

HB 441-FN-LOCAL - AS INTRODUCED

2023 SESSION

23-0728

10/04

HOUSE BILL ***441-FN-LOCAL***

AN ACT eliminating residency requirements for public school attendance.

SPONSORS: Rep. Yokela, Rock. 32; Rep. Phillips, Rock. 7

COMMITTEE: Education

ANALYSIS

This bill removes the requirement in the public school education laws that a pupil attend the school in the district of their residence. Changes of school or assignment are to be granted without discrimination based on the residence of the student.

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 Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty Three

AN ACT eliminating residency requirements for public school attendance.

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

1 1 Education; Compulsory Attendance; Residence Removed. Amend the introductory paragraph
2 of RSA 193:1, I to read as follows:

3 I. A parent of any child at least 6 years of age and under 18 years of age shall cause such
4 child to attend ~~the~~ **a** public school ~~[to which the child is assigned in the child's resident district]~~.
5 Such child shall attend full time when such school is in session unless:

6 2 Change of School of Assignment; Best Interest of the Student. Amend RSA 193:3, I through
7 IV to read as follows:

8 I.(a) The parent or guardian of a student may apply to the superintendent of ~~the student's~~
9 **a** district ~~[of residence]~~ if the parent or guardian believes it would be in the best interest of the
10 student to change the student's school or assignment.

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

13 (c) Prior to or at such meeting, the parent or guardian shall make a specific request that
14 the student be re-assigned ~~[by the school board]~~ to another public school, public academy, or an
15 approved private school within the district or to a public school, public academy, or an approved
16 private school in another district.

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

21 (e) In determining whether it is in the best interest of the student to change the
22 student's school or assignment, the superintendent shall **only** consider the student's ~~[academic,~~
23 ~~physical, personal, or social needs]~~ **best interest and the information provided by the parent.**

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

26 (1) A change of assignment ~~[within the student's current assigned school];~~

27 (2) The student's transfer to another public school or public academy within the
28 **superintendent's** district ~~[of residence]~~; or

29 (3) The student's transfer to a public school, public academy, or an approved private
30 school in another district.

1 (g) If a student is reassigned as a result of a best interest determination to a public
2 school or public academy, the superintendents or administrators involved in the reassignment shall
3 jointly establish a tuition rate for such student. Some or all of the tuition may be waived by the
4 superintendent of the receiving district for good cause shown or pursuant to school board policy of
5 the receiving district. The school board of the student's district of residence shall approve the
6 payment of tuition upon the superintendent's finding that is in the best interest of the student to be
7 reassigned. ***Tuition shall not be charged to the parent or legal guardian.*** Transportation
8 shall be the responsibility of the parent or legal guardian.

9 (h) If the student is reassigned as the result of a best interest determination to an
10 approved private school, the private school may [~~charge tuition to the parent or may~~] enter into an
11 agreement for payment of tuition with the school district in which the child resides.

12 (i) If the superintendent does not find that it is in the best interest of the student to
13 change the student's school or assignment, the parent or guardian may request a hearing with the
14 school board of residence to determine if the student is experiencing a manifest educational hardship
15 under paragraph II. ***The school board of residence shall grant the hearing within 30 days of***
16 ***receiving written notification of the request.***

17 II.(a) "Manifest educational hardship" means that a student has a documented hardship in
18 his or her current educational placement; and that such hardship has a detrimental or negative
19 impact on the student's academic achievement or growth, physical safety, or social and emotional
20 well-being, ***or any other hardship as determined by the parent.*** [~~Such hardship must be so~~
21 ~~severe, pervasive, or persistent that it interferes with or limits the ability of the student to receive~~
22 ~~an education.~~]

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

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

31 (d) Prior to or at such hearing, the parent or guardian shall make a specific request that
32 the student be re-assigned by the school board to another public school, public academy, or an
33 approved private school within the district or to a public school, public academy or an approved
34 private school in another district.

35 (e) The [~~parent or guardian~~] ***superintendent*** shall have the burden of establishing the
36 [~~presence~~] ***absence*** of a manifest educational hardship by clear and convincing evidence.

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1 (f) If the school board finds that the student has a manifest educational hardship, the
2 school board shall grant the parent's or guardian's request to re-assign the student to another public
3 school, public academy or an approved private school within the district or to a public school, public
4 academy, or an approved private school in another district.

5 (g) If the school board finds that the parent or guardian has not met their burden of
6 proof, the parent or guardian may appeal the local school board decision to the state board of
7 education. If the state board of education chooses to accept the parent's or guardian's appeal, the
8 state board of education shall schedule hearing on the matter, pursuant to applicable department of
9 education rules.

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

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

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

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

24 (c) Nothing in this section shall alter or impair the right of a child with a disability, as
25 defined in RSA 186-C:2, to be accorded a due process review pursuant to rules adopted under RSA
26 186-C:16.

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

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

1 (f) Students re-assigned under this section shall meet the admission requirements of the
2 school to which the student is re-assigned, ***provided the admission requirements do not include***
3 ***discrimination based on the residence of the student.***

4 IV.(a) Any person having custody of a child may apply to enroll that child in a public school
5 or public academy outside the school district in which the person and child reside. If the non-
6 resident school district or public academy agrees to enroll the child it may ***not*** charge tuition to the
7 parent ~~[or]~~ ***and*** may enter into an agreement for payment of tuition with the school district in which
8 the child resides.

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

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

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

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

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

28 3 School Attendance; Legal Residence Defined RSA 193:12 is repealed and reenacted to read as
29 follows:

30 193:12 Legal Residence Required.

31 I. For the purposes of this title, "legal resident" of a school district means a natural person
32 who is domiciled in the state and who, if temporarily absent, demonstrates an intent to maintain a
33 principal dwelling place in the state indefinitely and to return there, coupled with an act or acts
34 consistent with that intent. A married person may have a domicile independent of the domicile of
35 his or her spouse. A person may have only one legal residence at a given time.

36 II. The term "homeless children and youths" means individuals who lack a fixed, regular,
37 and adequate nighttime residence, and shall include the following:

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1 (a) Children and youths who are sharing the housing of other persons due to loss of
2 housing, economic hardship, or a similar reason; are living in motels, hotels, trailer parks, or
3 camping grounds due to the lack of alternative adequate accommodations; are living in emergency or
4 transitional shelters; are abandoned in hospitals; or are awaiting foster care placement.

5 (b) Children and youths who have a primary nighttime residence that is a public or
6 private place not designed for or ordinarily used as a regular sleeping accommodation for human
7 beings.

8 (c) Children and youths who are living in cars, parks, public spaces, abandoned
9 buildings, substandard housing, bus or train stations, or similar settings.

10 (d) Migratory children, as defined in 20 U.S.C. section 6399 who qualify as homeless
11 because such children are living in circumstances as described in subparagraphs (a)-(c).

12 III. Nothing in this section shall limit or abridge the right of any child placed and cared for
13 in any home for children, as defined in RSA 193:27, or of any child placed in the home of a relative of
14 that child by the department of health and human services, or placed in the home of a relative or
15 friend by a court pursuant to RSA 169-B, RSA 169-C, RSA 169-D, RSA 170-C, or RSA 463, to attend
16 the public schools of the school district in which the home for children or home of the relative or
17 friend in which a child is placed by the department of health and human services or by a court of
18 competent jurisdiction is located, as provided in RSA 193:28.

19 IV. Whenever a parent or guardian voluntarily places a child with a relative at the
20 recommendation or request of the department of health and human services, that child shall be
21 permitted to attend the public schools of the school district in which that relative resides provided
22 that:

23 (a) Upon request of the school district, the department of health and human services
24 shall confirm that the department recommended or requested that the child be placed with the
25 relative to promote the child's well being, and not for the purpose of allowing the child to attend
26 school in the district where the relative resides; and

27 (b) Upon request of the school district, the relative shall take reasonable steps to secure
28 a court award of guardianship over the child, the child being allowed to attend school in that district
29 while the relative seeks guardianship.

30 V. Whenever a dispute arises among one or more school districts, the department of health
31 and human services, or one or more of the previously mentioned parties, as to the residency of a
32 child who is in the legal custody or guardianship of the department of health and human services, or
33 who has been placed pursuant to a court order in a proceeding under RSA 169-B, RSA 169-C, RSA
34 169-D, or RSA 463, the department of health and human services shall request in writing that the
35 superintendents involved resolve the dispute. If the residency dispute remains unresolved 10 days
36 after such request, the department of health and human services shall request that the
37 commissioner of the department of education determine the residence of the child. The child shall be

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1 permitted to attend school in the district in which the child has been placed by the court or the
2 department of health and human services. Liability as to the cost of school attendance provided
3 under this paragraph shall be determined by the commissioner of education.

4 VI.(a) The commissioner of the department of education, or designee, shall decide residency
5 issues for all pupils, excluding homeless children and youths, in accordance with this section. When
6 addressing residency issues, the only question the commissioner may decide is whether the child is a
7 resident of the state. The commissioner's decision, including a written explanation for that decision,
8 shall be provided to the parties of record and a copy of such explanation shall be kept on file by the
9 department of education. No school district shall deny a pupil attendance or implementation of an
10 existing individualized education program.

11 (b) A pupil shall remain in attendance in the pupil's school of origin during the pendency
12 of a determination of residency. If a child does not have a school of origin within this state, the child
13 shall be immediately admitted to the school in which enrollment is sought pending determination of
14 the residency dispute, provided such school is in the school district in which the child temporarily
15 resides. For the purpose of this paragraph, "school of origin" means the school the child attended
16 when permanently housed or the school in which the child was last enrolled.

17 (c) Notwithstanding the provisions of RSA 21-N:11, III any person aggrieved by a
18 determination of the commissioner may appeal such determination to a court of competent
19 jurisdiction.

20 VII. Nothing in this section shall require or prohibit a district to provide transportation for a
21 student beyond the geographical limits of that district.

22 VIII. Each school district shall adopt an admission and attendance of non-resident students
23 policy.

24 IX. The commissioner of education may enter into agreements with other states relative to
25 liability for educational costs, including special education costs, of students placed in New
26 Hampshire by those states, or of students placed outside the state of New Hampshire.

27 X. For the purpose of determining liability for a child placed and cared for in any home for
28 children or health care facility, the provisions of RSA 193:29 shall apply.

29 4 Education; Discrimination in Public Schools; Residency. Amend RSA 193:38 to read as
30 follows:

31 193:38 Discrimination in Public Schools. No person shall be excluded from participation in,
32 denied the benefits of, or be subjected to discrimination in public schools because of their age, sex,
33 gender identity, sexual orientation, race, color, marital status, familial status, disability, religion, or
34 national origin, all as defined in RSA 354-A, ***or their residence within the borders of the state.***
35 Any person claiming to be aggrieved by a discriminatory practice prohibited under this section,
36 including the attorney general, may initiate a civil action against a school or school district in

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1 superior court for legal or equitable relief, or with the New Hampshire commission for human rights,
2 as provided in RSA 354-A:27-28.

3 5 Effective Date. This act shall take effect 60 days after its passage.

**HB 441-FN-LOCAL- FISCAL NOTE
AS INTRODUCED**

AN ACT eliminating residency requirements for public school attendance.

FISCAL IMPACT: State County Local None

LOCAL:	Estimated Increase / (Decrease)			
	FY 2023	FY 2024	FY 2025	FY 2026
Expenditures	\$0	Indeterminable	Indeterminable	Indeterminable
Revenue	\$0	\$0	\$0	\$0

METHODOLOGY:

This bill strikes the requirement in RSA 193:1 that the child attend a school in his or her resident district and modifies what a parent must prove under best interest and manifest educational hardship to have their child attend a different school. The Department of Education states any fiscal impact from this bill would occur at the local school district level, however, such impact is indeterminable since it unknown how many people would request a change of school assignment pursuant to best interest and manifest educational hardship.

AGENCIES CONTACTED:

Department of Education