required. However, notice contemporaneous with the action shall be required.

IV. This section shall not apply to the issuance of professional or occupational licenses unless such issuance also results in actions meeting the criteria set forth in paragraph I. This section shall not apply to reissuance or renewal of licenses or permits issued prior to August 23, 1985.”

**Verbatim text of Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794**  
**Nondiscrimination under Federal grants and programs**

**Nondiscrimination under Federal grants and programs**

**(a) Promulgation of rules and regulations**

No *otherwise qualified* [emphasis added] individual with a disability in the United States, as defined in section 705(20) of this title, shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency or by the United States Postal Service. The head of each such agency shall promulgate such regulations as may be necessary to carry out the amendments to this section made by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Act of 1978. Copies of any proposed regulation shall be submitted to appropriate authorizing committees of the Congress, and such regulation may take effect no earlier than the thirtieth day after the date on which such regulation is so submitted to such committees.

**(b) "Program or activity" defined**

For the purposes of this section, the term "program or activity" means all of the operations of-

(1)(A) a department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(B) the entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(A) a college, university, or other postsecondary institution, or a public system of higher education; or

(B) a local educational agency (as defined in section 7801 of title 20), system of career and technical education, or other school system;

(3)(A) an entire corporation, partnership, or other private organization, or an entire sole proprietorship-

(i) if assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(ii) which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(B) the entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) any other entity which is established by two or more of the entities described in paragraph (1), (2), or (3);

any part of which is extended Federal financial assistance.

**(c) Significant structural alterations by small providers**

Small providers are not required by subsection (a) of this section to make significant structural alterations to their existing facilities for the purpose of assuring program accessibility, if alternative means of providing the services are available. The terms used in this subsection shall be construed with reference to the regulations existing on March 22, 1988.

**(d) Standards used in determining violation of section**

The standards used to determine whether this section has been violated in a complaint alleging employment discrimination under this section shall be the standards applied under title I of the Americans with Disabilities Act of 1990 (42 U.S.C. 12111 et seq.) and the provisions of sections 501 through 504, and 510,<sup>1</sup> of the Americans with Disabilities Act of 1990 (42 U.S.C. 12201–12204 and 12210), as such sections relate to employment.

## Verbatim Excerpts from federal Individuals with Disabilities Education Act (IDEA)

### 20 U.S.C. §1412. State eligibility

#### “(a) In general

A State is eligible for assistance under this subchapter for a fiscal year if the State submits a plan that provides assurances to the Secretary that the State has in effect policies and procedures to ensure that the State meets each of the following conditions:

#### (1) Free appropriate public education

##### (A) In general

A free appropriate public education is *available* to all children with disabilities residing in the State between the ages of 3 and 21, inclusive, including children with disabilities who have been suspended or expelled from school.” (Emphasis added.)

### 20 U.S.C. §1413. Local educational agency eligibility

#### “(a) In general

A local educational agency is eligible for assistance under this subchapter for a fiscal year if such agency submits a plan that provides assurances to the State educational agency that the local educational agency meets each of the following conditions: . . .

#### (5) Treatment of charter schools and their students

In carrying out this subchapter with respect to charter schools that are public schools of the local educational agency, the local educational agency—

(A) serves children with disabilities attending those charter schools in the same manner as the local educational agency serves children with disabilities in its other schools, including providing supplementary and related services on site at the charter school to the same extent to which the local educational agency has a policy or practice of providing such services on the site to its other public schools; and

(B) provides funds under this subchapter to those charter schools—

(i) on the same basis as the local educational agency provides funds to the local educational agency's other public schools, including proportional distribution based on relative enrollment of children with disabilities; and

(ii) at the same time as the agency distributes other Federal funds to the agency's other public schools, consistent with the State's charter school law.”

**Verbatim Text of Relevant Excerpt from U.S. Dept. of Education's  
Regulations Implementing the IDEA**

**34 C.F.R. § 300.209 Treatment of charter schools and their students.**

“(a) Rights of children with disabilities. Children with disabilities who attend public charter schools and their parents retain all rights under this part.

(b) Charter schools that are public schools of the LEA.

(1) In carrying out Part B of the Act and these regulations with respect to charter schools that are public schools of the LEA, the LEA must—

(i) Serve children with disabilities attending those charter schools in the same manner as the LEA serves children with disabilities in its other schools, including providing supplementary and related services on site at the charter school to the same extent to which the LEA has a policy or practice of providing such services on the site to its other public schools; and

(ii) Provide funds under Part B of the Act to those charter schools—

(A) On the same basis as the LEA provides funds to the LEA's other public schools, including proportional distribution based on relative enrollment of children with disabilities; and

(B) At the same time as the LEA distributes other Federal funds to the LEA's other public schools, consistent with the State's charter school law.

(2) If the public charter school is a school of an LEA that receives funding under § 300.705 and includes other public schools—

(i) The LEA is responsible for ensuring that the requirements of this part are met, unless State law assigns that responsibility to some other entity; and

(ii) The LEA must meet the requirements of paragraph (b)(1) of this section.

(c) Public charter schools that are LEAs. If the public charter school is an LEA, consistent with § 300.28, that receives funding under § 300.705, that charter school is responsible for ensuring that the requirements of this part are met, unless State law assigns that responsibility to some other entity.

(d) Public charter schools that are not an LEA or a school that is part of an LEA.

(1) If the public charter school is not an LEA receiving funding under § 300.705, or a school that is part of an LEA receiving funding under § 300.705, the SEA is responsible for ensuring that the requirements of this part are met.

(2) Paragraph (d)(1) of this section does not preclude a State from assigning initial responsibility for ensuring the requirements of this part are met to another entity. However, the SEA must maintain the ultimate responsibility for ensuring compliance with this part, consistent with § 300.149.”



**PART Ed 1109**  
**THE INDIVIDUALIZED EDUCATION PROGRAM**

**Ed 1109.01 Elements of an Individualized Education Program.**

- (a) Each IEP shall include:  
(1) The elements listed in CFR 300.320;

**§300.320 Definition of Individualized education program.**

- (a) **General.** As used in this part, the term individualized education program or IEP means a written statement for each child with a disability that is developed, reviewed, and revised in a meeting in accordance with §§300.320 through 300.324, and that must include--
- (1) A statement of the child's present levels of academic achievement and functional performance, including--
    - (i) How the child's disability affects the child's involvement and progress in the general education curriculum (i.e., the same curriculum as for nondisabled children); or
    - (ii) For preschool children, as appropriate, how the disability affects the child's participation in appropriate activities;
  - (2) (i) A statement of measurable annual goals, including academic and functional goals designed to--
    - (A) Meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum; and
    - (B) Meet each of the child's other educational needs that result from the child's disability;
  - (ii) For children with disabilities who take alternate assessments aligned to alternate achievement standards, a description of benchmarks or short-term objectives;
  - (3) A description of--
    - (i) How the child's progress toward meeting the annual goals described in paragraph (2) of this section will be measured; and
    - (ii) When periodic reports on the progress the child is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards) will be provided;
  - (4) A statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided to enable the child--
    - (i) To advance appropriately toward attaining the annual goals;
    - (ii) To be involved in and make progress in the general education curriculum in accordance with paragraph (a)(1) of this section, and to participate in extracurricular and other nonacademic activities; and
    - (iii) To be educated and participate with other children with disabilities and nondisabled children in the activities described in this section;
  - (5) An explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class and in the activities described in paragraph (a)(4) of this section;
  - (6) (i) A statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child on State and districtwide assessments consistent with section 612(a)(16) of the Act; and
    - (ii) If the IEP Team determines that the child must take an alternate assessment instead of a particular regular State or districtwide assessment of student achievement, a statement of why--
      - (A) The child cannot participate in the regular assessment; and
      - (B) The particular alternate assessment selected is appropriate for the child; and

- (7) The projected date for the beginning of the services and modifications described in paragraph (a)(4) of this section, and the anticipated frequency, location, and duration of those services and modifications.
- (b) Transition services. Beginning not later than the first IEP to be in effect when the child turns 16, or younger if determined appropriate by the IEP Team, and updated annually, Thereafter, the IEP must include--
- (1) Appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills; and
  - (2) The transition services (including courses of study) needed to assist the child in reaching those goals.
- (c) Transfer of rights at age of majority. Beginning not later than one year before the child reaches the age of majority under State law, the IEP must include a statement that the child has been informed of the child's rights under Part B of the Act, if any, that will transfer to the child on reaching the age of majority under §300.520.
- (d) Construction. Nothing in this section shall be construed to require--
- (1) That additional information be included in a child's IEP beyond what is explicitly required in section 614 of the Act; or
  - (2) The IEP Team to include information under one component of a child's IEP that is already contained under another component of the child's IEP.
- (2) The length of the school year and the school day required to implement the IEP;
  - (3) The types of service providers who would be responsible for implementing the IEP or the names of those providers;
  - (4) A statement identifying the party or parties assuming the financial responsibility for the implementation of the IEP;
  - (5) The signature of the parent or, where appropriate, student, and representative of the LEA stating approval of the provisions in the IEP;
  - (6) Short-term objectives or benchmarks for all children unless the parent determines them unnecessary for all or some of the child's annual goals;
  - (7) Short-term objectives or benchmarks for all children who take alternate assessment based on alternate achievement standards;
  - (8) A statement of how the child's progress toward meeting the annual goals shall be provided to the parents;
  - (9) A statement of how the child's progress toward meeting the annual goals will be measured and whether progress is sufficient to achieve the annual goals by the end of the school year;
  - (10) A statement of transition services that meets the requirements of 34 CFR 300.43 and 34 CFR 300.320(b), with the exception that a plan for each student with a disability beginning at age 14 or younger, if determined appropriate by the IEP team, shall include a statement of the transition service needs of the student under the applicable components of the student's IEP that focuses on the student's courses of study such as participation in advanced-placement courses or a vocational education; and

**§300.43 Transition services.**

- (a) Transition services means a coordinated set of activities for a child with a disability that--
- (1) Is designed to be within a results-oriented process, that is focused on improving the academic and functional achievement of the child with a disability to facilitate the child's movement from school to post-school activities, including postsecondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation;
  - (2) Is based on the individual child's needs, taking into account the child's strengths, preferences, and interests; and includes--
    - (i) Instruction;
    - (ii) Related services;
    - (iii) Community experiences;
    - (iv) The development of employment and other post-school adult living objectives; and
    - (v) If appropriate, acquisition of daily living skills and provision of a functional vocational evaluation.
- (b) Transition services for children with disabilities may be special education, if provided as specially designed instruction, or a related service, if required to assist a child with a disability to benefit from special education.

**§300.34 Related services.**

- (a) General. Related services means transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education, and includes speech-language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, early identification and assessment of disabilities in children, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services for diagnostic or evaluation purposes. Related services also include school health services and school nurse services, social work services in schools, and parent counseling and training.
- (b) Exception: services that apply to children with surgically implanted devices, including cochlear implants.
- (1) Related services do not include a medical device that is surgically implanted, the optimization of that device's functioning (e.g., mapping), maintenance of that device, or the replacement of that device.
  - (2) Nothing in paragraph (b)(1) of this section--
    - (i) Limits the right of a child with a surgically implanted device (e.g., cochlear implant) to receive related services (as listed in paragraph (a) of this section) that are determined by the IEP Team to be necessary for the child to receive FAPE.
    - (ii) Limits the responsibility of a public agency to appropriately monitor and maintain medical devices that are needed to maintain the health and safety of the child, including breathing, nutrition, or operation of other bodily functions, while the child is transported to and from school or is at school; or
    - (iii) Prevents the routine checking of an external component of a surgically-implanted device to make sure it is functioning properly, as required in §300.113(b)
- (c) Individual related services terms defined. The terms used in this definition are defined as follows:
- (1) Audiology includes--
    - (i) Identification of children with hearing loss;
    - (ii) Determination of the range, nature, and degree of hearing loss, including referral for medical or other professional attention for the habilitation of hearing;
    - (iii) Provision of habilitative activities, such as language habilitation, auditory training, speech reading (lip-reading), hearing evaluation, and speech conservation;
    - (iv) Creation and administration of programs for prevention of hearing loss;
    - (v) Counseling and guidance of children, parents, and teachers regarding hearing loss; and
    - (vi) Determination of children's needs for group and individual amplification, selecting and fitting an appropriate aid, and evaluating the effectiveness of amplification.

- (2) **Counseling services** means services provided by qualified social workers, psychologists, guidance counselors, or other qualified personnel.
- (3) **Early identification and assessment of disabilities in children** means the implementation of a formal plan for identifying a disability as early as possible in a child's life.
- (4) **Interpreting services** includes--
- (i) The following, when used with respect to children who are deaf or hard of hearing: Oral transliteration services, cued language transliteration services, sign language transliteration and interpreting services, and transcription services, such as communication access real-time translation (CART), C-Print, and TypeWell; and
  - (ii) Special interpreting services for children who are deaf-blind.
- (5) **Medical services** means services provided by a licensed physician to determine a child's medically related disability that results in the child's need for special education and related services.
- (6) **Occupational therapy--**
- (i) Means services provided by a qualified occupational therapist; and
  - (ii) Includes--
    - (A) Improving, developing, or restoring functions impaired or lost through illness, injury, or deprivation;
    - (B) Improving ability to perform tasks for independent functioning if functions are impaired or lost; and
    - (C) Preventing, through early intervention, initial or further impairment or loss of function.
- (7) **Orientation and mobility services--**
- (i) Means services provided to blind or visually impaired children by qualified personnel to enable those students to attain systematic orientation to and safe movement within their environments in school, home, and community; and
  - (ii) Includes teaching children the following, as appropriate:
    - (A) Spatial and environmental concepts and use of information received by the senses (such as sound, temperature and vibrations) to establish, maintain, or regain orientation and line of travel (e.g., using sound at a traffic light to cross the street);
    - (B) To use the long cane or a service animal to supplement visual travel skills or as a tool for safely negotiating the environment for children with no available travel vision;
    - (C) To understand and use remaining vision and distance low vision aids; and
    - (D) Other concepts, techniques, and tools.
- (8)(i) **Parent counseling and training** means assisting parents in understanding the special needs of their child;
- (ii) Providing parents with information about child development; and
  - (iii) Helping parents to acquire the necessary skills that will allow them to support the implementation of their child's IEP or IFSP.
- (9) **Physical therapy** means services provided by a qualified physical therapist.
- (10) **Psychological services** includes--
- (i) Administering psychological and educational tests, and other assessment procedures;
  - (ii) Interpreting assessment results;
  - (iii) Obtaining, integrating, and interpreting information about child behavior and conditions relating to learning;
  - (iv) Consulting with other staff members in planning school programs to meet the special educational needs of children as indicated by psychological tests, interviews, direct observation, and behavioral evaluations;
  - (v) Planning and managing a program of psychological services, including psychological counseling for children and parents; and
  - (vi) Assisting in developing positive behavioral intervention strategies.

- (11) **Recreation** includes--
- (i) Assessment of leisure function;
  - (ii) Therapeutic recreation services;
  - (iii) Recreation programs in schools and community agencies; and
  - (iv) Leisure education.
- (12) **Rehabilitation counseling services** means services provided by qualified personnel in individual or group sessions that focus specifically on career development, employment preparation, achieving independence, and integration in the workplace and community of a student with a disability. The term also includes vocational rehabilitation services provided to a student with a disability by vocational rehabilitation programs funded under the Rehabilitation Act of 1973, as amended, 29 U.S.C. 701 et seq.
- (13) **School health services and school nurse services** means health services that are designed to enable a child with a disability to receive FAPE as described in the child's IEP. School nurse services are services provided by a qualified school nurse. School health services are services that may be provided by either a qualified school nurse or other qualified person.
- (14) **Social work services in schools** includes--
- (i) Preparing a social or developmental history on a child with a disability;
  - (ii) Group and individual counseling with the child and family;
  - (iii) Working in partnership with parents and others on those problems in a child's living situation (home, school, and community) that affect the child's adjustment in school;
  - (iv) Mobilizing school and community resources to enable the child to learn as effectively as possible in his or her educational program; and
  - (v) Assisting in developing positive behavioral intervention strategies.
- (15) **Speech-language pathology services** includes--
- (i) Identification of children with speech or language impairments;
  - (ii) Diagnosis and appraisal of specific speech or language impairments;
  - (iii) Referral for medical or other professional attention necessary for the habilitation of speech or language impairments;
  - (iv) Provision of speech and language services for the habilitation or prevention of communicative impairments; and
  - (v) Counseling and guidance of parents, children, and teachers regarding speech and language impairments.
- (16) **Transportation** includes--
- (i) Travel to and from school and between schools;
  - (ii) Travel in and around school buildings; and
  - (iii) Specialized equipment (such as special or adapted buses, lifts, and ramps), if required to provide special transportation for a child with a disability.

**§300.320(b) Transition services.** Beginning not later than the first IEP to be in effect when the child turns 16, or younger if determined appropriate by the IEP Team, and updated annually, thereafter, the IEP must include--

- (1) Appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills; and
- (2) The transition services (including courses of study) needed to assist the child in reaching those goals.

(11) A vocational education component for each child with a disability for whom vocational education is to be provided.

(b) All of the requirements for the IEP specified in Ed 1109.01(a) shall apply to the development, approval, and implementation of the vocational education component.

**Verbatim text of U.S. Dept. of Education IDEA regulations addressing placement in the least restrictive environment, 34 C.F.R. §§ 300.114 - 300.120**

**Section 300.114 LRE requirements.**

(a) General.

(1) Except as provided in Sec. 300.324(d)(2) (regarding children with disabilities in adult prisons), the State must have in effect policies and procedures to ensure that public agencies in the State meet the LRE requirements of this section and Sec. Sec. 300.115 through 300.120.

(2) Each public agency must ensure that--

- (i) To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are nondisabled; and
- (ii) Special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

(b) Additional requirement--State funding mechanism.

(1) General.

(i) A State funding mechanism must not result in placements that violate the requirements of paragraph (a) of this section; and

(ii) A State must not use a funding mechanism by which the State distributes funds on the basis of the type of setting in which a child is served that will result in the failure to provide a child with a disability FAPE according to the unique needs of the child, as described in the child's IEP.

(2) Assurance. If the State does not have policies and procedures to ensure compliance with paragraph (b)(1) of this section, the State must provide the Secretary an assurance that the State will revise the funding mechanism as soon as feasible to ensure that the mechanism does not result in placements that violate that paragraph.

(Authority: 20 U.S.C. 1412(a)(5))

**Section 300.115 Continuum of alternative placements.**

(a) Each public agency must ensure that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services.

(b) The continuum required in paragraph (a) of this section must--

(1) Include the alternative placements listed in the definition of special education under Sec. 300.38 (instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions); and

(2) Make provision for supplementary services (such as resource room or itinerant instruction) to be provided in conjunction with regular class placement.

(Authority: 20 U.S.C. 1412(a)(5) )

**Section 300.116 Placements.**

In determining the educational placement of a child with a disability, including a preschool child with a disability, each public agency must ensure that--

(a) The placement decision--

(1) Is made by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options; and

(2) Is made in conformity with the LRE provisions of this subpart, including Sec. Sec. 300.114 through 300.118;

(b) The child's placement--

- (1) Is determined at least annually;
- (2) Is based on the child's IEP; and
- (3) Is as close as possible to the child's home;

(c) Unless the IEP of a child with a disability requires some other arrangement, the child is educated in the school that he or she would attend if nondisabled;

(d) In selecting the LRE, consideration is given to any potential harmful effect on the child or on the quality of services that he or she needs; and

(e) A child with a disability is not removed from education in age-appropriate regular classrooms solely because of needed modifications in the general education curriculum.

(Authority: 20 U.S.C. 1412(a)(5))

### **Section 300.117 Nonacademic settings.**

In providing or arranging for the provision of nonacademic and extracurricular services and activities, including meals, recess periods, and the services and activities set forth in Sec. 300.107, each public agency must ensure that each child with a disability participates with nondisabled children in the extracurricular services and activities to the maximum extent appropriate to the needs of that child. The public agency must ensure that each child with a disability has the supplementary aids and services determined by the child's IEP Team to be appropriate and necessary for the child to participate in nonacademic settings.

(Authority: 20 U.S.C. 1412(a)(5))

### **Section 300.118 Children in public or private institutions.**

Except as provided in § 300.149(d) (regarding agency responsibility for general supervision of some individuals in adult prisons), an SEA must ensure that § 300.114 is effectively implemented, including, if necessary, making arrangements with public and private institutions (such as a memorandum of agreement or special implementation procedures).

(Authority: 20 U.S.C. 1412(a)(5))

### **Section 300.119 Technical assistance and training activities.**

Each SEA must carry out activities to ensure that teachers and administrators in all public agencies—

- (a) Are fully informed about their responsibilities for implementing § 300.114; and
- (b) Are provided with technical assistance and training necessary to assist them in this effort.

(Authority: 20 U.S.C. 1412(a)(5))

### **Section 300.120 Monitoring activities.**

(a) The SEA must carry out activities to ensure that § 300.114 is implemented by each public agency.

- (b) If there is evidence that a public agency makes placements that are inconsistent with § 300.114, the SEA must—
  - (1) Review the public agency's justification for its actions; and
  - (2) Assist in planning and implementing any necessary corrective action.

(Authority: 20 U.S.C. 1412(a)(5))

**Excerpt provided by Gerald Zelin, Commission member:**

**IDEA provision encouraging mainstreaming, 20 United States Code (U.S.C.) § 1412**

“(a) A State is eligible for assistance under this subchapter for a fiscal year if the State submits a plan that provides assurances to the Secretary that the State has in effect policies and procedures to ensure that the State meets each of the following conditions: . . .

(5) Least restrictive environment

(A) In general

*To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.”* (Italics added.)



**RSA 186-C:15 Length of School Year.** – I. The length of the school year and school day for a child with a disability shall be the same as that provided by the local school district for a child without a disability of the same age or grade, except that the local school district shall provide an approved program for an extended period when the child's individualized education program team determines that such services are necessary to provide the child with a free appropriate public education.

**Ed 306.18 (part of the minimum standards) School Year.**

(a) Pursuant to RSA 189:1 and RSA 189:24, each school district shall maintain a school year as provided below:

(1) The school district shall maintain in each elementary school, a school year of at least 945 hours [*Note: 945/180 = 5.25 hours/day*] of instructional time and in each kindergarten at least 450 hours of instructional time;

(2) The school district shall maintain in each middle and high school, a school year of at least 990 hours of instructional time. Districts shall provide at least 990 hours [*Note: 990/180 = 5.5 hours/day*] of instructional time for grades 7 and 8 in elementary schools that include grades 7, or 8, or both;

(3) The instructional school day of an individual student shall not exceed 5.75 hours of instructional time in elementary schools and 6 hours of instructional time in middle and high schools;

(4) The school shall have in its school year an additional 60 hours in duration to provide for instructional time lost due to inclement weather or unexpected circumstances, staff development, and parent-teacher conferences. At least 30 of the 60 additional hours shall be available for rescheduling hours lost due to inclement weather or other emergencies. Schools shall use these additional hours to reschedule lost instructional time before requesting a waiver of the amount of instructional time under RSA 189:2, unless extraordinary circumstances exist that would place an unreasonable burden on the school or students such as, but not limited to, substantial building damage;

(5) A school may have a shortened day when an emergency condition exists which might adversely affect the health and safety of students, provided that the number of hours of instructional time originally planned for the day shall be credited to the number of hours of instructional time in the school year, if:

a. On that day, the school would normally have had at least 5.25 hours of instructional time; and

b. The school remained open for at least 3.5 hours of instructional time;

(6) There shall be no requirement to reschedule instructional time for kindergarten if morning or afternoon kindergarten sessions are cancelled due to delayed opening or early release for students in grade 1 or higher; and

(7) A school district may submit a plan to the commissioner that will allow schools to conduct instruction remotely for up to 5 days per year when the school has been closed due to inclement weather or other emergency. The plan shall include procedures for participation by all students. Academic work shall be equivalent in effort and rigor to typical classroom work. There shall be an assessment of all student work for the day. At least 80 percent of students shall participate for the day to count as a school day.

(b) Lunch time, home room periods, passing time, and breaks shall not be counted toward the required amount of instructional time. Elementary schools may count up to 30 minutes of recess per day as instructional time for pupils in kindergarten through grade 6. Advisory periods in middle and high schools shall be counted as instructional time.

(c) The school year for high school seniors may be reduced by no more than 5 days or 30 hours of instruction, whichever is less, from the number of days or hours of instruction for other high school students.

**CHAPTER 272**  
**SB 483-FN - FINAL VERSION**

02/11/2016 0342s  
03/03/2016 0641s  
11May2016... 1362h  
06/01/2016 2112EBA

2016 SESSION

16-2858  
04/03

**SENATE BILL 483-FN**

AN ACT establishing the position of chartered public school program officer in the department of education.

SPONSORS: Sen. Feltes, Dist 15; Sen. Stiles, Dist 24; Sen. Reagan, Dist 17; Sen. Carson, Dist 14; Sen. Fuller Clark, Dist 21; Sen. Little, Dist 8; Rep. Myler, Merr. 10; Rep. Gorman, Hills. 31; Rep. Weyler, Rock. 13; Rep. Bates, Rock. 7; Rep. Luneau, Merr. 10; Rep. Gile, Merr. 27; Rep. Ladd, Graf. 4; Rep. J. Frazer, Merr. 13; Rep. Heath, Hills. 14

COMMITTEE: Education

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AMENDED ANALYSIS

This bill requires the commissioner of the department of education to establish the position of chartered public school program officer.

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Explanation: Matter added to current law appears in ***bold italics***.

Matter removed from current law appears [~~in brackets and struck through~~]

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

02/11/2016 0342s  
03/03/2016 0641s  
11May2016... 1362h  
06/01/2016 2112EBA  
16-2858 04/03

STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Sixteen*

AN ACT establishing the position of chartered public school program officer in the department of education.

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

272:1 Statement of Purpose. The chartered public school program officer position under this act provides statewide administrative oversight, support, and guidance to ensure the chartered public school education program, including the delivery of special education services, complies with state and federal requirements.

272:2 New Paragraph; Department of Education; Duties of Commissioner; Chartered Public School Program Officer. Amend RSA 21-N:4 by inserting after paragraph XI the following new paragraph:

XII. No later than October 1, 2017, establish a chartered public school program officer position which shall be a classified position. The commissioner shall include a new classified chartered public school program officer classified position in its efficiency expenditure request pursuant to RSA 9:4 for the biennium ending June 30, 2019 and every biennium thereafter. The chartered public school program officer shall:

- (a) Answer inquiries regarding charter public schools.
- (b) Act as a liaison between chartered public schools and the department of education.
- (c) Ensure that a chartered public school is implementing its charter mission.
- (d) Provide training for interested parties on the governance of chartered public schools and the development of chartered public school policy.
- (e) Assist the chartered public school in identifying and securing alternative funding sources.
- (f) Receive and evaluate progress reports from chartered public schools, identify best practices for instruction and management in chartered public schools, and develop a process to share such best practices with other public schools.
- (g) Act as the liaison between chartered public schools and the United States Department of Education.
- (h) Act as the liaison between chartered public school advocacy groups and interested parties.
- (i) Act as the liaison between chartered public schools and other public schools in the chartered public school's geographic region.
- (j) Work closely with the resident school districts and chartered public schools to assure appropriate support for students with disabilities.

272:3 Effective Date. This act shall take effect July 1, 2017.

Approved: June 16, 2016

Effective Date: July 1, 2017

193 Fed.Appx. 510, 2006 WL 2456679 (C.A.6 (Mich.)), 214 Ed. Law Rep. 534, 2006 Fed.App. 0642N

(Not Selected for publication in the Federal Reporter)

(Cite as: 193 Fed.Appx. 510, 2006 WL 2456679 (C.A.6 (Mich.)))

## H

This case was not selected for publication in the Federal Reporter.

Not for Publication in West's Federal Reporter See Fed. Rule of Appellate Procedure 32.1 generally governing citation of judicial decisions issued on or after Jan. 1, 2007. See also Sixth Circuit Rule 28. (Find CTA6 Rule 28)

United States Court of Appeals,  
Sixth Circuit.  
Tammy CLARK, Plaintiff-Appellant,  
v.

Dr. Sharon BANKS, in her official capacity as Superintendent of Lansing School District, William DeFrance, in his official capacity as Superintendent, Eaton Rapids Public Schools, Jennifer Granholm, in her official capacity as Governor of the State of Michigan, and Michael P. Flanagan, in his official capacity as Superintendent of Public Instruction, Michigan Department of Education Defendants-Appellees.

No. 05-2287.  
Aug. 24, 2006.

**Background:** Resident of school district, who sought to enroll her developmentally disabled son in a different school district, without required agreement between districts on terms of his enrollment, sued school and government officials, challenging constitutionality and legality of Michigan's School of Choice statute, as it applied to students requiring special education. The United States District Court for the Western District of Michigan, 2005 WL 2001159, entered summary judgment in favor of defendants. Plaintiff appealed.

**Holdings:** The Court of Appeals held that:

(1) rational relationship existed between School of Choice statute and a legitimate governmental interest of ensuring adequate and equitable funding for the widely varying intermediate school districts

(ISDs), with consequently varying costs of special education students, for purpose of equal protection challenge, and

(2) plaintiff failed to show discrimination solely because of student's disability.

Affirmed.

West Headnotes

### [1] Constitutional Law 92 3159

92 Constitutional Law

92XXVI Equal Protection

92XXVI(B) Particular Classes

92XXVI(B)3 Disability or Disease, Physical or Mental

92k3157 Education

92k3159 k. Students. **Most Cited**

Cases

(Formerly 92k242.2(5.1))

### Constitutional Law 92 3361

92 Constitutional Law

92XXVI Equal Protection

92XXVI(B) Particular Classes

92XXVI(B)10 Residency or Duration

Thereof

92k3359 Education

92k3361 k. Students in General.

Most Cited Cases

(Formerly 92k242.2(5.1))

### Schools 345 10

345 Schools

345II Public Schools

345II(A) Establishment, School Lands and Funds, and Regulation in General

345k10 k. Constitutional and Statutory

Provisions. **Most Cited Cases**

Rational relationship existed between the Michigan's School of Choice statute and a legitimate governmental interest of ensuring adequate and

193 Fed.Appx. 510, 2006 WL 2456679 (C.A.6 (Mich.)), 214 Ed. Law Rep. 534, 2006 Fed.App. 0642N

(Not Selected for publication in the Federal Reporter)

(Cite as: 193 Fed.Appx. 510, 2006 WL 2456679 (C.A.6 (Mich.)))

equitable funding for the widely varying intermediate school districts (ISDs), with consequently varying costs of special education students, for purpose of equal protection challenge asserted by resident of one ISD, who sought to enroll her developmentally disabled son in a different ISD, without required agreement between districts on terms of his enrollment. [U.S.C.A. Const.Amend. 14](#); [M.C.L.A. § 388.1705c](#)(18).

## [2] Civil Rights 78 ↻1069

### 78 Civil Rights

78I Rights Protected and Discrimination Prohibited in General

78k1059 Education

78k1069 k. Disabled Students. [Most Cited](#)

#### Cases

Given that student's disability was not the sole reason for his exclusion from participation in Michigan's choice of law system, as exclusion was also a function of his residence and the funds attending his education, student failed to show discrimination solely because of his disability, as was required to maintain actions under the Rehabilitation Act, the Americans with Disability Act (ADA), and Michigan's Persons with Disabilities Civil Rights Act. Rehabilitation Act of 1973, § 504(a), [29 U.S.C.A. § 794\(a\)](#); Americans with Disabilities Act of 1990, § 202, [42 U.S.C.A. § 12132](#); [M.C.L.A. §§ 37.1102\(1\)](#), [380.1701\(b\)](#).

\*511 On Appeal from the United States District Court for the Western District of Michigan.

Before: [BOGGS](#), Chief Judge; [COLE](#), Circuit Judge; and [HOOD](#), District Judge. <sup>FN\*</sup>

FN\* The Honorable [Denise Page Hood](#), United States District Judge for the Eastern District of Michigan.

PER CURIAM.

\*\*1 Tammy Clark, a resident of the Ingham In-

termediate School District (ISD) in Michigan, challenges the constitutionality and legality of Michigan's "school of choice" system, as it applies to students requiring special education. She seeks to enroll her developmentally disabled son, B.C., in the Eaton Rapid Public Schools (ERPS), which is part of a different ISD, despite the failure of the two ISDs to reach an agreement on the terms of his enrollment, as required by the governing state statute. She now appeals from summary judgment entered in favor of the defendants, who are school and government officials. The district court found a rational basis for Michigan's statutory scheme. We affirm the district court's grant of summary judgment.

## I

Tammy Clark seeks to enroll her son, B.C., in the Eaton Rapid Public Schools (ERPS) under Michigan's School of Choice statute. As of August 2005, B.C. was six years old. He lives with his mother, Tammy Clark, in Lansing, Michigan. It is conceded that he has developmental disabilities that entitle him to special education services. Clark has worked in the Eaton Rapids area for roughly eight years. B.C. attends day care there. Clark sought in November 2003 to enroll her child in the Eaton Rapids school district, for the 2004-2005 school year, even though she does not live there.

At the time of Clark's November 2003 enrollment request, ERPS was accepting applications for enrollment by non-resident applicants residing in a district located in a contiguous intermediate district under the State School Aid Act of 1979, [Mich. Comp. Laws Ann. § 388.1705c](#). Also at that time, the number of qualified non-resident applicants eligible for acceptance under the statute appears not to have exceeded the positions available for non-resident pupils at ERPS. For the 2004-2005 school year, ERPS accepted at least 67 school of choice students from other school districts.

The State of Michigan divides itself into 57 Intermediate School Districts. Each ISD has constituent member local districts, and every local district

in the State is a constituent of one of these 57 ISDs. Defendant-Appellee Eaton Rapids Public Schools (ERPS) is a constituent local district of the Eaton ISD, and Defendant-Appellee Lansing School District (LSD) is a constituent local district of the Ingham ISD. Each ISD oversees, inter alia, the provision of special education and related services to the students in the ISD's constituent\*512 local districts. Statutorily, ISDs must “[d]evelop, establish, and continually evaluate and modify in cooperation with its constituent districts, a plan for special education which shall provide for the delivery of special-education programs and services” to “each handicapped person ... who is a resident of 1 of its constituent districts...” M.C.L. § 380.1711(a) and (f). The plans must be approved by the State. M.C.L. § 380.1701(b). In implementing these plans, as the State points out, ISDs often create a “center program” for special-education students who are members of its constituent districts. Thus, statutorily, special education is managed on an ISD-wide basis.

\*\*2 Roughly 80% of a school district's revenue comes from the State through a per pupil foundation allowance. The State School Aid Act controls which students a district may claim in membership and how those students are counted. The foundation allowance is paid for pupils who are enrolled in regular daily attendance in the district on the pupil membership count days. Additionally, the State pays a district 28.6% of its total approved costs incurred in providing special education and related services. The federal government also provides funds for special education. ISDs also receive operational funds from the State. A local school district is not permitted to ask its voters to increase funding for special education through additional property taxes, but ISDs can and do ask voters to approve millage requests for special-education operating expenses across the ISD.

Typically, both general and special education students attend school in their districts of residence. Under M.C.L. § 380.1147, they have a statutory

right to do so. However, under other state provisions, they may also attend school in other districts. At issue in this case is the portion of the State School Aid Act, M.C.L. § 388.1705c, that allows transfers.

General education students have a more streamlined process than do special education students to apply for enrollment in schools outside their own ISDs. Due to the higher costs of special education, the approval of applications by special education students is conditional on an agreement between the two school districts (each from different ISDs) as to how the special education services and funding will be provided. ERPS and LSD were not able to reach an agreement on the financial arrangements necessary to permit approval of B.C.'s application.

## II

Clark filed a complaint in the United States District Court for the Western District of Michigan on December 27, 2004, against Sharon Banks, William DeFrance, Jennifer Granholm, and Thomas D. Watkins, Jr., in their official capacities as superintendent of LSD, superintendent of ERPS, Governor of the State of Michigan, and Superintendent of Public Instruction of the Michigan Department of Education, respectively. The complaint sought damages, declaratory, and injunctive relief.

The essential gravamen of Clark's claim is that B.C. is suffering discrimination due to his special education needs. Were he a “typical,” non-special education student, he would have been admitted into the school district to which he had applied. The defendants have consequently, in his view, denied him “an equal opportunity to take advantage of the benefits of the school of choice provision of the State School Aid Act of 1979, in violation of the Equal Protection Clause of the Constitution.” He claims that the defendants have “intentionally discriminated against [him] on the basis of his disability and recklessly disregarded his rights under Section 504 of the \*513 Rehabilitation Act of 1973, 29 U.S.C. § 794, Section II of the Americans with Dis-

abilities Act, 42 U.S.C. § 12132 et seq., and the Persons with Disabilities Civil Rights Act, Mich. Comp. Laws Ann. § 37.1102 et seq.”

**\*\*3** The district court granted summary judgment in favor of the defendants on August 17, 2005. The district court issued a lengthy opinion explaining its order. The court framed the central question of the case as “whether the decision by the Michigan Legislature to require school districts to enter into a written agreement regarding the costs of special education prior to permitting a student to attend a public school of their choice violates” the provisions cited by Clark.

As the district court noted, “Michigan voters fundamentally altered the manner in which school districts are funded” roughly ten years earlier, through amendment to the state constitution. See Mich. Const. of 1963 art. 9, § 11. Prior to that amendment, “the majority of a school district’s revenue came from local property taxes.” The amendment,

vastly changed this system. Currently, each school district receives funding directly from the state based on a per membership per pupil foundation allowance (‘foundation allowance’) as defined in Mich. Comp. Laws § 388.1620. The amount of the foundation allowance for each school district is determined through a weighted formula based upon the number of students who are enrolled and in regular attendance in the school district on two pupil membership count days. Mich. Comp. Laws § 388.1606(4), (8).

In addition to the foundation allowance, the state reimburses school districts and ISDs for 28.6138% of their total approved costs of special education and 70.4165% of total approved costs of special education transportation. Mich. Comp. Laws § 388.1651a(2). ISDs also annually receive additional aid from the state ‘be used to comply with requirements of this act and the revised school code ... and for which

funding is not provided elsewhere in this act, and to provide technical assistance to districts....’ Mich. Comp. Laws § 388.1681(1). ISDs and school districts also receive federal funding for special education pursuant to the Individuals with Disabilities Education Act (IDEA).

In addition to the funding from the state, ISDs are also statutorily authorized to, with voter approval, levy ad valorem property taxes for operational costs, and costs of special and vocational education programs. See Mich. Comp. Laws. §§ 380.625a (ISD ‘may levy ad valorem property taxes for operating purposes at a rate not to exceed 1.5 times the number of mills allocated to the [ISD] for those purposes in 1993.’); 380.1724a (special education millage); 380.681 (vocational education millage).

The district court described the Michigan school of choice system as a “voluntary program in which each school district determines whether or not it will accept nonresident applicants for enrollment.” The court noted that M.C.L. § 388.1705c governs the “procedure by which a school district may enroll students from outside the district when it ... determines that it will accept applications for enrollment from nonresident students who reside in a district located in a contiguous ISD.” The court emphasized that, under governing statutes, a school district retained the choice as to whether it would accept applications from nonresidents. However,

**\*514 \*\*4** [a]fter choosing to accept nonresident applicants, there is very little discretion left to a school district in selecting or denying enrollment. Both statutes expressly prohibit a school district from granting or refusing enrollment ‘based on intellectual, academic, artistic, or other ability, talent, or accomplishment, or lack thereof, or based on a mental or physical disability.’ Mich. Comp. Laws §§ 388.1705(6); 388.1705c(6). Further, a school district cannot grant or deny enrollment ‘based upon religion, race, color, national origin, sex, height, weight,

marital status, or athletic ability, or, generally, in violation of state or federal law prohibiting discrimination.’ *Id.* §§ 388 1705(8); 338.1705c(8).

Both statutes also provide that if the number of available positions in the school, grade, or program ‘the school district shall accept for enrollment al of the qualified nonresident applicants eligible for acceptance.’ *Id.* §§ 388 1705(13); 338.1705c(13). If, however, the number of qualified nonresident applicants exceeds the available positions in the grade, school, or program, ‘the district shall use a random draw system’ to fill the available positions. *Id.*

(emphasis supplied)

The court noted that a particular set of additional rules governs cases such as the one now appealed, in which a student from a contiguous ISD applies to enroll in a school district. The court quoted and cited [Mich. Comp. Laws § 388.1705c\(18\)](#), which provides:

In order for a district or intermediate district to enroll pursuant to this section a nonresident pupil who resides in a district located in a contiguous intermediate district and who is eligible for special education programs and services according to statute or rule, or who is a child with disabilities, as defined under the Individuals with Disabilities Education Act, title VI of Public Law 91-230, the enrolling district shall have a written agreement with the resident district of the pupil for the purpose of providing the pupil with a free appropriate public education. The written agreement shall include, but is not limited to, an agreement on the responsibility for the payment of the added costs of special education programs and services for the pupil.

It is conceded that such a written agreement is not needed for a general education student. It is further conceded that such an agreement is not needed

when a nonresident student seeks to enroll in a school district within the same ISD.

When B.C. applied in November 2003 for admission to the ERPS for the 2004-2005 school year, James Ewing, Special Services Director for ERPS, wrote a letter to Tammy Clark informing her that B.C. would not be recommended for enrollment due to the written agreement requirement of [§ 388.1705c\(18\)](#). He noted also that he had spoken with Jonathan Schelke, Director of Special Education for Lansing Public Schools, who informed him that LSD would provide B.C. with special education services.

**\*\*5** Clark renewed her application for enrollment in June 2004. ERPS agreed to accept B.C. for enrollment contingent on an agreement, pursuant to [§ 388.1705c\(18\)](#), between ERPS and LSD with respect to the additional cost for B.C.’s special education services program.

On July 1, 2004, ERPS submitted a proposed agreement to LSD. The agreement would have required LSD to release its \$6,700 foundation allowance for B.C. to **\*515** ERPS. It would also have required LSD to reimburse ERPS for “any agreed upon costs unique to the student.” The agreement also estimated the cost of educating B.C. in the ERPS to be \$25,007 and provided that LSD would pay \$18,307 to ERPS to make up the difference between the foundation allowance and the estimated cost.

Lansing School District rejected the agreement in a letter dated August 16, 2004. However, LSD also indicated a willingness to enter an agreement under which its only financial obligation was the release of its \$6,700 foundation allowance. The letter explicitly communicated an unwillingness to take on further costs.

On September 16, 2004, ERPS offered a revised proposal. This version required release of the \$6,700 foundation allowance plus reimbursement for specific further costs. This version calculated



the total costs to be reimbursed by LSD to be \$10,300, plus certain transportation costs. Again, LSD rejected the proposal.

Because ERPS and LSD have not been able to reach an agreement, B.C. has not been able to enroll in ERPS.

### III

Appellant's equal protection claim is subject to rational basis review. B.C. is not part of a suspect or quasi-suspect class. See *City of Cleburne v. Cleburne Living Center, Inc.*, 473 U.S. 432, 442, 105 S.Ct. 3249, 87 L.Ed.2d 313 (1985). Clark does not allege the violation of a fundamental right. See *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 37-38, 93 S.Ct. 1278, 36 L.Ed.2d 16 (1973).

Rational basis review affords a statute a "strong presumption of validity," and the statute "must be upheld as long as 'there is a rational relationship between the disparity of treatment and some legitimate government purpose.'" *Hadix v. Johnson*, 230 F.3d 840, 843 (6th Cir.2000) (quoting *Heller v. Doe*, 509 U.S. 312, 320, 113 S.Ct. 2637, 125 L.Ed.2d 257 (1993)). The court is obligated to uphold the statute "if there is any reasonably conceivable state of facts that could provide a rational basis for the classification." *Walker v. Bain*, 257 F.3d 660, 668 (6th Cir.2001).

General education and special education students are not similarly situated for the purposes of equal protection analysis. See *City of Cleburne v. Cleburne Living Center, Inc.*, 473 U.S. 432, 442, 105 S.Ct. 3249, 87 L.Ed.2d 313 (1985) (the Equal Protection Clause "is essentially a direction that all persons similarly situated should be treated alike"). As the district court noted, under federal and state statute, a school district is required to furnish disabled students with special education services, and these services are "frequently" more costly than the services provided to general education students. The court correctly concluded that, "because school districts are obligated by federal and state mandate to provide special programs and services to dis-

abled students, which often increase the cost of educating the student, [such disabled students] are not similarly situated to general education students."

**\*\*6 [1]** There is a rational relationship between the Michigan provision and a legitimate governmental interest of ensuring adequate and equitable funding for the widely varying IEPs-with consequently varying costs-of special education students. Michigan reimburses school districts and ISDs for approximately 29% of total approved costs of special education and approximately 70% of special education transportation costs. Beyond this, the State allows ISDs to use a variety of funding techniques for to provide educational services. They are entitled to levy ad valorem property taxes for special **\*516** education purposes. If an ISD chooses to levy a special education millage, it may do so at a rate "not to exceed the number of mills of those taxes authorized in the intermediate school district in 1993." The ISD may then distribute the revenue from that millage at its discretion. *Mich. Comp. Laws §§ 388.1651a(2) and 380.1724a(1)* and *Mich. Admin. Code R. 111(5)*.

As the district court explained, the Michigan statute properly accounts for the

fact that federal and state law require that each special education student have an IEP which addresses their specific needs and provides them with a free appropriate public education.... By its terms, the required programs and services in an IEP will vary based upon the individual needs of the disabled student. Therefore, the legislature determined that the school districts must agree, on a case-by-case basis, on the allocation of costs to educate a special education student, pursuant to his or her IEP, who wishes to attend school in a contiguous ISD. The Court cannot say that such a decision is unreasonable.

One special education student's IEP may cost \$7,000, and another's \$27,000. Since this variance

has not been shown to exist in the cases of general education students, there exists a rational relationship between the legitimate governmental purpose of ensuring the proper funding of all special education students' IEPs and the requirement that school districts enter into a formal written agreement—which incentivizes or catalyzes thoughtful examination of the availability of funds for a given applicant's IEP—before accepting special education students for enrollment. Moreover, under the IDEA, the resident district has an obligation to furnish a FAPE. The putatively receiving school district has none. Therefore, it is rational to allow the receiving district to negotiate the terms on which a student with special needs may enroll.

Clark argues that since foundation allowance funding for a given school district follows the enrollment numbers for that district, there is no rational basis for the state's written agreement requirement. The district court did acknowledge this claim as “partially correct.” However, as the district court pointed out, Clark's view does not take account of the weighted formula used by the State to set the amount of the foundation allowance. This formula is such that a student new to the district carries three quarters of the total state funding for that student to his or her new district for the initial year of his or her enrollment, while the old district still receives a quarter of the funding allocation for that student for the year. [Mich. Comp. Laws § 388.1606\(4\)](#).

\*\*7 The district court further cited the May 6, 2005, affidavit of John Andrejack, supervisor in the Michigan Department of Education, Office of Special Education & Early Intervention Services, Finance Management Unit for the proposition that “federal funding received by the state under Part B of the IDEA is given to ISDs in three components, none of which would immediately transfer from a student's district of residence to their school of choice.” This citation is quite apt. Andrejack's affidavit is clear on this point:

The flow-through payment [from the federal

government, under Part B of IDEA] to an ISD has three potential components. The first payment is a base award, which is a continuation of the federal money received in fiscal year 1999, the “base year” referenced in [\[34 C.F.R. § 300.712\]](#). How much federal special education money a particular ISD receives is based on how many special-education students were \*517 attending school in the ISD in 1998. Under this base award, an ISD receives approximately \$519 per special-education student counted in the district in 1998. A special education student moving from one ISD to another does not affect this portion of the federal special education flow-through funds that an ISD receives.

.... Once the total base award is subtracted from the total IDEA Part B Grant Award (and certain allowances are also subtracted) the remaining federal funds are apportioned on the basis of two additional calculations. First, 85% of the remaining amount is apportioned to ISDs based on their total number of students enrolled in the district, kindergarten through 12th grade (K-12), in both public and non-public schools. In fiscal year 2005 this award was approximately \$96 per student. Student counts used for determining this portion are based on the student counts for that ISD from the previous school year as this is the best data available at the time that the flow-through calculations are made. Therefore, a student who transfers to a new ISD is counted in the previous ISD's membership count in the first year of attendance in a new ISD.

.... Lastly, the remaining 15% of flow-through funds is apportioned on the basis of the number of students in each ISD who qualify for free school lunch. Eligibility for free lunch is used as a substitute for determining the number of students who live in poverty. This amount in fiscal year 2005 was approximately \$66 per student. Again, the count for this portion of the

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federal flow-through payment is based on the previous year's count data because it is [sic] the best data available at the time the flow-through calculations are made. Therefore, a student who transfers to a new ISD is counted in the previous ISD's membership count in the first year of attendance in a new ISD.

The district court quickly addressed appellant's specific equal protection claim against DeFrance, Superintendent of the receiving district ERPS, in light of its finding that [§ 388.1705c\(18\)](#) is valid. The court noted that it is undisputed that the two school districts did not reach a written agreement with respect to B.C.'s application. DeFrance complied with the state statute. The district court also considered the equal protection claim against Banks, Superintendent of B.C.'s home district LSD. The court noted that, contrary to Clark's allegation, the “undisputed evidence demonstrates that Banks does not maintain” a “blanket policy against entering into agreements for special education services under [§ 388.1705c\(18\)](#)....” The court noted that the discovery evidence Clark relied on to make his claim against Banks was an affidavit of Jonathan Schelke, Director of Special Education for the LSD. This is a one-page affidavit. The relevant parts are:

**\*\*8** 3. Whenever a student who is a resident in the Lansing School District elects to enroll in another district within the Ingham County Intermediate School District, Lansing foregoes the revenue from the state's foundation allowance for that student and the student is counted in the membership of the enrolling district. This is true regardless of status as a general education student or as a student with disabilities eligible for special education and related services.

4. Whenever a Lansing student enrolls in a school district that is a constituent of a contiguous Intermediate School District exactly the same procedure**\*518** is followed as described in paragraph 3. The practice of the Lansing School District is to release the foundation al-

lowance only. The Lansing School district operates a comprehensive program of special education and related services for students with disabilities and unless it is specifically determined that the programs and services offered by the Lansing School District would be inadequate to provide the eligible student with the necessary special education and related services, Lansing does not enter into a cooperative agreement to pay for the services elsewhere.

Clark points to paragraph “4” of Schelke's affidavit as evidence of LSD's “blanket policy” against entering into agreements under [§ 388.1705c\(18\)](#). However, the plain language of this affidavit does not indicate such a blanket policy. The statement may indicate a policy that results in very few agreements, because LSD may not wish to pay extra to enable the enrollment of a student in another district, even though LSD appears quite willing to pay the foundation allowance in order to facilitate such enrollment.

The evidence before the court offered no indication, in the court's view, that DeFrance or Banks violated any of the statutes Clark cites. DeFrance followed the commands of a valid law. He actively pursued an agreement with LSD but was not successful in securing one. In an attempt to reach an agreement, he even significantly reduced the amount demanded by ERPS in his second letter to the officials of LSD.

We emphasize that [§ 388.1705c](#) contains express prohibitions- [§ 388.1705c\(6\)](#) and (8)-against the making of enrollment decisions on the basis of applicants' disabilities. The district court concluded, perhaps a little ambitiously, that because a written agreement is required for special education students under [§ 388.1705c](#) only when an applicant seeks to enroll across the borders of the ISD in which he resides, “[c]learly, the requirement is in place because of the special education student's residence, not because of any disability.” We do not agree that the requirement is purely a function of residence. It is also a function of a student's disability. But be-

cause there is a rational basis for this statutory scheme, and since a rational basis review is what is required here, our disagreement with the district court on this particular does not disturb the result in this case.

#### IV

**\*\*9** We note also that the Michigan Legislature included a repealer provision in [M.C.L. § 388.1705c](#). This provision requires that the entire “section is repealed if the final decision of a court of competent jurisdiction holds that any portion of this section is unconstitutional, ineffective, invalid, or in violation of federal law.” [M.C.L. § 388.1705c](#) (21). The inclusion of a such a repealer suggests that the Michigan Legislature understood that its complex “school of choice” statutory scheme comprehended many related considerations of educational, financing, and other policy, as well as the nuanced interrelationships among them.

#### V

[2] Clark also challenges [Mich. Comp. Laws § 380.1701\(b\)](#) and the actions of the school districts under § 504 of the Rehabilitation Act of 1973, Title II of the Americans with Disability Act (ADA), and Michigan's Persons with Disabilities Civil Rights Act.

**\*519** As the district court indicated, there exists a great deal of analytic overlap among the three statutes. Specifically, each statute requires that the plaintiff show that he was discriminated against on the basis of his disability. Thus, under the Rehabilitation Act of 1973, “[n]o otherwise qualified individual with a disability in the United States ... shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.” [29 U.S.C. § 794\(a\)](#).

Similarly, the ADA's operative language reads: “Subject to the provisions of this subchapter, no qualified individual with a disability shall, by reason of such disability, be excluded from participa-

tion in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.” [42 U.S.C. § 12132](#). Finally, the relevant Michigan statute reads: “The opportunity to obtain employment, housing, and other real estate and full and equal utilization of public accommodations, public services, and educational facilities without discrimination because of a disability is guaranteed by this act and is a civil right.” [Mich. Comp. Laws § 37.1102](#) (1). See also [McPherson v. Mich. High Sch. Athletic Ass'n](#), 119 F.3d 453, 459-60 (6th Cir.1997) (en banc) (noting that the Rehabilitation Act and the ADA require a “roughly parallel[ ]” analysis).

To show discrimination under these statutes, therefore, a “plaintiff must establish that (1) she has a disability; (2) she is otherwise qualified; and (3) she is being excluded from participation in, being denied the benefits of, or being subjected to discrimination under the program solely because of her disability.” See [Jones v. City of Monroe](#), 341 F.3d 474, 477 (6th Cir.2003) (describing the elements of a prima facie case of discrimination under Title II of the ADA). As we have indicated, B.C. was subject to the requirement of a written funding agreement in part due to his disability. However, as we have also explained, B.C.'s disability was not the sole reason for his exclusion from participation in Michigan's choice of law system. B.C.'s exclusion was also a function of his residence, as well as the funds attending his education. Therefore, B.C. has failed to show discrimination “solely because of [his] disability.”

#### VI

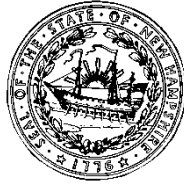
**\*\*10** We therefore affirm the grant of summary judgment for the defendants.

C.A.6 (Mich.),2006.

Clark v. Banks

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Bureau of Special Education FY'13 Memo #10

Date: November 19, 2012

To: Superintendents of Schools  
Directors of Special Education

From: Virginia M. Barry  
Commissioner of Education

Santina Thibedeau  
State Director of Special Education  
Administrator, Bureau of Special Education

Roberta Tenney, Administrator  
Bureau of School Approval

RE: Chartered Public School: Funding Amended RSA 194-B: 11 III ~ Questions & Answers

Effective August 10, 2012, the legislature amended RSA 194-B:11, III Chartered Public School: Funding. The amendment clarifies the procedure for the provision of special education and related services to a child with a disability who is enrolled in a chartered public school and requires chartered public schools<sup>1</sup> to provide due process in the provision of special education and related services to children with disabilities.

Prior to the change, RSA 194-B:11, III provided:

In accordance with current department of education standards, the funding and educational decision-making process for children with disabilities attending a chartered public school shall be the responsibility of the school district and shall retain all current options available to the parent and to the school district.

The legislative change, SB 300, revised the language, "responsibility of the school district," to "responsibility of the *resident* district." RSA 194-B:11, III(a) (emphasis added). Additionally, SB 300 added the following language:

**TDD Access: Relay NH 711  
EQUAL OPPORTUNITY EMPLOYER- EQUAL EDUCATIONAL OPPORTUNITIES**

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<sup>1</sup> For purposes of this memo, the terms "chartered public school" and "charter school" are interchangeable.

b) When a child is enrolled by a parent in a chartered public school, the local education agency of the child's resident district shall convene a meeting of the individualized education program (IEP) team and shall invite a representative of the chartered public school to that meeting. At the meeting, the IEP team shall determine how to ensure the provision of a free and appropriate public education in accordance with the child's IEP. The child's special education and related services shall be provided using any or all of the methods listed below starting with the least restrictive environment:

- (1) The resident district may send staff to the chartered public school; or
- (2) The resident district may contract with a service provider to provide the services at the chartered public school; or
- (3) The resident district may provide the services at the resident district school; or
- (4) The resident district may provide the services at the service provider's location; or
- (5) The resident district may contract with a chartered public school to provide the services; and
- (6) If the child requires transportation to and/or from the chartered public school before, after, or during the school day in order to receive special education and related services as provided in the IEP, the child's resident district shall provide transportation for the child.

(c) Consistent with section 5210(1) of the Elementary and Secondary Education Act and section 300.209 of the Individuals with Disabilities Education Act, when a parent enrolls a child with a disability in a chartered public school, the child and the child's parents shall retain all rights under federal and state special education law, including the child's right to be provided with a free and appropriate public education, which includes all of the special education and related services included in the child's IEP. The child's resident district shall have the responsibility, including financial responsibility, to ensure the provision of the special education and related services in the child's IEP, and the chartered public school shall cooperate with the child's resident district in the provision of the child's special education and related services.

RSA 194-B:11, III

The Bureau of Special Education has developed a list of questions and answers to assist the districts with frequently asked questions with reference to Chartered Public Schools.

**1. How can special education and related services be provided for students with individualized education programs ("IEPs") enrolled at a chartered public school?**

Pursuant to RSA 194-B:11, III(b), when a child is enrolled by a parent in a chartered public school, the local education agency (LEA) of the child's resident district shall convene a meeting of the individualized education program (IEP) team and shall invite a representative of the chartered public school to that meeting. At the meeting, the IEP team shall determine how to ensure the provision of a free and appropriate public education in accordance with the child's IEP. The child's special education and related services shall be provided using any or all of the methods listed below starting with the least restrictive environment:

- (1) The resident district may send staff to the chartered public school; or
- (2) The resident district may contract with a service provider to provide the services at the chartered public school; or
- (3) The resident district may provide the services at the resident district school; or
- (4) The resident district may provide the services at the service provider's location; or

- (5) The resident district may contract with a chartered public school to provide the services; and
- (6) If the child requires transportation to and/or from the chartered public school before, after, or during the school day in order to receive special education and related services as provided in the IEP, the child's resident district shall provide transportation for the child.

**2. If a parent chooses to enroll a child with disabilities at a chartered public school, is the LEA of residence responsible for transportation?**

- The LEA of residence is responsible for transportation to the chartered public school if transportation is a necessary related service in the child's IEP. See RSA 194-B:11, III(b)(6). If transportation is not a necessary related service in a child IEP, then transportation must be provided in accordance with RSA 194-B:2 (V).

**3. Is the LEA of residence responsible for entering students with disabilities enrolled in a charter public school into the New Hampshire Special Education Information System (NHSEIS)?**

- Yes, the LEA of residence is responsible for entering data for students into NHSEIS if the student is receiving special education services.

**4. If personnel at a chartered public school suspect a disability, what are the next steps?**

- The chartered public school personnel should contact the student's LEA of residence. The chartered public school should also notify the parent.

**5. Can an LEA place a student with disabilities at a chartered public school?**

- Only parents can choose to enroll a child at a chartered public school. However, it is the responsibility of the LEA to implement the IEP for the child attending the chartered public school.

**6. If a child is enrolled by a parent in a chartered public school, who convenes the IEP meeting?**

- The LEA of the child's resident district shall convene a meeting of the IEP team. See RSA 194-B:11, III(b).

**7. Is it the responsibility of the LEA of residence to invite personnel from the chartered public school to the students' IEP meeting?**

- Yes, it is the responsibility of the LEA of residence to invite representatives from the chartered public school to the IEP team meeting. The construct of the IEP team is outlined in 34 CFR 300.321.

**8. If a parent chooses to enroll a child with disabilities at a chartered public school is the LEA of residence responsible for implementing the IEP?**

- The resident district shall have the responsibility, including financial responsibility, to ensure the provision of the special education and related services in the child's IEP, and the chartered public school shall cooperate with the child's resident district in the provision of the child's special education and related services. See RSA 194-B:11, III(c).

**9. How does a LEA of residence address the issue of "HQT" for students with disabilities enrolled in a chartered public school?**

- According to NH chartered public school law, "the teaching staff of a chartered public school shall consist of a minimum of 50 percent of teachers either New Hampshire certified or having at least 3 years of teaching experience." RSA 194-B:14, IV.

**10. Is the LEA in which the chartered public school is located responsible for providing special education services to all children with disabilities in the chartered public school?**

- No, the LEA in which the chartered public school is located is only responsible for providing special education services to the children with disabilities who reside in the LEA. See RSA 194-B:11, III (funding "shall be the responsibility of the resident district"). The students' LEA of residence is responsible for providing special education services.

**11. If a LEA of residence is not in agreement with a parents' choice to enroll their child with disabilities in a chartered public school, what is the responsibility of the LEA of residence?**

- It is the parent's choice to enroll their child at a chartered public school. It is the LEA of residence's responsibility to ensure that FAPE is being provided. If the parent and LEA are in disagreement, they may pursue means to resolve the issues.

**12. Do children with disabilities who are enrolled at chartered public schools participate in the state-wide assessments?**

- Yes.

**13. What rights do the child and the child's parents have when a child is enrolled in a chartered public school?**

- Consistent with section 5210(1) of the Elementary and Secondary Education Act and Section 300.209 of the Individuals with Disabilities Education Act, when a parent enrolls a child with a disability in a chartered public school, the child and the child's parents shall retain all rights under federal and state special education law, including the child's right to be provided with a free and appropriate public education, which includes all of the special education and related services included in the child's IEP. See RSA 194-B:11, III(c).

**14. Will a school district be able to request reimbursement through the catastrophic aid formula when it pays a chartered public school to provide special education services?**

- The NHDOE will consider the cost of special education and related services from a chartered public school so long as the service provider is appropriately certified and/or licensed and the cost will meet the guidelines in the CAT Aid Manual dated March 12, 2012.

**15. Is the LEA or chartered public schools responsible for 504 Plans?**

- The chartered public school is responsible for 504 Plans.

The NHDOE website provides updated information regarding Chartered Public Schools:

[http://www.education.nh.gov/instruction/school\\_improve/charter/index.htm](http://www.education.nh.gov/instruction/school_improve/charter/index.htm)



**Credentialing of Special Education Teachers and  
Related Service Providers  
Information Provided by the NH Department of Education**

The requirement that special education teacher and related service providers be credentialed appropriately is the responsibility of the school board to require certifications be held by their professional staff.

**Ed 306.15 Provision of Staff and Staff Qualifications.**

*Ed 306.15(b) (4) (e) "Pursuant to RSA 189:24, and in accordance with Ed 500 and Ed 600, the local school board shall require that each professional staff member is certified for assignment by the department.*

**Section 189:24** – outlines the provisions of a Standard School, wherein it is stated that “A standard school shall provide instruction in all subjects prescribed by statute or by the state board of education”

**Ed 500-** regulations for Certification Standards For Educational Personnel

**Ed 600-** regulations for Approval of Professional Preparation Programs

**Ed 507.39** – outlines the requirements that shall apply to the certification and employment of the general special education teacher

The licensure of related service providers is not the purview of the ED RSAs. Licensure is governed by the NH Office of Licensed Allied Health Professionals as defined by NH Statutes governing Occupations and Professionals (Title XXX):

**Chapter 326-F** Speech-Language Pathologists licensure

**Chapter 326-C** Occupational Therapists licensure

**Chapter 238-A** Physical Therapists licensure

Of Note:

**194-B:14 Chartered Public Schools; Employees. –**

I. Employees of chartered public schools shall be considered public employees for the purpose of collective bargaining.

II. (a) Any teacher may choose to be an employee of a chartered public school, in which case such teacher shall have the rights of a teacher in public education to join or organize collective bargaining units.

(b) Bargaining units at a chartered public school shall be separate from other bargaining units.

(c) No chartered public school teacher shall be a member of more than one bargaining unit.

(d) A teacher who serves as a member of the board of trustees of a chartered public school in which that teacher is an employee may not participate in or vote as a member of the board on collective bargaining matters.

(e) A teacher in a chartered public school shall have withdrawn from any bargaining unit with which that teacher may have been previously affiliated.

III. A public chartered public school may choose to participate in the state teacher retirement system, and service in a public chartered public school shall be deemed creditable service under RSA 100-A:4.

IV. The teaching staff of a chartered public school shall consist of a minimum of 50 percent of teachers either New Hampshire certified or having at least 3 years of teaching experience.

# OSEP Letters Regarding Chartered Public Schools & Special Education

Dated April 4, 2003

Ms. Debra Farmer  
Director  
Special Education Section  
Hawaii Department of Education  
637 18<sup>th</sup> Avenue  
Honolulu, Hawaii 96816

Dear Ms. Farmer:

This letter is in response to the Hawaii Department of Education's (HDE) recent electronic mail message regarding a State's obligations to students with disabilities whose parents choose to place them in a charter school. You ask:

Keeping in mind that Hawaii is a centralized, statewide school system and charter schools are not LEAs [local educational agencies], if FAPE [free appropriate public education] is offered at a department (DOE) public school (i.e. the IEP team feels that the DOE school is the appropriate placement for the student), but the parent still chooses to send their child to a charter school, what is the state's obligation to that student attending the charter school?

You acknowledge in your inquiry that Hawaii is a centralized, statewide school system that serves both as the State educational agency (SEA) and the local educational agency (LEA). Further, based on your inquiry, it is our understanding that the charter schools in question are public schools within the statewide school system and that under Hawaii's charter schools law, charter schools are not their own LEAs.

Under applicable Federal law—Part B of the Individuals with Disabilities Education Act (Part B), Section 504 of the Rehabilitation Act of 1973 (Section 504), and Title II of the Americans with Disabilities Act of 1990 (Title II), children with disabilities attending public charter schools and their parents retain all rights under these statutes, including the right to a free appropriate public education. 34 C.F.R. §300.312(a); 34 C.F.R. §104.4 and 28 C.F.R. §35.130. Generally, States have great flexibility in determining how students with disabilities who are placed in public charter schools will be provided FAPE, including the option of designating another entity as responsible for ensuring that the requirements of Part B are met and the option of allowing a charter school to establish its eligibility for funds as its own LEA. 34 C.F.R. §§300.312; 300.180-300.185 and 300.220-300.250. Hawaii appears to have chosen to maintain responsibility for serving these students within its unitary school system, and it is our understanding that responsibility for ensuring that FAPE is made available to these students has not been assigned to some other entity. This means that, under 34 C.F.R. §300.241, those students with disabilities attending charter schools must be served in the same manner as students in other schools, or, if funds under Part B are provided to other schools, then charter schools must be provided funds in the same manner.

The Department also has determined that parental choice programs are consistent with Part B, Section 504, and Title II if they allow the parent to choose between one or more LEAs or public agencies that, if chosen, would be responsible for ensuring that FAPE is provided. See, *Letter to Lutjeharms*, 16 EHLR 554 (1989); *Letter to Tatel*, 16 EHLR 349 (1990). However, while the Department previously determined that it is consistent with Part B for a parental choice program to allow the parent to choose between one or more placements within an LEA or public agency where FAPE will be provided to the child, it is not consistent with Part B for a parental

choice program to allow a placement determination, arrived at by the appropriate team within an LEA or public agency, to be unilaterally overridden by the parent without regard to the provision of FAPE. See, *Letter to Siegel*, 16 EHLR 797 (1990); *Letter to Lugar*, 17 EHLR 834 (1991); *Letter to Evans*, 17 EHLR 836 (1991); *Letter to Burton*, 17 EHLR 1182 (1991); *Letter to Bina*, 18 EHLR 582 (1991); and *Letter to Bayh*, 17 EHLR 840 (1991). Therefore, to the extent that Hawaii's parental choice program allows parents to choose between the school that the student would attend and a charter school of the unitary school system, then FAPE must be made available to the child at the charter school if the student's needs could be met in a school setting with special education and related services and additional aids and supports. However, students whose needs cannot be met in a school setting with special education and related services and additional aids and supports -- for example, students requiring residential placements -- would not need to have FAPE provided through the public charter school placement where that charter school is not a residential school.

Further, under Section 504 and Title II, parents of students with disabilities must be provided the same access to public charter schools and parental choice programs as parents of students without disabilities. Therefore, if public charter schools are schools of the school system, charter schools that offer FAPE must be made available to parents of students with disabilities in selecting a school for their children.

It is our understanding that the State is continuing its policy and practice of ensuring that FAPE is made available to all students with disabilities attending charter schools by requiring that their special education and related services needs, as expressed in the IEPs, be fully addressed. Please be advised that the Office of Special Education Programs is available to provide technical assistance on this issue.

The Seattle Office for Civil Rights also is available to provide technical assistance concerning the requirements of Section 504 and Title II with regard to charter schools and parental choice.

U.S. Department of Education  
Office for Civil Rights, Seattle Office  
915 Second Avenue, Room 3310  
Seattle, WA 98174-1099  
Telephone: (206) 220-7900  
FAX (206) 220-7887; TDD (206) 220-7907  
Email: [OCR\\_Seattle@ed.gov](mailto:OCR_Seattle@ed.gov)

If we can be of further assistance, please do not hesitate to call Dr. JoLeta Reynolds at (202) 205-5507, press (3).

Sincerely,

/s/ Patricia J. Guard for

Stephanie S. Lee  
Director  
Office of Special Education Programs

cc: Gary D. Jackson, Director  
Seattle Office for Civil Rights

Dated December 18, 2003

Dr. Susan Barnes  
Associate Commissioner for  
Standards and Programs  
Texas Education Agency  
1701 N. Congress Avenue, Room 3-121Q  
W.B. Travis Building  
Austin, TX 78701-1494

Dear Dr. Barnes:

This letter is in response to your question to Dean Kern, Director of the Charter School Program at the U.S. Department of Education regarding students with disabilities and virtual charter schools. You ask whether there is any federal guidance specifically for students with disabilities enrolled in virtual charter schools or other types of virtual education developed by states and/or their districts. By "virtual education," I assume that you mean education that uses information and communication technologies to deliver traditional educational programs (e.g., via the Internet, teleconferencing, tele-video conferencing).

The Office of Special Education Programs has not developed guidance specific to virtual charter schools or other types of virtual education. The Individuals with Disabilities Education Act (IDEA) requires that each State make available a free appropriate public education to all children with disabilities (as defined by the IDEA) aged 3 through 21 residing in the State (20 U.S.C 1412(a)(1)). This includes the identification and evaluation of children with disabilities (20 U.S.C 1412(a)(3)), the development of an individualized educational program (20 U.S.C 1412(a)(4)), the provision of special education and related services in the least restrictive environment (20 U.S.C 1412(a)(5)), and the provision of procedural safeguards to children with disabilities and their families (20 U.S.C 1412(a)(6)).

The IDEA statute and its corresponding regulations do not make any exceptions to these requirements or allow States to waive or relax these requirements for virtual schools.

I hope this information is useful. If you have any questions, please do not hesitate to contact Dr. Wendy Tada (202-205-9094) or Mr. Dale King (202-260-1156) of my staff.

Sincerely,

/s/ Patricia J. Guard for

Stephanie Smith Lee  
Director  
Office of Special Education  
Programs

cc: Dean Kern

dated August 8, 2003

Mr. Lawrence C. Gloeckler  
Deputy Commissioner  
Office of Vocational and Educational Services for  
Individuals with Disabilities  
Room 1606 One Commerce Plaza  
Albany, New York 12234

Dear Mr. Gloeckler:

The issue of the status of charter schools in New York has come to our attention in the context of a recent audit conducted by the Office of the Inspector General (OIG). The purpose of the audit was to determine whether the New York State Education Department (NYSED) and the local educational agencies (LEAs) provided new or expanding charter schools with timely and meaningful information about funding under Part B of the Individuals with Disabilities Education Act (IDEA) for which these schools might have been eligible and whether NYSED and LEAs had management controls that ensured that charter schools were allocated the proportionate amount of those IDEA funds in instances where charter schools were eligible.

As a result, we have questions about the status of charter schools under New York law for purposes of Part B of the IDEA. The starting point of analysis for determining how students with disabilities attending a charter school are provided a free appropriate public education and how a charter school may access IDEA funds or services for students with disabilities enrolled in the school, is the determination of whether the charter school is established under State law as an LEA, a school of an LEA or some other entity. See 34 CFR §300.312. Under 34 CFR §§300.18, 300.711 and 301.30, if the charter school is an LEA, it is eligible to receive a subgrant under the Grants to States and Preschool grants program and, under 34 CFR §300.312(b), it is responsible for ensuring that the requirements of the IDEA are met, unless State law assigns that responsibility to some other entity. Under 34 CFR §300.312(c), if the charter school is a school of an LEA, the LEA is responsible for ensuring that the requirements of the IDEA are met, unless State law assigns that responsibility to some other entity. Under 34 CFR §300.312(d), if the charter school is not an LEA or a school that is part of an LEA, the State educational agency (SEA) is responsible for ensuring that the requirements of the IDEA are met. In this instance, the State may assign initial responsibility for ensuring the requirements of the IDEA are met to another entity; however, the SEA must maintain ultimate responsibility for ensuring that the IDEA requirements are met.

It is OSEP's understanding that under New York's charter school law, charter schools are not LEAs for purposes of Part B. The charter school may enroll students from more than one school district. That is, any child who is qualified under the laws of the State for admission to a public school is qualified for admission to a charter school. See N. Y. Educ. Law §2854(2)(b). The New York charter schools law also states that:

special education programs and services shall be provided to students with a disability attending a charter school in accordance with the individualized education program recommended by the committee or subcommittee on special education of the student's school district of residence. The charter school may arrange to have such services provided by such school district of residence or by the charter school directly or by contract with another provider.

N. Y. Educ. Law §2853(4)(a). In addition, "the school district shall also pay directly to the charter school any federal or state aid attributable to a student with a disability attending a charter school in proportion to the level of services for such student with a disability that the charter school provides directly or indirectly." N. Y. Educ. Law §2856(1).

The Department is also in receipt of a May 31, 2001 memorandum from Deputy Commissioner James A. Kadamus to charter school principals and school district superintendents stating that:

New York's Charter School Law provides that federal funds for services for students with disabilities flow from the school district of residence to charter schools... For purposes of the IDEA, however, the school district of residence serves as the LEA, with charter schools treated as schools of the school district.

This memorandum suggests that New York views a charter school as a school of an LEA for purposes of 34 CFR §300.312. Our review of New York law and understanding of the practices of school districts in the State raises concerns regarding this conclusion. Specifically, OSEP needs further clarification regarding the relationship of school districts of residence to charter schools and how the State is ensuring that the requirements of 20 USC §1413(a)(5) and 34 CFR §300.241 are being met.

Under the IDEA, an LEA is defined as a public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary or secondary schools in a city, county, township, school district, or other political subdivision of a State, or for a combination of school districts or counties as are recognized in a State as an administrative agency for its public elementary or secondary schools. 34 CFR §300.18. Because New York law allows charter schools to enroll students from more than one LEA, it is not clear how the numerous LEAs are able to exercise administrative control or direction of, or perform a service function for, the charter school; i.e., it is not clear if New York views a charter school as the school of a particular LEA when students who reside in the attendance areas of more than one LEA attend the charter school.

If a charter school is considered a school of an LEA, the LEA must meet the requirement of 34 CFR §300.241 to serve children with disabilities attending charter schools in the same manner as it serves children with disabilities in its other schools and to provide funds under Part B of IDEA to its charter schools in the same manner as it provides Part B funds to its other schools. It appears that LEAs are providing services to children with disabilities in their non-charter schools and a combination of funds and services to charter schools based on the level of services the charter school is providing to its students with disabilities. Therefore, it is not clear how the requirement of 34 CFR 300.241 is being met.

We would appreciate your providing New York's position on the status of charter schools under 34 CFR 300.312. If New York considers a charter school to be a school of an LEA, please explain which LEA fills that function where students of more than one LEA attend the charter school and how the requirements of 34 CFR 300.241 are being met. We note that if New York determines that a charter school is not a school within an LEA but some other entity under §300.312(d), to which 34 CFR 300.241 does not apply, the State would not be precluded from assigning responsibility to the school district of residence. If you have any questions, please contact Martin Benton at (202) 205-9028 or Dr. JoLeta Reynolds at (202) 205-5507 (press 3 and ask to be transferred to Dr. Reynolds).

Sincerely,

/s/

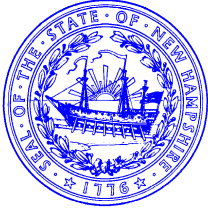
Stephanie S. Lee  
Director  
Office of Special Education  
Programs

## Appendix D

### Materials Provided to the Commission / Supplemental Materials

#### Contents of Appendix D:

- State of NH Memo – Organizational Meeting of the Commission to Study Issues Relating to Students Receiving Special Education Services While Attending a Chartered Public School – dated August 6, 2015
- Identified Students at NH Charter Schools as of 1/14/16, provided by the NH DOE
- Identified Students at NH Charter Schools as of 8/25/15, provided by the NH DOE
- NH Child Count for Children with Disabilities 10/2015
- Links to documents provided by Lauren Morando-Rhim, Commission Member and Executive Director of the National Center for Special Education in Charter Schools:
  - *“Charter Schools and Students with Disabilities: A Preliminary Analysis of the Legal Issues and Areas of Concern”* developed under contract with COPAA, 2012
  - *“Improving Access and Creating Exceptional Opportunities for Students with Disabilities in Public Charter Schools”*, 2013
  - *“Equity at Scale: How Public Charter School Networks Can Innovate and Improve Services for Students with Disabilities”*, 2015
  - *“Getting Lost While Trying to Follow the Money: Special Education Finance in Charter Schools”*, 2015
  - *A Model law for Supporting the Growth of High-Quality Charter Schools, Second Edition, 2016*
- Link to Document provided by P. Alan Parady, Commission Member and Executive Director of the NH Association of Special Education Administrators: *“Key Trends in Special Education in Charter Schools: A Secondary Analysis of the Civil Rights Data Collection 2011-2012”*, 2015
- Protocol for Students with Disabilities Enrolling at Ledyard Charter School, a sample protocol provided by Lauren Morando-Rhim
- Link to article, “Charting a New Course” by Sheryl Rich-Kern
- *New Hampshire’s “Medicaid to Schools” Program – A Snapshot Summary by MSB*
- Responses to a Survey distributed to Special Education Administrators by Alan Parady, Executive Director of the NH Association of Special Education Administrators
- Providing for Students with Special Education Services: An initial survey of how Charter Schools and District Schools have worked together, Compiled and Written by Beth McClure, M.Ed.
- Testimony notes from Meryl Levin and Beth McClure as part of their 12/10/2015 presentation to the Commission
- Letter from the Nashua School District, dated May 6, 2016
- Written copy of testimony given on 1/14/2016 by Tom Raffio, Chair of the State Board of Education
- Funding information
- NCSECS Financial Data
- Memorandum to Interim study committee on special education at charter schools dated October 14, 2014 from Gerald M. Zelin re: Proposed statutory amendments



# State of New Hampshire

GENERAL COURT

CONCORD

## MEMORANDUM

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**TO: Commission to Study Issues Relating to Students Receiving Special Education Services While Attending a Chartered Public School  
(RSA 186-C:30, HB 126, Ch. 120, Laws of 2015)**

**FROM: Representative Rick Ladd  
P. O. Box 67  
Haverhill, NH 03765-0067  
(603) 989-3268  
ladd.nhhouse@charter.net**

**DATE: August 6, 2015**

**SUBJECT: Organizational Meeting**

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As first-named House member of the Commission to Study Issues Relating to Students Receiving Special Education Services While Attending a Chartered Public School, I have scheduled an organizational meeting on:

***Thursday, August 13, 2015  
10:00 a.m.  
Room 207, Legislative Office Building***

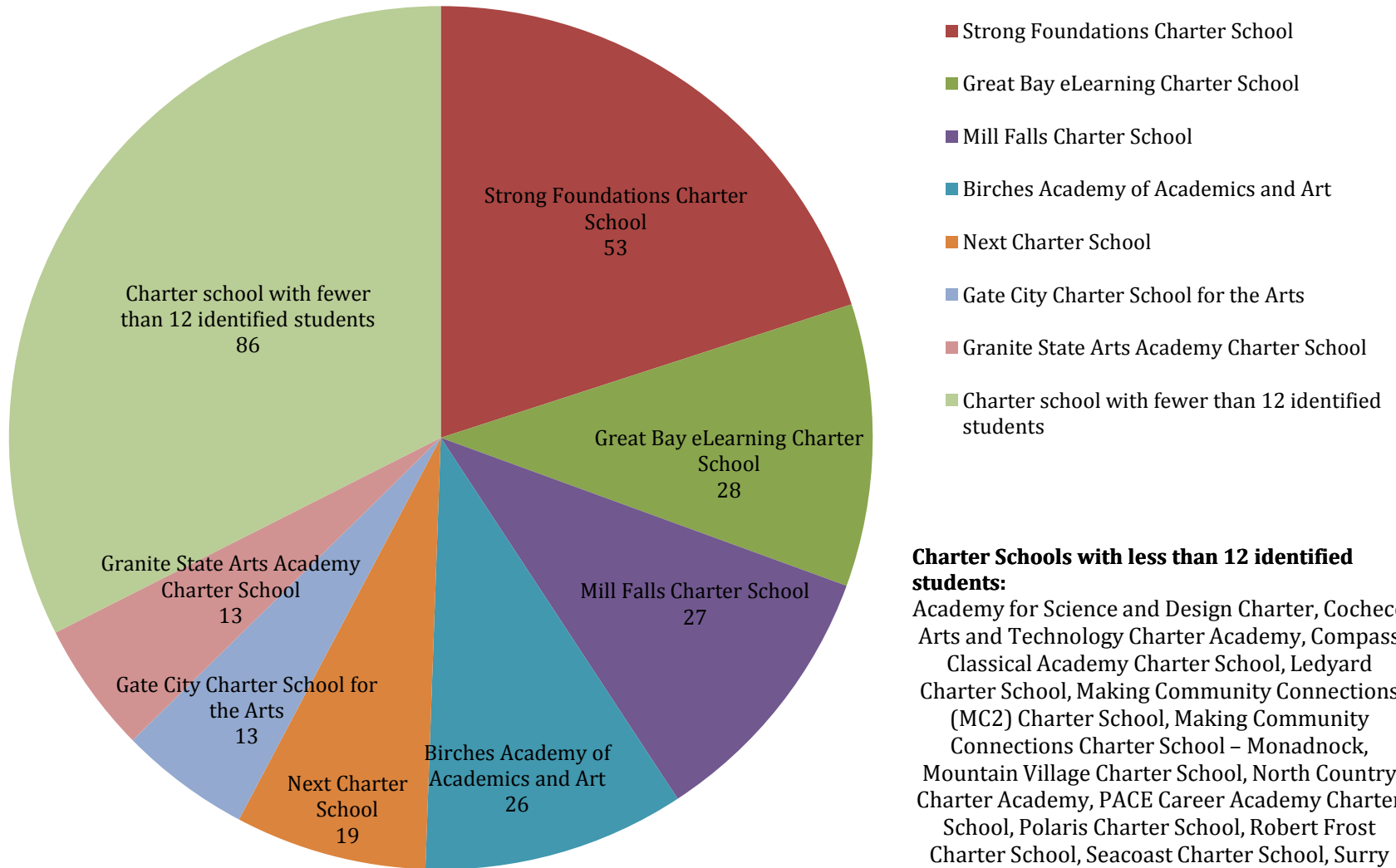
At that time we will elect a Chairman and discuss the duties of the Commission. I hope you will be able to attend.

RL/dm

Cc: Ann FitzGerald, Committee Researcher

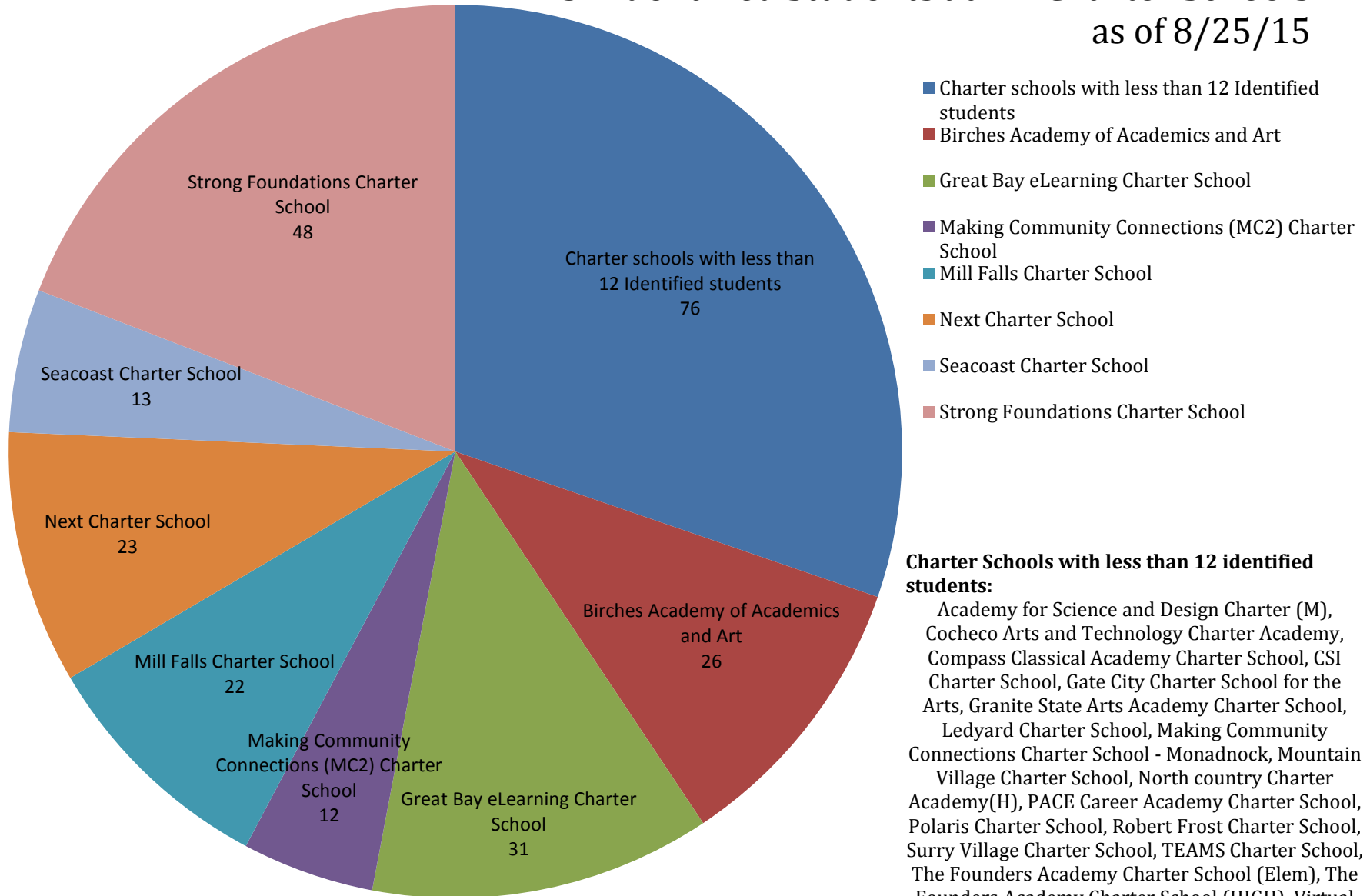


## 265 Identified Students at NH Charter Schools as of 1/4/16



**Charter Schools with less than 12 identified students:**  
 Academy for Science and Design Charter, Coheco Arts and Technology Charter Academy, Compass Classical Academy Charter School, Ledyard Charter School, Making Community Connections (MC2) Charter School, Making Community Connections Charter School – Monadnock, Mountain Village Charter School, North Country Charter Academy, PACE Career Academy Charter School, Polaris Charter School, Robert Frost Charter School, Seacoast Charter School, Surry Village Charter School, TEAMS Charter School, The Founders Academy Charter School, Virtual Learning Academy

## 251 Identified Students at NH Charter Schools as of 8/25/15



- Charter schools with less than 12 Identified students
- Birches Academy of Academics and Art
- Great Bay eLearning Charter School
- Making Community Connections (MC2) Charter School
- Mill Falls Charter School
- Next Charter School
- Seacoast Charter School
- Strong Foundations Charter School

**Charter Schools with less than 12 identified students:**  
 Academy for Science and Design Charter (M), Cochecho Arts and Technology Charter Academy, Compass Classical Academy Charter School, CSI Charter School, Gate City Charter School for the Arts, Granite State Arts Academy Charter School, Ledyard Charter School, Making Community Connections Charter School - Monadnock, Mountain Village Charter School, North country Charter Academy(H), PACE Career Academy Charter School, Polaris Charter School, Robert Frost Charter School, Surry Village Charter School, TEAMS Charter School, The Founders Academy Charter School (Elem), The Founders Academy Charter School (HIGH), Virtual Learning Academy (H)

New Hampshire Department of Education  
Statewide Census by Disability  
as of October 1, 2015

AGE	AUT	DB	DD	ED	HI	MD	ID	OHI	OI	SLD	SLI	TBI	VI	Total
3	78	2	351		10	2		33	3	1	417	1	7	905
4	125	1	470		19	9		43	8		558		4	1,237
5	130		497		13	5	1	47	2	1	487	1	9	1,193
6	147	1	604	18	11	12	3	103	5	23	447	5	4	1,383
7	131		552	28	16	17	5	186	3	171	389	3	9	1,510
8	170	1	485	61	12	23	12	286	2	478	371	2	11	1,914
9	160		219	89	16	21	40	377	5	817	339	4	9	2,096
10	191			133	15	31	45	489	6	1,012	295	5	9	2,231
11	206			186	22	25	48	485	3	1,010	246	5	15	2,251
12	209			170	11	26	76	474	1	973	176	4	10	2,130
13	211			223	11	29	68	472	5	989	190	6	7	2,211
14	217			222	10	28	69	486	5	951	167	9	10	2,174
15	224	2		269	24	30	83	509	5	937	122	4	5	2,214
16	179			300	15	27	73	558	5	918	108	4	7	2,194
17	161	1		282	11	23	70	481	7	815	113	6	5	1,975
18	83	1		96	5	21	80	160		300	44	5	6	801
19	53			21	2	22	61	39	2	40	4	4	2	250
20	39	1		9		23	41	15		3	5	1		137
<b>Total</b>	<b>2,714</b>	<b>10</b>	<b>3,178</b>	<b>2,107</b>	<b>223</b>	<b>374</b>	<b>775</b>	<b>5,243</b>	<b>67</b>	<b>9,439</b>	<b>4,478</b>	<b>69</b>	<b>129</b>	<b>28,806</b>

**Disability Legend by Race:**

		AM	AS	BL	HI	MU	PI	WH	Total	%
<b>AUT</b>	AUTISM	7	68	74	101	1	6	2,457	2,714	9.42%
<b>DB</b>	DEAF-BLINDNESS							10	10	0.03%
<b>DD</b>	DEVELOPMENTAL DELAY	11	50	103	180	1	5	2,828	3,178	11.03%
<b>ED</b>	EMOTIONAL DISTURBANCE	10	5	92	79	1	2	1,918	2,107	7.31%
<b>HI</b>	HEARING IMPAIRMENTS	2	12	5	17			187	223	0.77%
<b>MD</b>	MULTIPLE DISABILITIES	1	9	14	11		1	338	374	1.30%
<b>ID</b>	INTELLECTUAL DISABILITY	3	13	38	46			675	775	2.69%
<b>OHI</b>	OTHER HEALTH IMPAIRMENTS	15	42	165	180		3	4,838	5,243	18.20%
<b>OI</b>	ORTHOPEDIC IMPAIRMENTS	1	3	1	4			58	67	0.23%
<b>SLD</b>	SPECIFIC LEARNING DISABILITIES	44	79	304	502	1	6	8,503	9,439	32.77%
<b>SLI</b>	SPEECH OR LANGUAGE IMPAIRMENTS	20	99	129	209	2	10	4,009	4,478	15.55%
<b>TBI</b>	TRAUMATIC BRAIN INJURY		2	4	4			59	69	0.24%
<b>VI</b>	VISUAL IMPAIRMENTS		3	7	4		1	114	129	0.45%
<b>Grand Total</b>		<b>114</b>	<b>385</b>	<b>936</b>	<b>1,337</b>	<b>6</b>	<b>34</b>	<b>25,994</b>	<b>28,806</b>	<b>100.00%</b>

**Student Gender**

F	33.90%	9,765
M	66.10%	19,041
		<u>28,806</u>

**Race Legend is:**

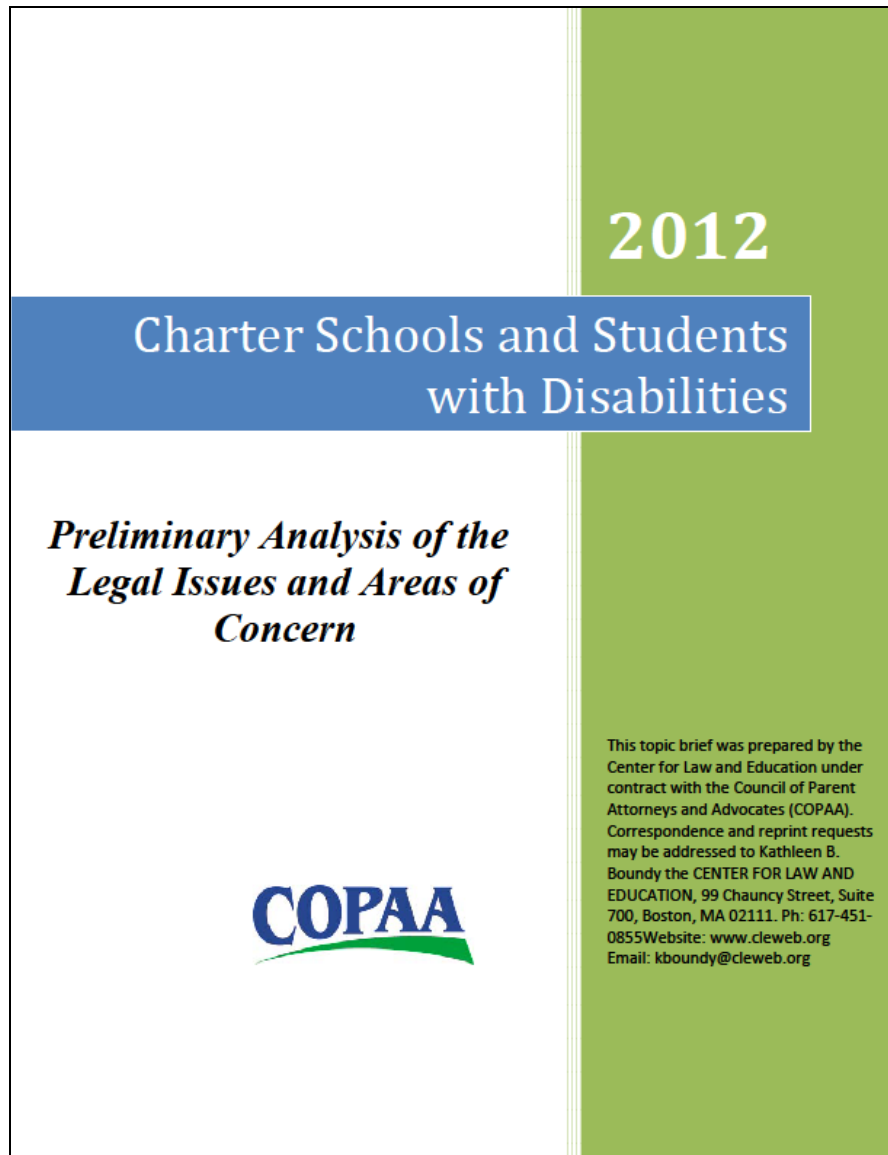
<b>AM</b>	AMERICAN INDIAN OR ALASKA NATIVE	0.40%
<b>AS</b>	ASIAN	1.34%
<b>BL</b>	BLACK (NOT HISPANIC)	3.25%
<b>HI</b>	HISPANIC/LATINO	4.64%
<b>MU</b>	MULTIPLE RACES	0.02%
<b>PI</b>	NATIVE HAWAIIAN OR OTHER PACIFIC ISLANDER	0.12%
<b>WH</b>	WHITE (NOT HISPANIC)	90.24%
		<u>100.00%</u>

*Note: The document shown below was provided by Lauren Morando-Rhim, Commission Member and Executive Director of the National Center for Special Education in Charter Schools*

*Copies may be obtained online at:*

<http://www.cleweb.org/sites/cleweb.org/files/assets/Administrative/Charter%20Schools%20and%20Students%20with%20DisabilitiesFinalDraft.pdf>

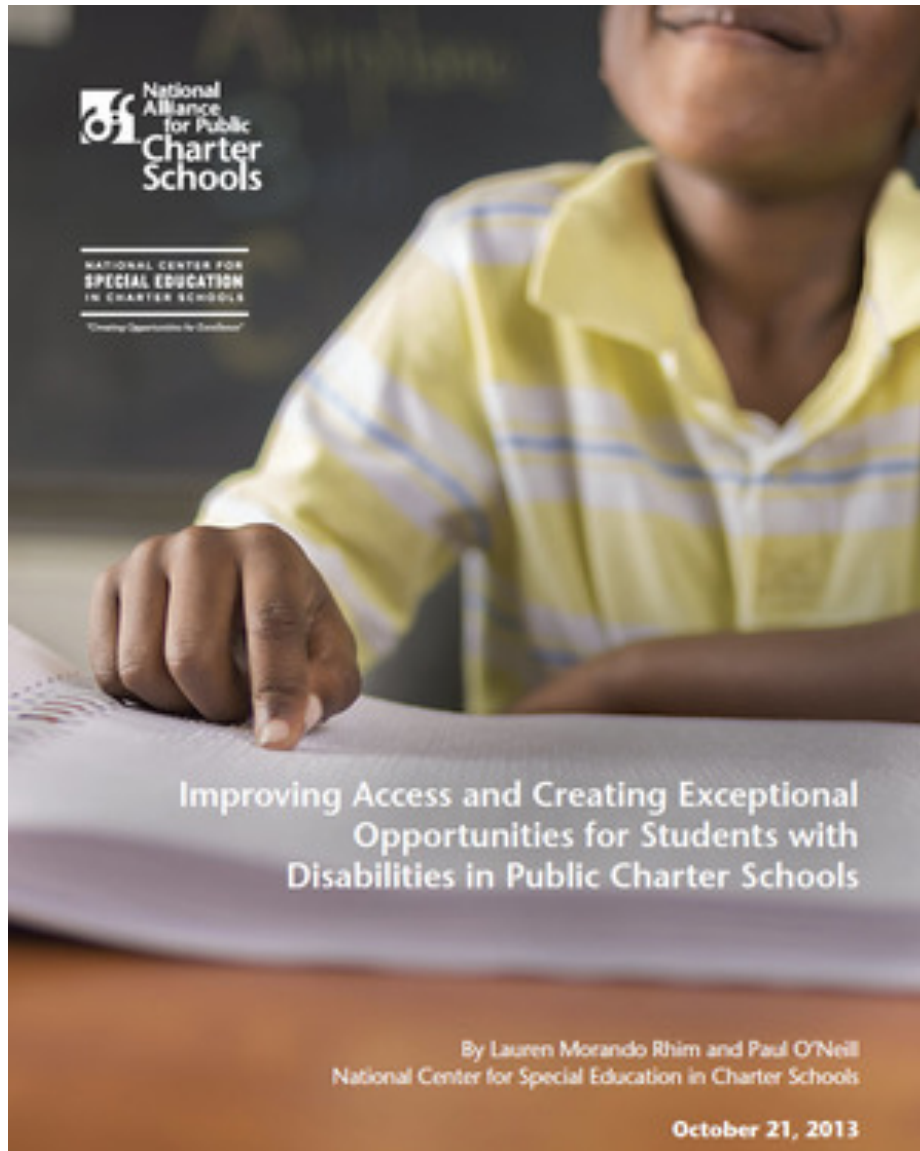
*The document shown below was provided by Lauren Morando-Rhim, Commission Member and Executive Director of the National Center for Special Education in Charter Schools*



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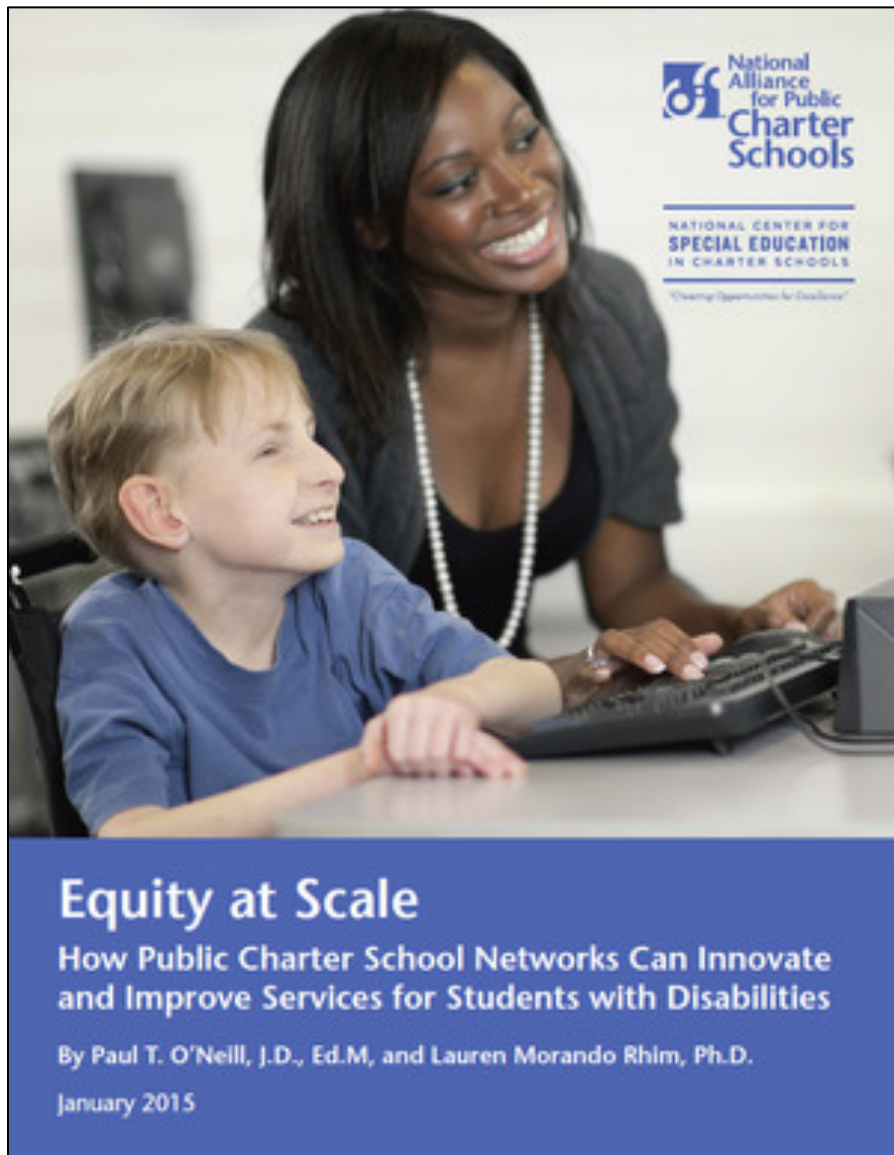
<http://static1.squarespace.com/static/52feb326e4b069fc72abb0c8/t/5399c1f8e4b0807b2cb79137/1402585592311/NAPCS-Disabilities-Report-03.pdf>



*Note: The document shown below was provided by Lauren Morando-Rhim, Commission Member and Executive Director of the National Center for Special Education in Charter Schools*

*Copies may be obtained online at:*

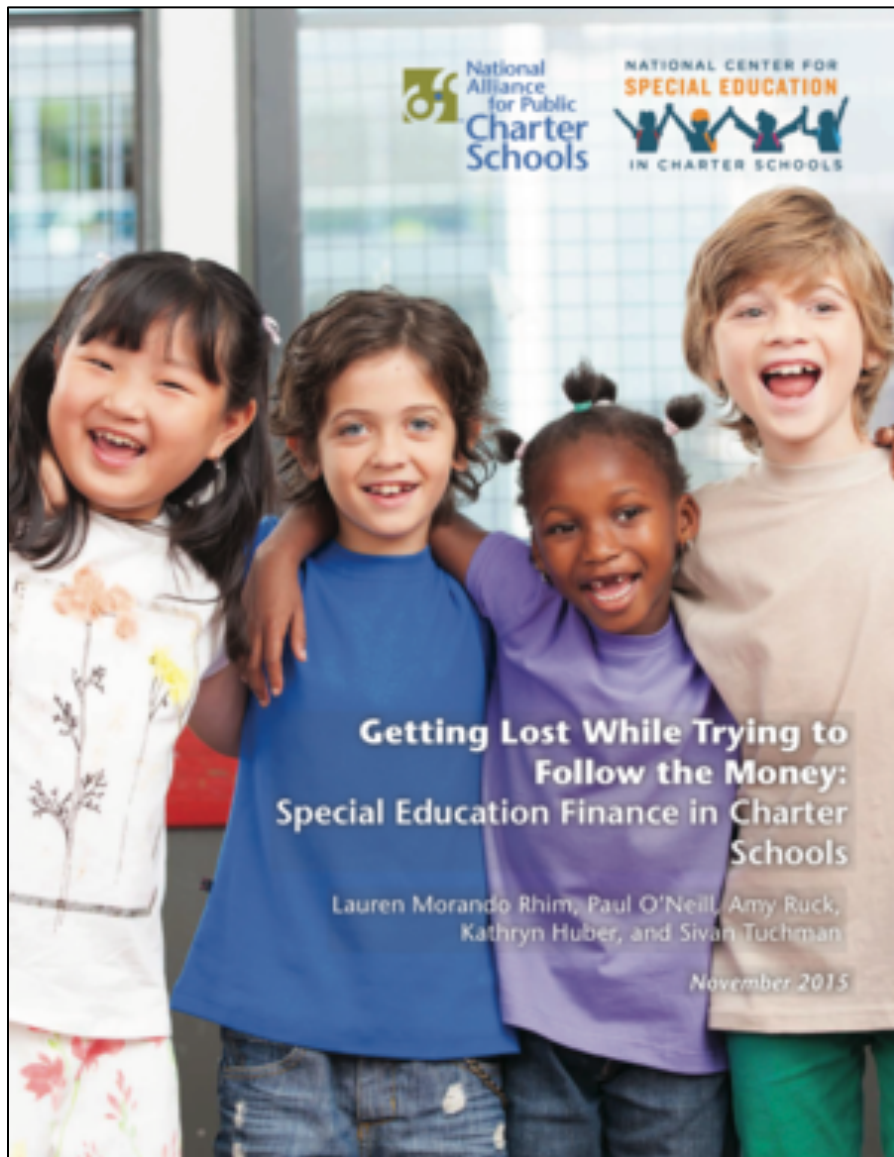
[http://static1.squarespace.com/static/52feb326e4b069fc72abb0c8/t/54d4f576e4b0fafca6766ce8/1423242614524/equity\\_at\\_scale\\_011215.pdf](http://static1.squarespace.com/static/52feb326e4b069fc72abb0c8/t/54d4f576e4b0fafca6766ce8/1423242614524/equity_at_scale_011215.pdf)



*Note: The document shown below was provided by Lauren Morando-Rhim, Commission Member and Executive Director of the National Center for Special Education in Charter Schools*

*Copies may be obtained online at:*

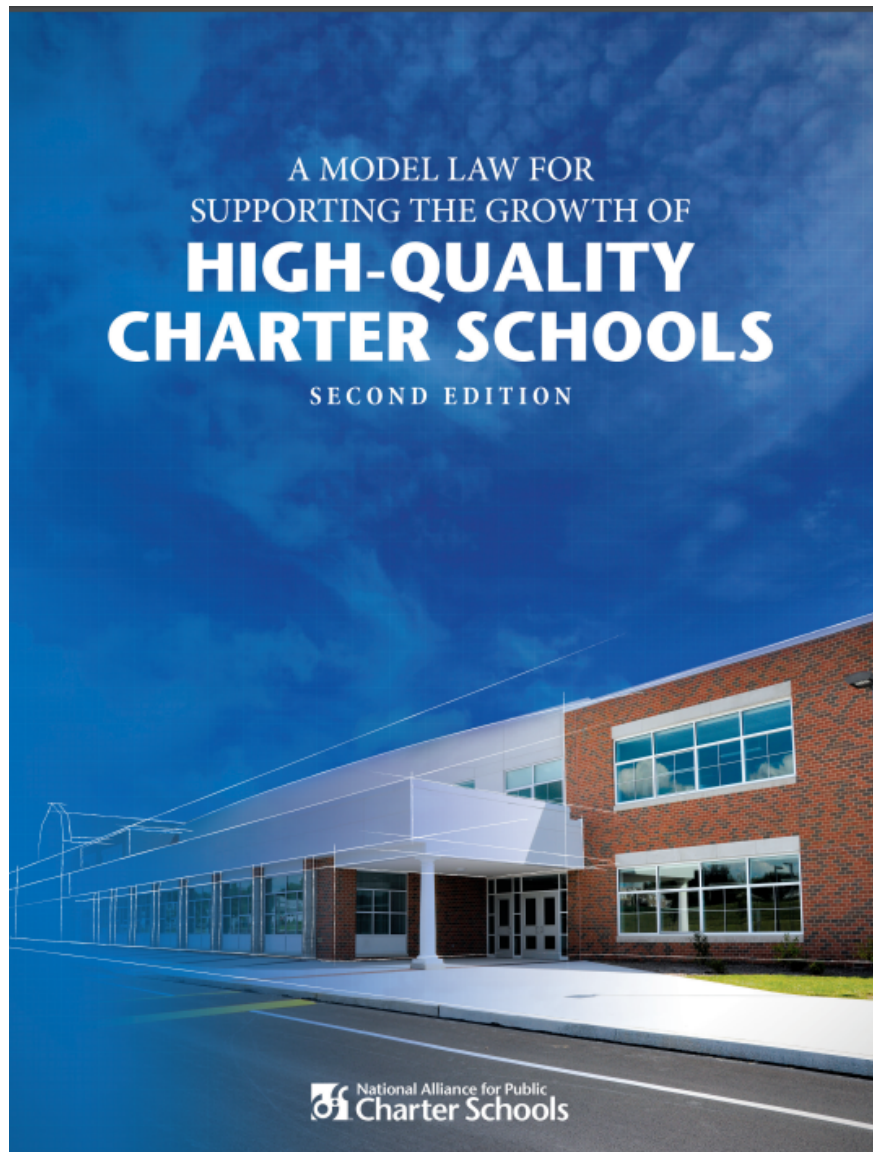
[http://static1.squarespace.com/static/52feb326e4b069fc72abb0c8/t/56391fb2e4b06ea3a17aabce/1446584242886/sped\\_finance\\_web.pdf](http://static1.squarespace.com/static/52feb326e4b069fc72abb0c8/t/56391fb2e4b06ea3a17aabce/1446584242886/sped_finance_web.pdf)



*Note: The document shown below was provided by Lauren Morando-Rhim, Commission Member and Executive Director of the National Center for Special Education in Charter Schools*

*Copies may be obtained online at:*

<http://www.publiccharters.org/wp-content/uploads/2016/10/2016ModelCharterSchoolLaw.pdf>





*Note: The document shown below was provided by Alan Parady, Chair of the Commission. It is from the National Center for Special Education in Charter Schools*

*Copies may be obtained online at:*

[http://static1.squarespace.com/static/52feb326e4b069fc72abb0c8/t/567b0a3640667a31534e9152/1450904118/101/crdc\\_full.pdf](http://static1.squarespace.com/static/52feb326e4b069fc72abb0c8/t/567b0a3640667a31534e9152/1450904118/101/crdc_full.pdf)



**An example of a potential parental notice related to students with disabilities enrolling in charter schools.**

*Provided by Lauren Morando-Rhim, Commission Member and Executive Director of the National Center for Special Education in Charter Schools*

**Protocol for Students with Disabilities Enrolling at Ledyard Charter School**

As an alternative public high school deeply committed to helping ALL students achieve their goal to graduate prepared for college or a satisfying career, Ledyard Charter School welcomes students with Individual Education Programs (IEPs).

Based on New Hampshire law, the local school district of residence (i.e., the district in the town where you live) is responsible for provision of special education and related services outlined in your child's IEP. Under federal law, your child is guaranteed a free, appropriate public education in the least restrictive environment. **Your decision to enroll your child in a charter school does not change this right in any way.** Furthermore, the district may not require your child to forego any services in order to enroll in a charter school.

To ensure that your child continues to receive the same or similar special education and related services (e.g., speech therapy, academic support or counseling) they have been receiving at their prior school, we ask that you request a meeting with the district to discuss the transition to LCS and include an LCS staff member in the meeting.

***Registering to Enroll at Ledyard Charter School***

To facilitate the process and ensure your child continues to receive needed supports, when you register your child to enroll at LCS, we require the following:

- Request transfer of relevant records to LCS
- Complete the attached form granting LCS permission to request any other relevant records from the district of residence
- Provide two pieces of evidence of residency (e.g., drivers license, lease agreement, or utility bill)
- Inform LCS personnel of any meeting with the district to discuss your child's IEP

***IEP Transfer Process***

- Hold an IEP Team Meeting to review the IEP. Note: The full IEP Team, including the LCS Representative, should attend.
- Evaluate what if any aspect of the IEP will change as a result of the student enrolling in the charter school.
- Determine if services should be provided physically at the charter school to maximize the educational benefit of the support services or if the student should travel to the local district to obtain services in which case, the district will need to schedule transportation and services to ensure this approach does not limit the student's access to the general education curriculum at LCS.

***Responsibilities of Special Education Case Manager From The District Of Residence***

- Meet with LCS at the start of the school year to review the need for and implementation of the IEP;
- Meet with LCS at the end of each Trimester and completing the NHSEIS Trimester Progress report;
- Monitor of Related Services;
- Drafting of new IEP as warranted; coordinating 3 year re-evaluations;
- Prepare appropriate transition plan that appropriate reflects the student's course of study at LCS, and
- Serve as liaison between LCS, parent and the district.

We look forward to welcoming your child at LCS. By involving our staff with the transition process we can ensure your child continues to receive the special education and related services that will help them be successful.

## **“Charting a New Course”**

*An article in BusinessNH*

Published Friday, March 25, 2016

by SHERYL RICH-KERN

This article may be accessed online at: <https://shar.es/1YIPRU>

Jonny Bottino, a 17-year-old at the NEXT Charter School in Derry, stands in a classroom at a table displaying three posters and a trove of artifacts, including a dusty 8 mm film camera and a high fidelity turntable, all representing various decades of hipster culture.

It’s “Exhibition Day” at NEXT, and six students are presenting their independent research projects under the theme of “The Things We Wear.” As teachers, parents and other community members walk around the room, they stop to chat with Bottino about crooner Bing Crosby, one of the first Caucasian hipsters to pedal bebop music to a mainstream audience.

As Bottino describes it, the project is emblematic of the school’s mission to let students learn independently and develop confidence in speaking. “The teachers give us space to persevere on our own.”



*Devony, a third year student at NEXT, investigates the impact of culture on wrapped clothing as part of the school’s “The Things We Wear” presentations. Photo Courtesy of NEXT.*

NEXT is one of 26 charter schools in NH (a 27th will open in the fall of 2017) that offer students an alternative to traditional public schools. The first two opened in 2004, and there are now 3,196 students in grades K-12, or 1.7 percent of students attending schools in NH.

No NH data is available on student success at charter schools versus traditional public schools, but as the number of charter schools has grown, so have the critics accusing them of siphoning resources from public schools. Proponents, many of whom enter competitive lotteries to gain their child a spot in a school, say these schools offer an alternate path to success, something they couldn’t find in the public schools.

Bottino’s grandmother and guardian, Susan DeStefano, says Bottino spent his freshman year at Pinkerton Academy in Derry “but he had challenges staying focused and organized.” After exploring the instructional approach at NEXT, which eliminates time-oriented deadlines, they both decided to transfer him to the intimate setting of the NEXT charter school, which now has 60 students and 11 teachers.

DeStefano says her grandson is now thriving.

### **Charter History**

New Hampshire lawmakers first sanctioned charter schools in 1996, but close to a decade elapsed before two charter schools, the North Country Academy in Littleton and the Seacoast Charter in Dover, opened in the fall of 2004.

Despite struggles with capital funding, the champions of charter schools received a major boost in 2010 when the state received \$10.8 million in federal start-up funds. That allowed 17 new schools to open between 2010 and 2015. Only \$600,000 of that money remains.

*Children working with Montessori Math Materials at Mill Falls Charter School in Manchester. Photo by Meryl Levin.*



That momentum almost stalled when a \$4.9 million budget shortfall compelled the NH Board of Education (BOE) to place a moratorium on approving any new applications in September 2012. The freeze, however, was lifted in July 2013 when a law changed allowing the board to approve charters, whether or not the House and Senate pass a state budget.

Legally, either the state Board or the local school district can authorize a charter school. With the exception of the PACE Career Academy in Pembroke, all NH charter schools have sought state approval.

New Hampshire's charter landscape looks different than that of other states. A 2013 study by the Center for Research on Education Outcomes, its most recent, found that 56 percent of charter schools are urban, while only two fall in that category in the Granite State. It also found that 39 percent of charter schools nationally were elementary schools, while in NH only 19.2 percent were in that group. The study covered charter schools in 27 states, which accounted for 95 percent of charter students nationwide.

While many charter schools in urban areas were created in response to failing public schools, NH charter schools often offer a different approach to education or serve a segment of students not succeeding in traditional public schools. New Hampshire's charter movement includes Montessori schools, those focused on math and science, those focused on the arts and schools for kids who need a competency-based model that is geared to individual needs.

### **The Funding Conundrum**

Since schools in NH are primarily funded by property taxes, residents pay close attention to dollars coming into and going out of town. This puts charter schools under tight scrutiny as they remove students from public schools along with the state adequacy aid towns receive for each student.

Towns receive \$3,561 per student in state adequacy funding. Additional funding comes from the state for students who require special education services, English as a second language and those who qualify for a free or reduced lunch. However, statewide per-pupil costs average \$14,000, which means town taxes cover most of the cost.

Charter schools have a completely different formula. Under the current formula, charter schools receive \$5,597 per student and must make up the rest of the per-student cost through donations, grants and other fundraising activities.

### **Keeping Doors Open**

At Mill Falls in Manchester, NH's first Montessori-based charter school, young children lie on the rug moving number cards and blocks, while others are measuring sand into vials at child-sized tables. By intention, the class looks more like a living room than a classroom.

Meryl Levin, executive director of Mill Falls, says the state provided \$550,000 in start-up funds for the first three years. She then set out to raise about half a million dollars more for the first five-year charter period by establishing a nonprofit organization for the sole purpose of fundraising. As of the end of the last fiscal year, the nonprofit had about \$300,000 in its coffers. Rent alone is \$120,000 annually. The school has 168 kids in mixed-grade classrooms for first through sixth grade. Kindergarten, the only stand-alone classroom, has 24 spots like other rooms, and there are usually more than 150 children vying to get in through the annual lottery. The school's wait list has 400 students.

The Academy of Science and Design in Nashua on Amherst Street moved into its current location in 2012 after outgrowing its first home in Merrimack.

With 525 students, it is the second largest charter school in the state behind the Virtual Learning Academy, which only offers online classes. Virtual Learning Academy has 190 high school students, 29 middle school students and about 10,000 part-time students.

Jennifer Cava, director of the Academy for Science and Design, says the \$34,000 per month rent is one of the biggest line items in her \$2.5 million budget. The other is personnel. Cava says there is a separate page for donations on the school's website, but due to recent funding increases donations "have always been appreciated" but are not necessary.

In the fall of 2014, Nashua dentist and parent Scott Bobbit pledged \$30,000 to build a chemistry lab. Cava says that level of generosity is infrequent and she doesn't expect more one-time gifts of that magnitude rolling in the door. Cava adds many parents do make donations.

Charter schools typically request, but don't obligate, parents to do more than contribute financially. Parents are asked to volunteer in the classroom. Levin of Mill Falls says we "hope for 15 to 20 hours per year," though she says not everyone can commit that time. She often suggests other ways parents can help out, such as volunteering at evening events or working on projects outside school hours.

Matora Fiorey has directed the Surry Village Charter School since its inception in 2006. When the bell signals the day's end, kids don't run out the door to a parked car. Instead, teachers request that parents enter the classroom, and greet their children. "We want them to stay connected to the school," says Fiorey.

Surry Village asks that parents commit to 20 volunteer hours annually. "I never came across a parent that didn't want to do that," says Fiorey.



*Students work on assignments at Surry Village Charter School. Photo courtesy of Surry Village.*

Most charter schools find success, but four charter schools in Concord, Franklin, Goffstown and Rochester have closed between 2006 and 2010 in part due to financial concerns.

Low enrollments also contributed to these closures, notes Department of Education (DOE) Commissioner Virginia Barry. She points out that, in particular, charter high schools are at risk of decreasing demographics because it is not unusual for parents to transition their kids back to the traditional public schools in their junior and senior years as they get closer to applying for college.

### **Special Education Tensions**

For the most part, charter schools collaborate well with colleagues at traditional schools. But tension arises when it comes to serving kids with special needs because the responsibility to assist kids with individual education plans (IEPs) falls on the district of residence, and not the charter school.

Alan Pardy, executive director of the NH Association of Special Education, says, "New Hampshire has this funny hybrid model. It approves them [the charter schools], but doesn't fund them adequately. Then they throw the special education dilemma into the mix where in many cases public schools are subsidizing special education in charter schools."

In Nashua, speech pathologists are stretched thin, says Janet Arcaro, who recently retired as assistant special education director for Nashua. The district provides services to around 30 students across four charter schools. "They [the therapists] have to [make] time in their schedules to travel to the charter schools and come back," says Arcaro—and all at the home district's expense.

Arcaro also says that therapists who work on social skills—like making conversation and reading non-verbal cues—work best in groups. That’s less likely to occur at a charter school where there are fewer students, in the same grade or at the same level, making it necessary to work one on one. In some cases, for students with significant disabilities, says Commissioner Barry, “It may be better to stay at the residential district.” But ultimately, the choice remains with the parent.

What worries Arcaro about the complicated relationships between charter and conventional schools is “that the parents are caught in the middle.” To address the concerns of Arcaro and other special educators, a state commission is studying how to improve these working relationships. The group, which includes educators and parents, will report its recommendations to legislators by November.

### **A Model of Partnership**

Tensions surely exist, but some charter schools have established strong relationships with their host communities. The success of the state-approved NEXT Charter School in Derry stems from its partnership with the local district. After moving from West Running Brook Middle School in Derry, the trustees at NEXT spent \$200,000 renovating space in the Gilbert H. Hood Middle School. The rent is a dollar a year, an arrangement that becomes more costly, but more permanent, when residents vote in March to transition NEXT to a 10-year lease.

Dan McKenna, chair of the Derry Cooperative School Board, says the district was instrumental in developing the charter to support an avenue for kids who, for a variety of reasons, are underserved in a traditional high school setting. The town of Derry pays the NEXT charter school the same \$11,477.63 tuition fee it would pay for its students to attend Pinkerton Academy, minus the adequacy funds the charter receives from the state.

Like every other local school district, Derry funds special education for resident students. At Pinkerton, fees for these services run from anywhere from \$7,500 to \$25,000 per student. But at NEXT, McKenna says the personalized instruction diminishes the need for some of these services, ultimately saving the town \$300,000.

Similarly, the K-6 Surry Village Charter School in the small town north of Keene is housed in the former Surry Elementary School, which the school district shuttered a decade ago. Wanting to preserve a village square landmark for resident students, charter proponents worked with the town to lease the former elementary school for a new charter school with multi-grade classrooms. The annual rent is one dollar. Tim Peloquin, school board chair, says when Surry students attend the charter, the town saves money it would otherwise pay in tuition to send kids to school in Keene. In 2010, the charter extended its reach to include seventh and eighth graders at a facility in Keene. At \$20,000 a year, the middle school’s lease is considerably higher.

### **Working Their Own Way**

As a chemical engineer at Thermo Electron in Massachusetts, Karen Legault developed systems for detecting trace explosives and chemical warfare agents and travelled frequently to many war-torn countries in the Middle East. She decided her second act career would be as a math teacher at the Academy of Science and Design. While she values her contributions as an engineer, she says she’s “thrilled” to draw upon her knowledge of real-world scenarios to teach beyond textbooks.

*Students work on calculus problems at the Academy of Science and Design in Nashua. Courtesy of the Academy of Science and Design.*

For instance, in her geometry lessons on arcs and circles, she asks students to calculate optimum heights of multiple communication towers on the moon using NASA specifications. The high schoolers react with enthusiasm, discussing how to make the towers mobile, how and what type of building materials to transport to the moon, and where to place them. Legault says she often has to remind her students to move on to their next class.



It's not that teachers at conventional public schools don't create innovative projects based on real-world scenarios. They do. But they don't get the charter school perks: smaller class sizes—which every parent covets—and the absence of administrative red tape and contentious school board policies.

For teachers, working in an autonomous environment comes at a price. As a rule of thumb, teachers at charter schools don't earn as much as their traditional counterparts, particularly as they move up the ladder. But you won't hear any complaining from Legault about this. She says she's working toward her certifications and graduate degrees in math and education while teaching at ASD. She and others, like science teacher Emily Whalen of NEXT, say they brainstorm ideas "outside the box" and implement them quickly.

Whalen likes the range of projects. To probe the evolution of prey species, she asks her students to explore the ethics of bobcat trapping in NH. An assignment on the inner workings of the body's most important muscle led to a dissection of a sheep's heart.

Each of these lessons is a module. Unlike a conventional public school where students pass or fail a year of physical science, NEXT students are reassessed every 20 days. They either move up or meet the competency requirement for that module in another way.

"There's no penalty for doing that," explains Whalen.

As the only science teacher in a school of 59 students, Whalen generates a variety of lessons based on current events. "The downside is I don't have science colleagues to bounce ideas off of." But on the other hand, "I don't have to get 10 people on the same page."

Professionals who are otherwise ineligible to work at conventional public schools are also attracted to charter schools. Many charter school teachers are on their second or third careers and don't have teaching degrees. According to DOE Commissioner Barry, federal law requires only half the staff at charter schools to have a certification or three years of teaching experience while public school teachers must have a teaching certification. She adds that 75 percent of charter school teachers have a teaching endorsement from the State of NH.

### **The Future of Charters**

Without local district governance, trustees at charter schools also set their own rules. Proponents say they innovate new approaches to learning, cherry-pick staff, engage parents who proudly wear the badge of school choice, and provide personalized instruction.

But the big question is: do they push students to succeed in ways conventional schools can't? Anyone delving into the topic comes up short on answers. This is not because of lack of research. In fact, reams of literature explore the subject, but the results are often contradictory or inconclusive. If anything is clear, charter schools are here to stay in NH, though DOE Commissioner Barry doesn't expect a cascade of new schools to continue.

In 2015, the state DOE applied, but did not receive, another round of federal start-up funds worth \$5.8 million. More than \$600,000 remains from the 2010 grant, which allowed the state to approve one more charter school: the LEAF Academy in Alstead, focused on a STEAM (Science-Technology-Engineering-Arts-Math) curriculum for high school students. The state has enough funds left to approve one more charter school, Barry says.

The rejection from the feds doesn't arrest the momentum. "We will continue to apply [for federal dollars]," says Barry. "I'd like to see more activity north of Concord."

*Note: The document shown below, “New Hampshire’s Medicaid to Schools Program – A Snapshot Summary Prepared by MSB”, was provided by Dan Courter, Maine State Billing Service. The formatting has been adjusted to fit the page size for this report.*

## New Hampshire’s “Medicaid to Schools” Program

A Snapshot Summary\* prepared by MSB™

Service	Order	Referral	Practitioner Qualifications	Activities	Documentation
Medical Evaluation	IEP	N/A	Physician licensed in NH or in the state in which he/she practices or other licensed practitioner of the healing arts	<ol style="list-style-type: none"> <li>1. Examination of a single organ system including documentation of complaint(s), physical examination and diagnosis of current illness, and establishment of a plan of management relating to a specific problem</li> <li>2. In-depth evaluation with development and documentation of medical data, including chief complaint, present illness, family history, medical history, personal history, system review and physical examination</li> </ol>	Report as necessary
Nursing Services	IEP	N/A	Licensed Registered Nurse; or Licensed Practical Nurse; or Advanced Registered Nurse Practitioner licensed in NH or in the state in which he/she practices	<ol style="list-style-type: none"> <li>1. Administration of medication(s)</li> <li>2. Positioning/repositioning</li> <li>3. Assistance with specialized feeding programs</li> <li>4. Management and care of specialized medical equipment</li> <li>5. Observation of children with chronic medical illnesses</li> <li>6. Other services directly related to child’s disability determined to be necessary and appropriate</li> <li>7. Supplies and equipment related to nursing</li> </ol>	Transaction Log For supplies and equipment, see special instructions included with Director’s Packet
Occupational Therapy Services	IEP Physician’s order or order from a licensed practitioner of the healing arts practicing within the scope of his/her practice	N/A	Occupational Therapist licensed in NH or in the state in which he/she practices and certified by the NBCOT or graduate of an OT program approved by AMA and engaged in supplemental clinical experience before certification by the NBCOT Other persons under the direction of a licensed OT	Evaluation, treatments, consultations, supplies, or equipment necessary to implement a program of activities in order to develop or maintain adaptive skills necessary to achieve adequate and appropriate physical and mental functioning of a child. Such services shall be provided by or under the direction of an occupational therapist and include evaluation and treatment of children whose abilities to carry out age-appropriate tasks are threatened or impaired by physical illness, injury, emotional disorder, or congenital or developmental disability. Billable categories include evaluation, individual and group therapy, consultation, and supplies and equipment.	Written Order Transaction Log For supplies and equipment, see special instructions included with Director’s Packet
Physical Therapy Services	IEP Physician’s order or order from a licensed practitioner of healing arts practicing within the scope of his/her practice	N/A	Licensed in NH or in the state in which he/she practices; graduate of a PT program approved by CAHEA of the AMA and the APTA or its equivalent Other persons under the direction of a licensed physical therapist	<ol style="list-style-type: none"> <li>1. Any evaluations to determine a child’s level of physical functioning, employing such performance tests as measurements of strengths, balance, endurance, and range of motion</li> <li>2. Any treatment services or consultations which might utilize therapeutic exercises or the modalities of heat, cold, water, and electricity for the purpose of preventing, restoring, or alleviating a lost or impaired physical function</li> <li>3. Other services, including supplies and equipment, determined by a physical therapist to be necessary and appropriate for a child’s physical therapy</li> </ol>	Written Order Transaction Log For supplies and equipment, see special instructions included with Director’s Packet



Service	Order	Referral	Practitioner Qualifications	Activities	Documentation
Speech, Language and Hearing Services	IEP	Physician's referral or referral (written) from a licensed practitioner of the healing arts operating within the scope of practice	Speech pathologist or audiologist licensed in NH* or in the state in which he/ she practices and one of the following: CCC from ASHA; or shall have completed an academic program, and be in the process of accumulating the necessary supervised work experience to qualify for ASHA CCC; or completed equivalent education and work experience necessary for ASHA CCC *NH License =ASHA CCC	Speech, language and hearing services shall be covered services and be services, supplies, and equipment necessary for the evaluation, diagnosis and treatment of speech, language and hearing disorders which result in communication disabilities and shall be provided by or under the direction of a qualified speech pathologist or audiologist. Billable services include individual speech, language or hearing evaluation; individual and group speech, language or hearing therapy; consultations; and supplies and equipment.	Written Referral Transaction Log For supplies and equipment, see special instructions included with Director's Packet
Psychiatric Services	IEP	Recommended by a licensed physician	Licensed physician in NH or in the state in which he/she practices and either board certified or board eligible according to ABPN or its successor organization	Services necessary for the evaluation, diagnosis, and treatment of psychiatric problems in order for a student to benefit from an educational program. Billable categories of psychiatric services shall include the following: psychiatric evaluation/diagnosis; treatment; and consultation.	Transaction Logs for treatment
Psychological Services	IEP	Recommended by a certified psychologist	School or Associate School Psychologist; School Psychologist certified by State Board of Ed; or a psychologist or associate psychologist certified by the NH Board of Examiners of Psychologists or licensed in the state in which he/she practices.	Services necessary for the evaluation, diagnosis, and treatment of emotional or behavioral problems or disturbances in order for a child to benefit from an educational program. Billable categories of psychological services shall include psychological testing and evaluation, psychodiagnostic testing, individual and group psychological treatment, family counseling (child present at some point), and consultation.	Transaction Logs for treatment
Rehabilitative Assistance	IEP	Physician's referral or recommendation from a licensed practitioner of the healing arts within the scope of practice	Certified pursuant to Ed 504.05 or Ed 504.06, or have qualification equivalent to the above certification, or be a licensed practitioner of the healing arts practicing within the scope of practice	Includes assistance with mobility, communication, behavioral management, nutrition, medications, personal care, supported employment (but see specific requirements, He-M 1301.04 (v) (7)) and any other remedial services, excluding classroom instruction and academic tutoring, as are necessary for the maximum reduction of a child's physical or mental disabilities. Provision of services shall be reviewed by a licensed practitioner of the healing arts at least weekly. Such review shall include consultation with the staff person providing the rehabilitative assistance. Billable categories shall include individual and group rehabilitative assistance.	Written Referral or Recommendation Transaction Logs (to include sign-off from a properly credentialed Licensed Practitioner)

Service	Order	Referral	Practitioner Qualifications	Activities	Documentation
Preschool Services (utilizes a bundled rate methodology that has fallen into disfavor with federal regulators: not recommended)	IEP	Physician's referral or Recommendation from a licensed practitioner of the healing arts within the scope of practice	All-inclusive unit: program approval by the Department of Education; OR Discrete Services: Follow all requirements for each discrete service listed in this Summary.	Preschool services shall be covered services and include speech and language services, mobility and orientation, family counseling and information services, and nutrition services. In the exceptional situation where a preschool child has a one-on-one aide NOT RELATED IN ANY WAY TO THE PRE-SCHOOL PROGRAM, a waiver would be required for the specific student and program prior to billing for Rehabilitative Assistance for that child in addition to the all-inclusive unit.	Transaction Logs Written Referral/ Recommendation
Mental Health Services (Other than psychiatric and psychological)	IEP	N/A	Educational certifications as guidance director, guidance counselor, social worker, or by a community mental health program	Enable a child to benefit from an educational program in the least restrictive setting. Covered services include behavior management; individual, group, and family counseling; and crisis intervention	Transaction Logs
Transportation	IEP	N/A	N/A	When other coverable service provided on same date: 1. Transportation to and from school in a vehicle that has been adapted to accommodate the student's disability 2. Transportation to covered medical services in the community 3. Transportation for students who would not be eligible for transportation due to the proximity of their residence to the school and receive transportation because of their medical need for transportation	Trip Log Transaction Logs of other coverable service
Vision Services	IEP	Recommendation by a licensed optometrist, ophthalmologist, physician or other licensed practitioner of the healing arts within the scope of practice	N/A	Services necessary for the prevention or rehabilitation of visual impairment or restoration of a student with a visual impairment to his/her best possible functional level. Billable categories include aids to vision prescribed by an ophthalmologist or an optometrist; mobility and orientation training; Braille instruction and materials; services and supplies related to diagnostic screening and prevention of visual disorders; and other services and supplies related to restoration of vision and/or related functioning to the best possible functional level.	Transaction Logs Written Recommendation

\*Please be advised that MSB™ believes that the above summary accurately reflects the current (as of February 23, 2013) “Medicaid to Schools” Program rules. However, this summary is not intended to replace the regulations last published on **February 23, 2013**. Those regulations and subsequent clarifications and addendums published by the Division of Developmental Services are the sole sources of official interpretation of program rules. Further clarifications and interpretations can be requested from the current Program Auditor, Deb LaFave at (603) 271-5106.

\*Please be further advised that MSB™ informs school districts according to written policy and regulation published by the NH Division of Developmental Services (NHDDS) and the Centers for Medicare and Medicaid Services (CMS) at the federal level. As MSB™ becomes aware of changes, amendments, interpretations, etc. pertaining to the “Medicaid to Schools” Program rules, we will, in a timely manner, further inform you accordingly. School districts are responsible for recordkeeping mandated in the regulations. In the event of an audit, MSB™ cannot be held responsible for incomplete or missing internal school documents required for audit purposes under program rules. However, MSB™ does assume full responsibility for its own internal recordkeeping and billing procedures.

*Note: The document below was provided by Alan Pardy, Chair of the Commission and Executive Director of the NH Association of Special Education Administrators. It consists of a collection of responses to a survey that was distributed to local Special Education Administrators.*

TO: HB 126 Charter School/Special Education Commission

FR: Dr. P. Alan Pardy, Executive Director, NH Assoc. of Special Ed Administrators

RE: Comments received from NHASEA members, September 2015

September 30<sup>th</sup>, 2015

Based on 14 responses to an e-mail request, we received the following comments from local Special Education administrators, grouped by question (we used essentially the same three questions that the Charter School survey used, with an additional question about additional expenses). The content is unedited. Only one of the responses indicated specific dollar amounts of "extra" cost, although several others reference additional costs for providing services in their comments.

One other district sent comments before the survey went out, and those comments are shown separately, after the answers to the three survey questions.

**1. How are special education and related services being provided to students from your district(s) who attend public charter schools?**

A. We either send staff to the school, or bus them back to our school, depending upon location...

Students receive remediation/specialized instruction from the Charter School Staff and we are billed directly for that cost. For ESY the district provides the services.

B. In one charter school, we have a high number of students attending so we provide a full time Special Educator, a Speech/Language Assistant, a contracted Speech/Language Pathologist, and 2.5 Para-educators. The Special Educator teaches one to two classes where the services needed by the majority of the students are embedded. The Speech/Language Pathologist focuses on reading/writing instruction and working with the teachers and Para-educators around delivering the instruction.

In the charter schools where we only have a few students, we try to cost-share service providers with other districts or the charter school.

C. XXSD contracts with tutors, related service providers to deliver the services at two different Charter Schools. One Charter School has their own special education teacher, we contract with that school to provide the services.

D. We contract with a teacher to provide direct instruction in the Charter school. OT and speech services are provided by district staff at the charter school. Paraprofessional support is challenging, and something I am continuing to struggle with. In the past we have sent district folks but that does not work this year. I would love to hear how other districts provide the service in district.

E. I have had to contract with a special education teacher and a related service provider to go to the charter school and provide services. It is often a challenge to find someone to contract with.

F. We pay a special educator contracted by the charter school. We have the family bring the student to the district for OT at the beginning of the day.

G. Some are contracted/shared with another district; one is staff sent from XXSD. Consult is provided by XXSD with case management.

H. When the Charter School is more than 15 minutes away we contract the services either through an agency or the school. We had a new school open in the neighboring town. We are sending our staff.

I. Typically by school district personnel when the charter school is in a district with lots of students attending. Related services are typically contracted or students go back to the home school to keep connections and join groups.

J. The charter school contracts folks to work in their schools (sometimes not people I would hire) and then charges us \$50/hour for tutoring, and I do not know how much for speech. Another director has worked out some kind of contract/deal with the Surry Village Charter School and gets charged differently than we do.

K. Depending on the student, some services are offered by our staff in the charter school, others are not receiving "services" but their IEP's are shared with the school and followed by their staff. So far, no student has been interested in receiving services at the school.

L. The neighboring district, Conway, has hired a special education teacher to provide services at the Robert Frost CS and SAU 13's 3 districts each subcontract with Conway for direct instruction.

Our district SLP and OT, who, for personal reasons are in Conway daily, provide services at RFCS.

M. We previously contracted with the Charter Schools to provide services such as specialized instruction, case management and paraprofessional support to our students requiring these special education services in their IEPs. We have always sent our own speech and language personnel to the charter school. This year we have employed our own certified special education teacher to provide specialized instruction and case management to our students attending charter schools. We have also employed additional paraprofessionals to provide support as required by student IEPs.

## **2. What are the pros and cons of the way(s) that students from your district(s) are receiving specialized instruction and/or related services as students of a charter school?**

A. Pros and cons are dependent on the staff who work at the charter schools. We've had many difficulties with charter school staff following IEPs or (providing) accommodations.

B. Pros: Charter schools have SPED staff on-site who are familiar with the curriculum and program who can provide the remediation. They are available and the district is not in the position to pull our staff to go to the charter school. They also assist with the development of the IEP.

Cons: Charter schools always request more services because their instruction is not differentiated. The classrooms also tend to combine grades such as 6/7th grade classroom. Students who have behavior or "at risk" students do not have the trained staff or structure to appropriately address the behaviors.

C. Pros - students receive needed services throughout the school day, mostly embedded throughout their classes; no transportation required (which would add costs)

Cons - staff are taken away from the age-appropriate building (i.e. charter school has 7th - 12th graders so the staff we place in the charter school come from the middle school and/or high school and reduces their staff available in the building).

D. A school district team has a developed relationship with the students and their parents. There is a joined connection between regular and special education systems, special education teachers are in and out of classrooms observing, delivering services and commenting on what they see. A problem can be addressed that day, an accommodation can be added because when the staff notice a problem they identify a solution at the same time.

E. Pros are that the services can be readily coordinated with the current classroom instruction. The biggest con is that it takes away from district time and resources across all grade levels.

F. For the most part, I have found the teachers at the charter schools to have little experience working with children who have educational disabilities. They do not necessarily understand how to modify the curriculum to meet the needs of the students. It would be great if teachers at the charter schools had some training working with special education students. If charter schools had a special education teacher on their staff, this person could provide professional development to the staff, and be available for consultation. I think this is a critical piece that is missing.

G. Not a team approach. Charter school does not have OT materials or in house OT. Too far for our OT to travel.

H. Sorry no pros. Cons- little oversight. Some services seem to be because the classroom teachers are not providing accommodations or following the IEP. Having a very difficult time actually ensuring FAPE, which is impossible.

I. The pros are the students still receive their services, the cons are that staffing is done by the school and the IEP may or may not be followed at level where progress is made. We had a student return to public school this year who is below where they were when they left.

J. Pro's are when the service providers are there during the day since Charter schools tend have different formats or differentiation techniques and by charter are typically not delivering instruction in a traditional way. So it is difficult when providers are only there for an hour a week or some scattered through the day.

K. Pro

I don't have to locate providers or use school staff in a different location. I happen to know the folks are certified but ... IEPs are implemented

Con

They charge twice what we do. There is no control over the quality of service. Trust is a major issue.

L. The pros,... I am learning a lot and spending a good amount of time in conversation with (our attorney).

The cons... our para professional at one charter is overused by the charter for school wide purposes, we have to discuss roles and responsibilities frequently, gathering data on goals for reporting is a challenge, difficulty with scheduling meetings and coordinating a collaborative effort in regards to spec ed is a challenge.

M. The available service provider might not be the one we would have chosen, but she works well with the charter school staff and and parents are pleased, so it is fine.

N. One of the biggest drawbacks of contracting with the Charter Schools for specialized instruction was that we did not have any oversight of their staff. Often data wasn't presented at meetings, progress reports were not timely and there was the sense that parents had been coached by charter school staff to request services that were in opposition to LEA proposals.

Also, the charter school is acting as a special education program when in fact they are not an approved special education program with the DOE. They should have to go through the same approvals as any other public school does for special education programs.

**3. How did the passage of the 2012 amendments to RSA 194-B change how services are being provided to kids with IEPs in charter schools?**

A. N/A

B. In regards to transportation, all of our Charter School students have parents who are willing to transport. Should we be reimbursing the parents? If parents were not able to transport this would be a tremendous impact on our transportation dept (& transportation costs)

C. It didn't change anything for our district.

D. Needing to provide a FAPE at the Charter School has a monetary effect on our budget. Students who are not attending our school are receiving monies that could be spent on students who are in our own school district. Our 2014-15 and 2015-16 budget did not reflect the needs of Charter School special education students, so we have had to use existing funds targeted for other areas to pay for the Charter School services. Monies were added in budget preparations for Charter School students in the 2016-17 budget.

We also do not monitor the school curriculum so we do not have any way to make sure they have access to the same curriculum we deliver in our own district. It is difficult to make sure the students receive a FAPE. (I have the figures we spent this spent year and the projections for the next two years if that information will help you.)

E. We have incurred significant additional expenses for providing services as it has become an additional school. Furthermore, these students are in- eligible for cat-aid unless the district wants to propose this as a special education placement.

*Alan's Note: This is not possible at the present time, since no charter school is an "approved" special education program.*

F. The passage of the 2012 amendments to RSA 194-B, did not change how services were being delivered for my district. However, if transportation was needed, it would add a significant cost to the district.

G. The only glitch can be with transportation. We do not provide it. We offer services to start at our school and parents refuse. So we remind them that services at the charter school can be provided but they are responsible for transportation. All parents have agreed. While this change offers options, it makes it seem ala carte to a family, not a team recommendation. We have been lucky to have two students in charter schools move out. We are down to 3 students at this point, and one costs us a much higher rate due to the need for para support (because in my opinion the teachers are not trained and are not implanting the IEP)

H. ??

I. My experience with Charter Schools is from 2012 on.

**J. Not sure it changed much, this seems to be negotiated differently by different districts. There are some kids that this is a very cost effective solution for because typically a charter school is a smaller school with a different way of delivering instruction. Also, parents that send students to charter schools typically have had a perceived "bad" or bullying incident and are looking for a smaller more intimate setting. Other options are therapeutic settings or settings with all students with disabilities, so it seems to serve a nice balance.**

K. For us, not at all. We have sent staff to the charter school, especially for related services but it is difficult to do that given in district caseloads. We underwent an IRS audit about the use of contractors to provide services, so we no longer us contractors. We have offered services back in our schools which some parents take advantage of. We rarely need to provide transportation.

L. not provid(ing) services in a home. The lines are blurred with home schooling and virtual charter – parents are scared to let go of the IEP for homeschooling purposes yet VLACS needs student to not be enrolled in another school in order to apply to be full time...this creates a gap. (Child Find).

M. Nothing changed.

N. We have become open to exploring the variety of ways to provide services, however, in all cases, the services are more costly than what would have been provided to the student had they been attending their local public school. We have had to hire additional personnel (special education teacher and aides), pay mileage for services of our related service providers to go out the charter schools (in addition to the lost service time to others on their caseload while traveling) and had to be creative in asking staff to provide related services before or after school (an additional cost to their contract).

N, continued. The additional cost to our towns last year was in excess of \$70,000.00 paid to the Charter School for their services. This year we will be paying for the salary and benefits for one special education teacher and 1 ½ paras to serve the students of our towns.

If the students still attended our school districts, they would be receiving services from our in-district personnel and could share the paraprofessional services with other students at a significant cost savings.

## And, from one district (before the survey went out)...

### Concerns Regarding Charter Schools and Special Education Students

Students with an educational handicap who attend a charter school are not receiving the specialized instruction that the IEP team determined was needed at the evaluation meetings. There are no interventions for progress monitoring; and therefore, any progress is at best coincidental and not based on targeted instruction.

1. Intervention strategies are not implemented to remediate areas identified by IEP goals.
2. A staff member certified in special education is not providing instruction or monitoring IEP goals.
3. Quarterly progress is not monitored.
4. When requested, information provided by teachers is limited at best (per attached examples).
5. IEP's are left to the school district to write with no curriculum-based data, input from teachers, or other information except the most recent evaluations.
6. School district staff are required to travel to the charter schools to conduct academic evaluations resulting in the loss of instructional support for students within the district.
7. Many times academic content is not being taught by highly qualified teachers, yet school districts are not allowed to use credit recovery programs such as PLATO unless a highly qualified teacher supervises student participation.
8. When required support services such as occupational therapy, speech and language therapy, and physical therapy are needed, the charter schools have provided schedules that make it very difficult for the school district to coordinate the specialist services.

## **Providing for Students with Special Education Services:**

### **An initial survey of how Charter Schools and District Schools have worked together**

Compiled and Written by Beth McClure, M.Ed.

Presented to the HB 126 Study Commission

September 14, 2015

#### **Context:**

On Sep. 2, 2015 representatives from Charter Schools who are on the Study Commission were asked to collect information from NH Charter Schools regarding how Charters and Districts are providing special education services to students attending Charters. Representatives involved in this survey include: Karin Cevasco, School Director of the Gate City Charter School for the Arts; Lauren Morando Rhim, Ph.D. representing the NH Public Charter School Association; and Beth McClure, M.Ed., Principal of Strong Foundations Charter School.

#### **Process:**

Although we explained that it would not be possible to complete a thorough and comprehensive survey and prepare a complete report in six business days, the group agreed to prepare an initial survey and present the results with the understanding that there would be a need to gather additional information to present a more complete picture at a later date. The survey was conducted with a very short turnaround, so the results may not be representative and are certainly not comprehensive. We wish to emphasize that this is preliminary information and not fully reflective of the experience of all Charters.

We prepared three questions with open-ended responses in an electronic survey format and sent the link to Michelle Gauthier at the NH Department of Education. She sent it to the Charter Leaders distribution list on Wed. Sep. 9, 2015. A total of eleven responses were collected. The questions and responses are summarized here.



## Questions:

*Q1: How are special education and related services provided to students with disabilities who enroll in your charter school?*

*Q2: What are the pros and cons of the approach in your school?*

*Q3: In what ways did the passage of RSA 194-B: 11, III in 2012 change how special education services were delivered to students?*

## Responses:

*Q1: How are special education and related services provided to students with disabilities who enroll in your charter school?*

All of the options listed in RSA 194-B: 11, III are being implemented to some degree. In most cases services are currently provided at the chartered public school. Districts either send their own staff, contract with outside providers, or contract with the chartered public school, as listed in options 1, 2, and 5. One school reports that the resident district provides some services at the service provider location per option 4. One school reports that a local district provides services at the district's school per option 3, but requires the parents to drive the child to and from the school. This requirement of the local school is in conflict with provision 6, which states that the "resident district shall provide transportation for the child."

- (1) The resident district may send staff to the chartered public school; or
- (2) The resident district may contract with a service provider to provide the services at the chartered public school; or
- (3) The resident district may provide the services at the resident district school; or
- (4) The resident district may provide the services at the service provider's location; or
- (5) The resident district may contract with a chartered public school to provide the services; and
- (6) If the child requires transportation to and/or from the chartered public school before, after, or during the school day in order to receive special education and related services as provided in the IEP, the child's resident district shall provide transportation for the child.

Source: NH RSA 194-B: 11, III

***Q2: What are the pros and cons of the approach in your school?***

In the vast majority of cases, Charters and Districts are working together smoothly to provide services. Charters report that providing services at the Charter helps minimize the disruption to the students' schedules. Charters work closely with Districts to ensure students' needs are met. When Districts contract with Charter staff to work in the Charters, the staff's approach is more closely aligned with the training requirements and mission of the Charter. When Charter staff provide the services, approaches taught in the classroom are reinforced during special education services. One Charter reports that they offer free training to District staff, and District staff has attended.

When Districts send staff, Charters report a good working relationship with the District staff. When Districts send their own staff, it can benefit the Charter because they do not have to case manage the student. One Charter has a teacher who acts as an independent contractor, contracting with Districts to provide services at the Charter. This teacher provides all of the special education services at the Charter for all of the Districts.

When Charters and Districts work collaboratively, the students' needs are met. Charter staff attend special education team meetings. They work closely with local schools to ensure the students' special education and related services are being provided appropriately.

There are some difficulties. If the District staff member is not providing the services, they do not know the child as well. However, when Districts send their own staff, they may not have the flexibility to provide services at times that are not disruptive to the child's schedule. If the District has a case manager based in the District, it is hard for the District case manager to coordinate with the regular education staff.

In addition, District staff have a lack of knowledge of the Charter's curriculum/program, which leads at times to a conflict between the District staff members' approach and the way in which the student is instructed in the Charter. Some Charters have physical space limitations and have to work hard to find places for providers other than their existing staff to work with students. Also, two Charters report that it is hard to find qualified personnel to provide services at the Charter, especially guidance services.

Several Charters have had continuous struggles with local Districts providing special education services to students attending Charters. There are still repeated cases of Districts refusing to provide services, placing services into the accommodations section of the IEP so there is not a District financial liability, listing the Regular Education Teacher as the sole service provider for a special education goal, discharging students from IEPs prior to attendance at a Charter and placing them on 504 Plans, and insisting that families drive their children to the District school in order to access services. Some Charters report that Districts held official special education meetings with the parent, but without inviting a representative from the Charter. Despite the passage of RSA 194-B: 11, III, significant difficulties continue to occur. District adherence to both the spirit and letter of the statute appears to be somewhat discretionary and subject to the whim of district leaders.

***Q3: In what ways did the passage of RSA 194-B: 11, III in 2012 change how special education services were delivered to students?***

About half of the respondents were operating prior to the passage of RSA 194-B: 11, III. Those Charters report that they were already working with districts in the ways outlined in the statute. It did help define the roles and responsibilities of the Districts and Charters, which allowed for better communication between all parties. The clarity of the law has streamlined decision-making at transition meetings regarding how to provide services.

Prior to the passage of RSA 194-B: 11, III, some attorneys for Districts had advised their clients that the law was not clear. In addition, some attorneys advised Districts they did not have to provide services for students with IEPs in Charters because Charters were not an approved special education placement.

Despite the fact that Charters report a smooth working relationship with Districts in the vast majority of cases, there were many cases of difficulties reported. Some District representatives have been hostile towards Charter representatives or parents. At least one LEA has breached confidentiality by complaining on the record at school board meetings about the cost of special education in Charters when it is understood by all parties what the identity is of the student to whom the LEA is referring. Three schools report multiple cases of Districts offering to provide necessary services only if the student returns to the District school.

Candidly, RSA 194-B: 11, III provided an important clarification for Charters and Districts who genuinely were willing to work together to provide for the special education needs of students. It provided resolution for individuals who had previously stated that the law was not clear. If those individuals had not wanted to provide services to students with disabilities in Charters, it did not provide the resolution they desired. Those Districts and attorneys continue to create or place obstacles between the child and service provision for their students with disabilities attending Charters. Fortunately, most Districts have demonstrated a solid ability to work well with Charters within the context of RSA 194-B: 11, III.

**Closing Remarks:**

Discussion regarding this presentation is likely to reveal topics that require further inquiry. For example, we were unable to fully explore how the referral, evaluation, and determination process is working when a student is already enrolled in a Charter. We would strongly recommend that the Study Commission also hear from a constituency of parents of students in Charters who are receiving special education services. We appreciate the opportunity to share the perspective of Charters with the Study Commission.

Respectfully submitted,

Karin Cevasco

Lauren Morando Rhim, Ph.D.

Beth McClure, M. Ed.

***The following Testimony was prompted by the an email from the Commission Chair to charter leaders who sit on the Commission. That email read:***

Hi, Beth et.al. - Are you all willing to present (or recruit some other charter school directors) to speak to the Commission about the specifics of running a charter school? I think an overview of how each of three different schools are operated, what the daily schedule looks like, and how services are provided to kids with IEPs would be a good place to start...thoughts?

***These Testimony notes reflect the practices and structures in place during the 2015/16 school year at the two NH public charter schools whose leaders presented to the Commission on December 10, 2015:***

*Meryl Levin, Executive Director at Mill Falls Charter School in Manchester & Beth McClure, Principal at Strong Foundations Charter School in Pembroke.*

**Testimony Overview:**

**1: A brief overview of how different schools are operated.**

**2: What the daily schedule looks like?**

**3: How services are provided to students with IEPs at our NH Charter Schools?**

**1: A brief overview of how different schools are operated**

- All of the schools represented on the Commissions are state charter schools, which means anyone in the state can apply. Charter Law required an annual lottery if there is more interest than available spots. Some of us have extensive waitlists organized by grade, others have rolling admission.
- Each public charter school is mission-driven, as all charter schools are organized to be.
- Each school has an administrative team who manages the day-to-day workings of the school.
- Each school also has a Board of Trustees – the governing body of each organization. The Trustees are charged with insuring fiscal responsibility and, via the School's staff, successful educational outcomes based on the charter's mission.

**Strong Foundations – (mission)** - **Strong Foundations** is a Public Charter School serving grades K–8. Our focus is on a Literacy and Core Knowledge Curriculum. We utilize the Orton-Gillingham approach in our classrooms. As educators, we seek to model the joy of learning, the self-discipline to persist with learning, and the ability to work well with others. A sense of community, a positive approach, and clear expectations create a safe environment for active participation, learning, growing, questioning, and being creative.

**Mill Falls (mission)** - Launched in the fall of 2012, the school is open – tuition free – to New Hampshire students in grades K-6. Located in Manchester, *Mill Falls* brings together children of all backgrounds and learning styles in mixed-age classrooms that merge the Common Core Curriculum with the individualized and academically integrated Montessori approach. Students' emotional and social growth is cultivated along-side their academic achievement in an inclusive and diverse public school setting.

### **The Mill Falls Structure:**

**An Executive Director** whose role relates to Operations, Facility, Human Resources, meeting all reporting requirements (financial and program related), and is the outward face of the school – chief ambassador and fundraiser.

**The Educational Program Director** who is most like a traditional principal. She is a trained Montessorian, certified teacher and is also trained in Special Education. She insures that the Montessori pedagogy is part of every aspect of our school. She mentors and supervises our teaching staff, and oversees all student needs and related parent/guardian needs and communications.

This year our **Office Manager** became a part-time project manager, and we hired an **Office Assistant** who sits at the front desk.

**Our Teaching Faculty:** Each of our 7 classrooms has a Lead Teacher who is Montessori trained and an **Assistant Teacher**. All but one of our Lead Teachers and many of our Assistant Teachers are state certified. The Lead-Assistant Teams work together in support of their students. We also have a **Reading Interventionist** who works with our most struggling readers as well as a **Reading Coach** who runs some of the many reading groups we have in our Lower Elementary Program. Additionally we have a **Math Interventionist** who works with our students who struggle in math. We have 9 languages other than English spoken at Mill Falls, so we have an **English Language Learner Coordinator** who works with our English Language Learners to support them in their language acquisition and mastery. Our **Integrated Art Program** includes specialists in art, fitness, music and technology.

We also have a **Student Services Coordinator** whose job it is to follow our SpEd kiddos. Under that broad umbrella she: makes sure that all IEPs and 504 are properly integrated into our setting; schedules and attends IEP & 504 meetings along with the classroom teachers and others as needed; and attends to any other SpEd related needs, questions, concerns. She is also a certified Special Educator and some districts have contracted with us to have her provide services for the children with IEPs from their district who attend Mill Falls. As of this writing, there are many service providers, sent by sending districts to offer both academic and related supports, who visit our school on a weekly basis. We also have several **paraprofessionals** in the building daily for some or all of the day. Some have been hired by us as per contract agreements with the 6 sending districts that have SpEd students with us.

### **The Strong Foundations Structure:**

**Principal:** In addition to fulfilling the traditional roles of a principal, provides special education services 3 hours per day, and is the special education case manager for one of the districts who contracts with us.

**Dean of Students:** Schedules school-wide assessments, creates staff and student schedules by collaborating with the Principal and Special Education case manager, handles student discipline, 504 coordinator, teaches 1 hour per day, hires substitutes, schedules coverage for special education meetings and staff absences.

**Special Education Case Manager:** Fulfills the traditional role of Special Education Case Manager including assigning and scheduling special education services, coordinating progress reports, scheduling meetings, overseeing special education staff, writing IEPs, coordinating testing accommodations, and teaches 1 hour per day.

**Guidance Counselor:** Meets with all students, provides Counseling services for students who have Counseling in their IEPs

**Nurse:** Fulfills traditional role of a school nurse, working with all students. Some students having nursing services in their IEP.

**Office Manager:** Runs the office, handles contracts, invoices, and billing.

In addition to the administrative team, we have **regular education teachers**, all of whom are certified and have been trained in Orton-Gillingham. Our special education teachers provide services that school districts contract to provide. We have one special educator sent by a school district. We have a part-time **special educator** who collects progress notes from service providers, enters them in NHESIS, and prepares envelopes for mailing to districts and parents. We also have **specials teachers** for Art, PE, and Music.

## **2: What the daily schedule looks like?**

**Strong Foundations** – Elementary 8:15-3:15, Middle School 8:00-3:00. Elementary students have an hour each of reading, writing, and math every day. They have five 30-minute RTI periods in either reading or math. Students have specials 4 days per week. Middle School students have an hour each every day of language arts and math, 5 specials a week, science and social studies 45 min each daily, and 30 min. RTI period.

**Mill Falls** – our program day begins at 8:30 and runs until 3pm – a 6.5 hour day. Our classrooms are mixed age – as per our Montessori pedagogy – except our K classroom which is single age as the state doesn't (YET) pay for full day K. Additionally, our K day is a ½ day as charter law does not allow charter schools to charge for curricular time (this is different for district schools who are allowed to charge). Our students have 2 work cycles during their day – focused time when they work with materials and on projects meeting the expectations set out for them based on their grade. During the morning work-cycle which focused on math, language and cultural (all areas of social and hard science) they are pulled out for small group lessons, based on their level. The afternoon work cycle is linked to literacy – reading and writing. Again this is done in small group instruction, as well as group and individual work. Our younger students learn to read, and as they grow they read to learn. We also have specials – music, art, fitness and technology and the fifth day is a science/STEM/cultural program.

## **3: How services are provided to kids with IEPs?**

We have been asked to primarily talk about SpEd in NH's public charter schools.

As we begin, we ask you remember that the most common disability found in our charter schools is a learning disability, just as it is everywhere else.

To help explain how Special Education (SpEd) works at charter schools, we've chosen to come at it from the student perspective. So we will share the details of two hypothetical student experiences as we walk you through how SpEd works at our schools. You will hear about a boy – Max, and girl – Sarah. Sarah arrived at her charter school with an IEP already in place, and Max was referred during his time at his charter school.

**We will discuss:**

- How services are determined;
- How services are delivered;
- What costs the charter schools carry, over and above what the districts cover.

**Meet Sarah.** She is a 4<sup>th</sup> grader. She loves soccer, cooking and eating healthy food and is a great artist. But reading doesn't come naturally to Sarah. Earlier in her elementary years, her home district established an IEP for Sarah.

Sarah's family applied to 2 charter schools and they noticed that one school asked if she had an IEP, the other did not. Some charter schools have been reluctant to add that question to their lottery enrollment applications as they don't want to appear to be 'looking' for that. Others have included it, as they find it to be a better way to help insure there will not be a gap in services when new students enter their school.

On paper, and in practice, when Sarah arrived at her charter school, her IEP arrived with her.

**How are services determined at her new school?**

Well, first it's important to note that her services are dictated by the IEP itself. When Sarah enrolled at her new school, the IEP was reviewed by the school team – and there was a meeting with the resident/sending district, Sarah's family, and the charter school team. The Charter school team usually includes the lead/classroom teacher, the SpEd case manager if the school has this person on staff, or the curriculum coordinator in other cases. It seems at this point, that those charter schools with significant number of SpEd students have begun to hire student service coordinators/ special ed case managers to oversee the large number of cases in their student community. This initial meeting helps insure that everyone understands what is in the IEP, that all the services can and will be properly provided to the student in this new setting.

**How are the services delivered?**

The legal requirements around service delivery are set forth in RSA 194B:11,III, but the logistics likely look like this:

Depending on which charter school Sarah goes to, she might get her support from a provider that is employed directly by the resident district, or her provider(s) might be someone that is part of a plan where the school contracts with the district – the school pays this person directly, and the district contracts to cover those costs.

No matter who is providing the services, they have the appropriate certifications.

Our priority is that the children get the services they need – many of those services are written into the IEP, but some of these students need supports outside of those provisions. So let's take a moment to talk about...

### **What additional roles and costs do the charter schools have to meet the needs of SpEd students?**

- Often there are **additional in-class interventions** – for Sarah to succeed, her teachers may find that she needs additional accommodations in the classroom.
- **Additional Staff who provide support in the various academic areas.** Beyond Sarah's IEP, she might also be working with a reading interventionist or coach who is part of her school's non-Special Ed staff. Remember, Sarah, like all students, is a General Ed student before she is a SpEd student AND all students can benefit from individualized support.
- **Space:** The Charter Schools need to have **space** set aside for Sarah to work with her IEP service providers - quiet areas set aside for that purpose.
- **Materials:** There are also costs related to SpEd **materials** –programmatic costs as well (for example Wilson Reading Resource or other examples)
- **Technology** for the teacher to use for SpEd instructional/admin purposes
- **Planning time** - And perhaps most importantly for Sarah's success is the **planning time** required to make sure that Sarah has what she needs in place to work with her SpEd and general ed team.
- **Costs of substitutes** – During each year, Sarah's IEP team will have 2-3 meetings, which generally last about 1.5 hours. In order for our teachers to attend these meetings, charter schools often arrange for substitutes.
- **Case Manager** - At Mill Falls & Strong Foundations the in-house Student Services Coordinator/Case Manager's role is to ensure that the entire special education process is carried out with validity and that all accommodations/modifications are met within the charter school setting. These salaries for positions are covered by each school, and necessary for a successful program, given the large number of SpEd students enrolled at each of our schools.

### **Referral Process**

**Now we'd like you to meet Max.** Max's disability is related to executive functioning. Though this Football-loving 2<sup>nd</sup> grader is very bright, he is not succeeding academically because his disability makes it very hard for him to plan, organize his assignments, manage his time and stay on task. He is not able to complete work, he can't work independently, and his written expression, which takes a lot of planning and organization, is being impacted. He also has a very hard time literally putting pencil to paper.

All of these signs, as well as some behavior issues revealed to his charter school teachers that he needed to be evaluated for SpEd services. Interestingly, the frontal lobe, where executive function resides, is also where impulse control happens. Max doesn't like art and hates to write in his journal, and his teachers also wondered if he also has dysgraphia.

So, to sort out what if any services Max needs, his school embarked on the following:



- 1: Letter of Referral** – usually a classroom teacher or a parent/guardian requests a referral. The teacher and parent will consult with the SpEd person in-house at our two schools.
- 2: Confirm with the parent** that they want to go ahead (this can happen at any point).
- 3: Collect Data** – the teacher is then asked to collect data which may be related to assessments, response to intervention (RTI) and/or information from the parent/guardian. The data is compiled to support the referral.
- 4:** Since the sending/home district is responsible for the SpEd testing, the **Referral Letter** is sent to the district. By law, the district is required to respond within 15 days (though sometimes it takes longer).
- 5:** Then there is an **Evaluation Planning Meeting** with the district, charter school team and parents/guardians to decide what evaluations will be done.
- 6: Results of the Evaluations** are required to be shared out within 45 days at an Evaluation and Determination Meeting.

Should the assessment show that Max qualifies for SpEd services, the next step is to draw up an IEP.

**When all is working well**, this is a team effort, with one person chosen by the district to lead the development – the work of which includes the charter school’s input. Once the IEP is drafted, there is an IEP meeting where the team – charter school and sending district collaborate for the final document.

Max’s parents/guardians and the resident district sign off on the IEP.

It is important to note, that as a school, we do not have financial responsibility for the IEP’s implementation, by law, that resides with the home/sending district.

So now Max has an IEP... Given his story, he has a team of people who are supporting him. He might have:

- writing support services to help him develop and strengthen writing skills and learn to express his thoughts – remember Sam is super bright, but his disabilities makes it hard for him to express himself in writing.
- organization support service – check in at beginning and end of the day.
- as well as various accommodations related to his regular ed classes and assignments – like he might be able to dictate writing assignments.
- He might also have an Occupational Therapists to support his handwriting development.

EVERY service item in his IEP relates to his disability and the IEP’s goals.

### **Evolving Constructs for Service Delivery**

It is important to note that just last week, the largest district in the state announced that they will be changing the way services will be delivered to Manchester resident SpEd students attending charter schools in Manchester. The District plans to shift the responsibility for hiring SpEd services providers to the individual schools. This plan will be evolving over the next few months, but the district expects some version of it to be in place by spring.

The new SpEd Director at the District feels her small staff can no longer afford to put energies toward hiring and supervising the delivery of services at charter schools located in Manchester, so she is moving exclusively to a contract model with the charter schools in Manchester. Many of us are already using this model with some Manchester students and many other districts (Mill Falls utilizes this model with 5 other districts besides Manchester) for SOME but not all of the services in the various IEP's our students have.

### **How Can Charter School Prepare/Plan for Increased Expectations?**

While most charter schools have less than 10 SpEd students some of us have far more. At Strong Foundations we have approximately 55 students who have IEPs. At Mill Falls we have 32 currently on IEPs, several others with 504 plans, and several others in the evaluation process.

But we don't know year to year how many students with IEPs we will have, as students move or might even move off of there IEP's. So it's no small challenge to commit to SpEd staff year to year, when that number can fluctuate significantly.

And just like all other public schools, public charter schools have surprises in our budgets. But our budgets are smaller, so a surprise can quickly become a huge issue, especially when you consider that we receive less than half of the public dollars that other NH public schools receive AND we pay rent and other costs at each school like legal, audit, insurance, and other professional and facility fees – there is no central office for our charter schools, as there is for district schools.

# # #

To: Members of the Commission to Study Issues Relating to Students Receiving Special Education Services While Attending a Special Education Charter School

From: Christine Breen, Director of Special Education, Nashua School District



Janice Arcaro, Retired Assistant Director of Special Education, Nashua School District



Re: School District Input

Date: May 2, 2016

Dear Committee Members:

We would like to take this opportunity to provide input in regards to our perspective in providing special education services to about thirty students in four different charter schools. We have been working to develop a collaborative relationship with the charter schools so that students receive Free Appropriate Education at Public Expense (FAPE). We have been able to support most students appropriately but have had to overcome many obstacles along the way.

Nashua School District has invested years of training and many resources to develop high quality instruction in all content areas. Researched based instruction, on-going training, and a wide variety of materials are utilized to meet the needs of all learners. Short-cycle assessments are continuously used and targeted instruction is developed based on data and adjusted as needed. There are resources to assist teachers in differentiated instruction, such as peer coaches and curriculum specialists. Other resources such as school psychologists, certified guidance counselors, Title One services, and social workers are available to all teachers and students. In the Nashua School District, there are built in support systems, like Instructional Consultation and Life Space Crisis Intervention for students and teachers available prior to accessing the special education process. In contrast, the charter schools are at the beginning stages of developing these systems for students. This has led to a disproportionate number of referrals from charter schools as well as an over identification of students in order for them to get appropriate supports and services.

Built into our structure is tier two instruction which provides all students with targeted academic and/or behavioral support in areas of identified weakness. Students do not need to be identified as disabled to receive this instruction. The number of special education referrals within the Nashua School District has been reduced as we are able to provide remediation using trained staff and a multitude of resources to address needs. When students are receiving "just right instruction" with appropriate materials, there is an increase in student engagement and a decrease in off-task behavior. Based on discussions with two charter school administrators, their schools are attempting to develop tier two instruction but are met with the challenge of lack of personnel, training, and resources for tier two instruction. It is our impression that students are not receiving daily, high quality tier two instruction at this time at some of the charter schools. Once again, this has led to a disproportionate number of referrals from charter schools as well as an over identification of students.

In terms of special education services, the Nashua School District has worked closely with the charter schools to replicate IEP services at charter schools. One of the challenges is the integration of services throughout the day. The ability to incorporate strategies and intervention into daily routines can easily be done using a team approach within our Nashua schools because all service providers are in the building allowing for on-going consult and communication. The ability to “carry over” skills into an educational setting is crucial for student growth and progress on IEP goals and objectives. One of the hardships faced by the charter schools is isolated service delivery. Service providers’ ability to connect services to content areas is compromised. Another challenge is that there needs to be availability of school staff such as psychologists, social workers, and guidance counselors throughout the day when the need arises. Another obstacle is maximizing resources in terms of service providers being used effectively when intermittent services are required. This is particularly of concern for students who require intermittent para educator support which can be flexibly scheduled within Nashua School District. In a charter school, the hours in the IEP may have to be increased or provided as 1:1 support rather than group given the challenge of providing support when needed.

All students, including those with disabilities, should have access to charter schools and be able to be successful. However, some students’ needs are better met in their home school. Several families have chosen to return their children to their home schools. Many have done so due to behavioral deterioration and lack of academic progress despite our collective efforts. In some cases, gaps have widened.

It should be noted that the Nashua School District has worked diligently with charter schools and families to prevent contentious matters rising to the level of a DOE complaint. Our efforts have resulted in no complaints to the NH DOE. All issues have been resolved at the local level; however, these efforts have required many hours of meetings, creative problem solving, allocation of additional non-special education resources, and funding that has exceeded budgeted amounts.

Our work with charter schools this year has resulted in some success. Monthly meetings between two of the charter schools and the Nashua School District have proven beneficial. We are currently developing a different service delivery model with the hopes of increased effectiveness.

We respectfully ask this committee to consider a change in the way that special education services in charter schools are funded. From our perspective, the current system creates a system that is awkward at best and contentious at worst-and may result in FAPE not being provided. The school is responsible for funding without any control over instructional practices, structures, material, or teacher effectiveness. In the best of both worlds, special education services are integrated throughout the day so transfer of skills can occur. Special education staff, including related service providers, should have increased connections to charter schools especially in terms of their mission. If special education funds on a per pupil basis are allocated directly to the school, charter school administrators would be able to select staff and directly supervise them so that they are able to provide integrated services for students.

Thank you for hearing our concerns and for considering a change in the funding structure so that special education students receive FAPE and are successful at charter schools.

*Note: This is a written copy of testimony given on 1/14/2016 by Tom Raffio, Chair of the State Board of Education and Bill Duncan, Member, on behalf of the State Board of Education*

Testimony

to

The HB 126 Charter School and Special Ed Commission

By

Tom Raffio, chair, New Hampshire State Board of education

January 14, 2016

Committee chair Alan Pardy has proposed several questions. The full state board reviewed and discussed our responses and they are presented below.

### **1. How can charter schools best sustain themselves on limited State funding?**

We have no silver bullet for sustainability but can talk about how we approach reviewing the sustainability question in charter applications.

The foundation of a charter school's sustainability is the commitment of its staff and board. The first step is to match the mission and a high quality program to a need recognized in the community. That can open up funding from the host district, as in the case of Next and North Country Charter Academy.

In fact, many states explicitly allow charters to give preference to students from specified districts. The Legislature could conceivably enable charters to give preference to districts that agree to pay tuition for their students. This would provide an added incentive for cooperation between charters and districts around meeting a recognized local need.

Beyond the potential for voluntary district funding, keying the charter program to a recognized local need can be the basis for the local fundraising effort in which most charters are already engaged.

Each school will have its own finance plan. When SBOE reviews charter applications with respect to sustainability, we are looking for, first, how realistic expense projections are, most importantly staff salaries and rent. Then, how realistic projected fundraising needs are. Has the school done what it can to minimized the requirement for funding beyond the state tuition subsidy.

Then its a matter of leadership. Does the school have the staff and board in place with the leadership and experience to deliver on that fundraising requirement.

### **2. What are ways that traditional public schools and charters can work cooperatively?**

There are many ways to work cooperatively. The first, as I mentioned above, is to fill a recognized local need. And this committee is already working on one of they areas in which close cooperation is important, coordination around providing special education services guided by what is best for those children and their parents.

But there are many other ways, big and small. In most cases, districts and charter schools are already cooperating on transportation issues. Manchester send lunch over for MC2 and maybe others. There are great opportunities for joint professional development.

In fact, PACE schools will tell you that one of the most important benefits of PACE is the professional development that brings teachers from all over the state together to learn how to create and administer high quality performance assessments and competency based education programs more generally. Seacoast Charter is participating now and more charter schools could in the future.

New Hampshire is a state that encourages and supports innovation throughout its public education system. PACE highlights the potential for innovations to transfer back and forth in open ended ways between districts and charter schools.

### **3. What degree of oversight and support can the NH DOE provide to charters in the absence of a dedicated CS administrator at the DOE?**

Now that the federally funded charter administration position is no longer available, NHDOE is filling in where it can. The usually means that the Commissioner responds to issues that arise because she cares. She has essentially added charter administration to her job description.

Several legislators - senators and House members - are working together on a bill that would fund a new NHDOE staff position. There are a number of issues to work out but there is good potential in that area.

In the meantime, the department has no proactive way to identify issues that need to be addressed. The 2013 federal review of New Hampshire oversight policies, released in 2015, was useful. It was a review of the federal charter grant program, not the New Hampshire charter program overall.

While the report identified no issues that rose to the level of “findings,” it did note a number of legitimate procedural concerns such as the lack of a “strategic approach,” on-site monitoring, primary source document tracking and training for outside reviewers of charter applications. It also pointed out that our statutes do not say explicitly that charter schools cannot charge tuition.

The report also noted that one school used federal grant funds improperly to pay salaries outside the specified period and another school purchased equipment that would not be used until after the federal grant period was over. Finally, the report made the point that the charter graduation rate was 65% vs 86% for the state (probably a result of the emphasis our schools have properly placed on credit recovery needs).

Those are just the kinds of issues that a charter oversight administrator would address.

The department and the board have responded by putting new systems in place that, on the one hand, acknowledge the staff limitations but at the same time increase transparency and efficiency. For instance, the new dashboard will make mandated reporting easier for the schools as well as serving as the kind of source document repository the oversight report was looking for.

But these are the kinds of things we would have to pay serious attention to in New Hampshire to improve charter performance and oversight if we were to expand significantly from this level.

#### **4. What is the long-term vision of the State Board relative to charter schools?**

SBOE implements legislative policy. However, logic would suggest that, with the limited statutory foundation for charters in New Hampshire, limited oversight capacity, and very little additional federal startup funding available, we would not anticipate further large-scale charter growth in New Hampshire. Significant expansion from current levels would probably require substantially deeper statutory support.

Our first priority at this point is to provide the best support and oversight we can to our existing schools.

Within our existing legislative mandate, our goal is to approve credible home grown proposals. To us, that means the kind of sustainable schools I've discussed that have established a cooperative relationship with their communities and fill a specific, focused niche that supplements but does not strive to duplicate or replace the offerings of the local district schools.

#### **5. How will the new accountability "dashboard" work?**

We have worked with department staff on a design for the dashboard which would both make reporting easier for the schools and increase transparency for the board without increasing the demand on limited department staff resources.

Basically, schools will be able to upload each statutorily required report. The resulting report collection will then be visible and reviewable on line together with certain overarching metrics.

We are now working with the state technology resources to integrate dashboard technology with other technology and reporting requirements.

**– Funding Information –**

*Based on information provided to the Commission’s Writing Subgroup on Finance Issues by the NH Department of Education*

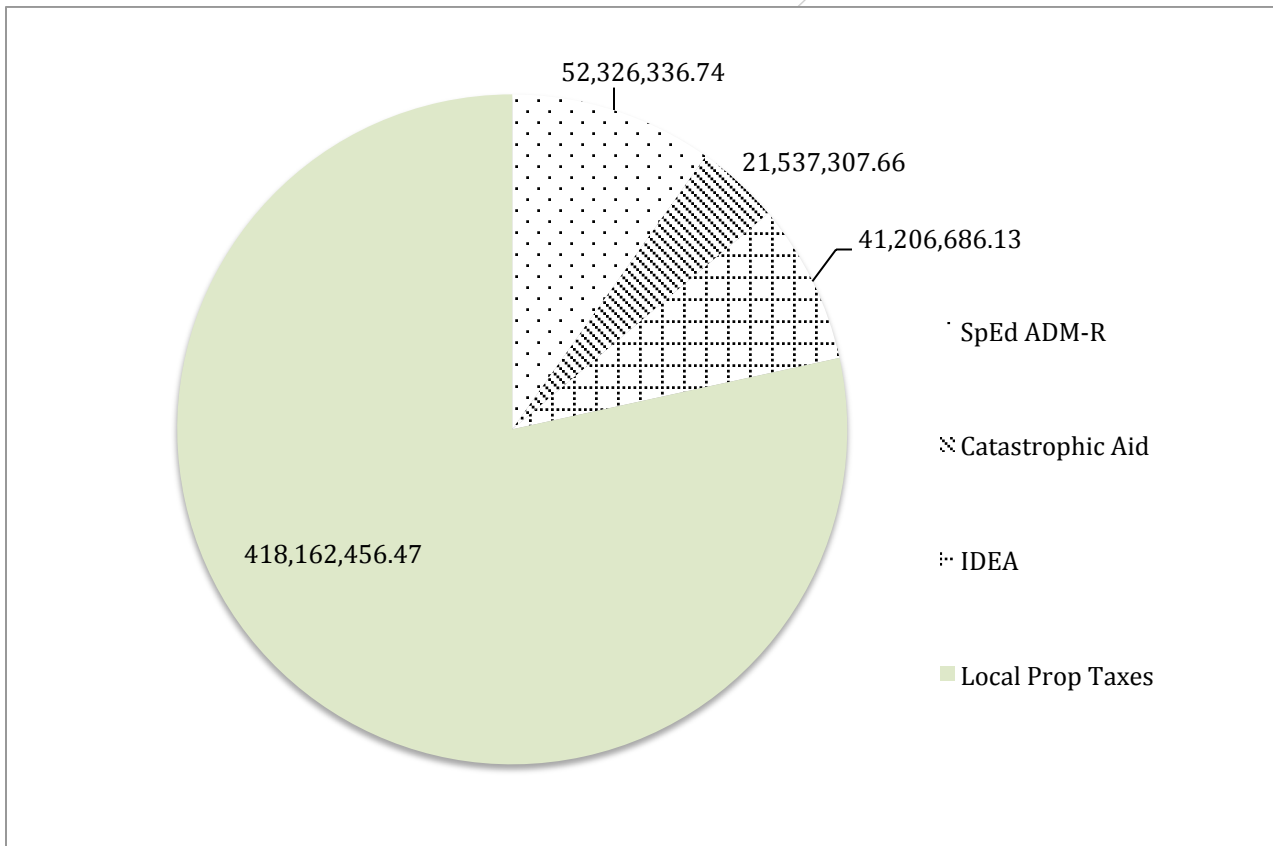
Resources that district schools can access to pay for special education costs include Federal IDEA funds, local funds from property tax dollars, local funds paid to the city/town from Catastrophic Aid, and Differentiated Aid. IDEA funds flow through the state to School Districts. Differentiated Aid in the amount of \$1,915.86 (2016-2017) is paid from the state to School Districts for each student receiving special education services.

Sources of funds for FY 2015 were as follows:

- 1) Allocation for Special Education ADM-R in Adequate Education Aid: \$52,326,336.74  
[http://education.nh.gov/data/documents/allocation\\_special\\_ed\\_fy14\\_15.pdf](http://education.nh.gov/data/documents/allocation_special_ed_fy14_15.pdf)
- 2) Catastrophic Aid Proration 74.42799% (75% of 80% of eligible costs): \$21,537,307.66  
[http://education.nh.gov/data/documents/catastrophic14\\_15.pdf](http://education.nh.gov/data/documents/catastrophic14_15.pdf)
- 3) IDEA Allocations \$41,206,686.13  
[http://education.nh.gov/instruction/special\\_ed/memos/documents/final\\_increase\\_january\\_2015.pdf](http://education.nh.gov/instruction/special_ed/memos/documents/final_increase_january_2015.pdf)
- 4) Local Property Taxes (Total State Expenditures for Special Programs minus Total Funding from 1-3 above: \$533,232,787 - \$115,070,330.53 = \$418,162,456.47

\*See pie chart that illustrates the allocations above.

The table below represents specific sources of funding for special education, the amount allotted, purpose, and method of distribution of dollars.



The State of NH has no mechanism to determine the average per pupil cost for special education. An approximation for students in NH can be estimated



data sources below	Spending PP	Revenue PP	Revenue Source	Revenue Source	Revenue Source	IDEA Part B, 611	IDEA High Cost	Total Number of	Total Number of	Percent Children	Total Number of
	FY 2014	FY2014	FY2014	FY2014	FY2014	FY2015	Funds FY2015	Charter Schools:	Schools: 2013-	with Disabilities:	Students: 2013-
	\$ Total	\$ Total	% Federal	% State	% Local	\$ Total	\$ Total	#	#	%	#
DC	18,485	29,866	10.1	(X)	89.9	17,630,177		109	227	15.10%	78,153
NH	14,335	15,919	5.5	34.1	60.4	46,952,343		23	486	15.50%	186,310
NE	11,726	12,773	8.1	32.7	59.2	73,884,483			1,102	15.30%	307,677
CT	17,745	20,577	4.0	39.4	56.6	131,525,104		18	1,152	13.00%	546,200
PA	13,961	17,223	6.6	37.2	56.3	421,227,513		181	3,068	16.80%	1,755,236
IL	13,077	14,756	7.6	36.7	55.7	500,249,065		65	4,204	14.20%	2,066,990
NJ	17,907	20,531	4.2	40.3	55.5	357,655,373		87	2,510	15.10%	1,370,295
SD	8,881	10,278	13.9	30.8	55.3	33,916,813			699	14.10%	130,890
MA	15,087	17,896	4.8	40.0	55.2	280,881,904		81	1,865	17.50%	955,739
RI	14,767	16,948	8.1	37.9	54.0	43,270,090		23	304	16.40%	142,008
NY	20,610	23,326	5.5	40.6	53.9	750,547,107		233	4,801	16.60%	2,732,770
VA	10,973	11,847	6.7	39.7	53.6	280,977,199		6	2,167	12.60%	1,273,825
ME	12,707	14,604	7.0	39.6	53.4	54,143,366		5	619	16.10%	183,995
TX	8,593	10,629	10.7	39.0	50.3	984,826,533	\$10,606,964	658	9,225	8.60%	5,153,702
OH	11,354	14,041	7.5	42.2	50.3	431,520,529	\$4,818,078	390	3,694	14.80%	1,724,111
MD	14,003	16,146	5.8	44.3	49.9	197,813,261		53	1,442	11.90%	866,169
MO	9,875	11,382	8.8	42.0	49.2	224,734,475	\$2,500,475	59	2,410	13.40%	918,288
CO	8,985	10,538	7.5	43.5	49.1	154,794,322		200	1,832	10.40%	876,999
AZ	7,528	8,786	13.3	38.4	48.3	188,511,333	\$1,938,379	600	2,363	11.80%	1,102,445
FL	8,755	9,628	11.9	40.1	47.9	635,778,154		623	4,319	13.10%	2,720,744
GA	9,202	10,486	10.1	44.0	45.9	329,031,471	\$3,021,418	94	2,379	11.10%	1,723,909
US	11,009	12,774	8.6	46.7	44.7			9,394	94,533	13.00%	50,468,456
SC	9,732	11,524	9.7	46.4	43.9	174,982,401		60	1,244	13.30%	745,657
LA	10,749	12,508	15.3	41.5	43.2	186,353,136	\$4,400,000	118	1,412	11.10%	711,491
TN	8,630	9,284	11.9	46.8	41.3	234,991,530	\$2,567,140	72	1,855	13.10%	993,556
WI	11,186	12,716	7.5	51.9	40.6	205,685,159	\$2,291,619	242	2,263	14.00%	874,414
OR	9,945	11,602	7.9	51.6	40.4	127,282,058		124	1,246	13.90%	593,000
IA	10,668	12,346	7.4	52.4	40.2	120,799,424	\$1,343,878	3	1,382	12.90%	502,964
MT	11,017	11,890	11.8	48.0	40.2	36,954,764			830	11.40%	144,129
WY	15,797	19,098	6.4	54.5	39.1	28,799,702	\$835,989	4	366	13.90%	92,732
OK	7,829	9,003	11.4	49.5	39.1	146,736,103	\$2,500,000	25	1,789	15.10%	681,848
UT	6,500	7,714	8.8	53.7	37.5	109,941,539	\$1,000,000	95	1,012	12.10%	625,461
KS	9,972	11,702	7.3	57.4	35.3	105,498,917		11	1,346	13.70%	496,440
MS	8,263	9,072	14.9	50.2	34.9	118,398,168			1,066	13.30%	492,586
CA	9,595	11,223	10.6	55.0	34.4	1,208,132,681		1,125	10,289	10.80%	6,312,623
AL	9,028	9,939	10.8	54.8	34.4	179,553,881			1,639	10.80%	746,204
KY	9,312	10,523	11.4	54.9	33.7	156,212,650			1,567	14.10%	677,389
MI	11,110	12,856	8.9	57.5	33.6	394,755,681		370	3,545	12.90%	1,548,841
DE	13,938	15,775	7.0	59.8	33.2	35,063,788	\$372,909	21	226	14.10%	131,687
WV	11,260	12,497	10.0	58.1	31.9	75,145,967			760	15.80%	280,958
WA	10,202	12,237	8.0	60.5	31.5	218,121,278	\$14,787,000		2,385	12.50%	1,058,936
ND	12,358	14,817	10.2	58.9	30.9	28,471,374			513	12.80%	103,947
NC	8,512	9,340	11.4	58.3	30.3	327,670,085	\$5,000,000	128	2,625	12.60%	1,530,857
IN	9,548	12,064	7.7	62.8	29.5	255,746,667		76	1,928	16.20%	1,047,385
NV	8,414	9,642	9.1	63.1	27.8	70,895,574		41	664	11.50%	451,831
ID	6,621	7,406	11.2	63.3	25.5	55,463,721		49	709	9.30%	296,476
MN	11,464	13,693	5.7	69.0	25.3	187,554,869		186	2,430	14.60%	850,973
AK	18,416	19,571	12.1	67.2	20.7	36,204,517		27	516	13.70%	130,944
NM	9,734	11,026	12.9	69.6	17.5	90,124,566	\$1,003,243	95	881	13.90%	339,244
AR	9,616	10,785	10.7	77.4	11.9	110,593,411		52	1,112	13.30%	489,979
VT	16,988	19,009	6.1	89.4	4.5	27,451,841			316	15.70%	88,690
HI	12,458	14,434	10.6	87.3	2.0	39,324,741		33	290	10.30%	186,825

Source	census.gov	census.gov	census.gov	census.gov	census.gov	www.ed2.gov	www.ed2.gov	NCES ed.gov	NCES ed.gov	NCES ed.gov	NCES ed.gov
Table	Table 8	Table 11	Table 5	Table 5	Table 5	Part B State	Annual State				
						Allocation Tables	Application Under				
							Part B CFDA No.				

## U.S. Department of Education

Office for Civil Rights



May 14, 2014

Dear Colleague:

One of the fastest-growing areas of school reform is the creation of public schools through a chartering process. Since first appearing in the early 1990s, many charter schools have provided students with additional meaningful opportunities to receive a high-quality education. In communities throughout the nation, numerous charter schools are developing unique learning environments, spurring innovation, engaging parents and other stakeholders, and improving educational opportunities for students. The U.S. Department of Education (Department) is committed to supporting the establishment of high-quality public charter schools from which all students can benefit.

Because many charter schools are newly created, it is understandable that charter school administrators are interested in information about the applicability of Federal civil rights laws.<sup>1</sup> Parents, teachers, community leaders, and charter school authorizers have also sought guidance as to charter schools' legal obligations under the Federal civil rights laws.

I am writing to remind you that the Federal civil rights laws, regulations, and guidance that apply to charter schools are the same as those that apply to other public schools. For this reason, it is essential that charter school officials and staff be knowledgeable about Federal civil rights laws. These laws extend to all operations of a charter school, including recruiting, admissions, academics, educational services and testing, school climate (including prevention of harassment), disciplinary measures (including suspensions and expulsions), athletics and other nonacademic and extracurricular services and activities, and accessible buildings and technology.

The Department's Office for Civil Rights (OCR) enforces a number of Federal civil rights laws that apply to charter schools, including:

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<sup>1</sup> More than one quarter of charter schools have been open three years or less. See National Alliance for Public Charter Schools, *The Public Charter Schools Dashboard Report on Charter School Age*, available at <http://dashboard.publiccharters.org/dashboard/schools/page/age/year/2013>.

- Title VI of the Civil Rights Act of 1964 (Title VI) (prohibiting discrimination based on race, color, or national origin);<sup>2</sup>
- Title IX of the Education Amendments of 1972 (Title IX) (prohibiting discrimination based on sex);<sup>3</sup> and
- Section 504 of the Rehabilitation Act of 1973 (Section 504) and Title II of the Americans with Disabilities Act of 1990 (Title II) (prohibiting discrimination based on disability).<sup>4</sup>

These Federal civil rights laws and the specific legal obligations discussed in this letter apply to all public charter schools in the United States, regardless of whether they receive Federal funds under the Department's Charter Schools Program.<sup>5</sup> In addition, charter schools that receive funds—either directly or through a State educational agency (SEA)—under a Department grant program, such as the Charter Schools Program, are subject to the additional requirements of each grant program.<sup>6</sup>

This letter does not attempt to summarize the entire body of Federal civil rights laws. Instead, it briefly addresses a few of the subjects that have arisen in the charter schools context: equal opportunity in admissions; provision of a free appropriate public education (FAPE) to students with disabilities; provision of services to English-language learners so that they can participate fully in their school's educational program; and the non-discriminatory administration of discipline. Throughout, this letter also identifies Departmental guidance and resources that are available to charter schools to assist them in complying with the Federal civil rights laws.

The obligations discussed below under the Federal civil rights laws are independent of charter schools' obligations under the Individuals with Disabilities Education Act (IDEA). Working with the Department's Office of Special Education and Rehabilitative Services (OSERS), which is responsible for administering the IDEA, OCR intends to issue joint guidance on the rights of students with disabilities who attend charter schools and their parents.

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<sup>2</sup> 42 U.S.C. § 2000d *et seq.*; 34 C.F.R. Part 100.

<sup>3</sup> 20 U.S.C. § 1681 *et seq.*; 34 C.F.R. Part 106.

<sup>4</sup> 29 U.S.C. § 794; 34 C.F.R. Part 104; 42 U.S.C. § 12131 *et seq.*; 28 C.F.R. Part 35. Pursuant to a delegation by the Attorney General of the United States, OCR shares in the enforcement of Title II in all programs, services, and regulatory activities relating to the operation of, among other types of entities, public elementary and secondary educational programs. 28 C.F.R. § 35.190(b)(2). Title II cannot be construed to establish any lesser standard than the standards established under Section 504 and its implementing regulations. 42 U.S.C. § 12201(a); 28 C.F.R. § 35.103(a).

<sup>5</sup> 20 U.S.C. § 7221-7225g. Title II applies to all public entities (including public schools) regardless of whether they receive Federal financial assistance. Title VI, Title IX, and Section 504 apply to all education programs or activities that receive Federal financial assistance either directly from the Department or through a local educational agency (LEA), State educational agency, or otherwise. OCR is unaware of any public school, including a charter school, that is not part of a program or activity that receives Federal financial assistance directly or indirectly from the Department.

<sup>6</sup> For further information on the Charter Schools Program, see <http://www.ed.gov/programs/charter/index.html>.

*Nondiscrimination in admissions.* Charter schools may not discriminate in admissions on the basis of race, color, national origin, or disability.<sup>7</sup>

Although public charter schools' civil rights obligations are no different from those of other public schools in this regard, the fact that students choose to attend a charter school and are not simply assigned to attend a charter school underscores the need to be mindful of the rights of children and parents in the community when publicizing the school to attract students and when evaluating their applications for admission.

Charter schools must ensure that language-minority parents who are not proficient in English receive meaningful access to the same admissions information and other school-related information provided to English-proficient parents in a manner and form they can understand, such as by providing free interpreter and/or translation services.<sup>8</sup> Also, communications with parents with disabilities must be as effective as communications with other parents. Appropriate auxiliary aids and services (such as Braille materials or a sign language interpreter) must be made available whenever they are necessary to ensure equally effective communication with parents with hearing, vision, or speech disabilities.<sup>9</sup>

As a general rule, a school's eligibility criteria for admission must be nondiscriminatory on their face and must be applied in a nondiscriminatory manner. In addition, a charter school may not use admissions criteria that have the effect of excluding students on the basis of race, color, or national origin from the school without proper justification.<sup>10</sup> Charter schools also may not categorically deny admission to students on the basis of disability.<sup>11</sup>

Charter schools located in a school district subject to a desegregation plan (whether the plan is court-ordered, or required by a Federal or State administrative entity) must be operated in a

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<sup>7</sup> 34 C.F.R. §§ 100.3(b)(1) (Title VI), 104.4(b) (Section 504). Generally, Title IX, which prohibits sex discrimination in federally funded education programs and activities, does not apply to admissions. A vocational (or career and technical education) charter school, however, may not discriminate on the basis of sex in its admissions policies or practices. 34 C.F.R. §§ 106.21(a), 106.35. The United States Constitution imposes strict parameters on the creation and operation of single-sex public schools and other uses of sex-based criteria. See *United States v. Virginia*, 518 U.S. 515, 531-33 (1996); Brief for the United States as *Amicus Curiae* Supporting Appellants at 25-26, *Doe v. Vermillion Parish Sch. Bd.*, No. 10-30378 (5th Cir. June 4, 2010), available at [http://www.justice.gov/crt/about/app/briefs/vermillion\\_brief.pdf](http://www.justice.gov/crt/about/app/briefs/vermillion_brief.pdf). Charter schools considering the use of sex-based admissions criteria should consult with legal counsel.

<sup>8</sup> OCR, *Identification of Discrimination and Denial of Services on the Basis of National Origin*, (May 25, 1970), reprinted in 35 Fed. Reg. 11,595 (July 18, 1970).

<sup>9</sup> See 34 C.F.R. § 104.4(b) and 28 C.F.R. § 35.160 (effective communication); see also 34 C.F.R. §§ 104.21-104.23 and 28 C.F.R. §§ 35.149-35.152 (program and facility accessibility).

<sup>10</sup> 34 C.F.R. §§ 100.3(b)(2), 100.3(b)(6). See also OCR and Department of Justice, *Guidance on the Voluntary Use of Race to Achieve Diversity and Avoid Racial Isolation in Elementary and Secondary Schools*, at p. 12 (December 2, 2011) (*Voluntary Use of Race Guidance*), available at <http://www.ed.gov/ocr/docs/guidance-ese-201111.pdf>.

<sup>11</sup> 34 C.F.R. § 104.4(b); and 34 C.F.R. §§ 104.33-104.36.

manner consistent with that desegregation plan.<sup>12</sup> Charter schools may also voluntarily elect to create learning environments that include students of diverse backgrounds. The benefits of such student body diversity are many. Diverse environments help students sharpen their critical thinking and analytical skills; prepare them to succeed in an increasingly diverse and interconnected world; break down stereotypes and reduce bias; and enable schools to fulfill their role in opening doors to students of all backgrounds.<sup>13</sup>

If a charter school wishes to promote racial diversity or avoid racial isolation, it has the flexibility (to the extent permitted by applicable State law) to pursue a variety of approaches in the context of admissions and recruiting, school location, attendance boundaries, transfers, and retention and support programs. As explained in greater depth in the *Guidance on the Voluntary Use of Race to Achieve Diversity and Avoid Racial Isolation in Elementary and Secondary Schools*,<sup>14</sup> charter schools should consider approaches that do not rely on the race of individual students before adopting approaches that do. Race-neutral approaches can take racial impact into account to promote diversity or avoid racial isolation;<sup>15</sup> examples include targeting specific media outlets in which to advertise, reaching out to particular community groups, or using lotteries that give extra weight based on the socioeconomic status of a child's parents.<sup>16</sup> If a charter school determines that race-neutral approaches would be unworkable or ineffective, it may employ generalized race-based approaches, which use race as an express criterion (such as locating a school based on the overall racial composition of neighborhoods or feeder schools) but do not rely on the race of individual

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<sup>12</sup> In some instances, it may also be necessary for a charter school to seek a modification of the school district's desegregation plan or order from the court or administrative entity requiring the desegregation plan.

<sup>13</sup> *Grutter v. Bollinger*, 539 U.S. 306, 330-31 (2003); see also *Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 787-89, 797-98 (2007) (Kennedy, J., concurring).

<sup>14</sup> Available at <http://www.ed.gov/ocr/docs/guidance-ese-201111.pdf>. See also OCR and Department of Justice, *Questions and Answers About Fisher v. University of Texas at Austin* (September 27, 2013), available at <http://www.ed.gov/ocr/docs/dcl-qa-201309.pdf> (affirming validity of *Voluntary Use of Race Guidance*); Department of Education and Department of Justice, *Dear Colleague Letter on Schuette v. Coalition to Defend Affirmative Action* (May 6, 2014), available at <http://www.ed.gov/ocr/letters/colleague-201405-schuette-guidance.pdf> (same).

<sup>15</sup> Racial impact may not, however, be considered in furtherance of an invidious purpose. *Voluntary Use of Race Guidance* at p. 5.

<sup>16</sup> Nonregulatory guidance from the Department identifies circumstances under which a charter school receiving Federal funds under the Charter Schools Program may use weighted lotteries: (1) when necessary to comply with certain Federal civil rights laws, the Equal Protection Clause of the United States Constitution, or applicable State law; (2) to give slightly better chances for admission to students seeking to transfer schools under the public school choice provisions of Title I, part A of the Elementary and Secondary Education Act of 1965 (ESEA); or (3) if permitted by State law, to give slightly better chances for admission to educationally disadvantaged students, including students who are economically disadvantaged, students with disabilities, migrant students, limited English proficient students, neglected or delinquent students, and homeless students. Department of Education, *Charter Schools Program: Title V, Part B of the ESEA: Nonregulatory Guidance* (January 2014) at pp. 18-19 (E-3), available at <http://www2.ed.gov/programs/charter/fy14cspnonregguidance.doc>. That guidance also suggests that charter schools consider conducting additional recruitment efforts toward groups that might otherwise have limited opportunities to participate in the charter school's programs. See *id.* at p. 20 (E-4). Note that the nonregulatory guidance only applies to Charter Schools Program recipients and does not otherwise apply to a charter school.

students. If race-neutral and generalized race-based approaches would be unworkable, a charter school may consider an individual student’s race under appropriate factual circumstances.<sup>17</sup>

Free appropriate public education for students with disabilities.<sup>18</sup> Under Section 504, every student with a disability enrolled in a public school, including a public charter school, must be provided a free appropriate public education—that is, regular or special education and related aids and services that are designed to meet his or her individual educational needs as adequately as the needs of students without disabilities are met.<sup>19</sup> Evaluation and placement procedures are among the requirements that must be followed if a student needs, or is believed to need, special education or related services due to a disability.<sup>20</sup>

Charter schools may not ask or require students or parents to waive their right to a free appropriate public education in order to attend the charter school. Additionally, charter schools must provide nonacademic and extracurricular services and activities in such a manner that students with disabilities are given an equal opportunity to participate in these services and activities.<sup>21</sup> More information will be provided in joint guidance that OCR and OSERS plan to issue on the rights of students with disabilities who attend charter schools.

Affirmative steps for English-language learners. Like all public schools, charter schools must take “affirmative steps” to help English-language learners overcome language barriers so that they can participate meaningfully in their schools’ educational programs.<sup>22</sup> A charter school must timely identify language-minority students who have limited proficiency in reading, writing, speaking, or understanding English, and must provide those students with an effective language instruction educational program that also affords meaningful access to the school’s academic content. Federal civil rights laws do not, however, require any school, including a charter school, to adopt or implement any particular educational model or program of instruction for English-language learners; schools have substantial flexibility to determine how they will satisfy their legal obligations to meet these students’ needs.<sup>23</sup>

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<sup>17</sup> Schools thinking about considering individual student’s race in admissions should carefully review the *Voluntary Use of Race Guidance* for detailed analysis of when such consideration may be lawful and may also wish to consult with legal counsel.

<sup>18</sup> IDEA also has a specific statutory definition of the term free appropriate public education. 20 U.S.C. § 1401(9) and 34 C.F.R. § 300.17. This letter does not address the IDEA definition of free appropriate public education or other related IDEA requirements.

<sup>19</sup> 34 C.F.R. § 104.33(b)(1).

<sup>20</sup> 34 C.F.R. § 104.35.

<sup>21</sup> 34 C.F.R. § 104.37; see also OCR, *Dear Colleague letter on Extracurricular Athletics* (January 25, 2013), available at <http://www.ed.gov/ocr/letters/colleague-201301-504.pdf>.

<sup>22</sup> See *Lau v. Nichols*, 414 U.S. 563, 566 (1974).

<sup>23</sup> OCR’s policies governing the treatment of English-language learners are available at <http://www.ed.gov/ocr/ellresources.html>.

*Nondiscrimination in discipline.* Data collected by OCR have demonstrated significant disparities in the use of exclusionary discipline (such as suspensions or expulsions) against students of color and students with disabilities in many schools across the country, and that an increasing number of students are losing important instructional time due to exclusionary discipline.<sup>24</sup> All public schools, including charter schools, are obligated to avoid and redress discrimination in the administration of school discipline on the basis of race, color, or national origin; disability; and sex. This obligation applies over the entire course of the disciplinary process, from behavior management in the classroom, to referral to an authority outside the classroom because of misconduct, to resolution of the discipline incident. The *Guidance on the Nondiscriminatory Administration of School Discipline*<sup>25</sup> offers detailed assistance on how to identify, avoid, and remedy discriminatory discipline. The discipline guidance document focuses on racial discrimination, but much of its analytical framework also applies to discrimination on other prohibited grounds.<sup>26</sup> In addition, when addressing discipline for students with disabilities, it is important that charter schools comply with applicable legal requirements governing the discipline of a child for misconduct caused by, or related to, the child’s disability.<sup>27</sup>

This is by no means an exhaustive list of the legal requirements that apply to charter schools under these Federal civil rights laws. A full list of OCR’s guidance publications is available at <http://www.ed.gov/ocr/publications.html>. OCR can provide technical assistance to help charter school authorizers and charter school operators, administrators, board members, and teachers understand and comply with these civil rights laws and other laws enforced by OCR.<sup>28</sup>

OCR is also available to provide technical assistance to students, parents/guardians, community-based organizations, and other stakeholders who are interested in learning more about the Federal civil rights of students and parents and the responsibilities of charter schools. The Federal civil rights laws prohibit retaliation and intimidation against those who contact OCR to gather information about their rights or who file a complaint. It is also unlawful for a school to retaliate

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<sup>24</sup> See OCR and Department of Justice, *Dear Colleague Letter on the Nondiscriminatory Administration of School Discipline* (January 8, 2014) at pp. 3-4, available at <http://www.ed.gov/ocr/letters/colleague-201401-title-vi.pdf>.

<sup>25</sup> *Id.* See also Department of Education guidance package on Student Climate and Discipline, including a Guiding Principles of Reform non-regulatory guidance, a Directory of Federal Resources, and a Compendium of State Laws and Regulations on School Discipline, available at <http://www2.ed.gov/policy/gen/guid/school-discipline/index.html>.

<sup>26</sup> See *Dear Colleague Letter on the Nondiscriminatory Administration of School Discipline*, at pp. 2-3.

<sup>27</sup> 34 C.F.R. § 104.35(a). See generally 34 C.F.R. §§ 104.4, 104.32-36.

<sup>28</sup> In addition to the statutes discussed in the letter, OCR enforces the Age Discrimination Act of 1975, 42 U.S.C. § 6101 *et seq.*; 34 C.F.R. Part 110; and the Boy Scouts of America Equal Access Act of 2001, 20 U.S.C. § 7905; 34 C.F.R. Part 108. The Department of Justice enforces Title IV of the Civil Rights Act of 1964, 42 U.S.C. § 2000c *et seq.*, and the Equal Educational Opportunities Act of 1974, 20 U.S.C. § 1703.

against an individual for bringing concerns about possible civil rights problems to a school's attention.<sup>29</sup>

SEAs and charter school authorizers have an important role in assisting charter schools with civil rights compliance. Every SEA or charter authorizer that receives Federal financial assistance has, as a matter of Federal law, an obligation to ensure that any charter school to which it provides a charter, money (regardless of whether they are Federal or State funds), or other significant assistance, is not discriminating.<sup>30</sup> In addition to SEAs and charter school authorizers, States can designate other agencies to take, investigate, and resolve complaints of discrimination by charter schools. Together with OCR, these entities can all provide technical assistance and support for charter schools, parents, and students.

If you have any questions or would like technical assistance on these issues, I encourage you to contact the OCR office in your region. I particularly urge individuals designated to coordinate charter schools' compliance with the civil rights laws to seek OCR's assistance whenever needed.<sup>31</sup>

The list of OCR offices is available at <http://wdcrobcolp01.ed.gov/CFAPPS/OCR/contactus.cfm>. You may also contact OCR's Customer Service Team at (800) 421-3481 or [ocr@ed.gov](mailto:ocr@ed.gov).

Thank you for your commitment to improving public education and providing high-quality educational opportunities to our nation's students.

Sincerely,

/s/

Catherine E. Lhamon  
Assistant Secretary for Civil Rights

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<sup>29</sup> 34 C.F.R. § 100.7(e) (Title VI); 34 C.F.R. § 106.71 (Title IX) (incorporating 34 C.F.R. §100.7(e) by reference); 34 C.F.R. § 104.61 (Section 504) (incorporating 34 C.F.R. §100.7(e) by reference); 28 C.F.R. § 35.134 (Title II); *see also* OCR *Dear Colleague Letter on Retaliation*, available at <http://www.ed.gov/ocr/letters/colleague-201304.html>.

<sup>30</sup> *See, e.g.*, 34 C.F.R. §§ 100.3(b)(1), 100.3(b)(2), 100.4(b) (Title VI); 34 C.F.R. § 104.4(b)(1)(v) (Section 504); 34 C.F.R. § 106.31(b)(6) (Title IX).

<sup>31</sup> 34 C.F.R. §§ 106.8(a) (Title IX) (requiring each recipient of Federal financial assistance to designate coordinator); 104.7(a) (Section 504) (each recipient with at least 15 employees); 28 C.F.R. § 35.107(a) (Title II) (each public entity with at least 50 employees, regardless of whether they are a recipient of Federal financial assistance).



## MEMORANDUM

**To: Interim study committee on special education at charter schools**

**From: Gerald M. Zelin, law firm of Drummond Woodsum**

**Re: Proposed statutory amendments**

**Date: October 14, 2014**

1. Amend RSA 194-B to provide that, whenever a charter school applies to the State Board of Education for approval or to renew approval:
  - (a) the State Board shall provide written notice to the superintendent of schools for the district in which the charter school is located; and
  - (b) the school district shall then have an opportunity to submit written comments before the State Board makes a decision on the application.
2. Amend RSA 194-B by adding that, if over 25 percent of a charter school's students qualify for special education, the school must first obtain approval under RSA 186-C:5 to operate as a special education program.
3. Consider amending RSA 194-B:11, I(b)(1) to conform to the State Department of Education's current practice of paying special education adequacy funds to the district of residence when a special education student attends a charter school.

### **Explanation:**

The State Department of Education's current practice, while well-intentioned, contradicts RSA 194-B:11, II(b)(1).

RSA 198:40-a, the "educational adequacy statute," offers State financial aid to the school district in which a student resides. The basic aid is \$3,450 annually per student. RSA 198:40-a, I. That statute then includes additional bonuses, called "differentiated aid," for students who are English language learners, who have not tested as proficient in reading, who qualify for federal free and reduced-price meal programs, *or who receive special education*. RSA 198:40-a, I-III.

The "special education bonus" totals \$1,856 annually per student with disabilities. RSA 198:40-a, III.

RSA 194-B:11, I(b)(1) reads as follows: "Except as provided in subparagraph (2), for a chartered public school authorized by the state board of education pursuant to RSA 194-B:3-a, the state shall pay tuition pursuant to *RSA 198:40-a* plus an additional grant of \$2,000 directly to the chartered public school for each pupil who is a resident of this state in attendance at such chartered public school." (Emphasis added.)

*RSA 198:40-a, III, the special education bonus, is part of RSA 198:40-a. Thus, RSA 194-B:11, I(b)(1) compels the State to pay the special education bonus to the charter school.*

The State Department of Education in fact distributes the special education bonus to the school district in which the student resides rather than to the charter school. The Department apparently pays all other forms of adequacy aid under RSA 198:40-a to the student's charter school.

It is unsavory for the Department to violate the statute, which directs the State to pay *all* adequacy funds – including the special education bonus – to the charter school. Either the statute should be amended to conform to the Department's current practice or the Department should change its practice to comply with the current statute.

4. Amend RSA 194-B:8, I, regarding prohibited forms of discrimination.

This statute currently provides as follows: “A chartered public school shall not discriminate nor violate individual civil rights in any manner prohibited by law. *A chartered public school shall not discriminate against any child with a disability as defined in RSA 186-C.* A chartered public school shall provide due process in accordance with state and federal laws and rules.” (Emphasis added.)

The italicized language should be deleted and replaced with the following: “A chartered public school shall not discriminate on the basis of disability against any child with a disability as defined in RSA 186-C.”

**Explanation:**

RSA 194-B:8, I currently prohibits a charter school from discriminating against a child who qualifies for special education, even when the discrimination is reasonable and *is unrelated to the fact that the child qualifies for special education.*

The language of Section 504 of the Rehabilitation Act of 1973 provides a more reasonable model. Section 504 says, “No otherwise qualified individual with a disability . . . shall, *solely by reason of her or his disability,* be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.” 29 U.S.C. § 794(a) (emphasis added).

5. Amend RSA 194-B:6 to immunize school districts from liability for a charter school's acts or omissions regarding implementation of the special education laws.

RSA 194-B:6 currently states: “No host, sending, or receiving district shall be held liable for *damages* in an action to recover for: (a) bodily injury, personal injury, or property damage as defined in RSA 507-B:1, or (b) for failure to educate pupils, where such actions arise out of the establishment or operation of a chartered public school.” (Emphasis added.)

Courts have held that claims for compensatory education are not damage claims. This is because an award of compensatory education directs a school district to provide *services* going forward, to make up for services the student missed in the past, not *monetary compensation* for physical or economic injury.

6. Amend RSA 194-B:11, III(a)-(b) as follows (by removing the struck-through language and by adding the italicized language):

*“(a) The fact that a child with disabilities attends a chartered public school does not relieve the district of residence of its duty to offer a free appropriate public education under RSA 186-C. ~~In accordance with current department of education standards,~~ While a child with disabilities under RSA 186-C attends a chartered public school, the funding and educational decision-making process for children with disabilities attending a chartered public school shall be the joint responsibility of the resident district and the chartered public school. ~~both of which shall retain all current options available to the parent and to the school district.~~ The district of residence shall ordinarily be obligated to fund the cost of special education, related services, supplementary aids and services, transition services, vocational education, and transportation within the limits set forth in paragraph (b)(6) below, while the chartered public school shall ordinarily be obligated to fund the cost of accommodations, modifications, and courses that satisfy the child’s transition service needs.*

(b) When a child is enrolled by a parent in a chartered public school, the local education agency of the child's resident district shall convene a meeting of the individualized education program (IEP) team and shall invite a representative of the chartered public school to that meeting. *The chartered public school shall send at least one representative to that meeting. At the meeting, the IEP team shall determine offer a “charter school IEP” that assumes the child will continue to be enrolled at the chartered public school, that offers a free appropriate public education to the extent feasible given the parent’s decision to enroll the child in the chartered public school, and that clearly identifies for each element of the IEP which entity (the school district or the chartered public school) is responsible for funding and implementing that element of the IEP. ~~how to ensure the provision of a free and appropriate public education in accordance with the child's IEP.~~ The child's IEP, including but not limited to special education, and related services, accommodations, modifications, supplementary aids and services, supports for school personnel, transition services, transition services needs, and vocational education, shall be provided using any or all of the methods listed below starting with in the least restrictive appropriate environment:*

- (1) The resident district may send staff to the chartered public school; or
- (2) The resident district may contract with a service provider to provide the services at the chartered public school; or
- (3) The resident district may provide the services at the resident district school; or
- (4) The resident district may provide the services at the service provider's location; or
- (5) The resident district may contract with a chartered public school to provide the services; and
- (6) If the child *due to his or her disability* requires transportation to and/or from the chartered public school before, after, or during the school day in order to receive special education and related services as provided in the IEP, the child's resident district shall provide transportation for the child, *except that the resident district shall not be required to transport the child beyond the resident district’s boundaries.*”

**Explanation:**

- A. The IDEA requires that an IEP include more than special education and related services. An IEP must also include modifications, accommodations, supplementary aids and services, supports for school personnel, and (starting no later than age 16) transition services. 20 U.S.C. § 1414(d)(1)(A)(IV), (VIII); 34 C.F.R. § 300.320. New Hampshire law adds that an IEP also include vocational education and, if the child is age 14 or older, transition service needs (which means courses to prepare a child for life after elementary and secondary school). N.H. Code of Admin. Rules, Ed 1109.01(a)(10), (11).
- B. Modifications, accommodations, transition service needs, and supports for school personnel are ordinarily not expensive.
- C. Modifications, accommodations, and supports for school personnel tend to permeate the school day. It is unreasonable to expect a school district, which has no control over the charter school, to be responsible for ensuring that the charter school implements those portions of the IEP.
- D. The clause “in accordance with current department of education standards” in RSA 194-B:11, III(a) is nonsense. That clause has been in the statute since 1995 when RSA 194-B was first enacted. Back in 1995, the New Hampshire Board of Education’s special education rules were entitled “State Standards,” but they said nothing about charter schools. The State Board of Education’s special education rules are still silent on charter schools.

7. Amend RSA 194-B:11, III(c) as follows (by removing the struck-through language and by adding the italicized language):

~~“(c) Consistent with section 5210(1) of the Elementary and Secondary Education Act and section 300.209 of the Individuals with Disabilities Education Act, when~~ *When* a parent enrolls a child with a disability in a chartered public school, the child and the child's parents shall retain all rights under federal and state special education law, including the child's right to ~~be provided with~~ have a free and appropriate public education *available*, which includes all of the special education and related services included in the child's IEP. ~~The child's resident district shall have the responsibility, including financial responsibility, to ensure the provision of the special education and related services in the child's IEP, and the chartered public school shall cooperate with the child's resident district in the provision of the child's special education and related services.”~~

**Explanation:**

- A. Section 5210(1) of the ESEA merely defines the term “charter school.” The ESEA says nothing about special education at charter schools.
- B. The reference to section 300.209 of the IDEA is nonsense and dishonest. The IDEA contains no such section. The U.S. Department of Education’s regulations implementing the IDEA, at 34 C.F.R. § 300.209(d), impose responsibility on the State, not on school districts, when a student attends a charter school that is not operated by a school district and that is not an LEA.

- C. The IDEA does not confer a right to “be provided” with a FAPE. It requires that every child with disabilities in a participating state have a FAPE “available.” 20 U.S.C. § 1412(a)(1)(A). Parents remain free to spurn a FAPE by opting out of special education or by enrolling their child in a school that does provide a FAPE.
- D. My proposed amendments to RSA 194-B:11, III(a) and (b), set forth in Section 6 of this memorandum, allocate responsibility for services while a special education child attends a charter school.

8. Add the following as RSA 194-B:11, III(d) and (e)

*“(d) In the event of a disagreement over what to include in a child’s charter school IEP, or over the allocation of responsibility to implement or fund any element of that IEP, the parent, school district, or charter school may initiate an impartial due process hearing pursuant to the Individuals with Education Disabilities Act, 20 U.S.C. § 1415, and the hearing officer shall have jurisdiction over the school district, the chartered public school, and the State Department of Education.*

*(e) If a parent refuses to allow the chartered public school to disclose relevant information to the school district in which the student resides, or refuses to allow representatives of that school district to observe their child in chartered public chartered school, the school district shall have no responsibility for the child’s special education while the child attends the chartered public school until the parents cooperate by allowing the disclosure of relevant information and by allowing such observation.”*

## **Appendix E**

### **Summary of Commission Members' Input Used In Developing Findings And Recommendations**

The charge of the commission is detailed in RSA 186-C:30, II: The commission shall study issues relating to students receiving special education services while attending a chartered public school, including but not limited to the following:

- (a) The provision of special education services to students attending chartered public schools, including the nature and amount of such services, how such services should be provided, and where such services should be provided;
- (b) The nature of communications between the chartered public school and the local education agency, including the involvement of a chartered public school in the individualized education plan meetings;
- (c) The funding for children in need of special education services who are attending a chartered public school and whether such funding is sufficient to ensure a free and appropriate public education;
- (d) The nature of the legal relationship between the local education agency and the chartered public school; and
- (e) Any other issues which the commission deems relevant to the objective of the study.

The chart on the following pages began with input from Commission members who responded to a questionnaire with sections for each of the issues in RSA 186-C:30, II(a) – (e). Initially, input was received from 10 Commission members (from about half of the membership categories) including representation from the General Court, NH DOE, organizations representing Special Education/LEAs and School Boards, Charter School administrators, Parents, PIC, DRC, and NH DHHS. The document was then shared with all Commission members, and further input from all of the members of the Commission was added and is included in this consolidated input chart.

The input for each section is organized into the following categories regarding the provision of special education services to children with disabilities who are attending chartered public schools:

- Statutory requirements,
- What is currently working well,
- Challenges,
- Solutions or strategies, and
- Additional input.

**RSA 186-C:30, II(a)** The provision of special education services to students attending chartered public schools, including the nature and amount of such services, how such services should be provided, and where such services should be provided.

**Required by Statute (The complete statutes/regulations or relevant excerpts are included in Appendix C):**

The RSA's below summarize current statutes that are applicable to the provision of special education services as well as communication between district schools and public chartered schools. They outline requirements that everyone must follow.

- 1. Chartered Public School Requirements (RSA 194-B:8, I)** states “A chartered public school shall not discriminate nor violate individual civil rights in any manner prohibited by law. A chartered public school shall not discriminate against any child with a disability as defined in RSA 186-C. A chartered public school shall provide due process in accordance with state and federal laws and rules.”
- 2. Chartered Public Schools; Funding and Decision-Making [RSA 194-B:11, III (a)]** states, “In accordance with current department of education standards, the funding and educational decision-making process for children with disabilities attending a chartered public school shall be the responsibility of the resident district and shall retain all current options available to the parent and to the school district.”
- 3. Chartered Public Schools; Public Selection; Enrollment; Separation [RSA 194-B:11, I (c)]** states, “Consistent with section 5210(1) of the Elementary and Secondary Education Act and section 300.209 of the Individuals with Disabilities Education Act, when a parent enrolls a child with a disability in a chartered public school, the child and the child's parents shall retain all rights under federal and state special education law, including the child's right to be provided with a free and appropriate public education, which includes all of the special education and related services included in the child's IEP. The child's resident district shall have the responsibility, including financial responsibility, to ensure the provision of the special education and related services in the child's IEP, and the chartered public school shall cooperate with the child's resident district in the provision of the child's special education and related services.”
- 4. Chartered Public Schools; Public Selection; Enrollment; Separation [RSA 194-B: 11, I (b)],** states, “When a child is enrolled by a parent in a chartered public school, the local education agency of the child's resident district shall convene a meeting of the individualized education program (IEP) team and shall invite a representative of the chartered public school to that meeting. At the meeting, the IEP team shall determine how to ensure the provision of a free and appropriate public education in accordance with the child's IEP.”
- 5. Chartered Public Schools; Public Selection; Enrollment; Separation [RSA 194-B:11, III (b) (1)-(6)],** states, “The child's special education and related services shall be provided using any or all of the methods listed below starting with the least restrictive environment:
  - 1) The resident LEA may send staff to the chartered public school; or
  - 2) The resident LEA may contract with a service provider to provide the services at the chartered public school; or
  - 3) The resident LEA may provide the services at the resident LEA school; or
  - 4) The resident LEA may provide the services at the service provider's location; or
  - 5) The resident LEA may contract with a chartered public school to provide the services; and
  - 6) If the child requires transportation to and/or from the chartered public school before, after, or during the school day in order to receive special education and related services as provided in the IEP, the child's resident LEA shall provide transportation for the child.”



6. In accordance with **RSA194-B:3 II (n)**, each charter school’s application and NHDOE approved charter must provide guidelines under “...matters pertaining to any required special education programs or services including method of compliance with federal and state laws pertaining to children with disabilities.”
7. **Special Education; Policy and Purpose (RSA 186-C: 15, I)** states, “The length of the school year and school day for a child with a disability shall be the same as that provided by the local school district for a child without a disability of the same age or grade, except that the local school district shall provide an approved program for an extended period when the child’s individual education program team determines that such services are necessary to provide the child with a free appropriate public education.”
8. **Provision of Staff and Staff Qualifications [Ed 306.15 (b)(4)(e)]** requires certification of each professional staff member working for a school district. “Certification Standards for Educational Personnel by Subject Area” (**Ed 500** and **Ed 600**) include requirements for certification and employment of the general special educator (**Ed 507.39**).
9. **Occupations and Professions (Title XXX)** and the NH Office of Licensed Allied Health Professionals defines licensing requirements of each professional (i.e. Speech Language Pathologists, Occupational Therapists) who works for New Hampshire schools.
10. **Chartered Public Schools, Employees (194-B:14, IV)** states, “The teaching staff of a chartered public school shall consist of a minimum of 50 percent of teachers either New Hampshire certified or having at least 3 years of teaching experience.

**Provision of Special Education Services – What is Working Well:**

The HB 126 Commission found that in regards to the provision of services, there are a number of processes that are working well and should continue to be maintained.

1. There is flexibility allowed for both the charter school and the school district to meet the services identified in the IEP as outlined under **RSA 194-B:11, III (b) (1)-(6)** (see #5 on previous page). Many school districts and charter schools work collaboratively to provide special education services at the best time for the student using available resources.
2. As outlined in **RSA 194-B:11I (b)**, many comply with the expectations that “School districts and charter schools shall convene a meeting of the individualized education program (IEP) team and shall invite a representative of the chartered public school to that meeting. At the meeting, the IEP team shall determine how to ensure the provision of a free and appropriate public education in accordance with the child's IEP.”
3. Certified special education teachers provide the special education services. The school district may provide the services or reimburse the charter school for services.
4. With collaboration and teamwork among the school district, charter school and special education service providers, the special education program is most effective for the student.
5. Parents of students whose charter school has no high school agree that school district involvement is important for students who may return to their school district.

**Provision of Special Education Services – Challenges:**

The HB 126 Commission found a number of challenges in regards to the provision of services. The challenges listed below affect District Schools, Chartered Public Schools, and/or Parents and Students.

1. The former NHDOE position was not filled which took away support for charter schools.
2. Hiring highly qualified and trained special education staff for students attending charter schools is a challenge, especially if a student transfers to the charter school in the late summer or early fall. Often

multiple school districts must work together with the charter school to hire highly qualified and specially trained special education staff.

3. Contracted special education services can be more costly to the school district, difficult to budget for, and difficult to secure. Districts are unable to realize the economies of scale in some cases because services are provided at a premium and in more restrictive 1:1 or smaller group settings.
4. Related services (i.e. speech-language pathologist or occupational therapist services) are difficult to secure due to a critical shortage across the state.
5. School districts are held accountable for the implementation of the IEP when districts have no authority to ensure charter school staff members follow the IEP.
6. Chartered Public Schools have no authority if districts are not providing all the hours of service in the IEP.
7. School districts and charter schools may not always schedule a meeting of the individualized education program (IEP) team, inviting a representative of the charter school is required as outlined in **RSA 194-B:11 I (b)** to address how the school district will implement the IEP at the charter school.
8. While the school district and charter school have options for providing special education services, there can be challenges when the student must return to the school district to receive these services as allowed under **RSA 194-B:11, III (b) (1)-(6)**.
9. Transporting the student to the District School may decrease the hours of the school day to below the minimum required or extend the school day for the student.
10. Changing the law won't help when school districts and charter schools face disagreement about special education service delivery; resources are needed to resolve these differences.
11. Communication and collaboration is key to strong special education programs provided by school districts at charter schools, but it is not possible to regulate collaboration.
12. Charter school teachers may have little experience or background in special education. School districts may need to provide special education training to charter school staff to ensure understanding of the special education process and the educational needs of students with disabilities.
13. The membership of the State Advisory Committee on the Education of Children with Disabilities (**RSA 186-C:3-b, II**) includes "a representative of a chartered public school, appointed by the governor", but that slot has often been unfilled.
14. While RSA 194-B:11, III(b) requires the LEA to invite a representative of the chartered public school to the IEP team meeting, it does not state that the charter school representative then becomes a member of the child's IEP team.

### **Provision of Special Education Services – Solutions or Strategies**

1. Establish a permanent and dedicated state-funded position of a full-time chartered public school officer at the NH DOE whose duties would include: 1) provide oversight of charter schools' academic programs, funding, and facilities; 2) identify vetted and certified special education service providers by region; 3) support coordination of services among school districts providing special education services for student attending charter schools; 4) act as a liaison between the charter school and school district should there be disagreement in how to provide special education services at the charter school.

Note: SB 483, *An Act establishing the position of chartered public school program officer in the department of education* was signed into law during the Commission's tenure, with an effective date of 7/1/17. One of the chartered public school program officer's responsibilities is to "work closely with the resident school districts and chartered public schools to assure appropriate support for students with disabilities".

- 2.** Clarify through procedures how special education services at chartered public schools will be monitored to ensure both the charter schools and the school district provide special education services as outlined in the student's Individualized Education Program (IEP).
- 3.** Provide specific information in the NH DOE's model Procedural Safeguards handbook about the rights of children with disabilities who attend a chartered public school, and about the available options for resolving disputes. Examples could be given in an accompanying memo from the NH DOE.
- 4.** Include information for school districts and chartered public schools in the NH DOE's Special Education Policy and Procedures Manual.
- 5.** DOE develop model forms and checklists to assist LEAs and chartered public schools in providing FAPE to students with disabilities attending chartered public schools in accordance with NH statutes and utilizing best practices.
- 6.** Clarify the process for dispute resolution and of non-compliance issues raised by the parent, the charter school, or the school district, and include in DOE guidance, memos, etc.
- 7.** Include in memos, guidance documents and the NH DOE's Special Education Policy and Procedures Manual, a clear prohibition on a chartered public school denying the enrollment of a child on the basis of the child's disability, on a LEA having policies, procedures or actions that discourage parents from choosing to enroll their child with a disability in a chartered public school or that encourage parents "opt their child out" of special education while the child is attending a chartered public school, or that unilaterally reduce a child's special education and/or related services once the child enrolls in a chartered public school. The documents should include the steps that the NH DOE will take in response to any such actions.
- 8.** Include procedures in the "NH Rules for the Education of Children with Disabilities" for resolving disputes between parents and the LEA regarding how and where special education services are provided.
- 9.** NH DOE, with input from charter schools and LEAs, identify special education resources and personnel for technical assistance and professional development for charter schools to provide these supports every year.
- 10.** Identify school districts and charter schools who do work collaboratively to find solutions for special education services and related services, and disseminate the best practices they use to other school districts and charter schools. Support opportunities where representatives from the LEAs and charter schools who have had positive experiences and who use best practices can mentor other LEAs and charter schools.
- 11.** Identify mechanisms for identifying and disseminating best practices that help charter schools and school districts meet student needs while minimizing the impact on staffing, schedules, budgets, and coordination of services, including through the use of data.
- 12.** Clarify the role of the invited representative of the chartered public school (RSA 194-B:11, III(b)) on the IEP team. While RSA 194-B:11, III(b) requires the LEA to invite a representative of the chartered public school to the IEP team meeting, it does not state that the charter school representative then becomes a member of the child's IEP team. Several parents and representatives of charter schools expressed that in order for the charter school representative to be valued as a true team member, they need to be listed as a member of the IEP team, rather than as an invited "guest". This may require a revision in the statute and/or in the NH Rules for the Education of Children with Disabilities.
- 13.** Provide specific requirements about how the decision is reached about where special education and/or related services are provided (i.e. LEA's decision alone or decision by the IEP team), and what options are available if there is a disagreement.
- 14.** Consider organizing the list of options for providing special education and related services in charter schools outlined in statute as a true continuum, with one option identified as preferred (e.g., the option that is least disruptive to the student's school day).

**Additional Input** – The HB 126 Commission heard the following input that was pertinent but did not fall under any major heading above:

- 1.** The NHDOE Bureau of Special Education has not received any special education complaints regarding students attending a charter school who are not receiving services in the IEP.
- 2.** School district and charter school administrators and staff may have differing opinions on the NH special education process and the effectiveness of various special education service delivery models.
- 3.** There is limited data on the special education services provided for students attending charter schools.
- 4.** Funding issues can distract the school district and the charter school when considering the most fiscally responsible and student centered model for providing special education services.
- 5.** School schedules can complicate scheduling special education services.

**RSA 186-C:30, II(b)** The nature of communications between the chartered public school and the local education agency, including the involvement of a chartered public school in the individualized education plan meetings.

**Communication – Statutory Requirements (The complete statutes/regulations or relevant excerpts are included in Appendix C):**

- 1. Chartered Public Schools; Funding and Decision-Making [RSA 194-B:11, III(a)]** states, “In accordance with current department of education standards, the funding and educational decision-making process for children with disabilities attending a chartered public school shall be the responsibility of the resident district and shall retain all current options available to the parent and to the school district.”
- 2. Chartered Public Schools; Public Selection; Enrollment; Separation [RSA 194-B:11 I (b)]**, states, “When a child is enrolled by a parent in a chartered public school, the local education agency of the child's resident district shall convene a meeting of the individualized education program (IEP) team and shall invite a representative of the chartered public school to that meeting. At the meeting, the IEP team shall determine how to ensure the provision of a free and appropriate public education in accordance with the child's IEP.”
- 3. Chartered Public Schools; Public Selection; Enrollment; Separation [RSA 194-B:11, III (b) (1)-(6)]**, states, “The child's special education and related services shall be provided using any or all of the methods listed below starting with the least restrictive environment:
  - (1) The resident LEA may send staff to the chartered public school; or
  - (2) The resident LEA may contract with a service provider to provide the services at the chartered public school; or
  - (3) The resident LEA may provide the services at the resident LEA school; or
  - (4) The resident LEA may provide the services at the service provider's location; or
  - (5) The resident LEA may contract with a chartered public school to provide the services; and
  - (6) If the child requires transportation to and/or from the chartered public school before, after, or during the school day in order to receive special education and related services as provided in the IEP, the child's resident LEA shall provide transportation for the child.”
- 4. Chartered Public Schools; Public Selection; Enrollment; Separation [RSA 194-B:11 I (c)]** states, “The child's resident district shall have the responsibility, including financial responsibility, to ensure the provision of the special education and related services in the child's IEP, and the chartered public school shall cooperate with the child's resident district in the provision of the child's special education and related services.”
- 5.** In accordance with **[RSA 194-B:3 II (n)]**, each charter school’s application and NHDOE approved charter must provide guidelines under “...matters pertaining to any required special education programs or services including method of compliance with federal and state laws pertaining to children with disabilities.”

**Communication - What is Working Well:**

The HB 126 Study Commission considered what is working well in regards to communication between District Schools and Public Chartered Schools in the area of special education. We identified the following areas:

- 1. RSA 194-B:11, III (b) (1)-(6)** allows flexibility for school districts to provide the special education services outlined in the IEP. Many school districts and charter schools work collaboratively to find solutions to providing special education services at the best time for the students.

2. Many school districts and charter schools follow the expectations of **RSA 194-B:11, I (b)** whereby “School districts and charter schools shall convene a meeting of the individualized education program (IEP) team and shall invite a representative of the chartered public school to that meeting. At the meeting, the IEP team shall determine how to ensure the provision of a free and appropriate public education in accordance with the child's IEP.” As part of this process, school district personnel and charter school personnel contribute valuable information about students’ needs. Representatives from the charter schools typically are invited to these meetings and participate. Charter school representatives provide input about how special education services could be delivered in the chartered public school.
3. Certified special education teachers provide the special education services. The school district may provide the services or reimburse the charter school for services.
4. In the spirit of cooperation and good communication, when the special education teacher works closely with the charter school and the school district, student progress is carefully monitored and reported to parents, charter school staff, and school district staff.
5. Parents of students whose charter school has no high school agree that school district involvement is important for students who may return to their school district.
6. Many charter schools provide the majority of services with reimbursement by the school districts. To be successful, this model requires planning/meeting time and timely reimbursement.

### **Communication – Challenges:**

The HB 126 Study Commission found a number of challenges in regards to the communication between District Schools, Chartered Public Schools, and Families of Students. The challenges listed below affect all three entities.

1. The process of hiring or contracting for highly qualified and certified or licensed special education services is often time-consuming. Having special education staff available the first day of school is sometimes difficult, especially if school district is not aware of the special education student’s transfer to the charter school and/or if the charter schools is not be aware that the student has an IEP.
2. School districts prepare budgets well in advance of the start of the new school year. Unanticipated costs for special education services at the charter school along with the requirement for oversight of special education programs at a charter school can create tension between the school district and the charter school.
3. Funding issues can distract the school district and the charter school when considering the most fiscally responsible and student centered model for providing special education services.
4. There will always be potential for disagreements between the school district and the charter school that may cause contentious relationships. Perhaps NH DOE resources could assist those few to work out the issues.
5. While there is no evidence of denial or reduction of special education services for students attending charter schools, perhaps the NH DOE should monitor to ensure compliance with the RSAs governing school district and charter school requirements under special education.
6. School districts are required to invite charter school staff to IEP meetings. This may not happen consistently. Charter school staff may not be able to attend due to scheduling conflicts. This impacts the charter school’s role and level of participation in the special education meeting.
7. Defining each person’s role and responsibility would be helpful to both the charter school and the school district (for example, what are the expectations for each member of the special education team during IEP meetings; who is responsible for collecting progress monitoring data; who writes the special education progress reports, etc.)

8. School districts could identify training resources and/or identify professional development tools for use by charter school staff to understand the special education process and understand the unique nature of a student's learning differences.

### **Communication – Solutions or Strategies:**

The HB 126 Commission offers the following recommendations as solutions or strategies to improve the challenges outlined above. Some would require a change of practice, some could be led by the NH Department of Education, and some would require legislation.

1. Establish a permanent and state-funded position of a chartered public school officer at the NH DOE to serve in multiple capacities: 1) provide oversight of charter schools' academic programs, funding, and facilities; 2) identify vetted and certified special education service providers by region; 3) support coordination of services among school districts providing special education services for student attending charter schools; 4) act as a liaison between the charter school and school district should there be disagreement in how to provide special education services at the charter school.
2. Provide parent-friendly documents and other information on the NH DOE website that defines special education services at charter schools. Include contact information for parents who may have questions or concerns. Define the resources available to special education teams that may benefit from IEP Team facilitation and other third-party supports or filing of a due process complaint.
3. Provide guidelines for each member of the special education team, defining the roles and responsibility of the charter school's classroom teacher or representative. Provide flexibility for ways in which the charter school may participate in the IEP meeting (by conference call, meeting at the charter school rather than at the district as two examples).
4. Review transition procedures for students transferring from a school district to a charter school, including to ensure the timely transfer of records. Monitor these students to ensure services continue as outlined in the IEP unless there is evidence to change services.
5. Investigate whether the student management systems within the NH DOE could help monitor student transfers without violating FERPA.
6. Define a mechanism for school districts and charter schools to share "best practices" that enable parties to work collaboratively on behalf of students with learning difficulties.
7. Provide joint/collaborative training opportunities (perhaps hosted by the NH DOE) for LEAs, chartered public schools, and parents of children with disabilities enrolled in chartered public schools, and/or provide "scholarships" for LEA representatives to attend NH's charter school conference and for charter school representatives to attend conferences for LEAs to ensure that there is a shared understanding of information and to provide networking opportunities.

### **Communication – Additional Input:**

1. A NH DOE stakeholders group could provide feedback and input on special education services at NH Charter Schools.
2. There may be a difference of opinion on how and where special education services should be provided by the school district (i.e. returning to the district for services rather than remain at the charter school)
3. School districts are held accountable for the implementation of the IEP when districts have no authority to ensure charter school staff members follow the IEP.

- 4.** Contracted special education services provided by highly qualified and specially trained staff can be costly to the school district and difficult to budget for and even more difficult to secure. Districts are unable to realize the economies of scale in some cases because services are provided at a premium and in more restrictive 1:1 or smaller group settings.
- 5.** Related services (i.e. speech-language pathologist or occupational therapist services) are difficult to secure due to a critical shortage.
- 6.** School districts must provide special education training to charter school staff to ensure understanding of the special education process and the educational needs of students with disabilities.
- 7.** Regularly scheduled meetings between charter school representatives and LEA representatives can allow them to proactively identify and respond to emerging issues or existing challenges.



**RSA 186-C:30, II(c)** The funding for children in need of special education services who are attending a chartered public school and whether such funding is sufficient to ensure a free and appropriate public education;

**Financial Issues – Statutory Requirements (The complete statutes/regulations or relevant excerpts are included in Appendix C):**

1. **RSA 194-B:11** is the statute covering funding for and related to chartered public schools, with RSA 194-B:11, III addressing funding responsibilities for the provision of special education and related services for children attending chartered public schools.
2. **RSA 194-B:11, III. (a)** In accordance with current department of education standards, the funding and educational decision-making process for children with disabilities attending a chartered public school shall be the responsibility of the resident district and shall retain all current options available to the parent and to the school district.
3. **RSA 194-B:11, III (b) (1)-(6)** allows flexibility for school districts to provide the special education and related services required by a child’s IEP.
4. **RSA 194-B:11, III. (c)** Consistent with section 5210(1) of the Elementary and Secondary Education Act and section 300.209 of the Individuals with Disabilities Education Act, when a parent enrolls a child with a disability in a chartered public school, the child and the child's parents shall retain all rights under federal and state special education law, including the child's right to be provided with a free and appropriate public education, which includes all of the special education and related services included in the child's IEP. The child's resident district shall have the responsibility, including financial responsibility, to ensure the provision of the special education and related services in the child's IEP, and the chartered public school shall cooperate with the child's resident district in the provision of the child's special education and related services.
5. **§300.209 Treatment of charter schools and their students –**
  - (d) Public charter schools that are not an LEA or a school that is part of an LEA.
    - (1) If the public charter school is not an LEA receiving funding under §300.705, or a school that is part of an LEA receiving funding under §300.705, the SEA is responsible for ensuring that the requirements of this part are met.
    - (2) Paragraph (d)(1) of this section does not preclude a State from assigning initial responsibility for ensuring the requirements of this part are met to another entity. However, the SEA must maintain the ultimate responsibility for ensuring compliance with this part, consistent with §300.149.

While, in accordance with 34 CFR 300.209(d), the SEA may assign initial responsibility to another entity (the resident LEA, in NH), the ultimate responsibility remains with the SEA.

6. **Part I, Article 28-A of the NH Constitution**, states, “The state shall not mandate or assign any new, expanded or modified programs or responsibilities to any political subdivision in such a way as to necessitate additional local expenditures by the political subdivision unless such programs or responsibilities are fully funded by the state or unless such programs or responsibilities are approved for funding by a vote of the local legislative body of the political subdivision.”

**What we know: Special Education Funding**

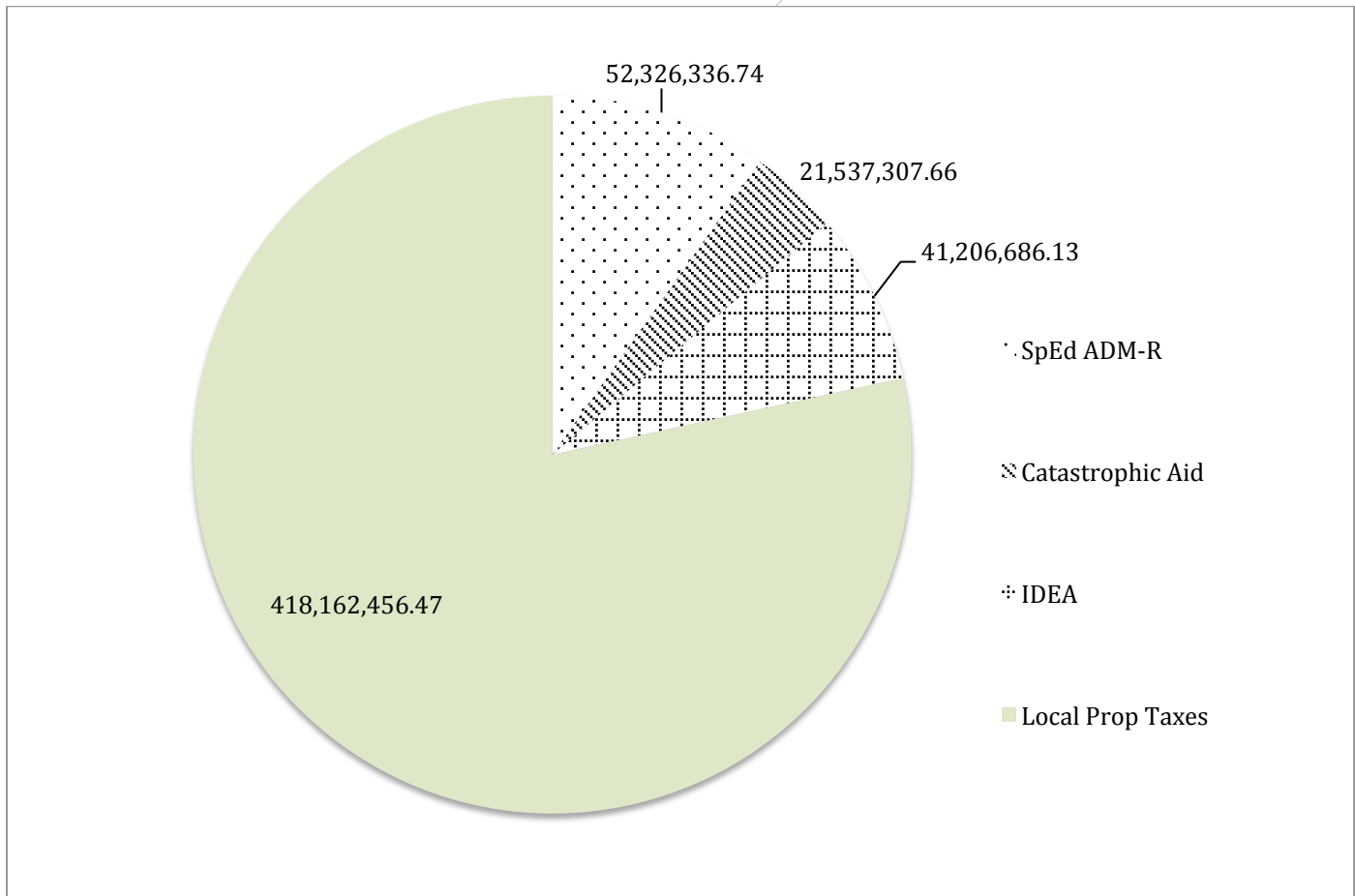
1. Resources that district schools can access to pay for special education costs include Federal IDEA funds, local funds from property tax dollars, local funds paid to the city/town from Catastrophic Aid, and Differentiated Aid. IDEA funds flow through the state to School Districts. Differentiated Aid in the amount of \$1,915.86 (2016-2017) is paid from the state to School Districts for each student receiving special education services.

Sources of funds for FY 2015 were as follows:

- 1) Allocation for Special Education ADM-R in Adequate Education Aid: \$52,326,336.74  
[http://education.nh.gov/data/documents/allocation\\_special\\_ed\\_fy14\\_15.pdf](http://education.nh.gov/data/documents/allocation_special_ed_fy14_15.pdf)
- 2) Catastrophic Aid Proration 74.42799% (75% of 80% of eligible costs): \$21,537,307.66  
[http://education.nh.gov/data/documents/catastrophic14\\_15.pdf](http://education.nh.gov/data/documents/catastrophic14_15.pdf)
- 3) IDEA Allocations \$41,206,686.13  
[http://education.nh.gov/instruction/special\\_ed/memos/documents/final\\_increase\\_january\\_2015.pdf](http://education.nh.gov/instruction/special_ed/memos/documents/final_increase_january_2015.pdf)
- 4) Local Property Taxes (Total State Expenditures for Special Programs minus Total Funding from 1-3 above: \$533,232,787 - \$115,070,330.53 = \$418,162,456.47

\*See pie chart that illustrates the allocations above.

The table below represents specific sources of funding for special education, the amount allotted, purpose, and method of distribution of dollars.



2. The State of NH has no mechanism to determine the average per pupil cost for special education. An approximation for students in NH can be estimated by dividing NH expenditures for Special Programs by the number of K-12 students with IEPs. For FY 2015, it would be approximately \$19,363. Special education costs per pupil vary widely based on the services the student needs as well as the range of typical special education costs for individual districts.
3. No expenditure made by a District School for special education costs at a Charter School has met the threshold for a School District to receive Catastrophic Aid.

**Other Funds for SPED through the DOE**

<b>State-funded Differentiated Aid for Special Education</b>	\$1,915.86 per pupil for FY 17	School district receives these funds for each public school student who receives special education services.
<b>State CAT aid RSA196-C:18 For DOE approved SPED programs</b>	Formula-based once threshold is met by school district (\$50,570.59 for FY 15) CAT aid applies to SPED costs that exceed 3½ times the average cost per pupil for an individual student.	School District is reimbursed 75% of 80% of eligible cost No School District expenditure for special education services for a charter school student has met the threshold as of this writing.
<b>IDEA Federal law</b>	Federal funding to SPED programs in districts. (41 million for FY 15) Not child specific. For example: equipment, personnel, modifications to a classroom, etc.	Formula based on SPED enrollment, poverty, and hold harmless. Used to ensure students with disabilities are provided FAPE tailored to needs.
<b>402 Court-Ordered Placement</b>	Formula based. District responsible for 3X the state average cost per pupil and development of IEP.	Court-ordered residential placement. Once threshold is met, the State picks up 100% of remaining costs.

**Financial Issues – What is Working Well / What Should We Maintain:**

1. Many School Districts and Charter Schools work collaboratively to find solutions to providing special education services while considering the fiscal impact and the ability to hire certified and highly qualified special education teachers.
2. In most instances, Charter Schools and District Schools state the arrangement works.
3. Because School Districts are responsible for providing a Free Appropriate Public Education (FAPE) in the Least Restrictive Environment (LRE), it ensures that students with disabilities are able to access local education dollars for provision of special education and related services.
4. Two specific instances were identified when cost-savings may be realized as a result of a child with a disability enrolling in a chartered public school: 1) if the type of level of services the child needs is reduced due to the child’s comfort level or environmental factors (It was noted that this may occur for children with anxiety.); or 2) if the resident LEA has a contractual arrangement with another LEA or academy for which they pay tuition for resident children to attend. (Tuition would not be paid for a child who attends a charter school.)

**Financial Issues – What are challenges that need to be addressed for LEAs, Charter Schools, and/or parents/students?**

1. School Districts and Charter Schools cannot predict from year to year how many students with special education needs will be attending Charter Schools.
2. In some instances, prior to the transfer of a student to a Charter School, School Districts are reducing services or discharging students from an IEP, possibly as a means to control the expense of providing special education services. There need to be assurances that services are not compromised to save costs.
3. Distance from the School District to the Charter School sometimes makes it difficult for the School District to provide services with its own staff. Contracting with service providers can increase the cost to School Districts of providing the service.
4. For students with complex needs, School Districts can incur a significant expense trying to recreate a specialized program in a Charter School. To date, District Schools and Charter Schools have worked out these issues on a case-by-case basis.
5. Some committee members view School Districts funding special education in Charter Schools as an unfunded mandate. Those members view the responsibility of funding state-authorized Charter Schools as being the State of New Hampshire's responsibility.
6. LEAs are not able to seek reimbursement from certain existing funding sources (e.g. Medicaid to Schools) for travel costs related to sending a special educator or related service provider to a chartered public school to serve a child with a disability on-site, but may be able to obtain reimbursement for transportation if the child is transported to the LEA to receive services.
7. Some charter schools provide the majority of services with reimbursement by the school districts. To be successful, this model requires planning/meeting time and timely reimbursement.
8. Statutorily, chartered public schools do not have funding that would allow them to take on the responsibility of providing and overseeing the provision of FAPE for a child with a disability.
9. Providing special education and/or related services at the charter school is less disruptive to the child, but may not be the least expensive.
10. School districts find it difficult to hire or contract with certified special educators and related service providers to serve children with disabilities who are attending chartered public schools.
11. A child whose IEP states he/she should receive group services may have to receive them 1:1 based on the student population at the charter school.
12. It is not possible to clearly define differences in costs to provide services in District Schools to the costs of providing them in Charter Schools because special education services are not provided in a vacuum.
13. If a district provides services at a charter public school, the district bears the financial responsibility.

**Financial Issues – Solutions or Strategies (including ideas for legislation to address the issues):**

1. Uncertainty about the amount of special education cost is unpredictable in all public schools due to the fact that students may move in or out, specialized placements may be made, and students may move from a School District to another School District or a Charter School. Movement of students to Charter Schools is not the only factor causing uncertainty about the cost of special education in School Districts. The larger issue is how School Districts can be supported when sudden financial demands are made on them due to student mobility. This is a larger issue that should be dealt with on a broader basis for those times when students move from district to district and district to charter.

2. Provide targeted CAT Aid or Differentiated Aid to District Schools to support the provision of FAPE to children with disabilities from the School District who attend Charter Schools. There could be a Statute that would provide for state funding for the difference whenever a district could demonstrate that its expenses have increased due to a student moving to a Charter School.
3. If the School District knows that a student will be attending a Charter School, there should not be changes to the IEP until the student has attended the Charter School and a progress meeting is held to discuss whether the IEP should or should not be amended.
4. Establish a state-funded position for a chartered public school officer at the NH DOE to provide oversight of Charter Schools' academic programs and facilities.
5. Establish a regional system of service providers that School Districts can use to provide services to children with disabilities attending Charter Schools. The Commission believes a solution like this could be difficult logistically due to uncertainty about staffing, scheduling services, and travel.
6. The state could be the LEA for all state-approved charter schools.
7. Provide additional funding, or provide targeted aid, and a process through legislation that would enable chartered public schools to assume the responsibility for providing and overseeing the provision of FAPE to children with disabilities attending chartered public schools.
8. The NH DOE could develop and provide a model contract or MOU for an LEA to use when contracting with a chartered public school to provide direct services. The form could include specific services to be provided including the frequency, duration, and location of the services and the type/certification/licensure of the individual providing the service, and any documentation of procedures and requirements.
9. If charter schools were able to become "approved special education programs" through an alternative approval process, they could apply for IDEA funds to hire special education teacher(s) and/or related service provider(s) to directly serve the children with disabilities attending the chartered public school.

**Financial Issues - Additional Input:**

1. Input received by the Commission from representatives of chartered public schools and parents of children with disabilities attending chartered public schools supported maintaining, either in total or in part, the current system.
2. Other input received from LEAs, an attorney representing LEAs, and the representative from the NH School Boards Association recommended that the NH DOE should be the LEA for special education purposes for all children with disabilities attending chartered public schools.
3. Information was provided by the NH DOE that they have determined that price setting for services provided to students at charter schools is not feasible, as charter schools are public schools and NH's rate-setting rules/procedures are designed for private providers of special education services.
4. In addition to special education funding, District Schools and Charter Schools can access other revenue streams. Revenue streams provided to both District Schools and Charter Schools include base funding (Adequacy Payments or Tuition and Additional Grants respectively), Differentiated Aid, Title funds, and Rural Education Achievement Program (REAP) funds.
5. District Schools can receive a Perkins Formula Grant to fund Career and Technical Education Centers.
6. District Schools can access local property tax dollars.
7. Charter Schools authorized by the District can access local property tax dollars because the District pays tuition to the public chartered school.

## Base Payments from the State of New Hampshire

Funding for special education in NH begins with the State's responsibility to provide an adequate education, i.e. base adequacy, for all students.

Base adequacy is the State's fiscal responsibility to provide an adequate education to all pupils whether in a district school or charter school. Charters are awarded an additional grant of \$2,036 for each pupil who is a resident in attendance. In 2017, charter schools will receive an additional \$1,000 per pupil as proposed by HB 563.

### Adequacy Payment per Pupil for Grades 1-12

	2015	2016*	2017**
<b>District schools</b>	\$3,498.30	\$3,561.27	\$3,561.27
<b>Charter schools</b>	\$5,498.30	\$5,597.27	\$6,597.27
<b>Charter/District</b>	157%	157%	185%

\*CPI adjustment

\*\*As proposed by HB 563

Note: Base Adequacy funding for Kindergarten and VLACS is different than other base adequacy funding.

A common miscalculation is to compare adequacy payments to charter schools to the average cost per public school pupil. It is a comparison of two unrelated quantities.

Adequacy refers to the State's fiscal responsibility to provide an adequate education to all pupils whether in a district school or charter school. Adequacy per pupil at a district school is \$3,561.27. Adequacy per pupil at a charter school is \$6,597.27.

The average cost per district public school pupil is \$14,001 statewide. It represents the sum of all current expenses-including special education for charter schools- from all funding sources, e.g. state & federal revenues, and property taxes (which are raised locally and stay locally) of every school district associated with their daily operations less transportation, food service revenue, and out of district placement divided by the ADM in attendance statewide. It is an intermediate figure or middle position on a scale of evaluation of all towns and their costs per pupil from Franklin at \$10,000 to Errol at \$30,000. It is not a sum paid to districts by the State.

**RSA 186-C:30, II(d)** The nature of the legal relationship between the local education agency and the chartered public school;

This aspect of the commission's charge includes issues/input related to the oversight or monitoring of special education services for children with disabilities attending chartered public schools.

**Legal Relationship – Statutory Requirements (The complete statutes/regulations or relevant excerpts are included in Appendix C):**

- 1. RSA 194-B:11, III** addresses the legal relationship and establishes procedures between the child's resident LEA and the chartered public school attended by a child with a disability.
- 2. Nondiscrimination – RSA 194-B:8, I** states "A chartered public school shall not discriminate nor violate individual civil rights in any manner prohibited by law. A chartered public school shall not discriminate against any child with a disability as defined in RSA 186-C. A chartered public school shall provide due process in accordance with state and federal laws and rules."
- 3. Right to FAPE for a Child with a Disability Attending a Chartered Public School – a RSA 194-B:11, I (c)** states, "Consistent with section 5210(1) of the Elementary and Secondary Education Act and section 300.209 of the Individuals with Disabilities Education Act, when a parent enrolls a child with a disability in a chartered public school, the child and the child's parents shall retain all rights under federal and state special education law, including the child's right to be provided with a free and appropriate public education, which includes all of the special education and related services included in the child's IEP. The child's resident district shall have the responsibility, including financial responsibility, to ensure the provision of the special education and related services in the child's IEP, and the chartered public school shall cooperate with the child's resident district in the provision of the child's special education and related services."
- 4. RSA 186-C:15 Length of School Year and Ed 306.18 School Year** establish minimum requirements for the length of the school year and school day for a child with a disability (RSA 186-C) and the length of the school year for all children (Ed 306.18).

**Legal Relationship – What is Working Well:**

- 1.** LEAs and chartered public schools are aware that the decision about whether to enroll a child in a chartered public school lies solely with the child's parent. The IEP team is responsible for determining a child's special education placement, but the decision about whether to enroll the child in a chartered public school occurs outside of this process.
- 2.** The Commission heard from a diverse group of stakeholders that, in the majority of instances, the current system is working well, and that school districts and charter schools generally work collaboratively to find solutions to providing special education services in a way that meets the student's needs.
- 3.** The Commission received input that the process is most effective when a district has a dedicated staff member or team to coordinate the provision and oversight of FAPE to children with disabilities attending chartered public schools, and when a chartered public school has a designated special education coordinator.

**Legal Relationship – Challenges:**

- 1.** LEAs must fund and provide, either directly or through contractual arrangements, special education and related services to children with disabilities attending chartered public schools, but the LEA has no ability to oversee the child's full day program, which if the child was attending the district public school, would be coordinated with the child's special education and related services. It was noted that the inability of the

LEA to provide first-hand oversight of a child's program may impact the child's outcomes, and impede the LEA's ability to identify effective strategies to address any lack of progress the child may be experiencing.

2. If a charter school provides the services, the LEA can only provide input to the quality of services but ultimately, the LEA cannot require remedial action if the services are not adequate for the students' needs. If a parent wanted to file a complaint or request a due process hearing, the LEA would be in the position of being held accountable for inadequate IEP implementation even though the student is attending a public school in a setting that is not approved for special education service provision by the DOE.
3. Without being able to oversee the provision of general education and tiered interventions, an LEA is unable to utilize the response to intervention option to determine if a child may be a child with a learning disability. This also means that an LEA receives a referral regarding a child attending a chartered public school, the LEA does not have evidence of interventions that have or have not been provided prior to the referral.
4. There is currently no system in place to ensure that either party (the LEA or chartered public school) provides the services they are responsible for, or have agreed to provide.
5. While chartered public schools are not required to have all teachers certified, the LEA must ensure that all special education teachers providing special education services to a child with a disability in accordance with the child's IEP has requisite special education certification. This is the LEA's responsibility regardless of whether the LEA provides the services directly using LEA staff, contracts with private providers, or contracts directly with the chartered public school to provide special education and related services to the child.
6. While RSA 194-B:11, III (b) states, "... the IEP team shall determine how to ensure the provision of a free and appropriate public education in accordance with the child's IEP. The child's special education and related services shall be provided using any or all of the methods listed below starting with the **least restrictive environment** [emphasis added] ...", the interpretation of the meaning of LRE is inconsistent, with parents often considering LRE to mean the setting where the child would be if he/she did not have a disability (the chartered public school), and the LEA opting to provide the services at the district public school, which is generally considered to be the LRE for children attending the district public school.

#### **Legal Relationship – Solutions or Strategies:**

1. Establish a permanent and dedicated state-funded position of a full-time chartered public school officer at the NH DOE whose duties would include: 1) provide oversight of charter schools' academic programs, funding, and facilities; 2) identify vetted and certified special education service providers by region; 3) support coordination of services among school districts providing special education services for student attending charter schools; 4) act as a liaison between the charter school and school district should there be disagreement in how to provide special education services at the charter school.
2. Establish a monitoring system to ensure that the LEA and chartered public schools are each providing the services for which they are responsible, or that they have agreed contractually to provide.
3. Dedicate one or more DOE special education consultants to focus on the delivery of special education services to children in chartered public schools; provide technical assistance to charter schools, LEAs and parents of children with disabilities who are attending or who are considering attending a chartered public school; and monitoring of chartered public schools.
4. Include in memos, guidance documents and the NH DOE's Special Education Policy and Procedures Manual, a clear prohibition on a chartered public school denying or discouraging the enrollment of a child on the basis of the child's disability through screening or any other means, on a LEA having policies, procedures or actions that discourage parents from choosing to enroll their child with a disability in a chartered public school or that encourage parents "opt their child out" of special education while the child is



attending a chartered public school, or that unilaterally reduce a child's special education and/or related services once the child enrolls in a chartered public school.

5. Provide additional clarity regarding the meaning of the term "least restrictive environment" as it is used in in RSA 194-B:11, III (b) "... the IEP team shall determine how to ensure the provision of a free and appropriate public education in accordance with the child's IEP. The child's special education and related services shall be provided using any or all of the methods listed below starting with the **least restrictive environment** [emphasis added]:
  - (1) The resident district may send staff to the chartered public school; or
  - (2) The resident district may contract with a service provider to provide the services at the chartered public school; or
  - (3) The resident district may provide the services at the resident district school; or
  - (4) The resident district may provide the services at the service provider's location; or
  - (5) The resident district may contract with a chartered public school to provide the services; and
  - (6) If the child requires transportation to and/or from the chartered public school before, after, or during the school day in order to receive special education and related services as provided in the IEP, the child's resident district shall provide transportation for the child."

This may involve prioritizing the list of options (1)-(5).

6. Clarify in RSA 194-B:11, III(b), who makes the decision about how and where the child's special education and related services are to be provided. As written, it says, "... the IEP team shall determine how to ensure the provision of a free and appropriate public education in accordance with the child's IEP. The child's special education and related services shall be provided using any or all of the methods listed below starting with the least restrictive environment ...", but does not clearly specify whether the LEA or the child's IEP team determines how and where the services are to be provided.
7. Given the requirements in RSA 186-C:15 Length of School Year and Ed 306.18 School Year, when the option for how and when special education services are to be provided to a child with a disability, the LEA must ensure that the child's school day is not interrupted to the extent that the child is no longer receiving the minimum number of hours of instruction or that the child's school day is not less than that of a child without a disability. RSA 186-C:15, I says: "I. The length of the school year and school day for a child with a disability shall be the same as that provided by the local school district for a child without a disability of the same age or grade, except that the local school district shall provide an approved program for an extended period when the child's individualized education program team determines that such services are necessary to provide the child with a free appropriate public education." Ed 306.18 establishes the minimum number of hours of instructional time to be provided for each child in kindergarten, and at the elementary school and middle/high school levels. For elementary school students the number of hours when divided by a 180-day school year is 5.25 hours/day; and for middle and high school students the number of hours when divided by a 180-day school year is 5.5 hours/day. The exceptions listed in Ed 306.18 when the number of hours may be reduced do not include a child being enrolled in a chartered public school.
8. Disseminate, and clarify if necessary, dispute resolution options that may be utilized when parents and the LEA disagree about how or where a child's special education services are to be provided, or about any other issues related to the provision of special education and related services to children with disabilities attending chartered public schools. This information should specify when and how a complaint would be filed against the chartered public school, and when it would be filed against the LEA. Include these procedures in applicable legislation, rules, the Procedural Safeguards handbook, the NH DOE's Special Education Policy and Procedures Manual, and for new information, in memos from the NH DOE to the field.
9. Provide information to administrators and staff at chartered public schools about their ability to file a complaint as a third party if they allege that a child's special education rights have been violated.

10. Investigate whether the student management systems within the NH DOE could help monitor student transfers without violating FERPA.
11. NH DOE develop and provide a model contract or MOU for an LEA to use when contracting with a chartered public school to provide direct services. The form could include specific services to be provided including the frequency, duration and location of the services and the type/certification/licensure of the individual providing the service, and any documentation procedures and requirements, as well as specifying who is responsible for making and providing progress reports to the parent.
12. Do not tie the child's outcomes (performance on statewide assessment, high school graduation, etc.) to the LEA, except to the extent the outcome is the direct result of the services provided by the LEA; include all such data in reports for the chartered public school instead.
13. Increase NH DOE monitoring of special education programs/services at chartered public schools, particularly to ensure that IEPs for children with disabilities who are attending chartered public schools are being fully implemented and complied with by chartered public schools and LEAs.
14. It was suggested that either the DOE or local districts should be required to periodically audit compliance (the audit percentage need not be high, but with a review of at least a few children with disabilities programs at each chartered public school done annually).
15. One suggestion received by the Commission was to give the NH DOE the oversight responsibility for children with disabilities receiving special education services at a chartered public school.

**Legal Relationship – Additional Input:**

1. The Bureau of Special Education FY'13 Memo #10 (see full memo in Appendix C) describes the process and array of options for serving children with disabilities who are enrolled in a chartered public school; for making and addressing a referral for a child who is suspected of being a child with a disability; and for scheduling and conducting an IEP team meeting, including inviting a representative from the chartered public school to the IEP team meeting.

**RSA 186-C:30, II(e)** Any other issues which the commission deems relevant to the objective of the study.

**Other Issues – Challenges:**

1. There are some areas in statute that are unclear, ambiguous or conflicting.

**Other Issues – Solutions or Strategies:**

1. DOE and other appropriate entities conduct joint training/professional development opportunities for administration and staff of chartered public schools and LEAs on the legal relationship between chartered public schools and LEAs, the responsibilities of each in providing a FAPE to children with disabilities attending chartered public schools, relevant procedures, NH special education process and Federal and State special education laws/requirements, and other topics where an identified need for information has been identified, including providing training and information on the needs of students with specific disabilities where a need has been identified.
2. If LEA staff or administrators are utilized to provide training to staff at a chartered public school, provide funding to cover the time and expenses incurred by the LEA staff or administrator to conduct the training.
3. Collect data to identify areas, particularly areas related to the indicators in the State Performance Plan and Annual Performance Report, where individual chartered public schools are achieving outcomes that are substantially higher or lower than the state average or than the LEA in which the chartered public school is located. Areas where the chartered public school's outcomes are low could lead to targeted assistance, while areas where the chartered public school's outcomes are high could indicate the use of best practices or other factors that should be disseminated for replication by other charter schools and LEAs. This dissemination could be done through a DOE memo to the field, through professional development and conferences, and/or through web-based information sharing.
4. Through follow-up monitoring or data collection/analysis, determine if the replication of the best practices identified through #1 above result in improved outcomes in LEAs and chartered public schools that utilize these practices.