DEVELOPMENTS IN NEW HAMPSHIRE EDUCATION LAW: STATE STATUTES

Presented by

Gerald M. Zelin and Erin R. Feltes

GZelin@dwmlaw.com

EFeltes@dwmlaw.com

Presented at the

New Hampshire Association of Special Education Administrators Annual Summer Academy

July 29, 2015

DrummondWoodsum

100 International Drive
Suite 340
Portsmouth, NH 03801

1001 Elm Street, Suite 303
Manchester, NH 03101

Tel: 800-727-1941
www.dwmlaw.com
www.schoollaw.com

NOTES

DEVELOPMENTS IN NEW HAMPSHIRE EDUCATION LAW: STATE STATUTES

By Gerald M. Zelin and Erin R. Feltes
Drummond Woodsum
July 29, 2015

I. Introduction

The 2015 legislative session proved to be a busy one with 270 new bills enacted into law as of July 26, 2015. Many of these new statutes impact school districts as they include limits on recording classrooms, changes to the school reassignment laws, and changes to the Right to Know law. This handout provides an overview of these relevant new state statutes.

Additionally, a number of bills that passed the New Hampshire legislature were vetoed by Governor Maggie Hassan. Most significantly, the Governor vetoed House Bills 1 and 2, which are generally referred to as the state budget. In response, an agreement was reached to continue funding levels at the fiscal year 2015 levels for the next six months. Other vetoed bills include one increasing school district responsibilities with regard to objectionable course material and one prohibiting the New Hampshire Department of Education and the State Board of Education from implementing the common core standards in New Hampshire. All of these vetoed bills will be reconsidered by the New Hampshire legislature when it reconvenes on September 16, 2015.

II. Facilitated IEP Team Meetings Removed from State Alternative Dispute Resolution Options

Since 2008, the New Hampshire Department of Education (NH DOE) has offered facilitated IEP team meetings as a method of

NOTES

alternative dispute resolution. Under this process, the NH DOE appointed a facilitator to assist IEP teams in running meetings, typically after there was a breakdown of communication between the school and parents.

School attorneys have long expressed concern about this process because the state statute authorizing facilitated IEP team meetings required that all statements and events at these meetings be kept confidential. Therefore, if the team did not reach an agreement at the meeting, everything that happened at the meeting (such as a school district proposal to improve the IEP or to offer a new placement) was deemed secret and could not be shared or used in a due process hearing. The Parent Information Center also had concerns about record keeping in facilitated IEP team meetings, leading them to reach out to the New Hampshire State Senate and request that the legislature remove facilitated IEP team meetings from the alternative dispute resolution options.[1]

The confidentiality requirement arose by accident. RSA 186-C:23 authorizes the NH DOE to conduct various forms of alternative dispute resolution, such as mediation and neutral conferences. RSA 186-C:23, III imposes a confidentiality requirement on all forms of alternative dispute resolution mentioned in RSA 186-C:23. In 2008, when the state legislature authorized the NH DOE to appoint facilitators for IEP team meetings, it nested that authorization in RSA 186-C:23. This extended the confidentiality requirement in RSA 186-C:23, III to facilitated IEP team meetings with a facilitator appointed by the NH DOE. [2]

Chapter 24 (2015) removes facilitated IEP team meetings from RSA 186-C:23. [3] This change in the law does not prohibit facilitated IEP team meetings. Nor does it prohibit the NH DOE from appointing

[1] N.H. Senate Journal, No. 5, page 58 (Feb. 12, 2015).
[2] RSA 186-C:23.
[3] N.H. Laws of 2015, Chapter 24, Section 1.

NOTES

facilitators. Rather, if a team chooses to use a facilitator to assist in the team meeting process, then the decisions, documents, and minutes generated from such meetings can been used in the same manner as all other IEP team meetings.

The New Hampshire Department of Education will reportedly continue to offer state-appointed facilitators for IEP team meetings. Facilitators are also available through other organizations, such as law firms.

III. Making Steps Towards Glucagon Injections by Certain School Employees

According to the New Hampshire Department of Health and Human Services, diabetes is the seventh leading cause of death in New Hampshire.[4] In 2013, 9.2% of New Hampshire adults reported having been diagnosed with diabetes and an additional approximately 6.8% of New Hampshire adults reported having been diagnosed with pre-diabetes, a risk factor for type 2 diabetes.[5] Many schools are also seeing an increase in the number of students who are diagnosed with diabetes or pre-diabetes. With the increasing number of students who may potentially need glucagon injections while at school, Chapter Law 20 (2015) paves the way to allow school employees to administer such injections.

Chapter Law 20 (2015) requires the State Board of Education to adopt rules regarding school employees administering glucagon injections to students who have been medically identified as having diabetes. The statute directs the State Board to adopt rules allowing a parent or legal guardian to authorize "a school employee or person employed on behalf of the school" to administer glucagon to a child while at school or a school sponsored activity.[6]

[4] http://www.dhhs.nh.gov/DPHS/cdpc/diabetes/index.htm
[5] *Id.*
[6] N.H. Laws of 2015, Chapter 20, Section 1.

NOTES

This authorization is limited to emergency situations where a school nurse is not immediately available. Further, parents will need to provide a diabetes management plan or a physician's order, which prescribes the care and assistance needed by the student, including glucagon administration, before the provisions of this new law apply.

The State Board of Education, in conjunction with the American Diabetes Association and the New Hampshire chapter of American Academy of Pediatrics, is charged with developing standards and guidelines for the training and supervision of personnel, other than the school nurse, who will be providing emergency medical assistance to students in diabetic emergencies.

While there are many details regarding training school employees to administer glucagon that must be ironed out, the new law is clear – school districts cannot *require* a school nurse to provide training to other school employees in glucagon administration. However, the school nurse may provide glucagon administration training, if he/she chooses to do so. Additionally, schools cannot require personnel - other than nurses - to be trained in glucagon administration.

Chapter Law 20 (2015) also provides liability protection for personnel who administer glucagon injections. It declares that no personnel or local educational authority "shall be liable for civil damages which may result from acts or omissions in use of glucagon which may constitute ordinary negligence. This immunity shall not apply to acts or omission constituting gross negligence or willful or wanton conduct."[7]

Although Chapter Law 20 (2015) provides a basic outline for school personnel to administer glucagon injections, schools will want to wait for the State Board's rules before implementing this new law or changing any practices or procedures regarding the administration of glucagon. The State Board will undoubtedly promulgate thorough rules

[7] N.H. Laws of 2015, Chapter 20, Section 1.

NOTES

governing training, administration, and storage of glucagon and schools will need to comply with those rules.

IV. Increased Training for Mental Health Practitioners

Licensed mental health professionals will soon be required to undergo continuing education specific to "suicide prevention, intervention, and postvention."[8] This change in the law comes in response to increasing concerns from a wide range of mental health providers, public safety officials, and citizens whose families have been impacted by suicide.[9] The legislature recognized that "it is critically important for mental health professionals to be able to detect early warning signs" of suicide and "the inclusion of the education requirements on suicide prevention will help to address the matter."[10] The state legislature amended RSA 330-A:10, XIV to read as follows:

> Procedures for assuring the continuing competence of persons licensed under this chapter including, but not limited to, continuing education requirements**, provided that at least 3 hours of the required continuing education units for biennial renewal shall be from a nationally recognized, evidence-based or best practices training organization in the area of suicide prevention, intervention, or postvention and how mental illness, substance use disorders, trauma, or interpersonal violence directly impacts risk for suicide**. (New language in bold.)[11]

These continuing education requirements will not go into effect until the Board of Mental Health Practice adopts rules to comply with the change.[12]

The statute defines mental health practitioners as persons

[8] N.H. Laws of 2015, Chapter 27, Section 1.
[9] N.H. House Calendar, No. 29, page 1302 (April 10, 2015).
[10] *Id.*
[11] N.H. Laws of 2015, Chapter 27, Section 1.
[12] N.H. Laws of 2015, Chapter 27, Section 2.

NOTES

licensed by the State Board of Mental Health Practice as "pastoral psychotherapists, clinical social workers, clinical mental health counselors, or marriage and family therapists."[13] As a result, certain school employees may fall into the category of a licensed mental health practitioner; schools will want to ensure that these employees are aware of and meet the increased continuing education requirements.

V. Repealing Payment of Subminimum Wages to Individuals with Disabilities

In 2014, in response to concerns that New Hampshire law permitted individuals with disabilities to be paid below minimum wage, the state legislature created a committee to study this issue.[14] In particular, the committee was charged with analyzing which laws would need to be changed to end the payment of subminimum wages to workers with disabilities and to develop a strategic plan to effectively phase out the payment of such wages.[15] As part of the committee's work, it concluded that although the law provided a mechanism by which employers could pay subminimum wages to workers with disabilities, no employers or agencies in New Hampshire were currently doing so.[16]

As a result of the 2014 committee report, Chapter Law 40 (2015) was passed which prohibits employers from employing individuals with disabilities at an hourly rate lower than the federal minimum wage, in most cases.

There are still two circumstances where individuals may be paid subminimum wages. First, when high school or post secondary students take part in job training programs, the law still permits these students to

[13] RSA 330-A:2, VI.
[14] N.H. Laws 2014, Chapter 227, Section 4.
[15] *Id.*
[16] House Calendar, No. 29, page 1309 (April 10, 2015).

NOTES

be paid at a subminimum wage or to receive no wage.[17] This applies to all students, regardless of whether they have a disability. Second, the law still permits a family-owned business to pay a family member with a disability a subminimum wage.[18] This portion of the state statute remained unchanged because federal labor law allows a family business to pay any family member, not just those with disabilities, below minimum wage.

In passing this legislation, the House Committee for Labor, Industrial and Rehabilitative Services stated that the committee "recognized that disabled people deserve the same dignity and employment opportunities within the same guidelines as everyone else."[19] It appears that New Hampshire is the first state in the nation to pass such legislation and could serve as a model for other states looking to repeal subminimum wages to workers with disabilities.

VI. Limits on Recording Classrooms

Schools occasionally get requests from parents to record a child's classroom. Similarly, schools may want to record teachers or students in order to measure performance. Additionally, there may be times when an IEP team determines that a student's classroom should be recorded in order to meet a student's unique educational needs.

Chapter Law 71 (2015) now limits when a classroom may be recorded. Effective August 1, 2015:

> No school shall record in any way a school classroom for any purpose without school board approval after a public hearing, and without written consent of the teacher and the parent or legal guardian of each affected student.[20]

According to Senator Stiles of the Senate Education Committee, this law

[17] RSA 279:22-aa.
[18] RSA 279:26-a.
[19] *Id.*
[20] N.H. Laws of 2015, Chapter 71, Section 4.

NOTES

was enacted to protect the privacy of students and teachers in light of increased recording capabilities. Senator Stiles reported: "The [Education] committee believes that policy should reflect the realities of increased technology in classrooms and take steps to safeguard the privacy of teachers and students in those classrooms."[21]

While it is clear that the intention of the new law is to safeguard the privacy of students and teachers in classrooms, schools will need to be equally aware of the need to safeguard the privacy of students and teachers when making requests to record classrooms.

- For instance, schools occasionally see requests to record classrooms when students with disabilities or certain medical conditions are unable to physically attend school.
- Another example is an IEP that allows a student or paraprofessional to audio record classroom lectures if the student has difficulty taking notes.

In following this new law and seeking permission to record a child's classroom under these circumstances, schools should ensure that protected student information, including any information about a student's disability or medical condition, is not released without the consent of that student's parent.

Although Chapter Law 71 (2015) outlines the basic steps to be taken in order to permit recording in a classroom, including a public hearing and written consent from the teacher and the parent or guardian of each child being recorded, school districts should consider adopting a policy concerning the recording of classrooms, as well as the process to be followed to obtain approval for the recording.

VII. State Law Changes Impacting FERPA Records Requests

Under a law titled "relative to the protection of personally-identifiable data by the department of education", Chapter Law 136

[21] N.H. Senate Journal, No. 15, page 377 (May 7, 2015).

NOTES

(2015) makes a sweeping change to the time frame school districts have to respond to FERPA records requests. As readers are aware, the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g, is a federal law which sets forth rules that school districts must follow in order to protect the privacy of student information. FERPA provides that educational agencies and institutions which receive U.S. Department of Education funds may not have a policy or practice of denying parents and eligible students of the right to:

> •inspect and review education records within 45 days of a request;
>
> •seek to amend education records believed to be inaccurate; and
>
> •consent to the disclosure of personally identifiable information from education records, except as specified by law.

States are generally free to enact their own laws governing the privacy of student information, so long as the state law provides more protection to student information than is in the federal law.

Through Chapter Law 136 (2015), the legislature chose to make the time frame to respond to record requests more restrictive than federal law. Chapter Law 136 (2015), as enacted, states as follows:

> IV. The department [of Education] shall make publicly available students' and parents' rights under the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. section 1232g, et seq., and applicable state law including:
>
> (a) The right to inspect and review the student's education records within 14 days after the day the school receives a request for access.
>
> (b) The right to request amendment of a student's

NOTES

> education records that the parent or eligible student believes are inaccurate, misleading, or otherwise in violation of the student's privacy rights under FERPA.
>
> (c) The right to provide written consent before the school discloses student personally identifiable data from the student's education records, provided in applicable state and federal law.
>
> (d) The right to file a complaint with the Family Policy Compliance Office in the United States Department of Education concerning alleged failures to comply with the requirements of FERPA.

Although Chapter Law 136 (2015) codifies in state law much of the federal FERPA provisions, it changes the amount of time that schools have to respond to a records request.

Under federal law, schools must make education records available to review and inspect within 45 days after the school receives a request for access.[22] Chapter Law 136 (2015) changes this to a mere 14 days. Representative Cordelli, a sponsor of the bill, testified in the Senate Education Committee: "FERPA allows 45 days for access to student records, but we narrow that, we make that more restrictive, and call for a 14 day response period for that."[23]

Importantly, like FERPA, Chapter 136 uses the terms "inspect and review." The right to inspect and review ordinarily does not include a right to copies. FERPA creates a right to *copies* only when "circumstances effectively prevent the parent or eligible student from exercising the right to inspect and review the student's education records" and it is impossible to "[m]ake other arrangements for the

[22] 34 C.F.R. § 99.10(b).
[23] Senate Education Committee Hearing, Audio Recording, March 31, 2015, located at: http://www.gencourt.state.nh.us/bill_status/BillStatus_Media.aspx?lsr=984&sy=2015&sortoption=&txtsessionyear=2015&txtbillnumber=hb322&q=1

NOTES

parent or eligible student to inspect and review the records." [24] The school may also charge a fee for copies, unless the imposition of a fee "effectively prevents a parent or eligible student from exercising the right to inspect and review." [25] However, the school may not charge a fee "to search for or to retrieve" the records. [26]

Chapter 136 goes into effect on August 11, 2015. School administrators need to be aware of this change in the law and to respond to records requests accordingly. Similarly, school boards will want to review and update their policies to ensure that they comply with the 14 day timeframe.

VIII. Reassignment of Pupils Requires School Board Approval

Chapter Law 125 (2015) removes superintendents' authority to reassign students without school board approval. Currently, RSA 193:3, III, states, in part:

> (a) Each school board shall establish a change of school assignment policy, *based on the best interest of the pupil*, authorizing the superintendent to re-assign a pupil from the public school to which he or she is currently assigned to another public school, or to approve a request from another superintendent to accept a transfer of a pupil from a school district that is not part of the school administrative unit…. (Emphasis added.)

Under RSA 193:3, III, the superintendents of the two school districts involved in a change of school assignment were permitted to reach an agreement on a student's school assignment, so long as the superintendents both agreed that the change in enrollment was in the pupil's best interest.

Under Chapter Law 125 (2015), the process for parents to apply

[24] 34 C.F.R. § 99.10(d).
[25] 34 C.F.R. § 99.11(a).
[26] 34 C.F.R. § 99.11(b).

NOTES

for a change in school assignment remains the same, however, the superintendent's authority is limited to recommending to the school board whether or not the pupil should be reassigned. Superintendents no longer have the authority to enter into an agreement to reassign a pupil without school board approval. Rather, the school board of each school district involved in the reassignment must vote to approve the reassignment. That means that the school board where the student *resides* must vote to allow the student to attend school in a different district and the school board where the student *seeks to enroll* must vote to allow the student to enroll in that district.

According to the testimony before the Senate Education Committee, the driving force behind this law is that student reassignments can have a financial impact on a school district's budget. Because school boards are ultimately responsible for the district's budget, they should be aware of all student reassignments and the potential cost implications associated with those reassignments.[27]

This law goes into effect on August 8, 2015. School boards will need to amend their policies on school reassignments to comply with the change in this law.

IX. Average Daily Membership in Attendance To Include Some Home Educated Pupils

Pursuant to RSA 193:1-c, home educated pupils are permitted to "have access to curricular courses and cocurricular programs offered by the school district in which the pupil resides." Local school boards may adopt policies regulating participation in curricular courses and cocurricular programs, but they cannot adopt a policy that is more restrictive for home educated pupils than it is for the school district's

[27] Senate Education Hearing, April 21, 2015, located at: http://www.gencourt.state.nh.us/bill_status/BillStatus_Media.aspx?lsr=734&sy=2015&sortoption=&txtsessionyear=2015&txtbillnumber=hb610&q=1.

NOTES

resident pupils.[28]

Although home educated pupils are permitted to attend public school classes and participate in cocurricular programs, school districts have historically not been permitted to include those students in their average daily membership in attendance (ADMA) and consequently have not received any state funding to account for home educated pupils' participation in such classes and programs.[29]

Chapter Law 251 allows school districts to count home educated pupils for the purpose of calculating the ADMA and makes grant payments for such pupils contingent on available appropriations. It amends RSA 198:38 to provide as follows:

> 251:1 School Money; Definitions. Amend RSA 198:38, I to read as follows:
> I.**(a)** "Average daily membership in attendance" or "ADMA" means the average daily membership in attendance of pupils in kindergarten through grade 12, as defined in RSA 189:1-d, III of the school year in which the calculation is made, provided that no kindergarten pupil shall count as more than 1/2 day attendance per calendar year.
>
> **(b) For the purpose of calculating ADMA, each pupil who is home educated in compliance with RSA 193-A and who is enrolled in a school board approved public high school academic course shall count as an additional 0.15 pupil for each such academic course taken in a public high school. The department of education shall only make grant payments for such pupils to the extent of available appropriations. In this subparagraph, "public high school" shall have the same meaning as "high school" as defined in RSA 194:23. (New language in bold.)**

As enacted, Chapter Law 261 only allows high school students

[28] RSA 193:1-c.
[29] *See* RSA 198:38 (defining ADMA).

NOTES

enrolled in school board approved public high school academic courses to be included in the ADMA calculation. Representative Rick M. Ladd for the House Education Committee recognized that this does not permit younger students and cocurricular opportunities to be included in ADMA calculations. He stated:

> This bill provides that if a home-schooled pupil enrolls at a high school and in a school board approved "academic" course that his or her attendance shall count as an additional 0.15 in the calculation formula for the school's ADMA for each academic course taken. As amended, the bill does not include an ADMA count calculation for a home-schooled student's participation in a co-curricular activity. Due to the self-contained nature of elementary classrooms and differing middle school/JHS instructional models, the committee believes that the additional ADMA count calculation is appropriate only in the high school grades where well-defined and approved/accredited academic courses are comparable and contribute to a high school diploma throughout the state. In summary, this bill provides ADMA funding to high schools for all enrolled students in relation to student attendance and offers choice and enrichment opportunity to home-schooled pupils.[30]

Although this law goes into effect on September 11, 2015, it does not guarantee that schools will receive additional funding for home educated pupils who participate in curricular courses. This additional funding is contingent on the existence of "available appropriations." At this point, none of the proposed state budgets account for any additional appropriations to schools under this statute.

X. Dyslexia Study Committee

The state legislature appears to have taken an interest in studying

[30] N.H. House Journal, No. 34, page 1534 (April 15, 2015).

NOTES

dyslexia in New Hampshire schools. Chapter Law 172 (2015) establishes a committee to study policies which the committee determines are necessary for dyslexic students. According to the House Education Committee:

> It is the intent of the bill that this committee will study the condition of dyslexia within NH schools. The goal of this committee is to publish findings which include successful intervention methods and effective corrective processes such as Orton-Gillingham.[31]

One of the state representatives who testified before the Senate Education Committee informed the committee that "there are better techniques for addressing dyslexia than are used at a local school level now."[32] This testimony suggests that the committee might be looking to study and develop state level policies on dyslexia that local school districts would be required to implement, and these could amount to anything from screening for dyslexia to required interventions. This bill was supported by the parent group, Decoding Dyslexia, which is interested in developing policies on children with dyslexia, particularly around screening children for dyslexia.

The dyslexia study committee is comprised solely of members from the New Hampshire House of Representatives, as appointed by the Speaker of the House of Representatives.[33] The committee is required to convene its first meeting by August 10, 2015. If you have input or comments to provide on this issue, you can identify committee members and see the committee's meeting schedule on the New Hampshire

[31] N.H. House Calendar, No. 19, 421 (March 6, 2015).
[32] Audio Recording, April 7, 2015, http://www.gencourt.state.nh.us/bill_status/BillStatus_Media.aspx?lsr=747&sy=2015&sortoption=&txtsessionyear=2015&txtbillnumber=hb519&q=1
[33] N.H. Laws of 2015, Chapter 172, Section 2.

NOTES

General Court website, http://www.gencourt.state.nh.us/.[34]

XI. Mixed Use School Buses

In 2011, the New Hampshire legislature, in response to concerns from local school districts about the growing costs of student transportation, amended student transportation laws. In particular, the legislature amended the definition of a "mixed use school bus" and enacted RSA 189:6-c, which sets forth where a student may be transported in a mixed use school bus.

In 2013, the legislature amended the definition of a "mixed use school bus," in response to safety and liability concerns. In short, the amendments allowed pupils to be transported to or from school activities in a "mixed use school bus" provided that the vehicle is owned by a public or private school, is used principally to transport pupils, bears a valid state inspection sticker, and is driven by a school employee who holds a valid driver's license.[35] These laws were designed to allow school employees to drive small groups of students to off-campus activities – such as athletic events, vocational classes, and job shadowing appointments – without using a conventional school bus or a certified school bus driver. The rationale is that conventional school buses are expensive and certified school bus drivers are rare.

In October of 2013, the New Hampshire Department of Safety adopted rules prohibiting students with disabilities from being transported in mixed use school buses.[36] The Department of Safety's rules caused concern among many schools and private special education providers because, in part, they violated federal laws prohibiting

[34] For specific dyslexic study committee information go to: http://www.gencourt.state.nh.us/statstudcomm/details.aspx?id=2218&rbl=1&txtyear=2015.

[35] RSA 259:96-a defines "mixed use school bus" as: "a station wagon, suburban, sport utility vehicle, passenger van, panel body vehicle, or vehicle converted to a school bus, owned or leased by a public school or private school and driven by a school employee, which bears a valid state inspection sticker and is employed principally in transporting schoolchildren to and from school activities."

[36] *See* Saf-C 1314.01.

NOTES

discrimination on the basis of disability.

In response to the Department of Safety's rules, a number of organizations and individuals, including the New Hampshire Private Special Education Association and the New Hampshire Association of Special Education Administrators, worked with state representatives and other stakeholders to amend the law to bring it back to its original purpose.

Chapter Law 100 (2015) amends RSA 189:6-c to provide as follows:

> **I.** Pupils may be transported to or from [~~school or a school-sponsored activity~~] **school activities** in a mixed use school bus, as defined by RSA 259:96-a, which bears a valid state inspection sticker and is operated by a driver who holds a valid **driver's** license to operate that vehicle.
>
> **II. Pupils with disabilities may be transported to or from school activities in a mixed use school bus unless the pupil's individualized education program as defined in RSA 186-C:2, III, or the pupil's accommodation plan pursuant to section 504 of the Rehabilitation Act of 1973, 29 U.S.C. section 794, states that such a vehicle shall not be used.**
>
> **III. In this section, "school activities" shall include, but is not limited to, sporting events, intramural events, events associated with student clubs or organizations, job training programs, field trips, and special education transition services. "School activities" shall not include transportation between home and school.** (New language in bold.)

In sum, after the last four years of legislative changes to the mixed use school bus statutes and rules, all students are permitted to ride in a "mixed use school bus," provided that the vehicle is:

NOTES

> a station wagon, suburban, sport utility vehicle, passenger van, panel body vehicle, or vehicle converted to a school bus, owned or leased by a public school or private school and driven by a school employee, which bears a valid state inspection sticker and is employed principally in transporting schoolchildren to and from school activities.[37]

The only exception is that the law includes a mechanism which prohibits a student with disabilities from riding in a mixed use school bus when, due to a student's *individual needs*, such a vehicle would be unsafe or unwise. The special education laws, Section 504, and the ADA all demand this sort of individualized decision making.

Although the statutes do not specify what sort of license is valid to drive a mixed use school bus, the House Education Committee's report confirms the legislative intent: that a conventional driver's license will suffice unless the vehicle is so large that it qualifies as a commercial motor vehicle under RSA 259:12-e, I or transports more than 11 students. [38] RSA 259:12-e, I defines "Commercial motor vehicle" as a vehicle "used in commerce" that: (a) has a gross vehicle weight of 26,001 pounds or more; or (b) is designed or used to transport 16 or more passengers including the driver. RSA 263:86, I states,

> no person shall drive a commercial motor vehicle unless the person holds or is in immediate possession of a commercial driver license valid for the vehicle being driven.

Thus, if a mixed use school bus happens to be very large – weighing over 26,001 pounds, or designed or used to transport 16 or more passengers including the driver – state law requires a commercial driver's license, provided the vehicle is "used in commerce."

The changes to the mixed use school bus statute go into effect on

[37] RSA 189:6-c.

[38] N.H. House Record, No. 19, page 398 (March 6, 2015). The reference to "11" students was apparently a clerical error and should have read "15."

NOTES

August 4, 2015. Schools that intend to use mixed use school buses to transport students to and from school activities in the 2015-16 school year will want to review the changes in the law to ensure that their practices and procedures comply with the new statute.

XII. Statewide Assessment Program

Few education topics received more discussion and debate this session than bills regarding the Common Core or the Smarter Balanced Testing. Many of these bills either failed to pass the state legislature or were vetoed by the Governor. The legislature will take up vetoed bills when it reconvenes on September 16, 2015.

One relevant bill, House Bill 323, has been signed into law. HB 323, permits the use of the College Board SAT or ACT readiness assessment to satisfy the assessments that high school students are required to take.[39]

RSA 193-C:6 now provides as follows:

> Each year, a statewide assessment shall be administered in all school districts in the state in grades 3 through 8 and one grade in high school. All public school students in the designated grades shall participate in the assessment, unless such student is exempted, or provided that the commissioner of the department of education may, through an agreement with another state when such state and New Hampshire are parties to an interstate agreement, allow pupils to participate in that state's assessment program as an alternative to the assessment required under this chapter. Home educated students may contact their local school districts if they wish to participate in the statewide assessment. Private schools may contact the department of education to participate in the statewide assessment.

[39] N.H. Laws of 2015, Chapter 226, Section 1.

NOTES

As originally introduced, House Bill 323 proposed a number of changes to the statewide assessments, including the grades in which testing would occur. As House Bill 323 worked its way through the legislative process, it was amended solely to include a provision at the end of RSA 193-C:6, which states: "The department may use the College Board SAT or ACT college readiness assessment to satisfy the high school assessment requirements of this chapter."[40] This amendment gives local school districts more flexibility in determining which statewide assessment to provide to high school students. As noted by the House Education Committee, "by using the SAT in grade 11 rather than smarter balanced, as does Maine, NH will have more students taking a college readiness assessment with the outcome of increased college enrollments by 2-3%."[41]

XIII. The Administration of Non-Academic Surveys or Questionnaires

The Federal Protection of Pupil Rights Law (formerly known as the "Hatch Amendment") places certain restrictions on a school's ability to survey students.[42] Under federal law, students may not be surveyed or questioned about the following topics without parental consent:

1. Political affiliations or beliefs of the student or the student's parents;
2. Mental or psychological problems of the student or the student's family;
3. Sex behavior or attitude;
4. Illegal, anti-social, self-incriminating, or demeaning behavior;
5. Critical appraisals of other individuals with whom respondents have close family relationships;
6. Legally recognized, privileged or analogous relationships, such as those of lawyers, physicians and ministers;

[40] N.H. Laws of 2015, Chapter 226, Section 1.
[41] House Journal 26, 12 MARCH 2015 HOUSE RECORD 1269
[42] 20 U.S.C. § 1232h; 34 C.F.R. § 98.4.

NOTES

7. Religious practices, affiliations, or beliefs of the student or student's parents; or
8. Income (other than that required by law to determine eligibility for participation in a program or for receiving financial assistance under such program).

Additionally, federal law requires local school districts receiving federal funds under any applicable program to adopt policies, in consultation with parents, on the following topics:

1. The right of parents to inspect, upon request, a survey created by a third party before the survey is administered or distributed by a school to parents;
2. Arrangements to protect student privacy that are provided by the district in the event a survey requests information about any of the above items;
3. The right of parents to inspect, upon request, any instructional material used as part of the educational curriculum for students;
4. The administration of physical examinations or screenings that the school may administer to students;
5. The collection, disclosure, or use of personal information collected from students for the purpose of marketing or selling, or otherwise providing the information (except for certain education-related products and services).

Under federal law, schools must annually notify parents of these policies and of the parent's right to opt their child out of participation of the activities addressed in the particular policy.

The state legislature recently passed Chapter Law 161 (2015), which requires school boards to adopt a policy governing the administration of non-academic surveys or questionnaires to students.[43] While many of the concepts contained in the new state law are similar to the federal Protection of Pupil Rights Law, the details in the two laws are different. For example, state law takes a much broader approach as to the survey subject areas that require parental notification. Under state law, schools must notify parents of a non-academic survey or

[43] N.H. Laws of 2015, Chapter 161, Section 6.

NOTES

questionnaire and its purpose. The law then goes on to define "non-academic survey or questionnaire" as: "surveys, questionnaires or other documents designed to elicit information about a student's social behavior, family life, religion, politics, sexual orientation, sexual activity, drug use, *or any other information not related to a student's academics*." (Emphasis added.) [44]

In addition to requiring that school boards adopt a policy on the administration of non-academic surveys or questionnaires, Chapter Law 161:6 (2015) dictates what must be included in the policy:

- The school district must notify a parent or guardian of a non-academic survey or questionnaire and its purpose;
- The school district must make surveys or questionnaires available at the school and on the school/school district's website at least 10 days prior to its distribution to students; and
- A parent or legal guardian must be permitted to opt out of the non-academic survey or questionnaire either in writing or electronically.

This law goes into effect on August 25, 2015. School boards will need to adopt a policy complying with Chapter Law 161 and administrators will want to make sure teachers and staff are aware of these new requirements.

The legislature has also established a committee to further study this issue.[45] The committee is charged with studying the:

> design of all non-academic surveys, questionnaires, tests, assessments, and other information gathering surveys administered by a public school to its students, and to determine whether and to what extent such surveys . . . elicit information about a student's social behavior, family life, religion, politics, sexual orientation, sexual activity, drug use, or other information not related to a student's academics, and make recommendations as necessary. [46]

[44] N.H. Laws of 2015, Chapter 161, Section 6.
[45] N.H. Laws of 2015, Chapter 161, Sections 1-5.
[46] N.H. Laws of 2015, Chapter 161, Section 3.

NOTES

Although the committee is comprised solely of members of the legislature, the committee may solicit advice and testimony from any individual or organization with information or expertise on this issue. If you have information or experiences regarding the administration of such surveys, you can find out more about this committee and how to contact committee members on the General Court website: http://www.gencourt.state.nh.us/.

XIV. Cursive Writing and Memorization of Multiplication Tables

One of the most talked about pieces of legislation this session was Senate Bill 195, which encourages schools to instruct students in cursive handwriting and in the memorization of multiplication tables. As introduced, the bill proposed to *require* schools to instruct students in these areas. However, in response to concerns that such decisions should be made at the local school board level, the bill was amended to simply encourage schools to teach such topics.[47] The House Education committee clarified the intent of the bill:

> This bill would simply encourage each school board to teach cursive handwriting and memorization of multiplication tables. It does not mandate that either be taught, so it will not take away local control. We believe that memorization is beneficial in early childhood. We also believe that cursive handwriting still has a place in our society and this skill will be needed by future generations, in order to read our founding documents, as well as many other purposes.[48]

Nothing in state law prohibits or requires schools to teach either cursive handwriting or memorization of multiplication tables. As a result,

[47] N.H. Laws 2015, Chapter 41, Section 1.
[48] N.H. House Journal, No. 29, page 1554 (April 15, 2015).

NOTES

school boards may want to consider whether to provide instruction in these areas.

XV. Social Media Accounts

As of August 22, 2015, schools will be limited in the information that can obtain from a student's social media accounts. [49] Social media accounts are defined as: "an account, service, or profile on a social networking website that is used by a current or prospective student primarily for personal communications."[50] This definition does not include "accounts opened or provided by an educational institution and intended to be used solely on behalf of the institution."[51]

Chapter Law 270 (2015) prohibits schools from doing the following:

- Requiring or requesting a student or a prospective student to disclose or to provide access to personal social media accounts through the "student's user name, password or other means of authentication that provides access";

- Requiring or requesting a student or prospective student to access a personal social media account in the presence of a school employee in a manner that allows the employee to observe the social media account;

- Compelling a student or prospective student to add anyone to the list of contacts associated with his or her social media account;

- Requiring, requesting, suggesting or causing a student or prospective student to change the privacy settings associated with a personal social media account; and

- Taking action or threaten to take any action against a student, including discipline or prohibition from participating in

[49] N.H. Laws 2015, Chapter 270, Section 1.
[50] *Id.*
[51] *Id.*

NOTES

curricular or cocurricular activities, for refusing to disclose information related to social media accounts.

In response to concerns from educators and student advocates that these prohibitions will prevent schools from adequately and effectively addressing student misconduct, such as cyberbullying, the legislature made it clear that schools are still permitted to investigate student misconduct based on activity associated with a student's social media account, but only to the extent that they do not take one of the above listed actions. During an investigation into student misconduct, school officials may request that a student "voluntarily share a printed copy of specific communication from the student's social media account that is relevant to the ongoing investigation" or, in the case of a minor, "may request that the student's parent or guardian provide specific data from the student's social media account." Schools may also revoke a student's access to equipment or computer networks owned or operated by the schools and monitor the usage of the school's computer system at any time, regardless of whether there is an investigation.

As a result of this new law, schools may need to review their computer access policies and their policies and procedures for investigating online student misconduct.

XVI. Changes to the Right to Know Law

This legislative session, three changes were made to New Hampshire's Right to Know Law, RSA chapter 91-A. As readers are likely aware, school boards, as municipal bodies, are subject to this law. Therefore, school boards will want to review the changes in the law and determine if any changes need to be made to the operating practices and procedures of the school board.

The first change impacts the process school boards use to seal minutes of nonpublic sessions. The Right to Know Law requires that minutes of meetings in nonpublic session ordinarily be kept and made

NOTES

available for public inspection.[52] However, recognizing that certain nonpublic sessions should be kept private, the law also allows school boards to seal the minutes of a nonpublic session when appropriate.[53]

Chapter Law 49 (2015) continues to permit school boards to seal the minutes of nonpublic sessions, but now requires that the vote to seal the minutes be taken in public session.[54] Chapter Law 49 accomplishes this by amending RSA 91-A:3, III to read as follows.

> Minutes of meetings in nonpublic session shall be kept and the record of all actions shall be promptly made available for public inspection, except as provided in this section. Minutes and decisions reached in nonpublic session shall be publicly disclosed within 72 hours of the meeting, unless, by recorded vote of 2/3 of the members present[,] **taken in public session**, it is determined that divulgence of the information likely would affect adversely the reputation of any person other than a member of the public body itself, or render the proposed action ineffective, or pertain to terrorism, more specifically, to matters relating to the preparation for and the carrying out of all emergency functions, developed by local or state safety officials that are directly intended to thwart a deliberate act that is intended to result in widespread or severe damage to property or widespread injury or loss of life. This shall include training to carry out such functions. In the event of such circumstances, information may be withheld until, in the opinion of a majority of members, the aforesaid circumstances no longer apply.[55] (New language in bold.)

As a result of Chapter Law 49, school boards will want to review their practice of sealing nonpublic meeting minutes to comply with the change in the law. This law goes into effect on January 1, 2016.

[52] RSA 91-A:3, III.
[53] *Id.*
[54] N.H. Laws of 2015, Chapter 49, Section 1.
[55] *Id.*

NOTES

The second change to the Right to Know Law clarifies when a municipal body, such as a school board, may go into nonpublic session to discuss litigation in which the municipality is involved. Chapter Law 105 (2015) amends RSA 91-A:3, II(e) to provide as follows:

> (e) Consideration or negotiation of pending claims or litigation which has been threatened in writing or filed **by or** against the public body or any subdivision thereof, or **by or** against any member thereof because of his or her membership in such public body, until the claim or litigation has been fully adjudicated or otherwise settled. Any application filed for tax abatement, pursuant to law, with any body or board shall not constitute a threatened or filed litigation against any public body for the purposes of this subparagraph. (New language in bold.)

Prior to this amendment, it was clear that the Right to Know Law allowed a school board to enter into nonpublic session to discuss litigation brought *against* a school district. This amendment extends the right to hold nonpublic sessions to situations where *the school district chooses to bring litigation against another party*. In other words, the school board is now permitted to enter into nonpublic session to discuss litigation when it is the plaintiff or the defendant in litigation. This minor change in the law clarifies the practice that many school boards currently have of entering into nonpublic session when discussing any litigation in which the school district is involved.

The final change allows the school board to consider certain contracts in nonpublic session under the Right to Know Law, in certain circumstances.[56] RSA 194 and RSA 195-A authorize school boards to enter into various contracts for providing services to pupils, such as joint maintenance agreements,[57] long term contracts,[58] and authorized

[56] N.H. Laws of 2015, Chapter 270, Section 2.
[57] RSA 194:21.
[58] RSA 194:21-a

NOTES

regional enrollment area (AREA) agreements.[59] Chapter Law 270 (2015) amends the Right to Know Law, RSA 91-A:3, II, by permitting the following to be considered in nonpublic session:

> (k) Consideration by a school board of entering into a student or pupil tuition contract authorized by RSA 194 or RSA 195-A, which, if discussed in public, would likely benefit a party or parties whose interests are adverse to those of the general public or the school district that is considering a contract, including any meeting between the school boards, or committees thereof, involved in the negotiations. A contract negotiated by a school board shall be made public prior to its consideration for approval by a school district, together with minutes of all meetings held in nonpublic session, any proposals or records related to the contract, and any proposal or records involving a school district that did not become a party to the contract, shall be made public. Approval of a contract by a school district shall occur only at a meeting open to the public at which, or after which, the public has had an opportunity to participate.

This new law takes effect on September 1, 2015.

XVII. Privacy Protections for Student Online Personal Information

Local school districts are increasingly using online service providers, such as Google for Education, for everything from email to information storage to educational applications ("apps").

The New Hampshire legislature enacted a new statute on online privacy protections, Chapter Law 128 (2015). This was modeled after California House Bill 1177, which was signed into law last year.

Chapter Law 128 limits the activities of an "operator," which is defined as "the operator of an Internet website, online service, online

[59] RSA chapter 195-A.

NOTES

application or mobile application with actual knowledge that the site, service, or application is used primarily for K-12 school purposes and designed and marketed for K-12 school purposes."

In essence, the operator is prohibited from using, selling, or disclosing a student's information. The operator is also prohibited from generating targeted advertisements based on student information. Operators are still permitted to use "de-identified student data" in certain circumstances, such as to improve educational products.

To ensure the continued protection of student data, the operator must "implement and maintain reasonable security procedures and practices appropriate to the nature of the covered information, and to protect that information from unauthorized access, destruction, use, modification, or disclosure." The operator must "delete a student's covered information if the school or district requests deletion" of such data.

School districts that have current contracts with service providers or who are negotiating with new service providers will want to ensure that those contracts comply with the new requirements set forth in Chapter Law 128. Schools may want to seek legal counsel to interpret such contracts.

XVIII. Changes to the Juvenile Court System

In 2014, the state legislature sought to modernize the juvenile justice system to ensure rehabilitation of juveniles and the preservation of juvenile rights.[60] Among other things, the legislature increased the age of minority for juvenile delinquency proceedings from 17 to 18 years of age, provided a right for court appointed counsel for indigent minors, limited the circumstances in which a minor can waive the right to counsel, and provided additional safeguards to ensure that continued commitment of a minor to the Youth Development Center (YDC) is

[60] N.H. Laws of 2014, Chapter 215.

NOTES

done only when necessary to protect the safety of the child or the community.

This year, the legislature sought to expand and clarify the changes made to the juvenile justice system last year. Chapter Law 260 (2015) adds additional safeguards to ensure that minors and their families understand the implications of waiving counsel in juvenile proceedings. For example, these safeguards empower courts to appoint counsel for the purpose of consulting with a minor about the decision to request or waive counsel. The new safeguards also require courts to make case-specific written findings regarding each of the required conditions for waiver.[61]

As noted above, last year the legislature increased the age of minority for juvenile delinquency proceedings from 17 to 18 years of age. However, this law did not go into effect until July 1, 2015. As a result, a number of 17 year olds likely received different sanctions than they would receive if the same offense was committed today. Therefore, Chapter Law 260 creates an avenue for annulment of criminal convictions for conduct that occurred between May 14, 2014 and July 1, 2015 while the individual was 17 years old.[62]

The other notable change to the juvenile justice system is that the Department of Health and Human Services is now required to develop discharge plans for minors who are committed to the Youth Development Center. These plans must be prepared "as early in the commitment as possible."[63] Although there are no details as to what these discharge plans must look like, it is likely that in many cases schools will be involved in helping to plan for a student's discharge from YDC and eventual return to the public school system.

[61] N.H. Laws 2015, Chapter 260, Section 1.
[62] N.H. Laws 2015, Chapter 260, Section 3.
[63] N.H. Laws 2015, Chapter 260, Section 2.

NOTES

XIX. Teacher Privacy Rights

In 2014 the legislature enacted a number of new statutes regarding protecting student information.[64] This year, the legislature expanded that trend to include teacher information.[65]

Chapter Law 71 (2015) defines "teacher personally-identifiable data" and sets forth when such information may be disclosed.

> VII-a. "Teacher personally-identifiable data" or "teacher data," which shall apply to teachers, paraprofessionals, principals, school employees, contractors, and other administrators, means:
>
> (a) Social security number.
>
> (b) Date of birth.
>
> (c) Personal street address.
>
> (d) Personal email address.
>
> (e) Personal telephone number.
>
> (f) Performance evaluations.
>
> (g) Other information that, alone or in combination, is linked or linkable to a specific teacher, paraprofessional, principal, or administrator that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify any with reasonable certainty.
>
> (h) Information requested by a person who the department reasonably believes or knows the identity of the teacher, paraprofessional, principal, or administrator to whom the education record relates.

Under the new law, neither a school nor the NH DOE may disclose "teacher personally-identifiable data" to "any testing entity performing test-data analysis."[66] Additionally, the NH DOE may not disclose the "teacher personally-identifiable data" contained in its "department data systems" to "any individual, person, organization,

[64] *See* RSA 189:65-:68.
[65] N.H. Laws of 2015, Chapter 71, Sections 2 and 3.
[66] N.H. Laws of 2015, Chapter 71, Section 2.

NOTES

entity, government or component thereof but may disclose such data to the school district in which . . . the teacher is employed."[67] Therefore, schools will still be able to obtain relevant teacher information from the NH DOE if necessary.

XX. School Districts Provided with More Options Regarding Payment of Hourly Employees

In New Hampshire, RSA 273:43, I, dictates that employers are required to pay their employees *all* wages due within eight (8) days of the work week in which the work was performed.[68] New Hampshire law also authorizes the State Commissioner of Labor, "upon written petition showing good and sufficient reason, [to] permit payment of wages less frequently than weekly, except that it shall be at least once each calendar month."[69]

Occasionally, school districts and collective bargaining units have sought to apply an "equal pay" option for hourly employees. Under this type of arrangement, the district defers part of an hourly employee's wages beyond the time permitted by statute. Therefore, an hourly employee would not be paid all wages within the timeframe required under RSA 273:43, but rather would have wages spread out over a longer period of time. Although this type of agreement has been entered into in the past, it was inconsistent with New Hampshire's wage and hour statute.

Therefore, in an effort to allow school districts and collective bargaining units to agree to "equal pay" type arraignments in collective bargaining agreements, the legislature enacted Chapter Law 168 (2015). This new law amends RSA 275:43 by adding the following paragraph:

[67] N.H. Laws of 2015, Chapter 71, Section 3.
[68] RSA 273:43, I, ("Every employer shall pay all wages due to employees within 8 days including Sunday after expiration of the week in which the work is performed, except when permitted to pay wages less frequently as authorized by the commissioner . . .").
[69] RSA 275:43, IV.

NOTES

> IV-a.(a) The commissioner may permit payment of wages less frequently than weekly where a school district collective bargaining agreement for hourly employees provides an option to be paid in any number of equal installments with one additional installment.
>
> (b) Such additional installment shall require a full reconciliation of pay at least once each calendar year. Each employee shall be informed in writing, prior to choosing the equal payment option, that the reconciliation could result in a paycheck of less than the equal pay amount to a possible zero balance due the employee. In all instances, payment shall be made regularly on a predesignated date. The commissioner may prescribe the terms and conditions of such permission, and limit the duration thereof.
>
> (c) Any employee may exclude himself or herself from participation in the provisions of this paragraph. If the employee chooses this option, the employee shall notify the school district in writing prior to the first pay check.

Importantly, Chapter Law 168 does not require any school district, collective bargaining unit, or individual employee to deviate from the payment schedule set forth in RSA 273:43, I. Rather, this provides school districts and collective bargaining units with another option by which to pay hourly employees.

Even if the parties to a collective bargaining agreement agree to an equal pay type arrangement described in Chapter Law 168, individual employees may still opt out of the payment arrangement, provided the employee notifies the school district in writing prior to the first pay check.[70]

Schools looking to enter into this type of arrangement may want to seek legal advice to ensure they are complying with New Hampshire

[70] N.H. Laws of 2015, Chapter 168, Section 1.

NOTES

wage statutes.

XXI. Privacy Protections at the New Hampshire Department of Education

In 2014, a number of laws were enacted regarding student privacy rights and, in particular, what information could be collected, maintained, and disclosed by the NH DOE. [71]

Chapter Law 136 (2015) goes further. It directs the NH DOE to "develop a detailed security plan" that includes: privacy compliance standards; privacy and security audits; breach planning, notification and procedures; and data retention and disposition policies.[72] In particular, the law contains very extensive reporting requirements in the event that there is a data breach at the Department, including reports to the legislature and making such reports available to the public.

XXII. Minor Changes to Local Elections

A. Fewer Voting Booths Required for School District Elections

As of July 6, 2015, fewer voting booths are required for city, town, school district, and village district elections. Under RSA 658:9, V, school districts were required to provide one voting booth for every 150 voters on the voter checklist.

Chapter Law 196 (2015) amends that statute by allowing one voting booth for every 200 voters on the checklist in city, town, school district, and village district elections.[73] For all other state elections, the polling place must continue to have one voting booth for every 150 voters.[74] In general elections and presidential elections, the law remains the same: a minimum of one voting booth for every 125 voters on the

[71] Chapter Law 68 (2014)
[72] N.H. Laws of 2015, Chapter 136, Section 1.
[73] N.H. Laws of 2015, Chapter 196, Section 1.
[74] *Id.*

NOTES

checklist, with most communities required to have a minimum of one voting booth for every 100 voters in presidential elections.[75]

According to the House Committee for Election Law, Chapter Law 196 recognizes that voter turnout is historically much lower in local elections than in state or federal election.[76] After hearing testimony at the public hearing on this matter, the committee concluded that reducing the requirement to one booth per 200 voters would not increase wait time for voters and it would expedite set-up and break down of polling places.

B. Clarification on Assistant Election Official Age Qualifications

The New Hampshire legislature amended RSA 658:7-a to clarify the age qualifications for an individual to perform the duties of an assistant election official. The law, as amended, states: "An assistant election official appointed as provided in RSA 658:7 shall be **at least** 17 years of age as of the date on which such official initiates performance of the duties of office." (New language in bold.) [77] Senator Nancy Stiles for the New Hampshire Senate Public Affairs Committee noted: "This bill simply clarifies the age qualifications of assistant election officials to be at least 17 years of age and not only 17 year-olds. The committee believes this change will reflect the original intention of the law."[78] Most local elections are likely already complying with this law, but election officials may want to review their procedures to ensure compliance.

XXIII. Commission to Study Special Education for Students Attending Charter Schools

Special education for students attending charter schools remains

[75] RSA 658:9, V.
[76] N.H. House Calendar, No. 13, page 238 (Feb. 13, 2015).
[77] N.H. Laws of 2015, Chapter 5, Section 1.
[78] N.H. Senate Calendar, No. 16, page 4 (April 2, 2015).

NOTES

a hot topic. State law compels the school district in which a student resides to "ensure the provision of the special education and related services in the child's IEP," and to fund those services, even though the district has no control over the charter school. [79] State law also directs the school district's IEP team to meet with representatives from the charter school to "determine how to ensure the provision of a free and appropriate public education in accordance with the IEP." [80]

In 2014, the New Hampshire legislature created an interim study committee to look at the issue of special education at charter schools. Being a "committee," its membership was limited to legislators.

After several days of public hearings, the committee recommended the creation of a legislative "commission" to study the issue more closely. Unlike a committee, a "commission" includes nonlegislators.

The legislature recently approved that recommendation by enacting Chapter Law 120 (2015), which amends RSA 186-C:30 effective June 8, 2015,

Chapter Law 120 "establishes a commission to study issues related to students receiving special education services while attending a chartered public school." This broad mandate includes, but is not limited to:

- The provision of special education services, such as the "nature and amount" of services, how they should be provided, and where they should be provided.
- Communication between school districts and charter schools, such as involvement of the charter school in IEP team meetings.
- Funding for children in need of special education attending charter schools "and whether such funding is

[79] RSA 194-B:11, III(a), (c).
[80] RSA 194-B:11, III(b).

NOTES

sufficient to ensure a free and appropriate public education."

- "The nature of the legal relationship" school districts and charter schools. [81]

The statute directs the commission to report its findings and recommendations for proposed legislation by November 1, 2016. According to the statute, the commission's first meeting should have occurred by July 8, 2015. In fact, that meeting has not yet occurred. Nor have all seats on the commission been filled.

What the commission recommends will probably reflect which interest groups are represented. The commission will have 21 members, specifically:

- four legislators;
- the State Commissioner of Education (or her designee);
- three people involved with the management or operation of a charter school, appointed by the Governor;
- three parents of children attending charter schools, appointed by the Governor;
- one parent of a child with a disability, appointed by the Governor;
- one parent of a school age child, appointed by the Governor;
- one member from the New Hampshire Council of Developmental Disabilities, appointed by that council;
- one member from the Disabilities Rights Center – NH, appointed by that organization;
- one member from the New Hampshire Public Charter School Association, appointed by that organization;
- one member from the Parent Information Center, appointed by that organization;
- one member from the New Hampshire School Administrators Association, appointed by that organization;
- one member from the New Hampshire Association of Special Education Administrators, appointed by that

[81] RSA 186-C:30, II.

NOTES

association;

- one member from the New Hampshire Council of School Attorneys, appointed by that organization; and
- one member from the New Hampshire School Boards Association, appointed by that organization. [82]

Thus, of the 21 members, 4 will be from organizations that represent school districts.

[82] RSA 186-C:30, I.