# NEW HAMPSHIRE EDUCATION LAWS UNANNOTATED

## 2023–2024 EDITION

Reprinted from New Hampshire Revised Statutes Annotated
and 2023 Cumulative Supplements

THOMSON REUTERS®

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Christopher T. Sununu

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The New Hampshire Department of Education is committed to fostering an inclusive community free from discrimination and harassment. In keeping with that mission, the Department encourages all employees and program participants to report all potential instances of discrimination, harassment, or retaliation.

### Federal Civil Rights Laws

- Title IX of the Education Amendments of 1972 — prohibits sex discrimination
- Title VI of the Civil Rights Act of 1964 — prohibits discrimination on the basis of race, color, or national origin
- Title VII of the Civil Rights Act of 1964 — prohibits employment discrimination on the basis of race, color, religion, sex, or national origin
- Section 504 of the Rehabilitation Act of 1973 — prohibits disability discrimination
- Americans with Disabilities Act of 1990 — prohibits disability discrimination
- Age Discrimination Act of 1975 — prohibits age discrimination

### New Hampshire Civil Rights Laws

- NH Law Against Discrimination — prohibits discrimination in employment, housing, and places of public accommodation
- NH Civil Rights Act — prohibits discrimination on the basis of race, color, religion, national origin, ancestry, sexual orientation, sex, gender identity, or disability

The following have been designated to handle inquiries regarding the non-discrimination policies and laws above:

**Office of Civil Rights for New Hampshire**
Boston Office Office for Civil Rights
US Department of Education
8th Floor 5 Post Office Square
Boston, MA 02109-3921
Telephone: 617-289-0111
FAX: 617-289-0150
TDD: 800-877-8339
Email: OCR.Boston@ed.gov

**Office of Civil Rights National Headquarters**
U.S. Department of Education
Office for Civil Rights
Customer Service Team
400 Maryland Avenue, SW
Washington, DC 20202-1100
Telephone: 800-421-3481
FAX: 202-245-6840
TDD: 877-521-2172
Email: OCR@ed.gov

**Title IX Coordinator**

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**Section 504 Coordinator**

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Section 504 Coordinator

Telephone: 603-271-3737

Email: danielle.pelletier@doe.nh.gov

Additionally, inquiries may also be directed to the:

New Hampshire Commission for Human Rights

2 Industrial Park Drive, Bldg. One

Concord, NH 03301

Telephone: 603-271-6339

Email: humanrights@nh.gov

Equal Employment Opportunity Commission (EEOC)

John F. Kennedy Federal Building

15 Sudbury Street, Room 475

Boston, MA 02222

Telephone: 800-669-4000

FAX: 617-565-3196

TTY: 800-669-6820

ASL Video Phone: 844-234-5122

# Preface

The 2023–2024 edition of New Hampshire Education Laws Unannotated is comprised of selected statutes relating to education. Included in this edition is the full text of Title XV, ''Education'', taken from the *New Hampshire Revised Statutes Annotated*.

The statutes included in this volume incorporate new legislation and amendments as enacted by the General Court through Chapter 243 of the 2023 Regular Session. Also included is a table containing the sections affected by 2023 Legislation.

November 2023

THE PUBLISHER

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# SECTIONS AFFECTED BY 2023 LEGISLATION

**NOTE:** In addition to the sections listed below, users of this edition should be aware that additional section and case note annotations have also been appropriately incorporated throughout this publication. The sections with new and/or revised annotations *do not* appear in this listing.

| RSA | Effect | Chap. | Sec. |
|---|---|---|---|
| 21–N:4, XII | Added | 197 | 1 |
| 21–N:8–c | Added | 79 | 62 |
| 21–N:8–d | Added | 79 | 65 |
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| 21–N:13 | Added | 79 | 79 |
| 91–A:2, IV | Added | 188 | 1 |
| 91–A:3, IV | Added | 189 | 1 |
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| 126–U:5–a | Amended | 75 | 1 |
| 126–U:5–b, III | Added | 75 | 3 |
| 126–U:7, II(intro. par.) | Amended | 75 | 4 |
| 169–B:10, I–a(intro. par.) | Amended | 56 | 1 |
| 169–B:10, I–a(k) | Amended | 56 | 2 |
| Prec. 169–B:48 subd. heading | Added | 1 | 5 |
| 169–B:48 | Added | 1 | 5 |
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| 170–E:2, XI–a | Amended | 167 | 1 |
| 170–E:2 note | – | 218 | 1 |
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| 170–E:3, (i) | Added | 21 | 5 |
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| 170–E:55, I | Amended | 209 | 6 |
| 170–E:69 | Added | 209 | 7 |

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| | Repealed | 199 | 2 |
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| 186–C:3–a, VII(b)(1) | Amended | 7 | 1 |
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| Prec. 188–F:70 subd. heading | Added | 79 | 589 |
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| 189:66, V(f) | Added | 225 | 2 |

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| 195–C:1, IV(a) | Amended | 35 | 3 |
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|---|---|---|---|
| 200–C:6–a | Repealed | 137 | 1 |
| Prec. 200–O:1 chap. heading | Added | 79 | 80 |
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# TITLE I

# THE STATE AND ITS GOVERNMENT

## CHAPTER 21–N

## DEPARTMENT OF EDUCATION



### 21–N:1 Findings; Policy Statement.

I. The general court finds that the students, parents, general citizenry, local school teachers and administrators, local governments, local school boards, school administrative units, and state government have a joint and shared responsibility for the quality of education delivered through the public education system in the state of New Hampshire.

II. In order to provide general guidance to the state department of education established by this chapter, the general court declares the following to be the policy of the state of New Hampshire:

(a) The department shall have the dual role of providing regulatory direction and instructional assistance to public elementary and secondary schools.

(b) The department shall be mindful of the need to balance these dual roles so that they are given equal consideration in planning department activities and expenditures and so that the consequences and implications of regulatory decisions are fully considered in light of the need to provide services to assist the local schools in complying with such regulatory direction.

(c) The paramount goal of the state shall be to provide an adequate education for all school-age children in the state, consistent with RSA 193–E.

(d) The department shall continually strive to develop creative and innovative methods to assist local schools to achieve the highest possible degree of effective educational programming and teaching techniques.

(e) In accordance with RSA 193–E, the department shall work to establish credible processes for measuring and rating schools.

**Source.** 1986, 41:1. 1996, 271:1. 1998, 389:5, 6. 2005, 257:15. 2007, 270:3, eff. June 29, 2007.

### 21–N:2 Establishment; General Functions.

I. There is hereby established the department of education, an agency of the state under the executive direction of a commissioner of education.

II. The department of education, through its officials, shall be responsible for the following general functions:

(a) Providing general supervision for elementary and secondary schools, teachers and administrators.

(b) Providing a variety of educational services to schools and particular groups.

(c) Providing vocational rehabilitation and social security disability determination services for persons with disabilities.

**Source.** 1986, 41:1. 1990, 140:2, IV. 1994, 379:1, eff. June 9, 1994.

### 21–N:3 Commissioner; Deputy Commissioner; Directors; Compensation.

I. The governor, after consultation with the board of education, shall appoint the commissioner and the deputy commissioner of the department of education with the consent of council. Each shall serve for a term of 4 years. The commissioner and the deputy commissioner may succeed himself or herself, if reappointed. The commissioner and deputy commissioner shall be qualified to hold their positions by reason of education and experience.

II. The commissioner, after consultation with the board of education, shall nominate each division director for appointment by the governor and council. The division directors shall serve for a term of 4 years. They may succeed themselves, if reappointed.

The directors shall be qualified to hold their respective positions by reason of education and experience.

III. The deputy commissioner and the directors shall serve staggered terms.

IV. The salaries of the commissioner, the deputy commissioner and each division director shall be as specified in RSA 94:1–a.

**Source.** 1986, 41:1. 1994, 379:1. 2004, 257:41, eff. July 1, 2004.

### 21–N:4 Duties of Commissioner.

In addition to the powers, duties, and functions otherwise vested by law in the commissioner of the department of education, the duties of the office of the commissioner shall include but not be limited to:

I. Establishing the organizational goals of the department and representing the public interest in the administration of the functions of the department of education and being responsible to the governor, the general court, and the public for such administration.

II. Having the authority, subject to the approval of the governor and council, to accept gifts, contributions, and bequests of unrestricted funds from individuals, foundations, corporations, and other organizations or institutions for the purpose of furthering the policy objectives of the department of education as set forth in RSA 21–N:1 and except as prohibited by any other provision of law.

III. Providing for a fair hearings unit within the commissioner's office which shall, when not inconsistent with federal law, conduct all hearings required under the provisions of RSA 186–C or any state or federal law or regulation. Such hearings shall be conducted as adjudicative proceedings as provided in RSA 541–A. The hearing officer, when appropriate and when not inconsistent with state or federal law, shall present proposed findings and recommendations to the commissioner who shall, upon review of the record, issue a final decision in the matter.

IV. Representing the department on boards, commissions, committees, and professional associations, or appointing a designee.

V. Establishing procedures to provide school administrative units with professional staff services, including direct services to school administrative units in improving the effectiveness and efficiency of administrative and instructional services. Such services shall include, but not be limited to, assistance in addressing problems, resolving disputes, and planning for internal reorganization; development of clearer role definitions for superintendents, assistant and associate superintendents, and school boards; and provision of resources and programs for board training and community education regarding school administrative unit functions and board and staff roles and responsibilities.

VI. Planning and applying for federal and other grants on a department-wide basis.

VII. Providing to the secretary of state in August of each year a list or lists of all colleges, universities, and career schools approved or licensed to operate in New Hampshire, all public high schools, and all nonpublic high schools in New Hampshire accredited by a private school accrediting agency recognized by the department of education.

VIII. With the advice of the state board of education, and in consultation with the deputy commissioner, the directors of the affected divisions, and the legislative oversight committee pursuant to RSA 193–C:8, transferring or assigning functions, programs, or services within or between any division. When transfers or assignments are enacted within the department that may require legislative action, the commissioner shall work with the legislative oversight committee to propose legislation supporting such transfers or assignments.

IX. Overseeing and providing, in conjunction with the deputy commissioner, the functions enumerated in RSA 21–N:5, I; RSA 21–N:6; RSA 21–N:7; and RSA 21–N:8.

X. Providing a clearing house for school bus driver and transportation monitor background checks to towns, cities, or other organizations paying for school bus transportation.

XI. (a) Reviewing, at least every 2 years, and updating as necessary, the consolidated state plan to ensure that sufficient funds are used to encourage and establish unified co-curricular activities in schools that currently have no unified program. For each biennium, the department may expend up to $50,000 for distribution to school districts for the primary purpose of funding first-year operational expenses of equipment and/or uniforms only for unified co-curricular activities. The amount of any grant shall be no more than $4,000 per program. Any funds remaining shall be distributed to school districts with existing unified co-curricular programs to fund grants to replace existing equipment and/or uniforms for existing unified co-curricular programs.

(b) The department shall include in its efficiency expenditure request under RSA 9:4 sufficient funds

for the continued operation of its duties under this paragraph.

(c) Beginning in fiscal year 2027 and every 5 years thereafter, the department shall conduct an efficiency review of the programs and expenditures under this paragraph and shall make recommendations to the legislature as needed.

(d) The commissioner may adopt rules under RSA 541–A for the administration and oversight of unified co-curricular activities in schools.

XII. At the beginning of each session of the biennium, at the request of the committee chair, providing a physical copy of, a copy on a portable data storage device of, or a searchable Internet database to the New Hampshire education laws annotated and education department rules to the house and senate standing education committees that oversee education policy, and to make such copy available to all superintendents of New Hampshire schools in any format as practicable.

**Source.** 1986, 41:1. 1989, 49:1, 2. 1994, 379:1. 1998, 389:7, eff. Oct. 1, 1998. 2013, 278:1, eff. July 24, 2013. 2016, 272:2, eff. July 1, 2017. 2017, 190:3, eff. June 30, 2017. 2018, 315:1, eff. Aug. 24, 2018. 2020, 38:34, eff. Jan. 1, 2021. 2022, 334:1, eff. Sept. 1, 2022. 2023, 197:1, eff. Oct. 3, 2023.

### 21–N:5 Duties of Deputy Commissioner.

The duties of the deputy commissioner shall include, but not be limited to the following, in accordance with applicable laws:

I. Provide for the following functions:

(a) Implementing the organizational goals, managing the work of the department, and directing the division directors in carrying out state and federal obligations.

(b) Assuring that the division directors comply with the procedures established by the commissioner relative to support for local schools under RSA 21–N:4, V.

(c) Personnel management.

(d) Developing and maintaining a system of accounting records and budget control procedures which meet all state and applicable federal accounting, purchasing, and reporting requirements.

(e) Property and contracts.

(f) Requiring and approving the development of short- and long-range division level plans and their implementation.

(g) Administering finance and operations.

(h) Fiscal management of all federal and other grants.

(i) Assuring compliance with all federal and state equal opportunity and access requirements, including, but not limited to, those federal requirements concerning awareness and elimination of discrimination on the basis of sex, race, language, national origin, or disability, and state requirements in accordance with RSA 354–A.

(j) Administering department responsibilities for information services.

II. Exercise, subject to the supervision of the commissioner, superior authority over the directors of the divisions of the department relative to areas of responsibility specified in this section.

**Source.** 1986, 41:1. 1987, 345:2. 1988, 214:2. 1989, 49:3. 1994, 379:1, eff. June 9, 1994. 2018, 315:1, eff. Aug. 24, 2018.

### 21–N:6 Division of Learner Support.

There is hereby established within the department the division of learner support, under the supervision of an unclassified director of learner support whose responsibilities shall include, but not be limited to, the following functions, in accordance with applicable laws:

I. Providing technical and consulting services in both academic and support areas to public elementary and secondary schools.

II. Administering the provisions of RSA 186–C relative to special education, including rate setting under RSA 186–C:7–c, III. Such rate setting shall be accomplished in consultation with the department of health and human services and the department of administrative services.

III. Administering federal and state programs designed to assist the education of students and teachers.

IV. Administering department responsibilities for nutrition programs and services.

V. Administering standards for approving elementary and secondary schools in accordance with rules adopted by the board under RSA 21–N:9, I.

VI. [Repealed.]

VII. Administering career technology and adult learning programs.

VIII. Administering the provisions of RSA 186:61 and RSA 186:62, relative to adult basic education, except functions assigned exclusively to the deputy commissioner, as provided by RSA 21–N:5.

IX. Reviewing, on an ongoing basis, the development and administration of academic standards.

X. Administering the provisions of RSA 193–C relative to the statewide educational improvement and assessment program.

**Source.** 1986, 41:1. 1987, 345:3. 1989, 49:4; 127:1. 1990, 140:2, X. 1994, 379:1. 2011, 224:7, eff. July 1, 2011. 2018, 315:1, eff. Aug. 24, 2018.

### 21–N:6–a School Nurse Coordinator.

There is established within the division of learner support the position of school nurse coordinator who shall be a classified employee. The school nurse coordinator shall be a licensed RN eligible for New Hampshire school nurse certification under RSA 200:29 and shall be qualified to hold such position by reason of education and experience. The position shall be subject to any other employment requirements as determined by the department. The school nurse coordinator shall coordinate and provide technical assistance to guide school nurses and other school personnel responsible for student health care in the areas of student health and wellness, safety, behavioral and mental health, and alcohol and substance use disorder. The school nurse coordinator shall also be a resource for administrators, educators, families, and policymakers across the state.

**Source.** 2019, 346:323, eff. July 1, 2019.

### 21–N:7 Division of Education Analytics and Resources.

There is hereby established within the department the division of education analytics and resources, under the supervision of an unclassified director of education analytics and resources whose responsibilities shall include, but not be limited to, the following functions, in accordance with applicable laws:

I. Providing school facility and safety services and administering the school building aid program under RSA 198 and any state funded grant program to school districts relative to school buildings, infrastructure, and safety.

II. Collecting, compiling, analyzing, and reporting on education data.

III. Promoting the application of educational research.

IV. Administering the provisions of RSA 193–E related to adequate public education.

V. Administering a chartered public school program office which 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 chartered public schools 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.

(k) Include in the department's 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 position, which shall be a classified position.

VI. Overseeing audit and financial monitoring functions which shall:

(a) Provide analytical reports of examinations conducted of the department's various divisions, bureaus, sections, programs, and functions. Examinations shall be conducted and reports prepared in accordance with standards of governmental auditing and program evaluation specified by authoritative national standard setting bodies. Reports shall contain analyses, appraisals, comments, and recommendations relating to the accuracy and competence of accounting, financial, and management procedures in use.

(b) Insure compliance with federal grant requirements and review grantee and subgrantee compliance with all department grant requirements.

(c) Not assume any managerial, supervisory, or operational function, or direct action initiated as a result of the unit's recommendations.

VII. Oversee the administration of the education trust fund under RSA 198:38 through RSA 198:42.

**Source.** 1986, 41:1. 1987, 168:4. 1988, 179:3. 1989, 49:6. 1990, 140:2, XI. 1994, 379:1, eff. June 9, 1994. 2018, 315:1, eff. Aug. 24, 2018.

### 21–N:7–a Education Freedom Accounts; Administrator.

There is established a position within the division of education analytics and resources who shall be a classified employee at no less than the level of administrator II. The education freedom account position shall be qualified to hold such position by reason of education and experience. The position shall be subject to any other employment requirements as determined by the department. The education freedom account position shall coordinate and provide technical assistance to guide students, parents, and the scholarship organizations responsible for dispensing the education freedom accounts (EFAs) under RSA 194–F. The education freedom account position shall:

I. Coordinate and provide technical assistance to students, parents, and the scholarship organizations that are responsible for administering the education freedom accounts (EFAs) under RSA 194–F.

II. Contract with scholarship organizations, subject to the approval of the governor and executive council.

III. Implement policies and procedures at the department related to the education freedom account program.

IV. Serve as a resource for administrators, educators, families, scholarship organizations, and policymakers across the state.

**Source.** 2022, 309:1, eff. July 1, 2022.

### 21–N:8 Division of Workforce Innovation.

There is hereby established within the department the division of workforce innovation, under the supervision of an unclassified director of workforce innovation whose responsibilities shall include, but not be limited to, the following functions, in accordance with applicable laws:

I. Overseeing the administration of the provisions of RSA 200–C.

II. Overseeing the administration of federal social security disability determinations as authorized by the Social Security Administration.

III. Overseeing the administration of the provisions of RSA 186–B relative to services to the blind.

IV. Establishing regional vocational rehabilitation offices necessary for the administration of this section.

V. Providing technical and consulting services to assist secondary vocational education efforts.

**Source.** 1986, 41:1. 1992, 60:1. 1994, 379:1, eff. June 9, 1994. 2018, 315:1, eff. Aug. 24, 2018.

### 21–N:8–a Division of Educator Support and Higher Education.

I. There is hereby established within the department the division of educator support and higher education, under the supervision of an unclassified director of higher education whose responsibilities shall include, but not be limited to, providing the following functions in accordance with applicable law:

(a) Support to the higher education commission established in paragraph II.

(b) Development and administration of standards governing the professional development of educators from pre-service preparation through ongoing professional development.

(c) Administration of standards for certifying and recertifying educational personnel, including monitoring local staff development efforts.

(d) Provide materials and information concerning certificate holders to boards providing licenses relative to Medicaid to schools.

I–a. There is hereby established within the division of educator support and higher education the position of background check coordinator who shall be a classified employee. The background check coordinator shall be qualified to hold such position by reason of education and experience. The position shall be subject to any other employment requirements as determined by the department.

II. (a) There is hereby established a higher education commission which shall consist of the following members:

(1) The president of the university of New Hampshire, the president of Keene state college and the president of Plymouth state university.

(2) Two presidents from institutions within the community college system of New Hampshire, to be chosen by the board of trustees of the community college system.

(3) The chancellor of the university system of New Hampshire.

(4) The chancellor of the community college system of New Hampshire.

(5) The commissioner of the department of education.

(6) Six representatives of the private 4-year colleges in New Hampshire appointed by the governor and council on recommendation by the New Hampshire College and University Council, with no more than one representative from any one college.

(7) One member to be appointed by the governor and council as a representative from a for-profit college or university not a member of the New Hampshire College and University Council.

(8) Four members to be appointed by the governor and council who shall be residents of the state and of the lay public, having no official connection with any college, university, or private postsecondary career school as an employee, trustee, or member on a board of directors.

(9) Two members to be appointed by the governor and council, who shall be residents of the state and shall represent private postsecondary career schools.

(b) The terms of appointed members, except as otherwise indicated above, shall be for 5 years and until a successor is appointed and qualified. Vacancies shall be filled for the unexpired term.

(c) Commission appointments shall be made in such a way as to preserve broad and equitable representation on the basis of gender, ethnicity, and socioeconomic groups in the state.

(d) The members of the commission shall serve without compensation, but may be reimbursed for actual travel and other expenses incurred in the performance of their duties on the commission from funds appropriated to the department of education specifically for this purpose.

(e) The commission shall:

(1) Regulate institutions of higher education pursuant to RSA 292:8–b through RSA 292:8–kk. The commission may accept accreditation by a recognized accrediting association in place of its own independent evaluation.

(2) Regulate private postsecondary career schools pursuant to RSA 188–G.

(3) Administer financial aid programs as provided in state and federal law for students attending higher education institutions, except as otherwise provided by law.

(4) Apply for, accept, and expend state, federal, or other grants.

(5) Oversee the functions of the Veterans Education Services as authorized by Congress.

(6) Establish and collect reasonable annual fees related to the performance of statutory duties.

(7) Enter into cooperative interstate or international agreements to further operating efficiencies, student access, and educational opportunities.

(8) Be the designee for the integrated postsecondary education data system as developed by the United States Department of Education.

(9) Adopt rules, pursuant to RSA 541–A relative to:

(A) Organization and operation of the higher education commission established in this section.

(B) Approval and regulation of institutions of higher education pursuant to RSA 292:8–b through RSA 292:8–kk.

(C) Approval and regulation of private postsecondary career schools pursuant to RSA 188–G.

(D) Administration of financial aid programs for institutions of higher education, except as otherwise provided by law.

(E) Establishment and collection of reasonable fees for functions performed by the division of higher education and the higher education commission as required in this section.

(10) Assume other responsibilities as may be provided in state or federal law.

III. There is hereby established in the office of the treasury the higher education fund to be administered by the higher education commission. The fund shall be nonlapsing and continually appropriated to the higher education commission for the purposes established in this chapter. All fees collected by the commission relative to the performance of its duties shall be deposited into the fund.

**Source.** 2011, 224:126, eff. July 1, 2011. 2013, 164:1, eff. June 28, 2013. 2014, 132:1, eff. June 16, 2014. 2016, 43:1, eff. July 2, 2016. 2018, 315:1, eff. Aug. 24, 2018. 2019, 132:4, eff. Aug. 24, 2019. 2020, 6:27, eff. Mar. 9, 2020; 38:36, eff. Jan. 1, 2021. 2022, 35:1, eff. May 3, 2022.

### 21–N:8–b Higher Education; Military Academic Credit.

I. The division of educator support and higher education shall develop and adopt a written policy requiring each public institution of higher education to develop a set of written policies and procedures governing the evaluation of a student's military occupation, military training, coursework, and experience, to determine whether academic credit shall be awarded by the institution for the evaluated occupation,

experience, training, and coursework. The division's policy may require that the occupation, training, experience, or courses meet the standards of the American Council on Education or equivalent standards for awarding academic credit. The division may also develop and adopt a written policy requiring each public institution of higher education to develop a set of written policies and procedures to standardize credit-by-exam equivalencies for exams funded through the Department of Defense. The educational credit shall be awarded based upon each institution's admissions standards and shall be consistent with the mission of the state's system of public higher education. Each public institution of higher education shall designate a single point of contact for a student who is enrolled in such an institution and who is also a veteran, as defined in RSA 21:50, I, to conduct such an evaluation and determination.

II. The division shall consult with the chief executive officers of each public institution of higher education in implementing the policy set forth in paragraph I and the policy adopted by the division shall, to the greatest extent possible, provide for consistent application by all of the state's public institutions of higher education and promote accurate and complete academic counseling.

**Source.** 2013, 53:1, eff. Aug. 3, 2013. 2018, 315:19, eff. Aug. 24, 2018.

### 21–N:8–c Commission Established; Department of Education; New Hampshire School Civics Program.

The commission on New Hampshire civics is hereby established to develop educational materials to teach the state constitution in New Hampshire schools.

I. Notwithstanding RSA 14:49 the members of the commission shall be as follows:

(a) Three public members appointed by the governor, of which at least one shall be the parent of a student in a qualified New Hampshire education program.

(b) The chair of NH Civics, or designee.

(c) The chief justice of the New Hampshire supreme court, or designee.

(d) The secretary of state, or designee.

(e) The chief administrative judge of the New Hampshire superior court, or designee.

(f) The chief administrative judge of the New Hampshire circuit court, or designee.

(g) The commissioner of the department of education, or designee.

(h) Two New Hampshire civics teachers appointed by the commissioner of education.

(i) The executive director of the New Hampshire Historical Society, or designee.

(j) Two members of the house of representatives, appointed by the speaker of the house of representatives.

(k) One member of the senate, appointed by the president of the senate.

(l) One member of the governor's office, appointed by the governor.

II. The commission shall create a textbook and related curriculum specifically designed for New Hampshire students and teachers to help them explore the history, heritage and principles of the New Hampshire Constitution and the government it established.

(a) A paper copy of the published textbook shall be available for each New Hampshire civics classroom and an interactive electronic version shall be made available on the department of education's website or in another form to all New Hampshire citizens at no charge.

(b) The commission shall meet as often as the chair determines and shall publish the book on or before August 1, 2025.

III. The members of the commission shall elect a chairperson among the members. The first meeting of the commission shall be called by the first-named governor appointee. The first meeting of the commission shall be held within 30 days of the effective date of this section. A majority of the members of the commission shall constitute a quorum.

**Source.** 2023, 79:62, eff. July 1, 2023.

### 21–N:8–d Recruitment of Educators in New Hampshire.

I. In this section:

(a) "Academic residency" means participation in an approved educator preparation program field-based experience under the supervision of a cooperating teacher or mentor.

(b) "Approved program" means an approved professional educator preparation program by the state board of education.

(c) "Educator" means a teacher or certified paraprofessional.

(d) "Eligible student" means a student who is enrolled in an approved program of preparation and eligible for financial assistance because the student's expected family contribution does not ex-

ceed 200 percent of the maximum federal Pell-eligible expected family contribution.

(e) "Candidate" means an educator candidate who is participating in an academic residency and placed in a school or community-based setting.

II. There is established an educator recruitment grant program administered by the department of education. Stipends or grants shall be awarded for the purpose of reducing the financial barriers to entering the educator workforce while eligible students gain clinical teaching experience either through a student teaching program or pre-educator preparation program. The program shall:

(a) Provide grants to New Hampshire institutions of higher education that fund programs designed to increase participation in the educator workforce.

(b) Provide grants to fund stipends for candidates during their clinical experience while engaging in education career pathway programs designed to culminate in licensure as an educator.

(c) Stipends for a student teaching program shall be $500 per week for not more than 16 weeks.

III. The higher education commission shall adopt any rules and guidelines to implement and administer the program.

IV. In order to qualify to participate in the stipend program, a student must be an eligible student and placed as student teacher in a public school or community agency as a candidate working toward an initial teaching certificate.

V. The department shall report annually to the chairs of the senate education committee and the house education committee, on:

(a) The number of students served by the program.

(b) The amounts of stipends received each year.

(c) The reported number of hours each eligible student works a second job to earn income.

VI. If the amount appropriated to the department for use in the educator recruitment grant program in a state fiscal year is insufficient to fully fund the stipends and grants for the total number of eligible students for that state fiscal year, the department shall reduce the amount distributed to each approved program of preparation by the same percentage that the deficit bears to the amount required to fully fund the total number of eligible students who qualify for the stipend program.

**Source.** 2023, 79:65, eff. July 1, 2023.

**21–N:9 Rulemaking.**

I. The board of education shall adopt rules, pursuant to RSA 541–A, relative to minimum standards for:

(a) High schools, as authorized by RSA 186:8.

(b) Junior high schools, as authorized by RSA 186:8.

(c) Elementary schools, as authorized by RSA 186:8 and 189:25.

II. The board of education shall adopt rules, pursuant to RSA 541–A, relative to:

(a) The organization of school administrative units.

(b) The duties of school boards.

(c) Standards for school building construction.

(d) School health policies.

(e) Child benefit services grants.

(f) Nonpublic school advisory councils.

(g) Home study.

(h) Dual enrollment, as authorized by RSA 193:1–b.

(i) High school equivalency programs, as authorized by RSA 186:61.

(j) Adult basic education programs, as authorized by RSA 186:61 and 186:62.

(k) Vocational rehabilitation services, as authorized by RSA 186:6 and 200–C.

(l) Special education programs affecting all children with disabilities, as authorized by RSA 186–C:5, 186–C:16 and 186–C:18, V.

(m) Standards for approval of regional career and technical education centers, as authorized by RSA 188–E:3.

(n) Vocational technical education, as authorized by RSA 186:6.

(o) Standards for approval of nonpublic schools, as authorized by RSA 186:11, XXIX.

(p) Qualifications and duties of school superintendents and principals, as authorized by RSA 186:8.

(q) Qualifications and duties of school administrative unit professional employees, as authorized by RSA 186:8.

(r) Professional preparation standards and approval of professional preparation programs for educating teachers in post-secondary institutions, as authorized by RSA 186:11, X.

(s) License standards for educational personnel, to include:

(1) The establishment and implementation of a secure system for conducting criminal background checks pursuant to RSA 189:13–a for all first-time applicants listed in this section,

(2) The establishment and implementation of a secure system for conducting a check of all applicants listed in this section in the National Association of State Directors of Teacher Education and Certification (NASDTEC) database by utilizing the applicant's social security number,

(3) The establishment and implementation of a secure system for accessing findings of abuse for individuals on the central registry pursuant to RSA 169–C:35, and other states' central registries upon approval of a memorandum of understanding by the governor and council, and

(4) The establishment of educator certification fees for granting licenses to educational personnel, including teachers, paraprofessionals, administrators, educational specialists, instructional specialists, school bus drivers and transportation monitors, and master teachers as authorized by RSA 186:8 and RSA 186:11, X, professional licenses including beginning educator licenses, experienced educator licenses, and intern authorizations, and other classifications of educators, administrators, specialists, and paraprofessionals necessary to address educational needs as determined by the state board upon the recommendation of the professional standards board pursuant to RSA 186:60.

(t) Administering the provisions of RSA 193:27 through 193:30 regarding placement of children, as authorized by RSA 193:30.

(u) Guidelines for uniform evaluation programs among local school districts.

(v) Administering the literacy education and dropout prevention program established in RSA 189:52–58.

(w) The exemption of certain students from participation in the statewide education assessment.

(x) Safe school zones, as provided in RSA 193–D:2.

(y) School bus safety, as provided in RSA 189:6–a.

(z) Local master plan for staff development and recertification.

(aa) Establishing requirements for teachers and teacher preparation programs to ensure that all teachers are prepared to teach to a broad range of students' needs, including, but not limited to, the needs of exceptional learners, using a variety of methods, materials, and instructional techniques.

(bb) Establishing the educational credential of master teacher as provided in RSA 189:14–f.

(cc)(1) The establishment and enforcement of a code of ethics and a code of conduct for licensed or certified educational personnel. These professional codes shall include a statement of purpose and standards defining each of the 4 primary principles which are:

(A) Responsibility to the education profession and educational professionals.

(B) Responsibility to students.

(C) Responsibility to the school community.

(D) Responsible and ethical use of technology as it relates to students, schools, and other educational professionals.

(2) The professional code of ethics and the professional code of conduct shall apply to all teachers, specialists, and administrators who are licensed or certified by the department.

III. [Repealed.]

**Source.** 1986, 41:1. 1987, 168:3. 1988, 274:2. 1989, 49:5. 1990, 140:2, X. 1992, 48:5. 1993, 290:1. 1994, 355:1. 1996, 19:3; 271:2. 1998, 174:1, 2; 314:1. 1999, 82:1. 2008, 274:31. 2011, 224:127, eff. July 1, 2011. 2013, 164:7, I, eff. June 28, 2013. 2015, 252:11, eff. July 1, 2015. 2017, 22:1, eff. June 24, 2017. 2019, 258:1, eff. Sept. 17, 2019. 2020, 19:3, eff. Sept. 15, 2020; 38:35, eff. Jan. 1, 2021. 2021, 209:2, Pt. II, Sec. 1, eff. Jan. 1, 2022. 2022, 21:2, eff. June 17, 2022; 222:1, eff. Aug. 16, 2022.

### 21–N:10 State Board of Education.

I. There is hereby established the state board of education consisting of 7 members who shall serve without pay and shall not be technical educators or professionally engaged in school work. The members shall be paid for actual expenses incurred in the performance of their duties out of moneys appropriated for the department of education.

II. The education committee of the house of representatives or the education committee of the senate may, by majority vote of its members, propose areas of study to the board, which shall be put on the agenda of the next meeting of the board for its consideration and response.

III. The governor and council shall appoint the members of the board. Five of the members shall be selected one each from the 5 executive councilor districts and 2 members shall be selected from the public at large. Terms of office of members shall be for 4 years from the January 31 on which the terms of their predecessors expired. Annually, on or before January 31, the governor shall name a member of the board who shall serve as chairperson for one year

and until a successor is appointed. No member of the board shall serve more than 3 consecutive full terms.

IV. The governor and council may, after notice and hearing, remove a member of the board for incompetency, failure to discharge the member's duties, malfeasance, immorality, or other cause inimical to the welfare of the public schools, and in case of such removal, or of a vacancy arising from any other cause, they shall make another appointment for the unexpired term.

V. The state shall provide an office for the board. The board shall hold at least 6 regular meetings each year, and such special meetings as may be required. The time and places for regular meetings shall be fixed by the board, and the chairperson shall call a special meeting upon the written request of any 2 members, or on the chairperson's own motion.

**Source.** 1986, 41:1. 1989, 94:1; 301:5. 1996, 271:3. 1999, 45:1, eff. July 20, 1999.

### 21–N:10–a State Board of Education Public; Comment Period.

The state board of education shall provide the opportunity for the public comment on educational matters at meetings of the state board. The public comment period shall be for no less than 30 minutes. The state board of education may request that persons register in advance of the meeting, but may not require pre-registration as a condition of participating in the public comment period. The state board of education may impose reasonable time limits for each speaker, provided such time limits are equal for all speakers. Nothing in this section shall restrict the state board of education from establishing other reasonable standards for the public comment period, provided such standards are imposed equally for all speakers. The state board of education may reasonably restrict public comments that disclose student personally-identifiable information, teacher personally-identifiable information, or other confidential or privileged information.

**Source.** 2022, 333:2, eff. Sept. 6, 2022.

### 21–N:11 Duties of Board.

The state board of education established by RSA 21–N:10 shall:

I. Regularly review all programs and activities of the department of education and make recommendations to the commissioner of education with regard to such programs and activities.

II. Advise the commissioner of education with regard to department goals, information gathering and any other aspect of elementary and secondary education within the state of New Hampshire.

III. Hear appeals and issue decisions, which shall be considered final decisions of the department of education for purposes of RSA 541, of any dispute between individuals and school systems or the department of education, except those disputes governed by the provisions of RSA 21–N:4, III.

IV. Appoint members of the professional standards board and other advisory bodies as provided by law.

V. Adopt rules as provided in 21–N:9.

**Source.** 1986, 41:1, eff. July 1, 1986.

### 21–N:12 Repealed by 2018, 110:2, eff. Nov. 1, 2018.

### 21–N:13 Computer Science and STEM; Administrator.

There is established a position within the department of education who shall be a classified employee at no less than the level of administrator II. The computer science and STEM position shall be qualified to hold such position by reason of education and experience. The position shall be subject to any other employment requirements as determined by the department. The computer science and STEM position shall coordinate and provide assistance to oversee the computer science educator program established in RSA 200–O. The computer science and STEM position shall:

I. Coordinate and provide technical assistance to all public schools in the state that participate in the computer science educator program.

II. Assist educators in the state that pursue eligible industry recognized credentials and utilize the computer science professional development fund.

III. Assist with administering the computer science professional development fund and computer science educator incentive fund.

IV. Coordinate and provide technical assistance with those school and educators that partake in the experiential robotics platform.

V. Serve as a resource for administrators and educators regarding computer science and STEM.

**Source.** 2023, 79:79, eff. July 1, 2023.

# TITLE VI

# PUBLIC OFFICERS AND EMPLOYEES

## CHAPTER 91–A

## ACCESS TO GOVERNMENTAL RECORDS AND MEETINGS



### 91–A:1 Preamble.

Openness in the conduct of public business is essential to a democratic society. The purpose of this chapter is to ensure both the greatest possible public access to the actions, discussions and records of all public bodies, and their accountability to the people.

**Source.** 1967, 251:1. 1971, 327:1. 1977, 540:1, eff. Sept. 13, 1977.

### 91–A:1–a Definitions.

In this chapter:

I. "Advisory committee" means any committee, council, commission, or other like body whose primary purpose is to consider an issue or issues designated by the appointing authority so as to provide such authority with advice or recommendations concerning the formulation of any public policy or legislation that may be promoted, modified, or opposed by such authority.

II. "Governmental proceedings" means the transaction of any functions affecting any or all citizens of the state by a public body.

III. "Governmental records" means any information created, accepted, or obtained by, or on behalf of, any public body, or a quorum or majority thereof, or any public agency in furtherance of its official function. Without limiting the foregoing, the term "governmental records" includes any written communication or other information, whether in paper, electronic, or other physical form, received by a quorum or majority of a public body in furtherance of its official function, whether at a meeting or outside a meeting of the body. The term "governmental records" shall also include the term "public records."

IV. "Information" means knowledge, opinions, facts, or data of any kind and in whatever physical form kept or maintained, including, but not limited to, written, aural, visual, electronic, or other physical form.

V. "Public agency" means any agency, authority, department, or office of the state or of any county, town, municipal corporation, school district, school administrative unit, chartered public school, or other political subdivision.

VI. "Public body" means any of the following:

(a) The general court including executive sessions of committees; and including any advisory committee established by the general court.

(b) The executive council and the governor with the executive council; including any advisory committee established by the governor by executive order or by the executive council.

(c) Any board or commission of any state agency or authority, including the board of trustees of the university system of New Hampshire and any committee, advisory or otherwise, established by such entities.

(d) Any legislative body, governing body, board, commission, committee, agency, or authority of any county, town, municipal corporation, school district, school administrative unit, chartered public school, or other political subdivision, or any committee, subcommittee, or subordinate body thereof, or advisory committee thereto.

(e) Any corporation that has as its sole member the state of New Hampshire, any county, town, municipal corporation, school district, school ad-

ministrative unit, village district, or other political subdivision, and that is determined by the Internal Revenue Service to be a tax exempt organization pursuant to section 501(c)(3) of the Internal Revenue Code.

**Source.** 1977, 540:2. 1986, 83:2. 1989, 274:1. 1995, 260:4. 2001, 223:1. 2008, 278:3, eff. July 1, 2008 at 12:01 a.m.; 303:3, eff. July 1, 2008; 303:8, eff. Sept. 5, 2008 at 12:01 a.m.; 354:1, eff. Sept. 5, 2008.

### 91–A:2 Meetings Open to Public.

I. For the purpose of this chapter, a "meeting" means the convening of a quorum of the membership of a public body, as defined in RSA 91–A:1–a, VI, or the majority of the members of such public body if the rules of that body define "quorum" as more than a majority of its members, whether in person, by means of telephone or electronic communication, or in any other manner such that all participating members are able to communicate with each other contemporaneously, subject to the provisions set forth in RSA 91–A:2, III, for the purpose of discussing or acting upon a matter or matters over which the public body has supervision, control, jurisdiction, or advisory power. A chance, social, or other encounter not convened for the purpose of discussing or acting upon such matters shall not constitute a meeting if no decisions are made regarding such matters. "Meeting" shall also not include:

(a) Strategy or negotiations with respect to collective bargaining;

(b) Consultation with legal counsel;

(c) A caucus consisting of elected members of a public body of the same political party who were elected on a partisan basis at a state general election or elected on a partisan basis by a town or city which has adopted a partisan ballot system pursuant to RSA 669:12 or RSA 44:2; or

(d) Circulation of draft documents which, when finalized, are intended only to formalize decisions previously made in a meeting; provided, that nothing in this subparagraph shall be construed to alter or affect the application of any other section of RSA 91–A to such documents or related communications.

II. Subject to the provisions of RSA 91–A:3, all meetings, whether held in person, by means of telephone or electronic communication, or in any other manner, shall be open to the public. Except for town meetings, school district meetings, and elections, no vote while in open session may be taken by secret ballot. Any person shall be permitted to use recording devices, including, but not limited to, tape recorders, cameras, and videotape equipment, at such meetings. Minutes of all such meetings, including nonpublic sessions, shall include the names of members, persons appearing before the public bodies, and a brief description of the subject matter discussed and final decisions. The names of the members who made or seconded each motion shall be recorded in the minutes. Subject to the provisions of RSA 91–A:3, minutes shall be promptly recorded and open to public inspection not more than 5 business days after the meeting, except as provided in RSA 91–A:6, and shall be treated as permanent records of any public body, or any subordinate body thereof, without exception. Except in an emergency or when there is a meeting of a legislative committee, a notice of the time and place of each such meeting, including a nonpublic session, shall be posted in 2 appropriate places one of which may be the public body's Internet website, if such exists, or shall be printed in a newspaper of general circulation in the city or town at least 24 hours, excluding Sundays and legal holidays, prior to such meetings. An emergency shall mean a situation where immediate undelayed action is deemed to be imperative by the chairman or presiding officer of the public body, who shall post a notice of the time and place of such meeting as soon as practicable, and shall employ whatever further means are reasonably available to inform the public that a meeting is to be held. The minutes of the meeting shall clearly spell out the need for the emergency meeting. When a meeting of a legislative committee is held, publication made pursuant to the rules of the house of representatives or the senate, whichever rules are appropriate, shall be sufficient notice. If the charter of any city or town or guidelines or rules of order of any public body require a broader public access to official meetings and records than herein described, such charter provisions or guidelines or rules of order shall take precedence over the requirements of this chapter. For the purposes of this paragraph, a business day means the hours of 8 a.m. to 5 p.m. on Monday through Friday, excluding national and state holidays.

II–a. If a member of the public body believes that any discussion in a meeting of the body, including in a nonpublic session, violates this chapter, the member may object to the discussion. If the public body continues the discussion despite the objection, the objecting member may request that his or her objection be recorded in the minutes and may then continue to participate in the discussion without being subject to the penalties of RSA 91–A:8, IV or V. Upon such a request, the public body shall record the member's objection in its minutes of the meeting. If

the objection is to a discussion in nonpublic session, the objection shall also be recorded in the public minutes, but the notation in the public minutes shall include only the member's name, a statement that he or she objected to the discussion in nonpublic session, and a reference to the provision of RSA 91–A:3, II, that was the basis for the discussion.

II–b. (a) If a public body maintains an Internet website or contracts with a third party to maintain an Internet website on its behalf, it shall either post its approved minutes in a consistent and reasonably accessible location on the website or post and maintain a notice on the website stating where the minutes may be reviewed and copies requested.

(b) If a public body chooses to post meeting notices on the body's Internet website, it shall do so in a consistent and reasonably accessible location on the website. If it does not post notices on the website, it shall post and maintain a notice on the website stating where meeting notices are posted.

III. A public body may, but is not required to, allow one or more members of the body to participate in a meeting by electronic or other means of communication for the benefit of the public and the governing body, subject to the provisions of this paragraph.

(a) A member of the public body may participate in a meeting other than by attendance in person at the location of the meeting only when such attendance is not reasonably practical. Any reason that such attendance is not reasonably practical shall be stated in the minutes of the meeting.

(b) Except in an emergency, a quorum of the public body shall be physically present at the location specified in the meeting notice as the location of the meeting. For purposes of this subparagraph, an "emergency" means that immediate action is imperative and the physical presence of a quorum is not reasonably practical within the period of time requiring action. The determination that an emergency exists shall be made by the chairman or presiding officer of the public body, and the facts upon which that determination is based shall be included in the minutes of the meeting.

(c) Each part of a meeting required to be open to the public shall be audible or otherwise discernable to the public at the location specified in the meeting notice as the location of the meeting. Each member participating electronically or otherwise must be able to simultaneously hear each other and speak to each other during the meeting, and shall be audible or otherwise discernable to the public in attendance at the meeting's location. Any member participating in such fashion shall identify the persons present in the location from which the member is participating. No meeting shall be conducted by electronic mail or any other form of communication that does not permit the public to hear, read, or otherwise discern meeting discussion contemporaneously at the meeting location specified in the meeting notice.

(d) Any meeting held pursuant to the terms of this paragraph shall comply with all of the requirements of this chapter relating to public meetings, and shall not circumvent the spirit and purpose of this chapter as expressed in RSA 91–A:1.

(e) A member participating in a meeting by the means described in this paragraph is deemed to be present at the meeting for purposes of voting. All votes taken during such a meeting shall be by roll call vote.

IV. The provisions of this paragraph allowing for less than a quorum to be physically present for meetings shall apply only to boards, committees, councils, advisory committees and like bodies of state government, not including the general court or either house thereof or any committee of either house, nor the governor and council, the composition of which is permitted by law or regulation to be drawn from individuals who may reside throughout the state of New Hampshire. This paragraph does not apply to boards, committees, councils, advisory committees, or any other components or instrumentalities of county or municipal government. For purposes of this paragraph only the boards, committees, councils, and like bodies to which this paragraph is applicable shall be referred to as "state boards."

(a) A state board covered by this paragraph may vote to allow one or more members to participate in a meeting remotely only when physical attendance at the meeting site is not reasonably practicable. Any reason that such attendance is not reasonably practicable shall be stated in the minutes of the meeting. The authority granted under this paragraph may be revoked, renewed, or modified in the same manner as it is approved.

(b) At least one-third of the total membership of the state board shall be present at the physical location of the meeting. Each member participating electronically or otherwise shall be able to contemporaneously and throughout the meeting see and hear, and be seen and heard by, the other members of the public body attending the meeting and members of the public in attendance at the

meeting site. A member participating in a meeting remotely as described in this paragraph is deemed to be present for all purposes, including for determination of a quorum and voting. Each member participating remotely shall identify the persons present in the location from which the member is participating. All votes taken during such a meeting shall be by roll call vote. Members of the public shall be permitted to participate remotely in remotely held state board meetings, including testifying or asking questions as the rules and procedures of the board allow.

(c) No meeting shall be conducted by electronic mail or any other form of communication that does not permit the public to hear, read, or otherwise discern meeting discussion contemporaneously at the meeting location specified in the meeting notice.

(d) In an emergency, when immediate action is imperative and the physical presence requirement is not reasonably practicable within the period of time requiring action, the minimum physical presence required under subparagraph (b) shall not apply. The determination that an emergency exists shall be made by the chair or presiding officer of the state board, and the facts upon which that determination is based shall be included in the minutes of the meeting.

(e) Any meeting held pursuant to the terms of this paragraph shall comply with all other requirements of this chapter relating to public meetings not inconsistent with this paragraph, and shall not circumvent the spirit and purpose of this chapter as expressed in RSA 91–A:1.

**Source.** 1967, 251:1. 1969, 482:1. 1971, 327:2. 1975, 383:1. 1977, 540:3. 1983, 279:1. 1986, 83:3. 1991, 217:2. 2003, 287:7. 2007, 59:2. 2008, 278:2, eff. July 1, 2008 at 12:01 a.m.; 303:4, eff. July 1, 2008. 2016, 29:1, eff. Jan. 1, 2017. 2017, 165:1, eff. Jan. 1, 2018; 234:1, eff. Jan. 1, 2018. 2018, 244:1, eff. Jan. 1, 2019. 2023, 188:1, eff. Oct. 3, 2023.

### 91–A:2–a Communications Outside Meetings.

I. Unless exempted from the definition of "meeting" under RSA 91–A:2, I, public bodies shall deliberate on matters over which they have supervision, control, jurisdiction, or advisory power only in meetings held pursuant to and in compliance with the provisions of RSA 91–A:2, II or III.

II. Communications outside a meeting, including, but not limited to, sequential communications among members of a public body, shall not be used to circumvent the spirit and purpose of this chapter as expressed in RSA 91–A:1.

**Source.** 2008, 303:4, eff. July 1, 2008.

### 91–A:2–b Repealed by 2012, 232:14, eff. Dec. 1, 2012.

### 91–A:3 Nonpublic Sessions.

I. (a) Public bodies shall not meet in nonpublic session, except for one of the purposes set out in paragraph II. No session at which evidence, information, or testimony in any form is received shall be closed to the public, except as provided in paragraph II. No public body may enter nonpublic session, except pursuant to a motion properly made and seconded.

(b) Any motion to enter nonpublic session shall state on its face the specific exemption under paragraph II which is relied upon as foundation for the nonpublic session. The vote on any such motion shall be by roll call, and shall require the affirmative vote of the majority of members present.

(c) All discussions held and decisions made during nonpublic session shall be confined to the matters set out in the motion.

II. Only the following matters shall be considered or acted upon in nonpublic session:

(a) The dismissal, promotion, or compensation of any public employee or the disciplining of such employee, or the investigation of any charges against him or her, unless the employee affected (1) has a right to a meeting and (2) requests that the meeting be open, in which case the request shall be granted.

(b) The hiring of any person as a public employee.

(c) Matters which, if discussed in public, would likely affect adversely the reputation of any person, other than a member of the public body itself, unless such person requests an open meeting. This exemption shall extend to any application for assistance or tax abatement or waiver of a fee, fine, or other levy, if based on inability to pay or poverty of the applicant.

(d) Consideration of the acquisition, sale, or lease of real or personal property which, if discussed in public, would likely benefit a party or parties whose interests are adverse to those of the general community.

(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.

(f) [Repealed.]

(g) Consideration of security-related issues bearing on the immediate safety of security personnel or inmates at the county or state correctional facilities by county correctional superintendents or the commissioner of the department of corrections, or their designees.

(h) Consideration of applications by the business finance authority under RSA 162–A:7–10 and 162–A:13, where consideration of an application in public session would cause harm to the applicant or would inhibit full discussion of the application.

(i) Consideration of matters relating to the preparation for and the carrying out of emergency functions, including training to carry out such 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.

(j) Consideration of confidential, commercial, or financial information that is exempt from public disclosure under RSA 91–A:5, IV in an adjudicative proceeding pursuant to RSA 541 or RSA 541–A.

(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.

(l) Consideration of legal advice provided by legal counsel, either in writing or orally, to one or more members of the public body, even where legal counsel is not present.

(m) Consideration of whether to disclose minutes of a nonpublic session due to a change in circumstances under paragraph III. However, any vote on whether to disclose minutes shall take place in public session.

III. 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 of such sessions shall record all actions in such a manner that the vote of each member is ascertained and recorded. Minutes and decisions reached in nonpublic session shall be publicly disclosed within 72 hours of the meeting, unless, by recorded vote of ⅔ 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. For all meetings held in nonpublic session, where the minutes or decisions were determined to not be subject to full public disclosure, a list of such minutes or decisions shall be kept and this list shall be made available as soon as practicable for public disclosure. This list shall identify the public body and include the date and time of the meeting in nonpublic session, the specific exemption under paragraph II on its face which is relied upon as foundation for the nonpublic session, the date of the decision to withhold the minutes or decisions from public disclosure, and the date of any subsequent decision, if any, to make the minutes or decisions available for public disclosure. Minutes related to a discussion held in nonpublic session under subparagraph II(d) shall be made available to the public as soon as practicable after the transaction has closed or the public body has decided not to proceed with the transaction.

IV. (a) A public body or agency may adopt procedures to review minutes of meetings held in nonpublic session and to determine by majority vote whether the circumstances that justified keeping meeting minutes from the public under RSA 91–A:3, III no longer apply. If the public body determines that those

circumstances no longer apply, the minutes shall be available for release to the public pursuant to this chapter.

(b) In the absence of an adopted procedure to review and determine whether the circumstances no longer apply for meeting minutes kept from the public, the public body or agency shall review and determine by majority vote whether the circumstances that justified keeping meeting minutes from the public under RSA 91–A:3, III no longer apply. This review shall occur no more than 10 years from the last time the public body voted to prevent the minutes from being subject to public disclosure. Meeting minutes that were kept from the public prior to the effective date of this paragraph that are not reviewed by the public body or agency within 10 years of the effective date of this paragraph shall be subject to public disclosure without further action of the public body.

**Source.** 1967, 251:1. 1969, 482:2. 1971, 327:3. 1977, 540:4. 1983, 184:1. 1986, 83:4. 1991, 217:3. 1992, 34:1, 2. 1993, 46:1; 335:16. 2002, 222:2, 3. 2004, 42:1. 2008, 303:4. 2010, 206:1, eff. June 22, 2010. 2015, 19:1; 49:1; 105:1, eff. Jan. 1, 2016; 270:2, eff. Sept. 1, 2015. 2016, 30:1, eff. Jan. 1, 2017; 280:1, eff. June 21, 2016. 2021, 48:7(I), eff. May 25, 2021; 163:1, eff. Jan. 1, 2022; 172:1, eff. Jan. 1, 2022. 2023, 189:1, eff. Oct. 3, 2023.

### 91–A:4 Minutes and Records Available for Public Inspection.

I. Every citizen during the regular or business hours of all public bodies or agencies, and on the regular business premises of such public bodies or agencies, has the right to inspect all governmental records in the possession, custody, or control of such public bodies or agencies, including minutes of meetings of the public bodies, and to copy and make memoranda or abstracts of the records or minutes so inspected, except as otherwise prohibited by statute or RSA 91–A:5. In this section, "to copy" means the reproduction of original records by whatever method, including but not limited to photography, photostatic copy, printing, or electronic or tape recording.

I–a. Records of any payment made to an employee of any public body or agency listed in RSA 91–A:1–a, VI(a)–(d), or to the employee's agent or designee, upon the resignation, discharge, or retirement of the employee, paid in addition to regular salary and accrued vacation, sick, or other leave, shall immediately be made available without alteration for public inspection. All records of payments shall be available for public inspection notwithstanding that the matter may have been considered or acted upon in nonpublic session pursuant to RSA 91–A:3.

II. After the completion of a meeting of a public body, every citizen, during the regular or business hours of such public body, and on the regular business premises of such public body, has the right to inspect all notes, materials, tapes, or other sources used for compiling the minutes of such meetings, and to make memoranda or abstracts or to copy such notes, materials, tapes, or sources inspected, except as otherwise prohibited by statute or RSA 91–A:5.

III. Each public body or agency shall keep and maintain all governmental records in its custody at its regular office or place of business in an accessible place and, if there is no such office or place of business, the governmental records pertaining to such public body or agency shall be kept in an office of the political subdivision in which such public body or agency is located or, in the case of a state agency, in an office designated by the secretary of state.

III–a. Governmental records created or maintained in electronic form shall be kept and maintained for the same retention or archival periods as their paper counterparts. Governmental records in electronic form kept and maintained beyond the applicable retention or archival period shall remain accessible and available in accordance with RSA 91–A:4, III. Methods that may be used to keep and maintain governmental records in electronic form may include, but are not limited to, copying to microfilm or paper or to durable electronic media using standard or common file formats.

III–b. A governmental record in electronic form shall no longer be subject to disclosure pursuant to this section after it has been initially and legally deleted. For purposes of this paragraph, a record in electronic form shall be considered to have been deleted only if it is no longer readily accessible to the public body or agency itself. The mere transfer of an electronic record to a readily accessible "deleted items" folder or similar location on a computer shall not constitute deletion of the record.

IV. (a) Each public body or agency shall, upon request for any governmental record reasonably described, make available for inspection and copying any such governmental record within its files when such records are immediately available for such release.

(b) If a public body or agency is unable to make a governmental record available for immediate inspection and copying the public body or agency shall, within 5 business days of a request:

(1) Make such record available;

(2) Deny the request; or

(3) Provide a written statement of the time reasonably necessary to determine whether the request shall be granted or denied and the reason for the delay.

(c) A public body or agency denying, in whole or part, inspection or copying of any record shall provide a written statement of the specific exemption authorizing the withholding of the record and a brief explanation of how the exemption applies to the record withheld.

(d) If a computer, photocopying machine, or other device maintained for use by a public body or agency is used by the public body or agency to copy the governmental record requested, the person requesting the copy may be charged the actual cost of providing the copy, which cost may be collected by the public body or agency. No cost or fee shall be charged for the inspection or delivery, without copying, of governmental records, whether in paper, electronic, or other form. Nothing in this section shall exempt any person from paying fees otherwise established by law for obtaining copies of governmental records or documents, but if such fee is established for the copy, no additional costs or fees shall be charged.

V. In the same manner as set forth in RSA 91–A:4, IV, any public body or agency which maintains governmental records in electronic format may, in lieu of providing original records, copy governmental records requested to electronic media using standard or common file formats in a manner that does not reveal information which is confidential under this chapter or any other law. If copying to electronic media is not reasonably practicable, or if the person or entity requesting access requests a different method, the public body or agency may provide a printout of governmental records requested, or may use any other means reasonably calculated to comply with the request in light of the purpose of this chapter as expressed in RSA 91–A:1. Access to work papers, personnel data, and other confidential information under RSA 91–A:5, IV shall not be provided.

VI. Every agreement to settle a lawsuit against a governmental unit, threatened lawsuit, or other claim, entered into by any political subdivision or its insurer, shall be kept on file at the municipal clerk's office and made available for public inspection for a period of no less than 10 years from the date of settlement.

VII. Nothing in this chapter shall be construed to require a public body or agency to compile, cross-reference, or assemble information into a form in which it is not already kept or reported by that body or agency.

**Source.** 1967, 251:1. 1983, 279:2. 1986, 83:5. 1997, 90:2. 2001, 223:2. 2004, 246:2. 2008, 303:4. 2009, 299:1, eff. Sept. 29, 2009. 2016, 283:1, eff. June 21, 2016. 2019, 107:1, eff. Jan. 1, 2020; 163:2, eff. Jan. 1, 2020 at 12:01 a.m.

### 91–A:5 Exemptions.

The following governmental records are exempted from the provisions of this chapter:

I. Records of grand and petit juries.

I–a. The master jury list as defined in RSA 500–A:1, IV.

II. Records of parole and pardon boards.

III. Personal school records of pupils, including the name of the parent or legal guardian and any specific reasons disclosed to school officials for the objection to the assessment under RSA 193–C:6.

IV. Records pertaining to internal personnel practices; confidential, commercial, or financial information; test questions, scoring keys, and other examination data used to administer a licensing examination, examination for employment, or academic examinations; and personnel, medical, welfare, library user, videotape sale or rental, and other files whose disclosure would constitute invasion of privacy. Without otherwise compromising the confidentiality of the files, nothing in this paragraph shall prohibit a public body or agency from releasing information relative to health or safety from investigative files on a limited basis to persons whose health or safety may be affected.

V. Teacher certification records in the department of education, provided that the department shall make available teacher certification status information.

VI. Records pertaining to matters relating to the preparation for and the carrying out of all emergency functions, including training to carry out such 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.

VII. Unique pupil identification information collected in accordance with RSA 193–E:5.

VIII. Any notes or other materials made for personal use that do not have an official purpose, including but not limited to, notes and materials made prior to, during, or after a governmental proceeding.

IX. Preliminary drafts, notes, and memoranda and other documents not in their final form and not disclosed, circulated, or available to a quorum or a majority of the members of a public body.

X. Video and audio recordings made by a law enforcement officer using a body-worn camera pursuant to RSA 105–D except where such recordings depict any of the following:

(a) Any restraint or use of force by a law enforcement officer; provided, however, that this exemption shall not include those portions of recordings which constitute an invasion of privacy of any person or which are otherwise exempt from disclosure.

(b) The discharge of a firearm, provided that this exemption shall not include those portions of recordings which constitute an invasion of privacy of any person or which are otherwise exempt from disclosure.

(c) An encounter that results in an arrest for a felony-level offense, provided, however, that this exemption shall not apply to recordings or portions thereof that constitute an invasion of privacy or which are otherwise exempt from disclosure.

XI. Records pertaining to information technology systems, including cyber security plans, vulnerability testing and assessments materials, detailed network diagrams, or other materials, the release of which would make public security details that would aid an attempted security breach or circumvention of law as to the items assessed.

XII. Records protected under the attorney-client privilege or the attorney work product doctrine.

XIII. Records of the youth development center claims administration and the YDC settlement fund pursuant to RSA 21–M:11–a, with the exception of settlement agreements, which shall remain subject to RSA 91–A:4, VI, and, after a claim has been finally resolved, such other records the release of which would not constitute a violation of other provisions of law or an unwarranted invasion of a claimant's privacy.

**Source.** 1967, 251:1. 1986, 83:6. 1989, 184:2. 1990, 134:1. 1993, 79:1. 2002, 222:4. 2004, 147:5; 246:3, 4. 2008, 303:4, eff. July 1, 2008. 2013, 261:9, eff. July 1, 2013. 2016, 322:3, eff. Jan. 1, 2017. 2018, 91:2, eff. July 24, 2018. 2019, 54:1, eff. Aug. 4, 2019. 2021, 163:2, eff. July 30, 2021. 2022, 122:3, eff. May 27, 2022.

### 91–A:5–a Limited Purpose Release.

Records from non-public sessions under RSA 91–A:3, II(i) or that are exempt under RSA 91–A:5, VI may be released to local or state safety officials. Records released under this section shall be marked "limited purpose release" and shall not be redisclosed by the recipient.

**Source.** 2002, 222:5, eff. Jan. 1, 2003.

### 91–A:6 Employment Security.

This chapter shall apply to RSA 282–A, relative to employment security; however, in addition to the exemptions under RSA 91–A:5, the provisions of RSA 282–A:117–123 shall also apply; this provision shall be administered and construed in the spirit of that section, and the exemptions from the provisions of this chapter shall include anything exempt from public inspection under RSA 282–A:117–123 together with all records and data developed from RSA 282–A:117–123.

**Source.** 1967, 251:1. 1981, 576:5, eff. July 1, 1981.

### 91–A:7 Violation.

*[RSA 91–A:7 effective until July 1, 2025; see also RSA 91–A:7 set out below.]*

I. Any person aggrieved by a violation of this chapter may petition the superior court for injunctive relief. In order to satisfy the purposes of this chapter, the courts shall give proceedings under this chapter high priority on the court calendar. Such a petitioner may appear with or without counsel. The petition shall be deemed sufficient if it states facts constituting a violation of this chapter, and may be filed by the petitioner or his or her counsel with the clerk of court.

II. In lieu of the procedure under paragraph I, an aggrieved person may file a complaint with the ombudsman under RSA 91–A:7–a and in accordance with RSA 91–A:7–b.

III. A person's decision to petition the superior court forecloses the ability to file a complaint with the ombudsman pursuant to RSA 91–A:7–b.

IV. A person's decision to file a complaint with the ombudsman forecloses the ability to petition the superior court until the ombudsman issues a final ruling or the deadline for such a ruling has passed.

**Source.** 1967, 251:1. 1977, 540:5. 2008, 303:5, eff. July 1, 2008. 2018, 289:1, eff. Jan. 1, 2019. 2022, 250:2, eff. July 1, 2022.

### 91–A:7 Violation.

*[RSA 91–A:7 effective July 1, 2025; see also RSA 91–A:7 set out above.]*

Any person aggrieved by a violation of this chapter may petition the superior court for injunctive relief. In order to satisfy the purposes of this chapter, the courts shall give proceedings under this chapter high priority on the court calendar. Such a petitioner may appear with or without counsel. The petition shall be deemed sufficient if it states facts constituting a violation of this chapter, and may be filed by the

petitioner or his or her counsel with the clerk of court or any justice thereof. Thereupon the clerk of court or any justice shall order service by copy of the petition on the person or persons charged. Subject to objection by either party, all documents filed with the petition and any response thereto shall be considered as evidence by the court. All documents submitted shall be provided to the opposing party prior to a hearing on the merits. When any justice shall find that time probably is of the essence, he or she may order notice by any reasonable means, and he or she shall have authority to issue an order ex parte when he or she shall reasonably deem such an order necessary to insure compliance with the provisions of this chapter.

**Source.** 1967, 251:1. 1977, 540:5. 2008, 303:5, eff. July 1, 2008. 2018, 289:1, eff. Jan. 1, 2019. 2022, 250:2, eff. July 1, 2022; 250:5, eff. July 1, 2025.

### 91–A:7–a Office Established.

*[RSA 91–A:7–a repealed by 2022, 250:6, effective July 1, 2025.]*

There is hereby established the office of the right-to-know ombudsman to be administratively attached to the department of state under RSA 21–G:10. The ombudsman shall be appointed by the governor and council and shall have the following minimum qualifications:

I. Be a member of the New Hampshire bar.

II. Have a minimum of 5 years full-time practice of law in any jurisdiction.

III. Be experienced with and knowledgeable of the provisions of this chapter and all New Hampshire laws regarding right-to-know.

IV. Annually, complete a minimum of 3 hours of continuing legal education courses or other training relevant to the provisions of this chapter.

**Source.** 2022, 250:3, eff. July 1, 2022.

### 91–A:7–b Complaint Process.

*[RSA 91–A:7–b repealed by 2022, 250:6, effective July 1, 2025.]*

I. Any party aggrieved by a violation of this chapter shall have the option to either petition the superior court or file a signed, written complaint, along with a $25 fee, with the office of the ombudsman, established under RSA 91–A:7–a. The ombudsman shall have the discretion to waive the $25 fee upon a finding of inability to pay. Any signed, written complaint filed with the ombudsman shall attach, if applicable, the request served on the public agency or official and the written response of the public agency or official. The complaint shall be deemed sufficient if it states facts constituting a violation of this chapter.

II. Once a complaint has been filed and provided by the ombudsman to the public body or public agency, the public body or public agency shall have 20 calendar days to submit an acknowledgment of the complaint and an answer to the complaint, which shall include applicable law and, if applicable, a justification for any refusal to or delay in producing the requested governmental records, access to meetings open to the public, or otherwise comply with the provisions of this chapter. This 20–day deadline may be reasonably extended by the ombudsman for good cause.

III. In reviewing complaints, the ombudsman shall be authorized to:

(a) Compel timely delivery of governmental records within a period not less than 14 days or more than 30 days unless an expedited hearing is warranted, regardless of medium and format, and conduct a confidential in-camera review of records where the ombudsman concludes that it is necessary and appropriate under the law.

(b) Compel interviews with the parties.

(c) Order attendance at hearings within a reasonable time if the ombudsman determines that a hearing is necessary. Such hearings shall be open subject to the provisions of RSA 91–A.

(d) Issue findings in writing to all parties.

(e) Order a public body or public agency to disclose requested governmental records within a reasonable time, provide access to meetings open to the public, or otherwise comply with the provisions of this chapter, subject to appeal.

(f) Make any finding and order any other remedy to the same extent as provided by the court under RSA 91–A:8.

IV. The ombudsman may draw negative inferences from a party's failure to participate and comply with orders during the review process.

V. The ombudsman shall determine whether there have been any violations of this chapter and issue a ruling within 30 calendar days following the deadline for receipt of the parties' submissions. This 30–day deadline may be extended to a reasonable time frame by the ombudsman for good cause. The ombudsman may also expedite resolution of the complaint upon a showing of good cause. Rulings on

expedited complaints shall be issued within 10 business days, or sooner where necessary.

VI. The ombudsman shall, where necessary and appropriate under the law, access governmental records in camera that a public body or public agency believes are exempt in order to make a ruling concerning whether the public body or public agency shall release the records or portions thereof to the public. The ombudsman shall maintain the confidentiality of records provided to the ombudsman by a public body or public agency under this section and shall return the records to the public body or public agency when the ombudsman's review is complete. All records submitted to the ombudsman for review shall be exempt from the public disclosure provisions of RSA 91–A during such review.

VII. Nothing in this section shall affect the ability of a person to seek relief in superior court under RSA 91–A:7, I in lieu of this process.

**Source.** 2022, 250:3, eff. July 1, 2022.

### 91–A:7–c Appeal and Enforcement.

*[RSA 91–A:7–c repealed by 2022, 250:6, effective July 1, 2025.]*

I. Any party may appeal the ombudsman's final ruling to the superior court by filing a notice of appeal in superior court no more than 30 calendar days after the ombudsman's ruling is issued. The ombudsman's ruling shall be attached to the document initiating the appeal, admitted as a full exhibit by the superior court, considered by the judge during deliberations, and specifically addressed in the court's written order. Citizen-initiated appeals shall have no filing fee or surcharge. The public body or public agency shall pay the sheriff's service costs if the public body or public agency, or its attorney, declines to accept service. Nothing in this section shall prevent a superior court from staying an ombudsman's decision pending appeal to the superior court.

II. On appeal, the superior court shall treat all factual findings of the ombudsman as prima facie lawful and reasonable, and shall not set them aside, absent errors of law, unless it is persuaded by a balance of probabilities on the evidence before it that the ombudsman's decision is unreasonable.

III. If the ombudsman's final ruling is not appealed, the ombudsman shall, after the deadline has passed, follow up with all parties, as required, to verify compliance with rulings issued.

IV. The ombudsman's final rulings which are not appealed may be registered in the superior court as judgments and enforceable through contempt of court. If such action is necessary to enforce compliance, all costs and fees, including reasonable attorney fees, shall be paid by the noncompliant public body or public agency.

**Source.** 2022, 250:3, eff. July 1, 2022.

### 91–A:7–d Rulemaking.

*[RSA 91–A:7–d repealed by 2022, 250:6, effective July 1, 2025.]*

The ombudsman shall adopt rules pursuant to RSA 541–A relative to:

I. Establishing procedures to streamline the process of resolving complaints under this chapter.

II. Hearing procedures.

III. Other matters necessary to the proper administration of RSA 91–A:7–a through RSA 91–A:7–c.

**Source.** 2022, 250:3, eff. July 1, 2022.

### 91–A:8 Remedies.

I. If any public body or public agency or officer, employee, or other official thereof, violates any provisions of this chapter, such public body or public agency shall be liable for reasonable attorney's fees and costs incurred in a lawsuit under this chapter, provided that the court finds that such lawsuit was necessary in order to enforce compliance with the provisions of this chapter or to address a purposeful violation of this chapter. Fees shall not be awarded unless the court finds that the public body, public agency, or person knew or should have known that the conduct engaged in was in violation of this chapter or if the parties, by agreement, provide that no such fees shall be paid.

II. The court may award attorney's fees to a public body or public agency or employee or member thereof, for having to defend against a lawsuit under the provisions of this chapter, when the court finds that the lawsuit is in bad faith, frivolous, unjust, vexatious, wanton, or oppressive.

III. The court may invalidate an action of a public body or public agency taken at a meeting held in violation of the provisions of this chapter, if the circumstances justify such invalidation.

IV. If the court finds that an officer, employee, or other official of a public body or public agency has violated any provision of this chapter in bad faith, the court shall impose against such person a civil penalty of not less than $250 and not more than $2,000. Upon such finding, such person or persons may also be required to reimburse the public body or public

agency for any attorney's fees or costs it paid pursuant to paragraph I. If the person is an officer, employee, or official of the state or of an agency or body of the state, the penalty shall be deposited in the general fund. If the person is an officer, employee, or official of a political subdivision of the state or of an agency or body of a political subdivision of the state, the penalty shall be payable to the political subdivision.

V. The court may also enjoin future violations of this chapter, and may require any officer, employee, or other official of a public body or public agency found to have violated the provisions of this chapter to undergo appropriate remedial training, at such person or person's expense.

**Source.** 1973, 113:1. 1977, 540:6. 1986, 83:7. 2001, 289:3. 2008, 303:6. 2012, 206:1, eff. Jan. 1, 2013.

### 91–A:8–a Repealed by 2017, 126:2, eff. November 1, 2017.

### 91–A:9 Destruction of Certain Information Prohibited.

A person is guilty of a misdemeanor who knowingly destroys any information with the purpose to prevent such information from being inspected or disclosed in response to a request under this chapter. If a request for inspection is denied on the grounds that the information is exempt under this chapter, the requested material shall be preserved for 90 days or while any lawsuit pursuant to RSA 91–A:7–8 is pending.

**Source.** 2002, 175:1, eff. Jan. 1, 2003.

## Procedure for Release of Personal Information for Research Purposes

### 91–A:10 Release of Statistical Tables and Limited Data Sets for Research.

I. In this subdivision:

(a) "Agency" means each state board, commission, department, institution, officer or other state official or group.

(b) "Agency head" means the head of any governmental agency which is responsible for the collection and use of any data on persons or summary data.

(c) "Cell size" means the count of individuals that share a set of characteristics contained in a statistical table.

(d) "Data set" means a collection of personal information on one or more individuals, whether in electronic or manual files.

(e) "Direct identifiers" means:

(1) Names.

(2) Postal address information other than town or city, state, and zip code.

(3) Telephone and fax numbers.

(4) Electronic mail addresses.

(5) Social security numbers.

(6) Certificate and license numbers.

(7) Vehicle identifiers and serial numbers, including license plate numbers.

(8) Personal Internet IP addresses and URLs.

(9) Biometric identifiers, including finger and voice prints.

(10) Personal photographic images.

(f) "Individual" means a human being, alive or dead, who is the subject of personal information and includes the individual's legal or other authorized representative.

(g) "Limited data set" means a data set from which all direct identifiers have been removed or blanked.

(h) "Personal information" means information relating to an individual that is reported to the state or is derived from any interaction between the state and an individual and which:

(1) Contains direct identifiers.

(2) Is under the control of the state.

(i) "Provided by law" means use and disclosure as permitted or required by New Hampshire state law governing programs or activities undertaken by the state or its agencies, or required by federal law.

(j) "Public record" means records available to any person without restriction.

(k) "State" means the state of New Hampshire, its agencies or instrumentalities.

(l) "Statistical table" means single or multi-variate counts based on the personal information contained in a data set and which does not include any direct identifiers.

II. Except as otherwise provided by law, upon request an agency shall release limited data sets and statistical tables with any cell size more than 0 and less than 5 contained in agency files to requestors for the purposes of research under the following conditions:

(a) The requestor submits a written application that contains:

(1) The following information about the principal investigator in charge of the research:

(A) name, address, and phone number;

(B) organizational affiliation;

(C) professional qualification; and

(D) name and phone number of principal investigator's contact person, if any.

(2) The names and qualifications of additional research staff, if any, who will have access to the data.

(3) A research protocol which shall contain:

(A) a summary of background, purposes, and origin of the research;

(B) a statement of the general problem or issue to be addressed by the research;

(C) the research design and methodology including either the topics of exploratory research or the specific research hypotheses to be tested;

(D) the procedures that will be followed to maintain the confidentiality of any data or copies of records provided to the investigator; and

(E) the intended research completion date.

(4) The following information about the data or statistical tables being requested:

(A) general types of information;

(B) time period of the data or statistical tables;

(C) specific data items or fields of information required, if applicable;

(D) medium in which the data or statistical tables are to be supplied; and

(E) any special format or layout of data requested by the principal investigator.

(b) The requestor signs a "Data Use Agreement" signed by the principal investigator that contains the following:

(1) Agreement not to use or further disclose the information to any person or organization other than as described in the application and as permitted by the Data Use Agreement without the written consent of the agency.

(2) Agreement not to use or further disclose the information as otherwise required by law.

(3) Agreement not to seek to ascertain the identity of individuals revealed in the limited data set and/or statistical tables.

(4) Agreement not to publish or make public the content of cells in statistical tables in which the cell size is more than 0 and less than 5 unless:

(A) otherwise provided by law; or

(B) the information is a public record.

(5) Agreement to report to the agency any use or disclosure of the information contrary to the agreement of which the principal investigator becomes aware.

(6) A date on which the data set and/or statistical tables will be returned to the agency and/or all copies in the possession of the requestor will be destroyed.

III. The agency head shall release limited data sets and statistical tables and sign the Data Use Agreement on behalf of the state when:

(a) The application submitted is complete.

(b) Adequate measures to ensure the confidentiality of any person are documented.

(c) The investigator and research staff are qualified as indicated by:

(1) Documentation of training and previous research, including prior publications; and

(2) Affiliation with a university, private research organization, medical center, state agency, or other institution which will provide sufficient research resources.

(d) There is no other state law, federal law, or federal regulation prohibiting release of the requested information.

IV. Within 10 days of a receipt of written application, the agency head, or designee, shall respond to the request. Whenever the agency head denies release of requested information, the agency head shall send the requestor a letter identifying the specific criteria which are the basis of the denial. Should release be denied due to other law, the letter shall identify the specific state law, federal law, or federal regulation prohibiting the release. Otherwise the agency head shall provide the requested data or set a date on which the data shall be provided.

V. Any person violating any provision of a signed Data Use Agreement shall be guilty of a violation.

VI. Nothing in this section shall exempt any requestor from paying fees otherwise established by law for obtaining copies of limited data sets or statistical tables. Such fees shall be based on the cost of providing the copy in the format requested. The agency head shall provide the requestor with a written description of the basis for the fee.

**Source.** 2003, 292:2, eff. July 18, 2003.

### Right-to-Know Oversight Commission

**91–A:11 to 91–A:15 Repealed by 2005, 3:2, eff. Nov. 1, 2010.**

# TITLE VIII

# PUBLIC DEFENSE AND VETERANS' AFFAIRS



## CHAPTER 110–D

## INTERSTATE COMPACT ON EDUCATIONAL OPPORTUNITY FOR MILITARY CHILDREN



### 110–D:1 Compact.

The interstate compact on educational opportunity for military children, hereinafter called "the compact", is hereby enacted into law and entered into with all other jurisdictions legally joining therein, in the form substantially as follows in this chapter.

**Source.** 2014, 308:1, eff. Sept. 30, 2014.

### ARTICLE I

### 110–D:2 Purpose.

It is the purpose of this compact to remove barriers to educational success imposed on children of military families because of frequent moves and deployment of their parents by:

I. Facilitating the timely enrollment of children of military families and ensuring that they are not placed at a disadvantage due to difficulty in the transfer of education records from the previous school district or districts or variations in entrance/age requirements.

II. Facilitating the student placement process through which children of military families are not disadvantaged by variations in attendance requirements, scheduling, sequencing, grading, course content, or assessment.

III. Facilitating the qualification and eligibility for enrollment, educational programs, and participation in extracurricular academic, athletic, and social activities.

IV. Facilitating the on-time graduation of children of military families.

V. Providing for the adoption and enforcement of administrative rules implementing the provisions of this compact.

VI. Providing for the uniform collection and sharing of information between and among member states, schools, and military families under this compact.

VII. Promoting coordination between this compact and other compacts affecting military children.

VIII. Promoting flexibility and cooperation between the educational system, parents, and the student in order to achieve educational success for the student.

**Source.** 2014, 308:1, eff. Sept. 30, 2014.

## ARTICLE II

### 110–D:3 Definitions.

As used in this compact, unless the context clearly requires a different construction:

I. "Accredited school" means a school that has completed the accreditation process from a regional accrediting association, such as the New England Association of Schools and Colleges, that validates the establishment of high standards for all levels of education.

II. "Active duty" means full-time duty status in the active uniformed service of the United States, including members of the National Guard and Reserve on active duty orders pursuant to 10 U.S.C. sections 1209 and 1211.

III. "Children of military families" means a school-aged child or school-aged children, enrolled in kindergarten through grade 12, in the household of an active duty member.

IV. "Cocurricular" shall include those activities which are designed to supplement and enrich regular academic programs of study, provide opportunities for social development, and encourage participation in clubs, athletics, performing groups, and services to school and community, as defined in RSA 193:1–c.

V. "Compact commissioner" means the voting representative of each compacting state appointed pursuant to Article VIII of this compact.

VI. "Deployment" means the period one month prior to the service members' departure from their home station on military orders through 6 months after return to their home station.

VII. "Education records" means those official records, files, and data directly related to a student and maintained by the school or local education agency, including but not limited to records encompassing all the material kept in the student's cumulative folder such as general identifying data, records of attendance and of academic work completed, records of achievement and results of evaluative tests, health data, disciplinary status, test protocols, and individualized education programs.

VIII. "Interstate Commission on Educational Opportunity for Military Children" means the commission that is created under Article IX of this compact, which is generally referred to as Interstate Commission.

IX. "Local education agency" means a public authority legally constituted by the state as an administrative agency to provide control of and direction for kindergarten through grade 12 public educational institutions.

X. "Member state" means a state that has enacted this compact.

XI. "Military installation" means a base, camp, post, station, yard, center, homeport facility for any ship, or other activity under the jurisdiction of the Department of Defense, including any leased facility, which is located within any of the several states, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Northern Marianas Islands, and any other U.S. territory. Such term does not include any facility used primarily for civil works, rivers and harbors projects, or flood control projects.

XII. "Non-member state" means a state that has not enacted this compact.

XIII. "Receiving state" means the state to which a child of a military family is sent, brought, or caused to be sent or brought.

XIV. "Rule" means a written statement by the Interstate Commission promulgated pursuant to Article XII of this compact that is of general applicability, implements, interprets or prescribes a policy or provision of the compact, or an organizational, procedural, or practice requirement of the Interstate Commission, and has the force and effect of statutory law in a member state, and includes the amendment, repeal, or suspension of an existing rule.

XV. "Sending state" means the state from which a child of a military family is sent, brought, or caused to be sent or brought.

XVI. "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Northern Marianas Islands, and any other U.S. territory.

XVII. "Student" means the child of a military family for whom the local education agency receives public funding and who is formally enrolled in kindergarten through grade 12.

XVIII. "Transition" means:

(a) The formal and physical process of transferring from school to school; or

(b) The period of time in which a student moves from one school in the sending state to another school in the receiving state.

XIX. "Uniformed service" or "uniformed services" means the Army, Navy, Air Force, Marine Corps, Coast Guard as well as the Commissioned Corps of the National Oceanic and Atmospheric Administration, and Public Health Services.

XX. "Veteran" means a person who served in the uniformed services and who was discharged or released there from under conditions other than dishonorable.

**Source.** 2014, 308:1, eff. Sept. 30, 2014.

## ARTICLE III

### 110–D:4 Applicability.

I. Except as otherwise provided in paragraph II, this compact shall apply to the children of:

(a) Active duty members of the uniformed services as defined in this compact, including members of the National Guard and Reserve on active duty orders pursuant to 10 U.S.C. section 1209 and 1211;

(b) Members or veterans of the uniformed services who are severely injured and medically discharged or retired for a period of one year after medical discharge or retirement; and

(c) Members of the uniformed services who die on active duty or as a result of injuries sustained on active duty for a period of one year after death.

II. The provisions of this interstate compact shall only apply to local education agencies as defined in this compact.

III. The provisions of this compact shall not apply to the children of:

(a) Inactive members of the national guard and military reserves;

(b) Members of the uniformed services now retired, except as provided in paragraph I;

(c) Veterans of the uniformed services, except as provided in paragraph I; and

(d) Other United States Department of Defense personnel and other federal agency civilian and contract employees not defined as active duty members of the uniformed services.

**Source.** 2014, 308:1, eff. Sept. 30, 2014.

## ARTICLE IV

### 110–D:5 Educational Records and Enrollment.

I. Unofficial or "hand-carried" education records. In the event that official education records cannot be released to the parents for the purpose of transfer, the custodian of the records in the sending state shall prepare and furnish to the parent a complete set of unofficial educational records containing uniform information as determined by the Interstate Commission. Upon receipt of the unofficial education records by a school in the receiving state, the school shall enroll and appropriately place the student based on the information provided in the unofficial records pending validation by the official records, as quickly as possible.

II. Official education records/transcripts. Simultaneous with the enrollment and conditional placement of the student, the school in the receiving state shall request the student's official education record from the school in the sending state. Upon receipt of this request, the school in the sending state will process and furnish the official education records to the school in the receiving state within 10 days or within such time as is reasonably determined under the rules promulgated by the Interstate Commission.

III. Immunizations. The state of New Hampshire may give 30 days from the date of enrollment, or within such time as is reasonably determined under the rules promulgated by the Interstate Commission, for students to obtain any required immunization or immunizations in accordance with RSA 141–C:20–a. For a series of immunizations, initial vaccinations shall be obtained within 30 days or within such time as is reasonably determined under the rules promulgated by the Interstate Commission.

IV. Kindergarten and first grade entrance age. Students shall be allowed to continue their enrollment at grade level in the receiving state commensurate with their grade level, including kindergarten, from a local education agency in the sending state at the time of transition, regardless of age. A student that has satisfactorily completed the prerequisite grade level in the local education agency in the sending state shall be eligible for enrollment in the next highest grade level in the receiving state, regardless of age. A student transferring after the start of the school year in the receiving state shall enter the school in the receiving state on their validated level from an accredited school in the sending state.

**Source.** 2014, 308:1, eff. Sept. 30, 2014.

## ARTICLE V

### 110–D:6 Placement and Attendance.

I. Course placement. When the student transfers before or during the school year, the receiving

state school shall initially honor placement of the student in educational courses based on the student's enrollment in the sending state school and/or educational assessments conducted at the school in the sending state if the courses are offered. Course placement includes but is not limited to Honors, International Baccalaureate, Advanced Placement, vocational, technical, and career pathways courses. Continuing the student's academic program from the previous school and promoting placement in academically and career challenging courses should be paramount when considering placement. This does not preclude the school in the receiving state from performing subsequent evaluations to ensure appropriate placement and continued enrollment of the student in the course or courses.

II. Educational program placement. The receiving state school shall initially honor placement of the student in educational programs based on current educational assessments conducted at the school in the sending state or participation/placement in like programs in the sending state. Such programs include, but are not limited to, gifted and talented programs, remedial services, and English Language Learner (ELL). This does not preclude the school in the receiving state from performing subsequent evaluations to ensure appropriate placement of the student. The school placement process should promote and measure knowledge and skills that lead students to meet learning competencies across content domains.

III. Special education services. (1) In compliance with the federal requirements of the Individuals with Disabilities Education Act (IDEA), 20 U.S.C.A. section 1400 et seq., the receiving state shall initially provide comparable services to a student with disabilities based on his or her current Individualized Education Program (IEP); and (2) In compliance with the requirements of section 504 of the Rehabilitation Act, 29 U.S.C.A. section 794, and with Title II of the Americans with Disabilities Act, 42 U.S.C.A. sections 12131–12165, the receiving state shall make reasonable accommodations and modifications to address the needs of incoming students with disabilities, subject to an existing 504 or Title II Plan, to provide the student with equal access to education. This does not preclude the school in the receiving state from performing subsequent evaluations to ensure appropriate placement of the student.

IV. Placement flexibility. Local education agency administrative officials shall have flexibility in waiving course/program prerequisites, or other preconditions for placement in courses/programs offered under the jurisdiction of the local education agency.

V. Absence as related to deployment activities. A student whose parent or legal guardian is an active duty member of the uniformed services, as defined by the compact, and has been called to duty for, is on leave from, or immediately returned from deployment to a combat zone or combat support posting, shall be granted additional excused absences at the discretion of the local education agency superintendent to visit with his or her parent or legal guardian relative to such leave or deployment of the parent or guardian.

**Source.** 2014, 308:1, eff. Sept. 30, 2014.

## ARTICLE VI

### 110–D:7 Eligibility.

I. Eligibility for enrollment.

(a) Special power of attorney, relative to the guardianship of a child of a military family and executed under applicable law, shall be sufficient for the purposes of enrollment and all other actions requiring parental participation and consent.

(b) A local education agency shall be prohibited from charging local tuition to a transitioning military child placed in the care of a non-custodial parent or other person standing in loco parentis who lives in a jurisdiction other than that of the custodial parent.

(c) A transitioning military child, placed in the care of a noncustodial parent or other person standing in loco parentis who lives in a jurisdiction other than that of the custodial parent, may continue to attend the school in which he/she was enrolled while residing with the custodial parent.

II. Eligibility for cocurricular participation. State and local education agencies shall facilitate the opportunity for transitioning military children's inclusion in cocurricular activities, regardless of application deadlines, to the extent they are otherwise qualified and eligible.

**Source.** 2014, 308:1, eff. Sept. 30, 2014.

## ARTICLE VII

### 110–D:8 Graduation.

In order to facilitate the on-time graduation of children of military families, states and local education agencies shall incorporate the following procedures:

I. Waiver requirements. Local education agency administrative officials shall waive specific courses required for graduation if similar course work has

been satisfactorily completed in another local education agency or shall provide reasonable justification for denial. Should a waiver not be granted to a student who would qualify to graduate from the sending school, the local education agency shall provide an alternative means of acquiring required coursework so that graduation may occur on time.

II. Exit exams. States shall accept: (1) exit or end-of-course exams required for graduation from the sending state; or (2) national norm-referenced achievement tests; or (3) alternative testing, in lieu of testing requirements for graduation in the receiving state. If none of these alternatives can be accommodated by the receiving state for a student transferring in his or her senior year, then the provisions of paragraph III shall apply.

III. Transfers during senior year. Should a military student transferring at the beginning or during his or her senior year be ineligible to graduate from the receiving local education agency after all alternatives have been considered, the sending and receiving local education agencies shall ensure the receipt of a diploma from the sending local education agency, if the student meets the graduation requirements of the sending local education agency. In the event that one of the states in question is not a member of this compact, the member state shall use best efforts to facilitate the on-time graduation of the student in accordance with paragraphs I and II.

**Source.** 2014, 308:1, eff. Sept. 30, 2014.

## ARTICLE VIII

### 110–D:9 State Coordination.

I. Each member state shall, through the creation of a state council or use of an existing body or board, provide for the coordination among its agencies of government, local education agencies, and military installations concerning the state's participation in, and compliance with, this compact and Interstate Commission activities. While each member state may determine the membership of its own state council, its membership shall include at least: the state superintendent of education, superintendent of a school district with a high concentration of military children, one representative from a military installation, one representative each from the legislative and executive branches of government, and other offices and stakeholder groups the state council deems appropriate. A member state that does not have a school district deemed to contain a high concentration of military children may appoint a superintendent from another school district to represent local education agencies on the state council.

II. The state council of each member state shall appoint or designate a military family education liaison to assist military families and the state in facilitating the implementation of this compact.

III. The compact commissioner responsible for the administration and management of the state's participation in the compact shall be appointed by the governor or as otherwise determined by each member state.

IV. The compact commissioner and the military family education liaison designated herein shall be ex-officio members of the state council, unless either is already a full voting member of the state council.

**Source.** 2014, 308:1, eff. Sept. 30, 2014.

## ARTICLE IX

### 110–D:10 Interstate Commission on Educational Opportunity For Military Children.

The member states hereby create the "Interstate Commission on Educational Opportunity for Military Children." The activities of the Interstate Commission are the formation of public policy and are a discretionary state function. The Interstate Commission shall:

I. Be a body corporate and joint agency of the member states and shall have all the responsibilities, powers and duties set forth herein, and such additional powers as may be conferred upon it by a subsequent concurrent action of the respective legislatures of the member states in accordance with the terms of this compact.

II. Consist of one Interstate Commission voting representative from each member state who shall be that state's compact commissioner.

(a) Each member state represented at a meeting of the Interstate Commission is entitled to one vote.

(b) A majority of the total member states shall constitute a quorum for the transaction of business, unless a larger quorum is required by the bylaws of the Interstate Commission.

(c) A representative shall not delegate a vote to another member state. In the event the compact commissioner is unable to attend a meeting of the Interstate Commission, the governor or state council may delegate voting authority to another person from their state for a specified meeting.

(d) The bylaws may provide for meetings of the Interstate Commission to be conducted by telecommunication or electronic communication.

III. Consist of ex-officio, non-voting representatives who are members of interested organizations. Such ex-officio members, as defined in the bylaws, may include but not be limited to, members of the representative organizations of military family advocates, local education agency officials, parent and teacher groups, the United States Department of Defense, the Education Commission of the States, the Interstate Agreement on the Qualification of Educational Personnel, and other interstate compacts affecting the education of children of military members.

IV. Meet at least once each calendar year. The chairperson may call additional meetings and, upon the request of a simple majority of the member states, shall call additional meetings.

V. Establish an executive committee, whose members shall include the officers of the Interstate Commission and such other members of the Interstate Commission as determined by the bylaws. Members of the executive committee shall serve a one year term. Members of the executive committee shall be entitled to one vote each. The executive committee shall have the power to act on behalf of the Interstate Commission, with the exception of rulemaking, during periods when the Interstate Commission is not in session. The executive committee shall oversee the day-to-day activities of the administration of the compact including enforcement and compliance with the provisions of the compact, its bylaws and rules, and other such duties as deemed necessary. The United States Department of Defense, shall serve as an ex-officio, nonvoting member of the executive committee.

VI. Establish bylaws and rules that provide for conditions and procedures under which the Interstate Commission shall make its information and official records available to the public for inspection or copying. The Interstate Commission may exempt from disclosure information or official records to the extent they would adversely affect personal privacy rights or proprietary interests.

VII. Give public notice of all meetings and all meetings shall be open to the public, except as set forth in the rules or as otherwise provided in the compact. The Interstate Commission and its committees may close a meeting, or portion thereof, where it determines by ⅔ vote that an open meeting would be likely to:

(a) Relate solely to the Interstate Commission's internal personnel practices and procedures;

(b) Disclose matters specifically exempted from disclosure by federal and state statute;

(c) Disclose trade secrets or commercial or financial information which is privileged or confidential;

(d) Involve accusing a person of a crime, or formally censuring a person;

(e) Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(f) Disclose investigative records compiled for law enforcement purposes; or

(g) Specifically relate to the Interstate Commission's participation in a civil action or other legal proceeding.

VIII. Cause its legal counsel or designee to certify that a meeting may be closed and shall reference each relevant exemptible provision for any meeting, or portion of a meeting, which is closed pursuant to this provision. The Interstate Commission shall keep minutes which shall fully and clearly describe all matters discussed in a meeting and shall provide a full and accurate summary of actions taken, and the reasons therefor, including a description of the views expressed and the record of a roll call vote. All documents considered in connection with an action shall be identified in such minutes. All minutes and documents of a closed meeting shall remain under seal, subject to release by a majority vote of the Interstate Commission.

IX. Collect standardized data concerning the educational transition of the children of military families under this compact as directed through its rules which shall specify the data to be collected, the means of collection, and data exchange and reporting requirements. Such methods of data collection, exchange, and reporting shall, in so far as is reasonably possible, conform to current technology and coordinate its information functions with the appropriate custodian of records as identified in the bylaws and rules.

X. Create a process that permits military officials, education officials, and parents to inform the Interstate Commission if and when there are alleged violations of the compact or its rules or when issues subject to the jurisdiction of the compact or its rules are not addressed by the state or local education agency. This section shall not be construed to create a private right of action against the Interstate Commission or any member state.

**Source.** 2014, 308:1, eff. Sept. 30, 2014.

## ARTICLE X

### 110–D:11 Powers and Duties of the Interstate Commission.

The Interstate Commission shall have the following powers:

I. To provide for dispute resolution among member states.

II. To promulgate rules and take all necessary actions to effect the goals, purposes and obligations as enumerated in this compact. The rules shall have the force and effect of statutory law and shall be binding in the compact states to the extent and in the manner provided in this compact.

III. To issue, upon request of a member state, advisory opinions concerning the meaning or interpretation of the interstate compact, its bylaws, rules, and actions.

IV. To enforce compliance with the compact provisions, the rules promulgated by the Interstate Commission, and the bylaws, using all necessary and proper means, including but not limited to the use of judicial process.

V. To establish and maintain offices which shall be located within one or more of the member states.

VI. To purchase and maintain insurance and bonds.

VII. To borrow, accept, hire, or contract for services of personnel.

VIII. To establish and appoint committees including, but not limited to, an executive committee as required by RSA 110–D:10, V, which shall have the power to act on behalf of the Interstate Commission in carrying out its powers and duties hereunder.

IX. To elect or appoint such officers, attorneys, employees, agents, or consultants, and to fix their compensation, define their duties and determine their qualifications; and to establish the Interstate Commission's personnel policies and programs relating to conflicts of interest, rates of compensation, and qualifications of personnel.

X. To accept any and all donations and grants of money, equipment, supplies, materials, and services, and to receive, utilize, and dispose of it.

XI. To lease, purchase, accept contributions or donations of, or otherwise to own, hold, improve, or use any property, real, personal, or mixed.

XII. To sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property, real, personal, or mixed.

XIII. To establish a budget and make expenditures.

XIV. To adopt a seal and bylaws governing the management and operation of the Interstate Commission.

XV. To report annually to the legislatures, governors, judiciary, and state councils of the member states concerning the activities of the Interstate Commission during the preceding year. Such reports shall also include any recommendations that may have been adopted by the Interstate Commission.

XVI. To coordinate education, training and public awareness regarding the compact, its implementation and operation for officials and parents involved in such activity.

XVII. To establish uniform standards for the reporting, collecting, and exchanging of data.

XVIII. To maintain corporate books and records in accordance with the bylaws.

XIX. To perform such functions as may be necessary or appropriate to achieve the purposes of this compact.

XX. To provide for the uniform collection and sharing of information between and among member states, schools, and military families under this compact.

**Source.** 2014, 308:1, eff. Sept. 30, 2014.

## ARTICLE XI

### 110–D:12 Organization and Operation of the Interstate Commission.

I. The Interstate Commission shall, by a majority of the members present and voting, within 12 months after the first Interstate Commission meeting, adopt bylaws to govern its conduct as may be necessary or appropriate to carry out the purposes of the compact, including, but not limited to:

(a) Establishing the fiscal year of the Interstate Commission.

(b) Establishing an executive committee, and such other committees as may be necessary.

(c) Providing for the establishment of committees and for governing any general or specific delegation of authority or function of the Interstate Commission.

(d) Providing reasonable procedures for calling and conducting meetings of the Interstate Commission, and ensuring reasonable notice of each such meeting.

(e) Establishing the titles and responsibilities of the officers and staff of the Interstate Commission.

(f) Providing a mechanism for concluding the operations of the Interstate Commission and the return of surplus funds that may exist upon the termination of the compact after the payment and reserving of all of its debts and obligations.

(g) Providing "start up" rules for initial administration of the compact.

II. The Interstate Commission shall, by a majority of the members, elect annually from among its members a chairperson, a vice-chairperson, and a treasurer, each of whom shall have such authority and duties as may be specified in the bylaws. The chairperson or, in the chairperson's absence or disability, the vice-chairperson, shall preside at all meetings of the Interstate Commission. The officers so elected shall serve without compensation or remuneration from the Interstate Commission; provided that, subject to the availability of budgeted funds, the officers shall be reimbursed for ordinary and necessary costs and expenses incurred by them in the performance of their responsibilities as officers of the Interstate Commission.

III. (a) The executive committee shall have such authority and duties as may be set forth in the bylaws, including but not limited to:

(1) Managing the affairs of the Interstate Commission in a manner consistent with the bylaws and purposes of the Interstate Commission;

(2) Overseeing an organizational structure within, and appropriate procedures for the Interstate Commission to provide for the creation of rules, operating procedures, and administrative and technical support functions; and

(3) Planning, implementing, and coordinating communications and activities with other state, federal and local government organizations in order to advance the goals of the Interstate Commission.

(b) The executive committee may, subject to the approval of the Interstate Commission, appoint or retain an executive director for such period, upon such terms and conditions and for such compensation, as the Interstate Commission may deem appropriate. The executive director shall serve as secretary to the Interstate Commission, but shall not be a member of the Interstate Commission. The executive director shall hire and supervise such other persons as may be authorized by the Interstate Commission.

IV. The Interstate Commission's executive director and its employees shall be immune from suit and liability, either personally or in their official capacity, for a claim for damage to or loss of property or personal injury or other civil liability caused or arising out of or relating to an actual or alleged act, error, or omission that occurred, or that such person had a reasonable basis for believing occurred, within the scope of Interstate Commission employment, duties, or responsibilities; provided, that such person shall not be protected from suit or liability for damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of such person.

(a) The liability of the Interstate Commission's executive director and employees or Interstate Commission representatives, acting within the scope of such person's employment or duties for acts, errors, or omissions occurring within such person's state may not exceed the limits of liability set forth under the Constitution and laws of that state for state officials, employees, and agents. The Interstate Commission is considered to be an instrumentality of the states for the purposes of any such action. Nothing in this section shall be construed to protect such person from suit or liability for damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of such person.

(b) The Interstate Commission shall defend the executive director and its employees and, subject to the approval of the attorney general or other appropriate legal counsel of the member state represented by an Interstate Commission representative, shall defend such Interstate Commission representative in any civil action seeking to impose liability arising out of an actual or alleged act, error or omission that occurred within the scope of Interstate Commission employment, duties or responsibilities, or that the defendant had a reasonable basis for believing occurred within the scope of Interstate Commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from intentional or willful and wanton misconduct on the part of such person.

(c) To the extent not covered by the state involved, member state, or the Interstate Commission, the representatives or employees of the Interstate Commission shall be held harmless in the

amount of a settlement or judgment, including attorney's fees and costs, obtained against such persons arising out of an actual or alleged act, error, or omission that occurred within the scope of Interstate Commission employment, duties, or responsibilities, or that such persons had a reasonable basis for believing occurred within the scope of Interstate Commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from intentional or willful and wanton misconduct on the part of such persons.

**Source.** 2014, 308:1, eff. Sept. 30, 2014.

## ARTICLE XII

### 110–D:13 Rulemaking Functions of The Interstate Commission.

I. The Interstate Commission shall promulgate reasonable rules in order to effectively and efficiently achieve the purposes of this compact. Notwithstanding the foregoing, in the event the Interstate Commission exercises its rulemaking authority in a manner that is beyond the scope of the purposes of this act, or the powers granted hereunder, then such an action by the Interstate Commission shall be invalid and have no force or effect.

II. Rules shall be made pursuant to a rulemaking process that substantially conforms to the "Model State Administrative Procedure Act," of 1981 act, Uniform Laws Annotated, Vol. 15, p.1 (2000) as amended, as may be appropriate to the operations of the Interstate Commission.

III. Not later than 30 days after a rule is promulgated, any person may file a petition for judicial review of the rule; provided, that the filing of such a petition shall not stay or otherwise prevent the rule from becoming effective unless the court finds that the petitioner has a substantial likelihood of success. The court shall give deference to the actions of the Interstate Commission consistent with applicable law and shall not find the rule to be unlawful if the rule represents a reasonable exercise of the Interstate Commission's authority.

IV. If a majority of the legislatures of the compacting states reject a rule by enactment of a statute or resolution in the same manner used to adopt the compact, then such rule shall have no further force and effect in any compacting state.

**Source.** 2014, 308:1, eff. Sept. 30, 2014.

## ARTICLE XIII

### 110–D:14 Oversight, Enforcement, and Dispute Resolution.

I. Oversight.

(a) The executive, legislative, and judicial branches of state government in each member state shall enforce this compact and shall take all actions necessary and appropriate to effectuate the compact's purposes and intent. The provisions of this compact and the rules promulgated hereunder shall have standing as statutory law.

(b) All courts shall take judicial notice of the compact and the rules in any judicial or administrative proceeding in a member state pertaining to the subject matter of this compact which may affect the powers, responsibilities, or actions of the Interstate Commission.

(c) The Interstate Commission shall be entitled to receive all service of process in any such proceeding, and shall have standing to intervene in the proceeding for all purposes. Failure to provide service of process to the Interstate Commission shall render a judgment or order void as to the Interstate Commission, this compact, or promulgated rules.

II. Default, technical assistance, suspension, and termination. If the Interstate Commission determines that a member state has defaulted in the performance of its obligations or responsibilities under this compact, or the bylaws or promulgated rules, the Interstate Commission shall:

(a) Provide written notice to the defaulting state and other member states, of the nature of the default, the means of curing the default and any action taken by the Interstate Commission. The Interstate Commission shall specify the conditions by which the defaulting state must cure its default.

(b) Provide remedial training and specific technical assistance regarding the default.

(c) If the defaulting state fails to cure the default, the defaulting state shall be terminated from the compact upon an affirmative vote of a majority of the member states and all rights, privileges, and benefits conferred by this compact shall be terminated from the effective date of termination. A cure of the default does not relieve the offending state of obligations or liabilities incurred during the period of the default.

(d) Suspension or termination of membership in the compact shall be imposed only after all other means of securing compliance have been exhausted.

Notice of intent to suspend or terminate shall be given by the Interstate Commission to the governor, the majority and minority leaders of the defaulting state's legislature, and each of the member states.

(e) The state which has been suspended or terminated is responsible for all assessments, obligations, and liabilities incurred through the effective date of suspension or termination including obligations, the performance of which extends beyond the effective date of suspension or termination.

(f) The Interstate Commission shall not bear any costs relating to any state that has been found to be in default or which has been suspended or terminated from the compact, unless otherwise mutually agreed upon in writing between the Interstate Commission and the defaulting state.

(g) The defaulting state may appeal the action of the Interstate Commission by petitioning the United States District Court for the District of Columbia or the federal district where the Interstate Commission has its principal offices. The prevailing party shall be awarded all costs of such litigation including reasonable attorney's fees.

III. Dispute resolution.

(a) The Interstate Commission shall attempt, upon the request of a member state, to resolve disputes which are subject to the compact and which may arise among member states and between member and non-member states.

(b) The Interstate Commission shall promulgate a rule providing for both mediation and binding dispute resolution for disputes as appropriate.

IV. Enforcement.

(a) The Interstate Commission, in the reasonable exercise of its discretion, shall enforce the provisions and rules of this compact.

(b) The Interstate Commission, may by majority vote of the members, initiate legal action in the United State District Court for the District of Columbia or, at the discretion of the Interstate Commission, in the federal district where the Interstate Commission has its principal offices, to enforce compliance with the provisions of the compact, its promulgated rules and bylaws, against a member state in default. The relief sought may include both injunctive relief and damages. In the event judicial enforcement is necessary the prevailing party shall be awarded all costs of such litigation including reasonable attorney's fees.

(c) The remedies herein shall not be the exclusive remedies of the Interstate Commission. The Interstate Commission may avail itself of any other remedies available under state law or the regulation of a profession.

**Source.** 2014, 308:1, eff. Sept. 30, 2014.

## ARTICLE XIV

### 110–D:15 Financing of the Interstate Commission.

I. The Interstate Commission shall pay, or provide for the payment of the reasonable expenses of its establishment, organization, and ongoing activities.

II. The Interstate Commission may levy on and collect an annual assessment from each member state to cover the cost of the operations and activities of the Interstate Commission and its staff which must be in a total amount sufficient to cover the Interstate Commission's annual budget as approved each year. The aggregate annual assessment amount shall be allocated based upon a formula to be determined by the Interstate Commission, which shall promulgate a rule binding upon all member states.

III. The Interstate Commission shall not incur obligations of any kind prior to securing the funds adequate to meet the same; nor shall the Interstate Commission pledge the credit of any of the member states, except by and with the authority of the member state.

IV. The Interstate Commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the Interstate Commission shall be subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the Interstate Commission shall by audited yearly by a certified or licensed public accountant and the report of the audit shall be included in and become part of the annual report of the Interstate Commission.

**Source.** 2014, 308:1, eff. Sept. 30, 2014.

## ARTICLE XV

### 110–D:16 Member States, Effective Date and Amendment.

I. Any state is eligible to become a member state.

II. The compact shall become effective and binding upon legislative enactment of the compact into law by no less than 10 of the states. The effective date shall be no earlier than December 1, 2007. Thereafter it shall become effective and binding as to

any other member state upon enactment of the compact into law by that state. The governors of nonmember states or their designees shall be invited to participate in the activities of the Interstate Commission on a nonvoting basis prior to adoption of the compact by all states.

III. The Interstate Commission may propose amendments to the compact for enactment by the member states. No amendment shall become effective and binding upon the Interstate Commission and the member states unless and until it is enacted into law by unanimous consent of the member states.

**Source.** 2014, 308:1, eff. Sept. 30, 2014.

### ARTICLE XVI

**110–D:17 Withdrawal and Dissolution.**

I. Withdrawal.

(a) Once effective, the compact shall continue in force and remain binding upon each and every member state; provided that a member state may withdraw from the compact by specifically repealing the statute which enacted the compact into law.

(b) Withdrawal from this compact shall be by the enactment of a statute repealing the same, but shall not take effect until one year after the effective date of such statute and until written notice of the withdrawal has been given by the withdrawing state to the governor of each other member jurisdiction.

(c) The withdrawing state shall immediately notify the chairperson of the Interstate Commission in writing upon the introduction of legislation repealing this compact in the withdrawing state. The Interstate Commission shall notify the other member states of the withdrawing state's intent to withdraw within 60 days of its receipt thereof.

(d) The withdrawing state is responsible for all assessments, obligations, and liabilities incurred through the effective date of withdrawal, including obligations, the performance of which extend beyond the effective date of withdrawal.

(e) Reinstatement following withdrawal of a member state shall occur upon the withdrawing state reenacting the compact or upon such later date as determined by the Interstate Commission.

II. Dissolution of compact.

(a) This compact shall dissolve effective upon the date of the withdrawal or default of the member state which reduces the membership in the compact to one member state.

(b) Upon the dissolution of this compact, the compact becomes null and void and shall be of no further force or effect, and the business and affairs of the Interstate Commission shall be concluded and surplus funds shall be distributed in accordance with the bylaws.

**Source.** 2014, 308:1, eff. Sept. 30, 2014.

### ARTICLE XVII

**110–D:18 Severability and Construction.**

I. The provisions of this compact shall be severable, and if any phrase, clause, sentence, or provision is deemed unenforceable, the remaining provisions of the compact shall be enforceable.

II. The provisions of this compact shall be liberally construed to effectuate its purposes.

III. Nothing in this compact shall be construed to prohibit the applicability of other interstate compacts to which the states are members.

**Source.** 2014, 308:1, eff. Sept. 30, 2014.

### ARTICLE XVIII

**110–D:19 Binding Effect of Compact and Other Laws.**

I. Other laws.

(a) Nothing herein prevents the enforcement of any other law of a member state that is not inconsistent with this compact.

(b) All member states' laws conflicting with this compact are superseded to the extent of the conflict.

II. Binding effect of the compact.

(a) All lawful actions of the Interstate Commission, including all rules and bylaws promulgated by the Interstate Commission, are binding upon the member states.

(b) All agreements between the Interstate Commission and the member states are binding in accordance with their terms.

(c) In the event any provision of this compact exceeds the constitutional limits imposed on the legislature of any member state, such provision shall be ineffective to the extent of the conflict with the constitutional provision in question in that member state.

**Source.** 2014, 308:1, eff. Sept. 30, 2014.

## CHAPTER 110–E

## MILITARY–CONNECTED STUDENTS

**110–E:1 Definitions.**

In this chapter, "military-connected student" shall mean a student who is a dependent of a current or former member of:

I. The United States military serving in the Army, Navy, Air Force, Marine Corps, Space Force, or Coast Guard on active duty;

II. New Hampshire National Guard; or

III. A reserve force of the United States military; or

IV. A member of a military or reserve force under paragraphs I–III who was killed in the line of duty.

**Source.** 2022, 310:2, eff. Aug. 30, 2022.

**110–E:2 Military Parent Student Support.**

I. Beginning with the 2023–2024 school year and each school year thereafter, each public school shall provide appropriate support services, as specified in paragraph II, to military-connected students whose parent or guardian is a member of the armed forces being called to and while serving on active duty.

II. (a) If a parent or guardian of a military-connected student is called or ordered to active duty by the federal government under the provisions of 10 U.S.C. relating to armed forces, or 32 U.S.C. relating to the National Guard, the parent or guardian may notify school district of the activation to active duty and request additional supports for the student under this section. Upon receiving notification from the parent or guardian of activation, the school district shall provide the student with access to licensed counseling services, and information regarding existing federal and state military support services and any other service, agency, or resource necessary to support or provide assistance to the student.

(b) The department of education shall coordinate with the department of military and veterans services to carry out this section, including posting information about the requirements of this section to their publicly accessible Internet websites and providing informational materials for use by school districts to inform parents and guardians of the supports available under this paragraph.

**Source.** 2022, 310:2, eff. Aug. 30, 2022.

# TITLE X

# PUBLIC HEALTH



## CHAPTER 126–H

## HEALTHY KIDS CORPORATION

[Repealed by 2020, 37:4, VIII, eff. July 29, 2020.]

## CHAPTER 126–J

## COUNCIL FOR YOUTHS WITH CHRONIC CONDITIONS



### 126–J:1 Council Established; Membership; Terms.

I. There is established the council for youths with chronic conditions and their families which shall consist of the following members:

(a) One member of the senate, appointed by the senate president.

(b) One member of the house of representatives, appointed by the speaker of the house.

(c) One representative of the department of health and human services, appointed by the commissioner.

(d) One representative of the department of education, appointed by the commissioner.

(e) One representative of the insurance department, appointed by the commissioner.

(f) A director from a community-based agency which has been charged by the council with providing support and services to youths with chronic conditions and their families.

(g) Up to 6 representatives of professional and community organizations, which shall represent a cross-section of disciplines and constituencies such as, but not limited to, physicians, nurses, and educators, appointed by the council in accordance with its bylaws.

(h) Up to 13 members who are the parent or guardian of a youth with a chronic condition, appointed by the council in accordance with its bylaws.

(i) One parent or guardian of a youth with a chronic condition, appointed by the governor.

(j) One member, who is less than 30 years of age and who has a chronic condition, appointed by the chairperson of the council.

II. Terms of office shall be for 3 years, except that legislative members shall serve the terms of their office. No member shall serve more than 2 full consecutive terms. One third of the total members' terms shall expire annually as established in the bylaws.

III. Members shall elect annually from among their number a chairperson and such other officers as they may determine.

IV. Legislative members shall receive mileage at the legislative rate.

**Source.** 1997, 293:2. 2013, 113:2, 3, eff. Aug. 24, 2013.

### 126–J:2 Committees.

The council may establish such standing committees, ad hoc committees, or task forces as it deems appropriate to carry out the mission of the council.

**Source.** 1997, 293:2, eff. Aug. 19, 1997.

### 126–J:3 Duties.

The council shall:

I. Promote the organized assessment of the needs of youths with chronic conditions and their families.

II. Serve in an advisory capacity to the department of health and human services, department of education, and insurance department for policy and program development.

III. Collaborate with the department of health and human services, the department of education, and other public and private organizations statewide to enhance community-based family supports that meet the unique needs of youths with chronic conditions and their families.

IV. Increase awareness in the public and private sector of the medical, social, and educational issues which impact youths with chronic conditions and their families.

**Source.** 1997, 293:2. 2013, 113:4, eff. Aug. 24, 2013.

### 126–J:4 Technical Assistance.

The department of health and human services, department of education, and the insurance department shall provide to the council available data, consistent with confidentiality requirements, relevant to the needs of this population.

**Source.** 1997, 293:2, eff. Aug. 19, 1997.

### 126–J:5 Report.

The council shall report annually on or before December 1 to the governor and the general court regarding the progress being made to provide services and support to youths with chronic conditions and their families in regular educational and medical environments allowing them to remain in or near their own homes and communities.

**Source.** 1997, 293:2. 2013, 113:5, eff. Aug. 24, 2013.

### 126–J:6 Funding.

The council may solicit, expend, and disburse funds from the state and federal government, as well as private grants and funds, for the purposes of this chapter. It may also enter into contracts as necessary to carry out its purpose.

**Source.** 1997, 293:2, eff. Aug. 19, 1997.

## CHAPTER 126–K

## YOUTH ACCESS TO AND USE OF TOBACCO PRODUCTS



### 126–K:1 Purpose.

The purpose of this chapter is to protect the citizens of New Hampshire from the possibility of addiction, disability, and death resulting from the use of tobacco products by ensuring that tobacco products will not be supplied to persons under the age of 21. This chapter shall not apply to alternative treatment centers registered under RSA 126–X:7 or to individuals who have been issued a registry identification card under RSA 126–X:4 only with respect to the therapeutic use of cannabis; this chapter shall still apply to alternative treatment centers and these individuals with respect to tobacco products.

**Source.** 1997, 338:8, eff. Jan. 1, 1998. 2019, 346:97, eff. Jan. 1, 2020. 2020, 37:105, eff. July 29, 2020. 2021, 122:12, eff. Sept. 7, 2021.

### 126–K:2 Definitions.

In this chapter:

I. "Cigarette" means any roll for smoking made wholly or in part of tobacco, and wrapped in any material except tobacco.

II. "Commission" means the liquor commission.

II–a. "Device" means any product composed of a mouthpiece, a heating element, a battery, and electronic circuits designed or used to deliver any aerosolized or vaporized substance including, but not limited to, nicotine or cannabis. Device may include, but is not limited to, hookah, e-cigarette, e-cigar, e-pipe, vape pen, or e-hookah.

II–b. "E-cigarette" means any electronic smoking device composed of a mouthpiece, a heating element, a battery, and electronic circuits that may or may not contain nicotine or e-liquid. This term shall include such devices whether they are manufactured as e-cigarettes, e-cigars, or e-pipes, or under any other product name.

II–c. "E-liquid" means any liquid, oil, or wax product containing, but not limited to, nicotine or cannabis intended for use in devices used for inhalation.

III. "Licensee" means the person in whose name a license issued pursuant to RSA 78:6 was granted.

III–a. [Repealed.]

IV. "Manufacturer" means any person engaged in the business of importing, exporting, producing, or manufacturing tobacco products who sells the product only to licensed wholesalers.

V. "Minor" means a person under the age of 21.

VI. "Person" means any individual, firm, fiduciary partnership, corporation, trust, or association, however formed.

VII. "Public educational facility" means any enclosed place or portion of such place, which is supported by public funds and which is used for the instruction of students enrolled in preschool programs and in grades kindergarten through 12. This definition shall include all administrative buildings and offices and areas within facilities supportive of instruction and subject to educational administration including, but not limited to, lounge areas, passageways, rest rooms, laboratories, study areas, cafeterias, gymnasiums, libraries, maintenance rooms, and storage areas.

VIII. "Retailer" means any person who sells tobacco products to consumers.

VIII–a. "Rolling paper" means any paper product that is designed to encase or wrap tobacco or similar products and marketed for the purpose of smoking or manufacturing hand-rolled cigarettes.

IX. "Sampler" means any person who distributes free tobacco products to consumers for promotional purposes.

X. "Sub-jobber" means any person doing business in this state who buys stamped tobacco products from a licensed wholesaler and who sells all the sub-jobber's tobacco products to other licensed sub-jobbers, vending machine operators, and retailers.

XI. "Tobacco product" means any product containing or derived from tobacco including, but not limited to, cigarettes, smoking tobacco, cigars, chewing tobacco, snuff, pipe tobacco, smokeless tobacco, and smokeless cigarettes. "Tobacco product" shall not include drugs, devices, or combination products authorized for sale by the United States Food and Drug Administration, as those terms are defined in the federal Food, Drug, and Cosmetic Act.

XII. "Vending machine" means any self-service device which, upon insertion of money, tokens, or any other form of payment, dispenses tobacco, cigarettes, or any other tobacco product.

XIII. "Vending machine operator" means any person operating one or more tobacco product vending machines on property or premises other than the operator's own.

XIV. "Wholesaler" means any person doing business in this state who shall purchase all the wholesaler's unstamped tobacco products directly from a licensed manufacturer and who shall sell all of the wholesaler's products to licensed wholesalers, sub-jobbers, vending machine operators, retailers, samplers, and those persons exempted from the tobacco tax under RSA 78:5.

**Source.** 1997, 338:8. 2001, 171:1. 2010, 113:1, 2, eff. July 31, 2010. 2019, 178:2, 3, eff. Jan. 1, 2020; 259:1, 9, eff. July 1, 2019; 346:95, eff. July 1, 2019. 2020, 37:106, 107, eff. July 29, 2020.

### 126–K:3 Proof of Age of Purchaser.

I. For the purposes of this chapter, any person responsible for monitoring sales from a tobacco vending machine or any person making the sale of tobacco products, e-cigarettes, or e-liquid which vending machine or other sale is to be made to any person who does not appear to be at least 21 years of age, shall require the purchaser to furnish any of the following documentation that such person is 21 years of age or over:

(a) A motor vehicle driver's license issued by the state of New Hampshire, or a valid driver's license issued by another state, the District of Columbia, a United States territory, or a province of Canada, which bears the date of birth, name, address, and picture of the individual.

(b) An identification card issued by the director of motor vehicles under the provisions of RSA 260:21, RSA 260:21–a, or RSA 260:21–b, or any picture identification card issued by another state which bears the date of birth, name, and address of the individual.

(c) An armed services identification card.

(d) A valid passport from a country with whom the United States maintains diplomatic relations.

II. Photographic identification presented under this section shall be consistent with the appearance of the person, and shall be correct and free of alteration, erasure, blemish, or other impairment.

III. The establishment of all of the following facts by a person responsible for monitoring sales from a vending machine or a person or sampler making a sale or distribution of tobacco products, e-cigarettes, or e-liquid to a person under 21 years of age shall constitute prima facie evidence of innocence and a defense to any prosecution for such sale:

(a) That the person falsely represented in writing and supported by some official documents that the person was 21 years of age or older;

(b) That the appearance of the person was such that an ordinary and prudent person would believe such person to be at least 21 years of age or older; and

(c) That the sale was made in good faith relying on such written representation and appearance in

the reasonable belief that the person was actually 21 years of age or over.

**Source.** 1997, 338:8. 2010, 113:3, 4, eff. July 31, 2010. 2015, 179:2, eff. June 26, 2015. 2016, 71:2, eff. May 10, 2016. 2019, 259:2, 3, eff. July 1, 2019; 346:98, 99, eff. Jan. 1, 2020. 2020, 37:108, 109, eff. July 29, 2020.

### 126–K:4 Sale and Distribution of Tobacco Products, E-cigarettes, or E-Liquid to Persons Who Have Not Attained 21 Years of Age Prohibited.

I. No person shall sell, give, or furnish or cause or allow or procure to be sold, given, or furnished tobacco products, e-cigarettes, or e-liquid to a person who has not attained 21 years of age. The prohibition established by this paragraph shall not be deemed to prohibit persons who have not attained 21 years of age employed by any manufacturer, wholesaler, sub-jobber, vending machine operator, sampler, or retailer from performing the necessary handling of tobacco products, e-cigarettes, or e-liquid during the duration of their employment.

II. Violations of this section shall be civil infractions punishable by administrative action of the commission against the licensee. The fines for violations of this section shall not exceed $250 for the first offense and $500 for the second offense. For the third offense, the commission shall issue a letter of warning detailing necessary corrective actions and an administrative fine ranging from $500 to $1500. In addition, the license to sell tobacco products of the manufacturer, wholesaler, sub-jobber, vending machine operator, or retailer where the offense occurred shall be suspended for a period of 10 consecutive days and not exceeding 30 consecutive days. For the fourth offense, the commission shall issue either an administrative fine and a suspension of a minimum of 10 consecutive days not to exceed 40 consecutive days, or a suspension. The administrative fine shall range from $750 to $3,000 while any suspension without a fine shall be 40 consecutive days. For any violation beyond the fourth, the commission shall revoke any license for the business or business entity at the location where the infraction occurred or any principal thereof for a period of one year from the date of revocation. The commission shall determine the level of the violation by reviewing the licensee's record and counting violations that have occurred within 3 years of the date of the violation being considered.

III. In addition to the civil penalty described in paragraph II, a person who violates this section shall be guilty of a violation for a first offense and a misdemeanor for each subsequent offense.

**Source.** 1997, 338:8. 2000, 303:1. 2001, 280:1. 2010, 113:5, eff. July 31, 2010. 2019, 259:4, eff. July 1, 2019; 346:100, eff. Jan. 1, 2020. 2020, 37:110, eff. July 29, 2020.

### 126–K:4–a Rolling Papers.

I. No person shall sell, give, or furnish rolling papers to a minor. Violations of this paragraph shall be civil infractions punishable by administrative action of the commission against the licensee. The fines for violations of this paragraph shall not exceed $250 for the first offense, $500 for the second offense, and $750 for the third and subsequent offenses.

II. No person under 21 years of age shall purchase, possess, or use any rolling paper. Any person who violates this section shall be guilty of a violation and shall be punished by a fine not to exceed $100 for each offense.

**Source.** 2001, 171:2, eff. Jan. 1, 2002. 2019, 346:101, eff. Jan. 1, 2020. 2020, 37:111, eff. July 29, 2020.

### 126–K:5 Distribution of Free Samples.

I. No person may distribute or offer to distribute samples of tobacco products, e-cigarettes, or e-liquid in a public place or to a person who has not attained 21 years of age. This prohibition shall not apply to sampling:

(a) In an area to which minors are denied access.

(b) In a store to which a retailer's license has been issued.

(c) At factory sites, construction sites, conventions, trade shows, fairs, or motorsport facilities in areas to which minors are denied access.

II. The commission shall adopt rules, pursuant to RSA 541–A, concerning the distribution of free samples of tobacco products, e-cigarettes, or e-liquid to prevent their distribution to persons who have not attained 21 years of age.

III. Violations of this section shall be civil infractions punishable by administrative action of the commission against the licensee. The fines for the violations of this section shall not exceed $250 for the first offense and $500 for the second offense. For the third offense, the commission shall issue a letter of warning detailing necessary corrective actions and an administrative fine ranging from $500 to $1,500. In addition, the sampler's license shall be suspended for a period of 10 consecutive days and not exceeding 30 consecutive days. For the fourth offense, the commission shall issue either an administrative fine and a suspension of a minimum of 10 consecutive days not to exceed 40 consecutive days, or a suspension. The administrative fine shall range from $750 to $3,000 while any suspension without a fine shall be 40 con-

secutive days. For any violation beyond the fourth, the commission shall revoke any license for the business or business entity at the location where the infraction occurred or any principal thereof for a period of one year from the date of revocation. The commission shall determine the level of the violation by reviewing the licensee's record and counting violations that have occurred within 3 years of the date of the violation being considered.

**Source.** 1997, 338:8. 2000, 303:2. 2001, 280:2. 2010, 113:6, eff. July 31, 2010. 2019, 346:102, eff. Jan. 1, 2020. 2020, 37:112, eff. July 29, 2020.

### 126–K:6 Possession and Use of Tobacco Products, E-cigarettes, or E-Liquid by Persons Who Have Not Attained 21 Years of Age.

I. No person under 21 years of age shall purchase, attempt to purchase, possess, or use any tobacco product, e-cigarette, device, or e-liquid.

II. The prohibition on possession of tobacco products, devices, e-cigarettes, or e-liquid shall not be deemed to prohibit minors employed by any manufacturer, wholesaler, sub-jobber, vending machine operator, sampler, or retailer from performing the necessary handling of tobacco products, devices, e-cigarettes, or e-liquids during the duration of their employment.

III. A person who has not attained 21 years of age shall not misrepresent his or her age for the purpose of purchasing tobacco products.

IV. Notwithstanding RSA 169–B and RSA 169–D, a person 12 years of age and older who violates this section shall not be considered a delinquent or a child in need of services.

V. Any person who has not attained 21 years of age who violates this section may be guilty of a violation and shall be punished by a fine not to exceed $100 for each offense or shall be required to complete up to 20 hours of community service for each offense, or both. Where available, punishment may also include participation in an education program.

**Source.** 1997, 338:8. 2010, 113:7, eff. July 31, 2010. 2019, 259:5, eff. July 1, 2019; 346:103, eff. Jan. 1, 2020. 2020, 37:113, eff. July 29, 2020. 2021, 122:13, eff. Sept. 7, 2021.

### 126–K:7 Use of Tobacco Products, Devices, E-cigarettes, or E-liquids on Public Educational Facility Grounds Prohibited.

I. No person shall use any tobacco product, device, e-cigarette, or e-liquid in any public educational facility or on the grounds of any public educational facility.

II. Any person who violates this section shall be guilty of a violation and, notwithstanding RSA 651:2, shall be punished by a fine not to exceed $100 for each offense.

**Source.** 1997, 338:8. 2010, 113:8, eff. July 31, 2010. 2019, 259:6, eff. July 1, 2019.

### 126–K:8 Special Provisions.

I. (a) No person shall sell, give, or furnish tobacco products, e-cigarettes, or e-liquid to a person who has not attained 21 years of age who has a note from an adult requesting such sale, gift, or delivery. Tobacco products, e-cigarettes, or e-liquid shall only be delivered to a person who provides an identification as enumerated in RSA 126–K:3 establishing that the person has attained 21 years of age.

(b) Each school shall establish a policy regarding violations of this paragraph. The policy may include, but not be limited to, mandatory education classes on the hazards of using tobacco products, e-cigarettes, or e-liquid, and suspensions and other penalties.

II. All tobacco products shall be sold in their original packaging bearing the Surgeon General's warning.

III. The sale of single cigarettes is prohibited.

IV. Violations of this section shall be civil infractions punishable by administrative action of the commission against the licensee. The fines for violations of this section shall not exceed $250 for the first offense and $500 for the second offense. For the third offense, the commission shall issue a letter of warning detailing necessary corrective actions and an administrative fine ranging from $500 to $1,500. In addition, the license to sell tobacco products of the manufacturer, wholesaler, sub-jobber, vending machine operator, or retailer where the offense occurred shall be suspended for a period of 10 consecutive days and not exceeding 30 consecutive days. For the fourth offense, the commission shall issue either an administrative fine and a suspension of a minimum of 10 consecutive days not to exceed 40 consecutive days, or a suspension. The administrative fine shall range from $750 to $3,000 while any suspension without a fine shall be 40 consecutive days. For any violation beyond the fourth, the commission shall revoke any license for the business or business entity at the location where the infraction occurred or any principal thereof for a period of one year from the date of revocation. The commission shall determine the level of the violation by reviewing the licensee's record and counting violations that have occurred

within 3 years of the date of the violation being considered.

V. In addition to the civil penalty described in paragraph IV, a person who violates this section shall be guilty of a violation for the first offense and a misdemeanor for each subsequent offense.

**Source.** 1997, 338:8. 2000, 303:3. 2001, 280:3. 2010, 113:9, eff. July 31, 2010. 2019, 259:7, eff. July 1, 2019; 346:104, eff. Jan. 1, 2020. 2020, 37:114, eff. July 29, 2020.

### 126–K:9 Enforcement Authority.

The commission shall have the primary responsibility for enforcing this chapter. Local, county, and state law enforcement officers shall also have jurisdiction to enforce this chapter. Such authority may be delegated to agents working under their authority.

**Source.** 1997, 338:8, eff. Jan. 1, 1998.

### 126–K:10 Rulemaking.

The commission shall adopt rules, pursuant to RSA 541–A, relative to the hearings and appeals process and relative to the proper administration of this chapter.

**Source.** 1997, 338:8, eff. Jan. 1, 1998.

### 126–K:11 Fines.

I. All fines imposed by any court and collected for the violation of the provisions of this chapter shall be paid to the state, county, or town, the officials of which instituted the prosecution.

II. All fines imposed by the commission shall be deposited into the general fund.

**Source.** 1997, 338:8, eff. Jan. 1, 1998.

### 126–K:12 Penalties.

I. Violations of this chapter may be prosecuted by local, county, or state law enforcement officials.

II. The commission may issue administrative warnings and assess fines and may order the commissioner of revenue administration to suspend or revoke a license issued pursuant to RSA 78 for a specified period of time for violations of this chapter.

III. The commission may issue administrative warnings, assess fines, and suspend or revoke a license issued pursuant to RSA 178 for a specified period of time for violations of this chapter.

**Source.** 1997, 338:8. 2008, 341:18, eff. Jan. 1, 2009.

### 126–K:13 Severability.

If any provision of this chapter or the application thereof to any person or circumstance is held invalid, the invalidity does not affect 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.** 1997, 338:8, eff. Jan. 1, 1998.

### 126–K:14 Preemption.

Nothing in this chapter shall be construed to restrict the power of any county, city, town, village, or other subdivision of the state to adopt local laws, ordinances, and regulations that are more stringent than this chapter and RSA 78.

**Source.** 1997, 338:8, eff. Jan. 1, 1998.

## Tobacco Use Prevention and Cessation Program

### 126–K:15 Tobacco Use Prevention and Cessation Program.

There is hereby established in the department of health and human services the tobacco use prevention and cessation program, which shall be administered with funds appropriated to the department for such purpose, and which shall include but not be limited to:

I. Tobacco use prevention community programs and grants.

II. Tobacco use prevention school programs and grants.

III. Tobacco use prevention state-wide programs and grants.

IV. Tobacco use cessation programs.

V. Tobacco use prevention and cessation counter marketing.

VI. Evaluation of tobacco control initiatives.

VII. Administration and enforcement.

**Source.** 1999, 183:3. 2000, 62:2. 2007, 263:113, eff. June 30, 2007.

### 126–K:16 Definitions.

In this subdivision:

I. "Commissioner" means the commissioner of the department of health and human services.

II. "Department" means the department of health and human services.

III. [Repealed.]

**Source.** 2000, 62:3. 2007, 263:116, II, eff. June 30, 2007.

### 126–K:17 Purpose of Grants; Grants Process.

Grants shall be available in accordance with the following procedures:

I. Requests for funding consideration in any given year shall be forwarded to the commissioner by January 1 to be reviewed for a grant beginning in the following fiscal year.

II. The commissioner shall review all requests and recommend awards, including amounts and duration. The commissioner shall submit recommendations to the governor and executive council for approval.

III. Additional requests may be considered throughout the year if funds are available. The commissioner shall forward recommendations to the governor and council for approval.

**Source.** 2000, 62:3, eff. June 16, 2000.

**126–K:18 Rulemaking.**

The commissioner shall adopt rules, pursuant to RSA 541–A, necessary for the administration of this subdivision.

**Source.** 2000, 62:3, eff. June 16, 2000.

**126–K:19 Repealed by 2008, 144:1, II, eff. Aug. 5, 2008.**

## CHAPTER 126–U

## LIMITING THE USE OF CHILD RESTRAINT PRACTICES IN SCHOOLS AND TREATMENT FACILITIES



**126–U:1 Definitions.**

In this chapter:

I. "Child" means a person who has not reached the age of 18 years and who is not under adult criminal prosecution or sentence of actual incarceration resulting therefrom, either due to having reached the age of 17 years or due to the completion of proceedings for transfer to the adult criminal justice system under RSA 169–B:24, RSA 169–B:25, or RSA 169–B:26. "Child" also includes a person in actual attendance at a school who is less than 22 years of age and who has not received a high school diploma.

II. "Director" refers to the program director, school principal, or other official highest in rank and with authority over the activities of a school or facility.

III. "Facility" includes any of the following when used for the placement, custody, or treatment of children:

(a) The youth services center maintained by the department of health and human services, or any other setting established for the commitment or detention of children pursuant to RSA 169–B, RSA 169–C, or RSA 169–D.

(b) Child care agencies regulated by RSA 170–E.

(c) Any foster home, group home, crisis home, or shelter care setting used for the placement of children at any stage of proceedings under RSA 169–B, RSA 169–C, or RSA 169–D or following disposition under those chapters.

(d) Any hospital, building, or other place, whether public or private, which is part of the state services systems established under RSA 135–C:3 and RSA 171–A:4, including but not limited to:

(1) Facilities providing inpatient psychiatric treatment within the state mental health system.

(2) The acute psychiatric services building.

(3) Any designated receiving facility.

(4) A community mental health center as defined in RSA 135–C:7, or any of its subdivisions or contractors.

(5) An area agency as defined in RSA 171–A:2, or any of its subdivisions or contractors.

(e) Any residence, treatment center, or other place used for the voluntary or involuntary custody, treatment or care of children with developmental, intellectual, or other disabilities under RSA 171–A or 171–B.

(f) Community living facilities for persons with developmental disabilities or mental illness as au-

thorized by RSA 126–A:19, when used for the placement of children.

IV. "Restraint" means bodily physical restriction, mechanical devices, or any device that immobilizes a person or restricts the freedom of movement of the torso, head, arms, or legs. It includes mechanical restraint, physical restraint, and medication restraint used to control behavior in an emergency or any involuntary medication. It is limited to actions taken by persons who are school or facility staff members, contractors, or otherwise under the control or direction of a school or facility.

(a) "Medication restraint" occurs when a child is given medication involuntarily for the purpose of immediate control of the child's behavior.

(b) "Mechanical restraint" occurs when a physical device or devices are used to restrict the movement of a child or the movement or normal function of a portion of his or her body.

(c) "Physical restraint" occurs when a manual method is used to restrict a child's freedom of movement or normal access to his or her body.

(d) "Prone restraint" is a prohibited physical restraint technique which occurs when a child is intentionally placed face-down on the floor or another surface, and the child's physical movement is limited to keep the child in a prone position. For the purpose of this definition, physical restraint that involves the temporary controlling of an individual in a prone position while transitioning to an alternative, safer form of restraint is not considered to be a prohibited form of physical restraint.

(e) Restraint shall not include:

(1) Brief touching or holding to calm, comfort, encourage, or guide a child, so long as limitation of freedom of movement of the child does not occur.

(2) The temporary holding of the hand, wrist, arm, shoulder, or back for the purpose of inducing a child to stand, if necessary, and then walk to a safe location, so long as the child is in an upright position and moving toward a safe location.

(3) Physical devices, such as orthopedically prescribed appliances, surgical dressings and bandages, and supportive body bands, or other physical holding when necessary for routine physical examinations and tests or for orthopedic, surgical, and other similar medical treatment purposes, or when used to provide support for the achievement of functional body position or proper balance or to protect a person from falling out of bed, or to permit a child to participate in activities without the risk of physical harm.

(4) The use of seat belts, safety belts, or similar passenger restraints during the transportation of a child in a motor vehicle.

(5) The use of force by a person to defend himself or herself or a third person from what the actor reasonably believes to be the imminent use of unlawful force by a child, when the actor uses a degree of such force which he or she reasonably believes to be necessary for such purpose and the actor does not immobilize a child or restrict the freedom of movement of the torso, head, arms, or legs of any child.

V. "School" means:

(a) A school operated by a school district.

(b) A chartered public school governed by RSA 194–B.

(c) A public academy as defined in RSA 194:23, II.

(d) A nonpublic school subject to the approval authority of the state board of education under RSA 186:11, XXIX.

(e) A private or public provider of any component of a child's individualized education program under RSA 186–C.

V–a. (a) "Seclusion" means: the involuntary confinement of a child alone in any room or area from which the child is unable to exit, either due to physical manipulation by a person, a lock, or other mechanical device or barrier, or from which the child reasonably believes they are not free to leave; or, the involuntary confinement of a child to a room or area, separate from their peers, with one or more adults who are using their physical presence to prevent egress.

(b) The term shall not include: the voluntary separation of a child from a stressful environment for the purpose of allowing the child to regain self-control, when such separation is to an area which a child is able to leave; circumstances in which there is no physical barrier, and the child is physically able to leave; or involuntary confinement of a child to a room or area with an adult who is actively engaging in a therapeutic intervention. A circumstance may be considered seclusion even if a window or other device for visual observation is present, if the other elements of this definition are satisfied.

VI. "Serious injury" means any harm to the body which requires hospitalization or results in the fracture of any bone, non-superficial lacerations, injury to

any internal organ, second- or third-degree burns, or any severe, permanent, or protracted loss of or impairment to the health or function of any part of the body.

**Source.** 2010, 375:2. 2014, 324:1–3, eff. Sept. 30, 2014. 2022, 272:38, eff. June 24, 2022. 2023, 75:2, eff. Aug. 6, 2023; 153:2, eff. Sept. 26, 2023.

### 126–U:1–a Limitations of Child Restraint Practices.

The department of education and the department of labor shall work cooperatively to develop consistent definitions and applications of this chapter in order to inform school administrators and employees across the state of best practices regarding restraints in schools. The department of education may utilize grant funds that are available through the department's office of student wellness for trauma-responsive training, consultation on de-escalating violent situations, and proper uses of restraint.

**Source.** 2020, 38:15, eff. Sept. 27, 2020.

### 126–U:2 Written Policies Required.

Each facility and school shall have a written policy and procedures for managing the behavior of children. Such policy shall describe how and under what circumstances seclusion or restraint is used and shall be provided to the parent, guardian, or legal representative of each child at such facility or school.

**Source.** 2010, 375:2. 2014, 324:4, eff. Sept. 30, 2014.

### 126–U:3 Post Admission Planning in Facilities.

I. As soon as possible after admission to a facility, the treatment staff of the facility, the child, and the child's parent or guardian shall develop a plan to:

(a) Identify the child's history of physical, sexual, or emotional trauma, if any.

(b) Identify effective responses to potential behavior or situations which will avoid the use of seclusion and restraint.

(c) Identify health conditions which may make the child vulnerable to injury while at the facility.

II. The plan described in this section is not required if the child is expected to be at the facility for fewer than 72 hours and, after conducting a reasonable inquiry, the staff of the facility is not informed of any history of the use of seclusion or restraint of the child.

**Source.** 2010, 375:2. 2014, 324:4, eff. Sept. 30, 2014.

### 126–U:4 Prohibition of Dangerous Restraint Techniques.

No school or facility shall use or threaten to use any of the following restraint and behavior control techniques:

I. Prone restraint, or any other physical restraint or containment technique that:

(a) Obstructs a child's respiratory airway or impairs the child's breathing or respiratory capacity or restricts the movement required for normal breathing;

(b) Places pressure or weight on, or causes the compression of, the chest, lungs, sternum, diaphragm, back, or abdomen of a child;

(c) Obstructs the circulation of blood;

(d) Involves pushing on or into the child's mouth, nose, eyes, or any part of the face or involves covering the face or body with anything, including soft objects such as pillows, blankets, or washcloths; or

(e) Endangers a child's life or significantly exacerbates a child's medical condition.

II. The intentional infliction of pain, including the use of pain inducement to obtain compliance.

III. The intentional release of noxious, toxic, caustic, or otherwise unpleasant substances near a child for the purpose of controlling or modifying the behavior of or punishing the child.

IV. Any technique that unnecessarily subjects the child to ridicule, humiliation, or emotional trauma.

V. Other forms of physical and medical restraint shall be administered in such a way so as to prevent or minimize physical harm. During the administration of restraint, the physical status of the child, including skin temperature, color, and respiration, shall be continuously monitored. The child shall be released from restraint immediately if they demonstrate signs of one or more of the following: difficulty breathing; choking; vomiting; bleeding; fainting; unconsciousness; discoloration; swelling at points of restraint; cold extremities, or similar manifestations.

**Source.** 2010, 375:2, eff. Sept. 1, 2010. 2023, 153:3, 4, eff. Sept. 26, 2023.

### 126–U:5 Limitation of the Use of Restraint to Emergencies Only.

I. Restraint shall only be used in a school or facility to ensure the immediate physical safety of persons when there is a substantial and imminent risk of serious bodily harm to the child or others. The determination of whether the use of restraint is

justified under this section may be made with consideration of all relevant circumstances, including whether continued acts of violence by a child to inflict damage to property will create a substantial risk of serious bodily harm to the child or others. Restraint shall be used only by trained personnel using extreme caution when all other interventions have failed or have been deemed inappropriate.

II. Restraint shall never be used explicitly or implicitly as punishment for the behavior of a child.

**Source.** 2010, 375:2. 2014, 324:5, eff. Sept. 30, 2014.

### 126–U:5–a Limitation on the Use of Seclusion.

I. Seclusion shall never be used explicitly or implicitly as punishment or discipline for the behavior of a child. It may only be used when a child's behavior poses a substantial and imminent risk of physical harm to the child or to others, and may only continue until that danger has dissipated.

II. Seclusion shall only be used by trained personnel after other approaches to the control of behavior have been attempted and been unsuccessful, or are reasonably concluded to be unlikely to succeed based on the history of actual attempts to control the behavior of a particular child.

III. Seclusion shall not be used in a manner that unnecessarily subjects the child to the risk of ridicule, humiliation, or emotional or physical harm.

**Source.** 2014, 324:6, eff. Sept. 30, 2014. 2023, 75:1, eff. Aug. 6, 2023.

### 126–U:5–b Conditions of Seclusion.

I. When permitted by this chapter, seclusion may only be imposed in rooms which:

(a) Are of a size which is appropriate for the chronological and developmental age, size, and behavior of the children placed in them.

(b) Have a ceiling height that is comparable to the ceiling height of the other rooms in the building in which they are located.

(c) Are equipped with heating, cooling, ventilation, and lighting systems that are comparable to the systems that are in use in the other rooms of the building in which they are located.

(d) Are free of any object that poses a danger to the children being placed in the rooms.

(e) Have doors which are either not equipped with locks, or are equipped with devices that automatically disengage the lock in case of an emergency. For the purposes of this subparagraph, an "emergency" includes, but is not limited to:

(1) The need to provide direct and immediate medical attention to a child;

(2) Fire;

(3) The need to remove a child to a safe location during a building lockdown; or

(4) Other critical situations that may require immediate removal of a child from seclusion to a safe location.

(f) Are equipped with unbreakable observation windows or equivalent devices to allow the safe, direct, and uninterrupted observation of every part of the room.

II. Each use of seclusion shall be directly and continuously visually and auditorially monitored by a person trained in the safe use of seclusion.

III. When seclusion is used, school or facility staff shall designate a co-regulator to monitor the child and develop a plan to help the child manage their state of regulation and their return to a less restrictive setting. The co-regulator shall check the child at regular intervals not to exceed 30 minutes between any one interval. The co-regulator shall be selected and designated in the following order of preference:

(a) A trusted adult selected by the child.

(b) A clinician or counselor trained in trauma informed practices.

(c) A staff member known to have a positive relationship with the child.

(d) A staff member who was not involved in the incident leading to seclusion.

**Source.** 2014, 324:6, eff. Sept. 30, 2014. 2023, 75:3, eff. Aug. 6, 2023.

### 126–U:5–c Room Confinement at the Youth Development Center.

Notwithstanding any other provision of this chapter, the youth development center may confine children in their rooms when such confinement is part of a routine practice applicable to substantial portions of the population at the center and not imposed as a consequence in response to the behavior of one or more children. Such confinement is not subject to the notice and reporting requirements of RSA 126–U:7.

**Source.** 2014, 324:6, eff. Sept. 30, 2014.

### 126–U:6 Schools Limited to Physical Restraint.

Use of restraint in schools shall be limited to physical restraint as permitted by this chapter. Schools shall not use medication restraint and shall not use mechanical restraint except as otherwise

permitted in the transportation of children pursuant to RSA 126–U:12.

**Source.** 2010, 375:2, eff. Sept. 1, 2010.

**126–U:7 Notice and Record-Keeping Requirements.**

I. Unless prohibited by court order, the facility or school shall, make reasonable efforts to verbally notify the child's parent or guardian and guardian ad litem whenever seclusion or restraint has been used on the child. Such notification shall be made as soon as practicable and in no event later than the time of the return of the child to the parent or guardian or the end of the business day, whichever is earlier. Notification shall be made in a manner calculated to give the parent or guardian actual notice of the incident at the earliest practicable time.

II. A facility employee or school employee who uses seclusion or restraint, or if the facility employee or school employee is unavailable, a supervisor of such employee, shall, within 5 business days after the occurrence, submit a written notification, on a form developed by the department of education and department of health and human services, in consultation with the office of the child advocate, containing the following information to the director or his or her designee:

(a) The date, time, and duration of the use of seclusion or restraint.

(b) A description of the actions of the child before, during, and after the occurrence.

(c) A description of any other relevant events preceding the use of seclusion or restraint, including the justification for initiating the use of restraint.

(d) The names of the persons involved in the occurrence.

(e) A description of the actions of the facility or school employees involved before, during, and after the occurrence.

(f) A description of any interventions used prior to the use of the seclusion or restraint.

(g) A description of the seclusion or restraint used, including any hold used and the reason the hold was necessary.

(h) A description of any injuries sustained by, and any medical care administered to, the child, employees, or others before, during, or after the use of seclusion or restraint.

(i) A description of any property damage associated with the occurrence.

(j) A description of actions taken to address the emotional needs of the child during and following the incident.

(k) A description of future actions to be taken to control the child's problem behaviors.

(l) The name and position of the employee completing the notification.

(m) The anticipated date of the final report.

III. Unless prohibited by court order, the director or his or her designee shall, within 2 business days of receipt of the notification required in paragraph II, send or transmit by first class mail or electronic transmission to the child's parent or guardian and the guardian ad litem the information contained in the notification. Each notification prepared under this section shall be retained by the school or facility for review in accordance with rules adopted under RSA 541–A by the state board of education and the department of health and human services.

IV. Whenever a facility or school employee has intentional physical contact with a child which is in response to a child's aggression, misconduct, or disruptive behavior, a representative of the school or facility shall make reasonable efforts to promptly notify the child's parent or guardian. Such notification shall be made no later than the time of the return of the child to the parent or guardian or the end of the business day, whichever is earlier. Notification shall be made in a manner calculated to give the parent or guardian actual notice of the incident at the earliest practicable time.

V. In any case requiring notification under paragraph IV, the school or facility shall, within 5 business days of the occurrence, prepare a written description of the incident. Such description shall include at least the following information:

(a) The date and time of the incident.

(b) A brief description of the actions of the child before, during, and after the occurrence.

(c) The names of the persons involved in the occurrence.

(d) A brief description of the actions of the facility or school employees involved before, during, and after the occurrence.

(e) A description of any injuries sustained by, and any medical care administered to, the child, employees, or others before, during, or after the incident.

VI. The notification and record-keeping requirements of paragraphs IV and V shall not apply in the following circumstances:

(a) When a child is escorted from an area by way of holding of the hand, wrist, arm, shoulder, or back to induce the child to walk to a safe location. However, if the child is actively combative, assaultive, or self-injurious while being escorted, the requirements of paragraphs IV and V shall apply.

(b) When actions are taken such as separating children from each other, inducing a child to stand, or otherwise physically preparing a child to be escorted.

(c) When the contact with the child is incidental or minor, such as for the purpose of gaining a misbehaving child's attention. However, blocking of a blow, forcible release from a grasp, or other significant and intentional physical contact with a disruptive or assaultive child shall be subject to the requirements.

(d) When an incident is subject to the requirements of paragraphs I–III.

**Source.** 2010, 375:2. 2014, 324:8, eff. Sept. 30, 2014. 2023, 75:4, eff. Aug. 6, 2023.

### 126–U:7–a Notice and Record-Keeping Requirements for Foster Family Homes.

Notwithstanding RSA 126–U:7, foster family homes, as defined in RSA 170–E:25, shall keep records and provide notice of incidents involving seclusion or restraint, according to rules adopted pursuant to RSA 541–A by the commissioner of the department of human services. The rules shall provide for timely notice to parents or guardians, which may be provided through the department. In cases involving serious injury or death to a child subject to seclusion or restraint in a foster home, the rules shall provide for timely notification to the commissioner of the department of health and human services, the attorney general, and the state's federally-designated protection and advocacy agency for individuals with disabilities.

**Source.** 2014, 324:7, eff. Sept. 30, 2014.

### 126–U:8 Review of Restraint Records by Department of Education.

I. The state board of education shall adopt rules, pursuant to RSA 541–A, relative to:

(a) Periodic, regular review by the department of education of records maintained by schools relative to the use of seclusion and restraint.

(b) A process for the department of education's receipt of complaints and its conduct of investigations of improper use of seclusion and restraint in schools. The process shall provide for:

(1) Investigation of complaints regarding any violation of this chapter, regardless of whether injury results.

(2) Investigation by persons not affiliated with the school district which is the subject of the complaint.

(3) Resolution of complaints and completion of investigations within 30 days, with provision for limited extensions for good cause.

(4) Protection of children before and after completion of the investigation.

(5) Appropriate remedial measures to address physical and other injuries, protect against retaliation, and reduce the incidence of violations of this chapter.

II. Beginning November 1, 2010, and each November 1 thereafter, the state board of education shall provide an annual report to the chairpersons of the education committees of the senate and house of representatives regarding the use of seclusion and restraint in schools. The annual report shall be prepared from the periodic, regular review of such records, and shall include the number and location of reported incidents and the status of any outstanding investigations.

**Source.** 2010, 375:2. 2014, 324:8, eff. Sept. 30, 2014.

### 126–U:9 Review of Restraint Records by Department of Health and Human Services.

I. The commissioner of the department of health and human services shall adopt rules, pursuant to RSA 541–A, relative to:

(a) Periodic, regular review by the department of health and human services of records maintained by facilities regarding the use of seclusion and restraint.

(b) A process for the department's receipt of complaints and its conduct of investigations of reports of improper use of seclusion and restraint in facilities, which may be through the department of health and human services, office of the ombudsman, or otherwise. The process shall provide for:

(1) Investigation of complaints regarding any violation of this chapter, regardless of whether injury results.

(2) Investigation by persons not affiliated with the facility which is the subject of the complaint.

(3) Resolution of complaints and completion of investigations within 30 days, with provision for limited extensions for good cause.

(4) Protection of children before and after completion of the investigation.

(5) Appropriate remedial measures to address physical and other injuries, protect against retaliation, and reduce the incidence of violations of this chapter.

II. Beginning November 1, 2010, and each November 1 thereafter, the commissioner of the department of health and human services shall provide an annual report to the committees of the house of representatives and the senate with jurisdiction over health and human services and over children and family law, regarding the use of seclusion and restraint in facilities. The annual report shall be based on the periodic, regular review of such records and shall include the number and location of reported incidents and the status of any outstanding investigations.

**Source.** 2010, 375:2. 2014, 324:8, eff. Sept. 30, 2014.

### 126–U:10 Injury or Death During Incidents of Restraint or Seclusion.

I. In cases involving serious injury or death to a child subject to restraint or seclusion in a facility, the facility shall, in addition to the provisions of RSA 126–U:7, notify the commissioner of the department of health and human services, the attorney general, and the state's federally-designated protection and advocacy agency for individuals with disabilities. Such notice shall include the notification required in RSA 126–U:7, II. The department of health and human services shall annually notify facilities of their responsibilities under this section and provide contact information for the persons to be notified.

II. In cases involving serious injury or death to a child subject to restraint or seclusion in a school, the school shall, in addition to the provisions of RSA 126–U:7, notify the commissioner of the department of education, the attorney general, and the state's federally-designated protection and advocacy agency for individuals with disabilities. Such notice shall include the written notification required in RSA 126–U:7, II. The department of education shall annually notify schools of their responsibilities under this section and provide contact information for the persons to be notified.

**Source.** 2010, 375:2. 2014, 324:8, eff. Sept. 30, 2014.

### 126–U:11 Authorization and Monitoring of Extended Restraint.

In a school or facility:

I. Restraint shall not be imposed for longer than is necessary to protect the child or others from the substantial and imminent risk of serious bodily harm.

II. Children in restraint shall be the subject of continuous direct observation by personnel trained in the safe use of restraint.

III. No period of restraint of a child may exceed 15 minutes without the approval of the director or a supervisory employee designated by the director to provide such approval.

IV. No period of restraint of a child may exceed 30 minutes unless a face-to-face assessment of the mental, emotional, and physical well-being of the child is conducted by the facility or school director or by a supervisory employee designated by the director who is trained to conduct such assessments. The assessment shall also include a determination of whether the restraint is being conducted safely and for a purpose authorized by this chapter. Such assessments shall be repeated at least every 30 minutes during the period of restraint. Each such assessment shall be documented in writing and such records shall be retained by the facility or school as part of the written notification required in RSA 126–U:7, II.

**Source.** 2010, 375:2, eff. Sept. 1, 2010.

### 126–U:12 Restriction of the Use of Mechanical Restraint During the Transport of Children.

I. A school or facility shall not use mechanical restraints during the transportation of children unless case-specific circumstances dictate that such methods are necessary.

II. Whenever a child is transported to a location outside a school or facility, the director shall ensure that all reasonable and appropriate measures consistent with public safety are made to transport or escort the child in a manner which:

(a) Prevents physical and psychological trauma;

(b) Respects the privacy of the child; and

(c) Represents the least restrictive means necessary for the safety of the child.

III. Whenever a child is transported using mechanical restraints, the director shall document in writing the reasons for the use of mechanical restraints. Such documentation shall be treated as a notification of restraint under RSA 126–U:7.

**Source.** 2010, 375:2, eff. Sept. 1, 2010.

### 126–U:13 Restriction of the Use of Mechanical Restraint in Courtrooms.

At any hearing under RSA 169–B, RSA 169–C, or RSA 169–D, the judge may subject a child to mechanical restraint in the courtroom only when the judge

finds the restraint to be reasonably necessary to maintain order, prevent the child's escape, or provide for the safety of the courtroom. Whenever practical, the judge shall provide the child and the child's attorney an opportunity to be heard to contest the use of mechanical restraint before the judge orders its use. If mechanical restraint is ordered, the judge shall make written findings of fact in support of the order.

**Source.** 2010, 375:2, eff. Sept. 1, 2010.

### 126–U:14 School Review Following the Use of Restraint or Seclusion.

Upon information that restraint or seclusion has been used for the first time upon a child with a disability as defined in RSA 186–C:2, I or a child who is receiving services under Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. section 701, and its implementing regulations, the school shall review the individual educational program and/or Section 504 plan and make such adjustments as are indicated to eliminate or reduce the future use of restraint or seclusion. A parent or guardian of a child with a disability may request such a review at any time following an instance of restraint or seclusion and such request shall be granted if there have been multiple instances of restraint or seclusion since the last review.

**Source.** 2014, 324:9, eff. Sept. 30, 2014.

## CHAPTER 141–C

## COMMUNICABLE DISEASE



### 141–C:1 Policy.

The outbreak and spread of communicable disease cause unnecessary risks to health and life, interfere with the orderly workings of business, industry, government, and the process of education, and disrupt the day-to-day affairs of communities and citizens. Because the control of communicable disease may be attained by personal actions, the timely intervention of medical practices, and cooperation among health care providers, federal, state, and municipal officials, and other groups and agencies, it is hereby declared to be the policy of this state that communicable diseases be prevented, and that such occurrences be identified, controlled, and, when possible, eradicated at the earliest possible time by application of appropriate public health measures and medical practices.

**Source.** 1986, 198:21, eff. Aug. 2, 1986.

### 141–C:1–a Medical Freedom in Immunizations.

I. Every person has the natural, essential, and inherent right to bodily integrity, free from any threat or compulsion by government to accept an immunization. Accordingly, no person may be compelled to receive an immunization for COVID–19 in order to secure, receive, or access any public facility, any public benefit, or any public service from the state of New Hampshire, or any political subdivision thereof, including but not limited to counties, cities, towns, precincts, water districts, school districts, school administrative units, or quasi-public entities.

II. Paragraph I shall not:

(a) Limit the commissioner's authority to order treatment pursuant to RSA 141–C:15 or RSA 141–C:18, nor to order quarantine pursuant to RSA 141–C:11 or RSA 141–C:18.

(b) Supersede the requirement for vaccination as a prerequisite for admission to a school or child care agency pursuant to RSA 141–C:20–a, II.

(c) Supersede the involuntary emergency admission process pursuant to RSA 135–C:27–33; the revocation of conditional discharge process under RSA 135–C:51; or involuntary treatment of patients compliant with RSA 135–C:57, III.

(d) Limit treatment authorized by a guardian over a person; or short term treatment of a personal safety emergency declared by a licensed physician or nurse practitioner in a psychiatric care setting, or authorized by a surrogate decision maker or durable power of attorney for health care delegated by the person while competent to make decisions for them during periods when they are not competent, pursuant to RSA 137–J.

(e) Apply to a county nursing home, the New Hampshire state hospital, or any other medical facility or provider operated by the state of New Hampshire or any political subdivision identified in paragraph I, which is subject to a valid and enforceable Medicare or Medicaid condition of participation that imposes a vaccination requirement. Such facilities or providers shall, upon the request of an individual for whom vaccination is required under federal regulations promulgated by the Centers for Medicare and Medicaid Services, grant such exemption on medical or religious grounds, subject to the conditions established in subparagraphs (1) and (2).

(1) The written request for a religious exemption shall simply state: "I, (insert requestor's name), hereby attest that I sincerely hold religious beliefs and/or engage in religious practices or observances that dictate the refusal to accept the required vaccination(s). (Insert requestor's signature and date.)" With the assistance of the employee, the employer shall document and evaluate the request to ensure that the individual submitting the request is covered under the organization's vaccine policy, that the request is submitted on the appropriate form, and that the requestor has properly signed and dated the form. The employer shall record the date upon which the request was received in accordance with company policy. The employer shall maintain the request in organization records for a period of not less than one year. The employer may deny the request for a religious exemption in cases in which there is a compelling rationale or evidence to believe the employee is acting fraudulently.

(2) The written request for a medical exemption shall include documentation as required under federal regulations promulgated by the Centers for Medicare and Medicare Services. The employer shall evaluate the request to ensure that the individual submitting the request is covered under the organization's vaccine policy, that the request is submitted on the appropriate form, and that the requestor has properly signed and dated the form. The employer shall record the date upon which the request was received in accordance with company policy. The employer shall maintain the request in organization records for a period of not less than one year.

III. The department of corrections may mandate medical treatment or immunization for inmates when a direct threat exists as defined in 28 CFR section 36.208.

**Source.** 2021, 131:1, eff. July 23, 2021. 2022, 269:1, eff. Aug. 23, 2022.

### 141–C:2 Definitions.

In this chapter:

I. "Agent" means any individual authorized by the commissioner to assist in carrying out the provisions of this chapter.

II. "Baggage" means the personal belongings of travelers. Such personal belongings need not be in the personal possession of the traveler.

III. "Care" means the furnishing of necessary services to a person infected with a communicable disease. The term includes provisions for shelter, food, and such other services that the person is unable to provide for himself due to his infection or its physical effects.

IV–a. "Child" means any person between birth and 18 years of age.

IV–b. "Child care agency" means "child day care agency" as defined in RSA 170–E:2, IV and "child care agency" as defined in RSA 170–E:25, II.

V. "Commodity" means any animal or animal product, plant or plant product, or inanimate material intended to be sold or distributed to the public.

VI. "Communicable disease" means illness due to a microorganism, virus, infectious substance, biological product that may be engineered as a result of biotechnology, or any naturally occurring or bioengineered component of any such microorganism, virus, infectious substance, or biological product, which may be transmitted directly or indirectly to any person from an infected person, animal or arthropod (includ-

ing insecta or arachnida) or through the vehicle of an intermediate host, vector, or inanimate environment.

VII. "Conveyance" means any vessel, aircraft, motor vehicle or other mode of transportation which is engaged in the transport of passengers, baggage, or cargo.

VIII. "Decontamination" means the act of rendering anything free from the causal agents of communicable disease.

IX. "Commissioner" means the commissioner of department of health and human services, or his designee.

X. "Department" means the department of health and human services.

X–a. "Health care provider" means any person who or entity which provides health care services including, but not limited to, hospitals, medical clinics and offices, clinical laboratories, physicians, naturopaths, chiropractors, pharmacists, dentists, registered and other nurses, and nurse practitioners, paramedics, and emergency medical technicians.

XI. "Health officer" means any individual appointed under RSA 128:1 or employed under RSA 47:12.

XI–a. "Immunization" means inoculation with a specific antigen to promote antibody formation in the body.

XI–b. "Immunizing agent" means a vaccine, antitoxin, or other substance used to increase a person's immunity to a disease.

XII. "Isolation" means the separation, for the period of communicability, of infected persons from others in such places and under such conditions as to prevent or limit the direct or indirect transmission of the infectious agent from those infected to those who are susceptible or who may spread the agent to others.

XII–a. "Protected health information" means any information, whether in oral, written, electronic visual, or any other form, that relates to an individual's physical or mental health status, condition, treatment, service, products purchased, or provision of care, and that reveals the identity of the individual whose health care is the subject of the information, or where there is a reasonable basis to believe such information could be utilized (either alone or with other information that is, or should reasonably be known to be, available to predictable recipients of such information) to reveal the identity of that individual.

XIII. "Quarantine" means the restriction of activities of well persons who have been exposed to a case of communicable disease, during its period of communicability, to prevent disease transmission during the incubation period if infection should occur. It also means the detention of a conveyance, commodity, baggage, or cargo in a separate place for such time as may be necessary and during which decontamination may be carried out.

XIII–a. "School" means any facility which provides primary or secondary education.

XIV. "Treatment" means the provision of medical services to prevent, control, or eliminate the infection of a person by a communicable disease.

**Source.** 1986, 198:21. 1987, 193:1–3. 1990, 257:1. 1994, 208:1. 1995, 310:93, 183. 2002, 258:6–8, eff. July 1, 2002.

### 141–C:3 Duties of Department.

The department shall:

I. Identify, investigate, and test for communicable diseases posing a threat to the citizens of the state and its visitors.

II. Educate the general public, persons who provide health services to the public, and those persons responsible for the health and well-being of other persons relative to measures that will prevent the contraction of communicable disease, minimize its effects, and impede its spread.

III. Coordinate such medical, municipal, and other services as may be necessary to control, and, when possible, eradicate communicable diseases when they occur.

**Source.** 1986, 198:21. 1995, 310:175, eff. Nov. 1, 1995.

### 141–C:4 Duties of Commissioner.

The commissioner shall:

I. Identify communicable diseases to be reported to the department under RSA 141–C:8.

II. Investigate outbreaks of communicable diseases under RSA 141–C:9.

III. Establish, maintain, and suspend isolation and quarantine to prevent the spread of communicable diseases under RSA 141–C:11.

IV. Order persons who pose a threat to the life and health of the public to receive such treatment and care as necessary to eliminate the threat under RSA 141–C:15.

V. Purchase and distribute such pharmaceutical agents as may be deemed necessary to prevent the

acquisition and spread of communicable disease under RSA 141–C:17.

VI. Provide laboratory services to support the detection and control of communicable disease under RSA 141–C:19.

VII. Educate the public relative to the cause, prevention and treatment of communicable disease and relative to the provisions of this chapter and its rules regarding reporting, investigations, examinations, treatment and care.

VIII. Regulate, in public places, conveyances, and buildings, the use of a common drinking cup under RSA 141–C:6.

IX. Prohibit, in public places, conveyances, or buildings the use of a common towel.

X. Authorize treatment, under the orders of a licensed physician, as may be necessary to carry out the provisions of this chapter.

**Source.** 1986, 198:21. 1990, 61:1. 1991, 3:1. 1995, 310:175, 183, eff. Nov. 1, 1995.

### 141–C:5 Duties of Health Officers.

Health officers shall:

I. Assist the commissioner, when requested to do so, in the establishment and maintenance of isolation and quarantine in their respective cities and towns, and enforce all rules adopted by the commissioner relative to isolation and quarantine.

II. Attend meetings with the commissioner, when requested, for consultation on matters relating to public health, the restriction and prevention of communicable diseases, or the consideration of other important sanitary matters related to preventing or controlling the spread of communicable diseases.

III. After being informed of isolation and quarantine orders issued pursuant to RSA 141–C:12 to persons in their jurisdiction, inform the commissioner if they identify any substantive non-compliance with the order.

IV. In the event of a public health emergency declared pursuant to RSA 4:45, enforce orders issued pursuant to RSA 4:47.

**Source.** 1986, 198:21. 1995, 310:183, eff. Nov. 1, 1995. 2021, 61:7, eff. Aug. 3, 2021.

### 141–C:6 Rulemaking.

The commissioner shall adopt rules, pursuant to RSA 541–A, relative to:

I. Identifying communicable diseases to be reported under RSA 141–C:8.

II. The design and content of all forms required under this chapter including forms for reporting communicable diseases under RSA 141–C:8.

III. Reporting required under RSA 141–C:7.

IV. The conduct of investigations carried out under RSA 141–C:9, I.

V. The procedure for disclosure of information under RSA 141–C:10.

VI. Establishing, maintaining, and lifting the isolation and quarantine of cases, carriers, or suspected cases or carriers of communicable diseases under RSA 141–C:11.

VII. Decontamination of commodities, conveyances, baggage, and cargo under RSA 141–C:11, IV.

VIII. Issuing and carrying out orders for the treatment and care and for the restriction and control of diseases under RSA 141–C:15.

IX. Distribution of pharmaceutical agents under RSA 141–C:17.

X. Laboratory testing, fee schedules, and the waiving of fees under RSA 141–C:19.

XI. Regulating use of the common cup under RSA 141–C:4, VIII.

XII. The procedure for written orders under RSA 141–C:12.

XIII. Other communicable diseases requiring immunization under RSA 141–C:20–a, I.

XIV. The child's age for administration of a vaccine for immunization.

XV. The number of doses necessary for each vaccine.

XVI. The acceptable level of immunization necessary for a child to be enrolled in a school or child care agency under RSA 141–C:20–a, II(b).

XVII. Procedures for keeping immunization records under RSA 141–C:20–b, II.

XVIII. The immunization registry established under RSA 141–C:20–f.

XIX. Identifying microbial isolates of reportable diseases and patient specimens to be retained or forwarded to the public health laboratories.

XX. Establishing a registry of biological agents present in New Hampshire.

XXI. Procedures relating to information, specimens, and samples as required under RSA 141–C:10, IV.

XXII. Procedures for administration of and disbursement from the mosquito control fund, established in RSA 141–C:25.

**Source.** 1986, 198:21. 1987, 193:4. 1990, 61:2. 1995, 310:183. 1998, 183:2. 2002, 258:9, 10. 2006, 284:2, eff. July 1, 2006.

**141–C:6–a Repealed by 2020, 9:3, eff. Nov. 1, 2021.**

**141–C:7 Reporting of Communicable Disease.**

I. Upon becoming aware of any communicable disease or communicable disease syndrome listed under RSA 141–C:8, any health care provider, clinical laboratory director, the superintendent or other person in charge of any hospital, or other health care facility, or any other person having under his or her care or observation a person afflicted with a communicable disease or communicable disease syndrome, or who has reason to believe that a person was or might have been afflicted with a communicable disease at the time of death, shall report to the commissioner the communicable disease or communicable disease syndrome and shall provide social security numbers, if persons were given the option at the original point of collection to provide social security numbers voluntarily, and such additional information and periodic reports as required under RSA 141–C:9, I.

II. Any veterinarian, livestock owner, veterinary diagnostic laboratory director, or other person engaged in the care of animals shall report animals having or suspected of having any disease that may cause a communicable disease in humans.

III. Any clinical laboratory director shall forward to the department's public health laboratory isolates of reportable infectious microorganisms as specified by the commissioner. In addition, any clinical laboratory director performing any testing for reportable diseases shall retain the original patient specimens for 7 days after issuing a final test result for diseases specified by the commissioner and shall submit such specimens to the public health laboratories upon request.

IV. In addition to the foregoing requirements for health care providers, a pharmacist shall report, if required under rulemaking procedures by the commissioner, any unusual or increased types of prescriptions, or unusual trends in pharmacy visits that may be caused by a communicable disease. Prescription–related events that require a report may include, but are not limited to:

(a) An unusual increase in the number of prescriptions to treat fever, respiratory, or gastrointestinal complaints.

(b) An unusual increase in the number of prescriptions for antibiotics.

(c) An unusual increase in the number of requests for information on over-the-counter pharmaceuticals to treat fever, respiratory, or gastrointestinal complaints.

**Source.** 1986, 198:21. 1995, 310:183. 2002, 258:11. 2003, 309:6, eff. Sept. 19, 2003.

**141–C:8 List of Diseases; Report Forms.**

The commissioner shall compile a list of reportable communicable diseases necessary to protect the citizenry. The commissioner shall develop and provide a form for the reporting of communicable diseases under this section. The form shall include, at a minimum, the name, age, address, occupation, and place of occupation of the person. Reportable information shall not include psychiatric, psychological, or other mental health records or information.

**Source.** 1986, 198:21. 1995, 310:183. 2002, 258:12, eff. July 1, 2002.

**141–C:9 Investigations; Examinations.**

I. The commissioner or designee may investigate incidents of communicable diseases. Such investigations shall include, but not be limited to, requiring additional information and periodic reports from the reporting official, interviews with reporting officials, their patients, and other persons affected by or having information pertaining to the communicable disease, surveys of such individuals, inspections of buildings and conveyances and their contents, and laboratory analysis of samples collected during the course of such inspections. The commissioner shall adopt such rules as are necessary to carry out investigations with due regard for the rights of person and property. The commissioner may call upon health officers, as authorized by RSA 141–C:5, I, to assist in such investigations.

II. Any person having or suspected of having a communicable disease, any person who is a communicable disease carrier or contact or any person who is suspected of being a communicable disease carrier or contact shall, when requested by the commissioner or designee, submit to a physical examination for the purpose of determining the existence of a communicable disease. Such persons shall submit specimens of body secretions, excretions, body fluids, and discharges for laboratory examinations when so requested by the commissioner or designee.

**Source.** 1986, 198:21. 1994, 208:2. 1995, 310:183, eff. Nov. 1, 1995.

### 141–C:10 Disclosure; Confidentiality.

I. Any protected health information provided to or acquired by the department under this chapter shall be released only with the informed, written consent of the individual or to those authorized persons having a legitimate need to acquire or use the information and then only so much of the information as is necessary for such persons to provide care and treatment to the individual who is the subject of the protected health information, investigate the causes of disease transmission in the particular case, or control the spread of the disease among the public. Any release of information under this section without the informed, written consent of the individual shall be conditioned upon the protected health information remaining confidential.

II. Analyses and compilations of data which do not disclose protected health information shall be available to the public under RSA 91–A.

III. The physician-patient privilege shall not apply to information required to be reported or provided to the commissioner under this chapter.

IV. The department shall acquire and retain only the minimum amount of information, specimens, and samples relating to individuals necessary to carry out its obligations under this chapter. The department shall adopt rules, pursuant to RSA 541–A, relative to the types of information, specimens, and samples to be acquired and the length of time such information, specimens, and samples shall be retained before being destroyed. Any genetic testing of specimens and samples shall be limited to the viruses, bacteria, fungi, or other micro-organisms therein.

V. The department may share information with town and city health officers acting in accordance with their duties under RSA 141–C:5, provided the health officer has signed a confidentiality agreement at the time of his or her appointment under RSA 128 and has presented proof of successful completion of training on adherence to applicable confidentiality and security laws and regulations required when assisting the department of health and human services under RSA 141–C:5. All sharing of confidential information under this section shall be in accordance with this section and pursuant to 45 C.F.R. 164.512(b).

**Source.** 1986, 198:21. 1994, 208:3. 1995, 310:183. 2002, 258:13, eff. July 1, 2002. 2021, 61:8, eff. Aug. 3, 2021.

### 141–C:11 Isolation and Quarantine.

I. Whenever it is necessary to prevent the introduction or spread of communicable diseases within this state or from another state, or to restrict such diseases if introduced, and when such communicable diseases pose a substantial threat to the health and life of the citizenry, the commissioner shall establish isolation or quarantine for persons who are cases or carriers, or suspected cases or carriers of communicable diseases, and establish quarantine for commodities, conveyances, baggage and cargo that are carriers or suspected carriers of the communicable diseases by written order prepared in accordance with RSA 141–C:12. Such isolation or quarantine shall be by the least restrictive means necessary to protect the citizenry which, in the case of an individual, shall be at a place of his or her choosing unless the commissioner determines such place to be impractical or unlikely to adequately protect the public health. The commissioner shall adopt such rules regarding the establishment, maintenance and lifting of isolation and quarantine as the commissioner may deem best for protecting the health of the public.

II. When a conveyance, operator, crew, passenger, baggage, cargo or commodity is placed in isolation or quarantine, the owners, consignees, assignees and operators shall submit to such investigations as authorized by RSA 141–C:9, I, regarding any circumstance or event concerning the health of the operator, crew, passengers and the sanitary condition of the conveyance, baggage, cargo or commodity. The operator, crew and passengers shall submit to such examinations, as authorized by RSA 141–C:9, II, as the commissioner may determine appropriate.

III. The commissioner may, in ordering isolation or quarantine of persons, require that treatment be obtained in accordance with rules adopted under RSA 141–C:15.

IV. The order of quarantine for commodities, conveyances, baggage and cargo may require, as a condition for lifting the quarantine, that decontamination be performed. The commissioner shall adopt such rules pursuant to RSA 541–A as are necessary for the performance of decontamination.

**Source.** 1986, 198:21. 1995, 310:183. 2002, 258:20, eff. July 1, 2002.

### 141–C:12 Orders.

I. The commissioner, in imposing isolation and quarantine under RSA 141–C:11, in requiring treatment under RSA 141–C:15, or in excluding children under RSA 141–C:20–d, shall do so by written order.

The order shall include, as appropriate, the following information:

(a) The cause of the quarantine or isolation.

(b) The location of quarantine or isolation.

(c) When appropriate, that decontamination be performed on commodities, conveyances, baggage and cargo.

(d) When treatment is required as part of the order, where such treatment is available and, if applicable, what effect the receipt of treatment may have on the conditions of isolation and quarantine.

(e) The period of duration of isolation or quarantine.

(f) The commissioner's signature.

(g) The reason and length of time for the exclusion of children from schools and child care facilities.

II. Orders issued under this section shall be complied with immediately.

III. When an individual subject to an order for isolation or quarantine refuses to cooperate with such order, the commissioner may issue a complaint, which shall be sworn to before a justice of the peace. Such complaint shall set forth the reasons for the order imposing isolation or quarantine and the place or facility where the individual shall be isolated or quarantined. Upon being presented with such an order, any law enforcement officer shall take such individual into custody and transport the individual to the place or facility where the individual is to be isolated or quarantined.

**Source.** 1986, 198:21. 1987, 193:5, 6. 1995, 310:94, 183. 2002, 258:14, eff. July 1, 2002.

### 141–C:13 Evading Quarantine; Breaking Quarantine.

I. If, after an order is issued under RSA 141–C:12, any commodity, conveyance, cargo or baggage is not removed to the place of quarantine or is not decontaminated or is brought near any dwelling house, facility, or housing providing services to people, or near any place of business or manufacture without the permission of the commissioner or his designee, the commissioner shall petition the superior court to review the order.

II. If any person ordered to undergo isolation or quarantine leaves such place of quarantine, a place designated by the commissioner for the decontamination of commodities, conveyances, baggage and cargo under quarantine, or a place of treatment and care of persons under isolation or quarantine without the permission of the commissioner or his designee, the commissioner shall petition the superior court for review of the order.

III. When an individual subject to an order for isolation or quarantine refuses to cooperate with such order, the commissioner may issue a complaint, which shall be sworn to before a justice of the peace. Such complaint shall set forth the reasons for the order imposing isolation or quarantine and the place or facility where the individual shall be isolated or quarantined. Upon being presented with such an order, any law enforcement officer shall take such individual into custody and transport the individual to the place or facility where the individual is to be isolated or quarantined.

**Source.** 1986, 198:21. 1995, 310:183. 2002, 258:15, eff. July 1, 2002.

### 141–C:14 Invading Isolation; Quarantine.

If any person shall, without permission of the commissioner, his designee, or a health officer acting on the request of the commissioner, enter a place of isolation or quarantine, board a conveyance under quarantine, enter the limits of a place designated for the decontamination of cargo or baggage under quarantine, or enter a place designated for the treatment of persons placed under isolation or quarantine and such person is not an employee or agent of the facility providing such treatment, he shall be considered infected and ordered to undergo isolation or quarantine under RSA 141–C:11. He shall remain there at his own expense until the commissioner determines that there is no threat to the citizenry by virtue of the exposure to the cause of isolation or quarantine.

**Source.** 1986, 195:21. 1995, 310:183, eff. Nov. 1, 1995.

### 141–C:14–a Due Process.

I. Any person subject to an order for submission of a specimen, or for examination, immunization, treatment, isolation, quarantine, provision of information, inspection of a building or conveyance, or any other order of the commissioner under this chapter or RSA 21–P:53, may request a hearing in the superior court to contest such order. The commissioner shall provide, or cause to be provided, to the person both oral and written notice of the right to contest the order and the form for making the request, which form shall require no more than the person's name, address, and signature and the time and date of the signature.

II. Submission of the completed form to the law enforcement officer or other individual serving the

order shall be considered a filing with the superior court and such officer or other individual shall promptly deliver the form to the superior court.

III. The superior court shall schedule a hearing and render a decision upon the request within 48 hours of the time the request was made. If the court determines that exigencies related to protection of the health of the public preclude a hearing and decision within the 48-hour period, the hearing and decision may take place within a suitable time as determined by the court, but in no event later than 120 hours after the time the request was made.

IV. No examination, specimen, immunization, treatment, or other action shall be required against the will of a person who has filed a request for a hearing. A person may be held in isolation or quarantine pending the outcome of the court hearing, but may no longer be held if the court fails to render its decision within the time period required under paragraph III.

V. At the hearing the burden of proof shall be on the commissioner to prove by clear and convincing evidence that the person poses a threat to public health, or that the information to be produced or inspection of a building or conveyance is necessary to protect against a serious threat to the public health, and the order issued by the commissioner is thereby warranted to alleviate such threat.

VI. All orders issued under this chapter shall be in writing and a copy shall be provided to the person subject to the order at the time it is served. Every person who contests an order of the commissioner under this chapter shall be given a copy of the executed form contesting such order.

VII. Nothing in this chapter shall be construed to require the medical examination, medical treatment, or immunization of a person who objects, and no criminal penalties shall be imposed as a result. Notwithstanding this paragraph, such a person may be subject to isolation or quarantine for the minimum period necessary to protect the public health, as determined by the court in its decision following the hearing pursuant to this section.

**Source.** 2002, 258:16. 2008, 271:2, 3, eff. June 26, 2008.

### 141–C:15 Treatment, Care of Sick; Costs.

I. Any person infected with a communicable disease, or reasonably suspected of being infected with a communicable disease, and whose continued presence among the citizenry poses a significant threat to health and life, shall be ordered by the commissioner under RSA 141–C:11, to report to a health care provider or health care facility to undergo such treatment and care as the commissioner may deem necessary to eliminate the threat. The commissioner shall adopt rules, pursuant to RSA 541–A, necessary to issue and carry out such orders for treatment and to restrict and control communicable disease through treatment.

II. If the person subject to the order cannot be removed to a health care provider or to a health care facility for treatment without danger to his life or to the citizenry, the commissioner shall impose isolation or quarantine under RSA 141–C:11 and shall arrange for treatment and care as necessary to mitigate the threat.

III. The commissioner shall assist indigent persons who are infected with tuberculosis and supply them with anti-tuberculosis drugs for treatment and preventative therapy, chest x-rays, and such physical examinations as necessary to monitor the course of treatment and therapy.

IV. The cost of treatment and care, except treatment provided under RSA 141–C:15, III, and physical examinations under RSA 141–C:9 and RSA 141–C:18, shall be a cost to the person, or his parent or guardian, or, if such person is indigent, from such public funds available for such purposes. Costs of physical examinations and treatment and care provided to the operator, passengers and crew of conveyances who are, or might have been, infected by means of the conveyance, shall be a cost to the owner, consignee or assignee of the conveyance.

V. The cost for maintenance of quarantine for commodities, conveyances, cargo and baggage, and for the decontamination of commodities, conveyances, cargos and baggage, shall be a cost to the owner, consignee or assignee of the commodity or conveyance.

VI. When an individual subject to an order for treatment by the commissioner refuses to undergo such ordered treatment, the commissioner may issue a complaint, which shall be sworn to before a justice of the peace. Such complaint shall set forth the reasons for the order imposing treatment, the nature of the treatment to be provided, and the place or facility where the treatment shall be provided. Upon being presented with such an order, any law enforcement officer shall take such individual into custody and transport the individual to the place or facility where the treatment is to be provided.

**Source.** 1986, 198:21. 1995, 310:183. 2002, 258:17, eff. July 1, 2002.

**141–C:15–a Administration of Certain Prescription Medication for Treatment or Prevention of a Communicable Disease.**

I. Notwithstanding the provisions of RSA 326–B:2, I–a, and RSA 329:1–c, a health care professional authorized to prescribe prescription medication for the treatment or prevention of a communicable disease may prescribe, dispense, or distribute directly or by standing order, drugs and testing to a patient he or she did not evaluate and with whom there is no established health care provider-patient relationship to empirically treat for, or provide an agent or prophylaxis to prevent, a communicable disease that poses a threat to public health. Any such prescription shall be regarded as being issued for a legitimate medical purpose and in accordance with established clinical practice guidelines, when available.

II. Communicable diseases that pose a threat to public health for the purposes of paragraph I shall be limited to the following:

(a) Bordetella pertussis, Chlamydia trachomatis, Neisseria gonorrhea, and Neisseria meningitis; or

(b) Diseases that constitute an immediate threat to public health and for which the commissioner, or designee, declares a public health incident under RSA 508:17–a or issues clinical guidance that requests providers to consider prescribing, dispensing, or distributing immunizing agents or drugs under paragraph I in order to control a disease outbreak.

III. No health care professional who, acting in good faith and with reasonable care, prescribes, dispenses, or distributes an agent or drug and testing for the treatment or prevention of a communicable disease as described in paragraph I, shall be subject to any criminal or civil liability, or any professional disciplinary action, for any action authorized by this section or any outcome resulting from an action authorized by this section.

**Source.** 2017, 42:2, eff. May 9, 2017. 2020, 39:2, eff. July 29, 2020.

**141–C:16 Mode of Treatment and Care.**

Nothing in this chapter shall be construed to authorize the commissioner to restrict in any manner a person's right to select the mode of treatment of his choice, or to refuse treatment, when treatment is ordered by the commissioner under RSA 141–C:15, I, or to request any physical examination or treatment of a person who in good faith relies upon spiritual means or prayer for healing. Such reliance or treatment or refusal of treatment shall not be considered a danger or menace to others under any provisions of this chapter; provided, however, that there is compliance with the sanitary, isolation and quarantine laws and rules adopted under this chapter. This section shall not be construed to prevent a parent or guardian from exercising his legal responsibilities.

**Source.** 1986, 198:21. 1995, 310:183, eff. Nov. 1, 1995.

**141–C:16–a Closure; Decontamination.**

I. The commissioner, with the written approval of the governor, may close, direct, and compel the evacuation and decontamination of any building located within the state that is accessible to the public, such as businesses, primary and secondary schools, and universities, regardless of whether publicly or privately owned, when there is reasonable cause to believe the building may present an imminent danger to the public health. The commissioner may also cause any material located within or on the grounds of a building to be decontaminated or destroyed when there is reasonable cause to believe that the material may present imminent danger to the public health. Destruction of any material under this chapter shall be considered a taking of private property and shall be subject to the compensation provisions of RSA 4:46.

II. Notice shall be made by posting notice on all means of ingress or egress of the building and, within 24 hours of posting, mailing the notice, return receipt requested, to the owner of record. The notice shall state the reason for the action and its anticipated duration.

III. Orders issued pursuant to this section shall be effective immediately and shall remain in effect in accordance with this section unless the superior court issues a decision directing otherwise. Any person who is aggrieved by an order pursuant to this section may request a hearing in the superior court to contest that order. The superior court shall schedule and hold a hearing and issue a decision within 5 working days of the court's receipt of the request for a hearing, unless a shorter period is required for review. At the hearing, the burden of proof shall be on the commissioner to prove by clear and convincing evidence that the action taken is reasonably necessary to protect the health of the public.

IV. Orders issued under this section shall be subject to the due process provisions of RSA 141–C:14–a.

**Source.** 2002, 258:22. 2008, 336:1, eff. July 7, 2008.

### 141–C:16–b Cancellation of Events.

The commissioner, with the written approval of the governor, may order the cancellation of public gatherings and events within the state, or in specific geographic areas of the state, as is deemed necessary to prevent an imminent danger to the public health. Notice of any order canceling a public gathering or event shall be made in writing, shall specify the reason for the cancellation, and shall be delivered to the organizer of the event or owner of the venue where the event was to occur in a manner that will give as much notice prior to the cancellation as is reasonably possible. Notice shall also be given to the public in a manner that is reasonably likely to be available to the members of the public affected by the order. Such order shall be effective immediately and shall remain in effect in accordance with this section unless the superior court issues a decision directing otherwise. Any person who is aggrieved by an order pursuant to this section may request a hearing in the superior court to contest that order. The superior court shall schedule and hold a hearing and issue a decision within 5 working days of the court's receipt of the request for a hearing, unless a shorter period is required for review. At the hearing, the burden of proof shall be on the commissioner to prove by clear and convincing evidence that cancellation of the public gathering or event is reasonably necessary to protect the health of the public.

**Source.** 2008, 336:2, eff. July 7, 2008.

### 141–C:17 Purchase; Distribution.

The commissioner may purchase and distribute anti-toxins, serums, vaccines, immunizing agents, antibiotics and other pharmaceutical agents which the commissioner deems advisable to prevent, prepare for, or respond to an outbreak of communicable disease or other serious threat to the public health. Any medications distributed in the event of a public health incident declared pursuant to RSA 508:17–a shall be exempt from labeling in accordance with RSA 318:47–b. State employees and other persons acting under the authority and direction of the commissioner may carry out the activities authorized under this section.

**Source.** 1986, 198:21. 1990, 61:3. 1994, 208:8. 1995, 310:183. 2008, 271:4, eff. June 26, 2008.

### 141–C:17–a Vaccine Purchase Fund.

There is hereby established a vaccine purchase fund for the purchase of antitoxins, serums, vaccines and immunizing agents, which are to be provided to the public at no cost except for the actual cost of administering such agents, under RSA 141–C:17. Any funds provided to the department for this purpose and deposited in the fund shall not be used for any other purpose. Moneys in the fund shall be continually appropriated to the commissioner of the department of health and human services.

**Source.** 1991, 280:1. 1995, 310:175, 182, eff. Nov. 1, 1995.

### 141–C:17–b Custody; Rationing.

If there is a statewide or regional shortage or threatened shortage of any anti-toxins, serums, vaccines, immunizing agents, antibiotics, and other pharmaceutical agents, or mechanical equipment, and such shortage poses a serious threat to the public health, the commissioner, with the written approval of the governor, may control, restrict, and ration the use, sale, dispensing, distribution, or transportation of such agents as necessary to best protect the health, safety, and welfare of the people of this state. In making rationing or other supply and distribution decisions, the commissioner may determine the preference and priority for distribution of such agents, such as giving preference to health care providers and emergency response personnel. The commissioner, with the written approval of the governor, shall have the discretion to take custody of all supplies of specific anti-toxins, serums, vaccines, immunizing agents, antibiotics, and other pharmaceutical agents, or mechanical equipment, existing within the state to ensure that such agents are distributed and utilized appropriately. Notice of an order issued pursuant to this section shall be given in writing to the owner of the personal property, or, if the owner cannot be readily determined, to the person in charge of the location where the personal property is located. The notice shall specify the reason for the action and its expected duration. Such order shall be effectively immediately and shall remain in effect in accordance with this section unless the superior court issues a decision directing otherwise. The owner of any property subject to an order issued pursuant to this section may request a hearing in the superior court to contest that order. The superior court shall schedule and hold a hearing and issue a decision within 5 working days of the court's receipt of the request for a hearing, unless a shorter period is required for review. At the hearing, the burden shall be on the commissioner to prove by clear and convincing evidence that the order is reasonably necessary to protect the health, safety, and welfare of the public. Multiple requests for hearings under this section may be consolidated into one hearing if the underlying facts are similar, the court deems such consolidation to be appropriate, and the court determines that such

consolidation will adequately satisfy the due process rights of the persons who requested a hearing.

**Source.** 2008, 336:3, eff. July 7, 2008.

### 141–C:17–c Compensation and Expenditures.

Items taken by the commissioner pursuant to the provisions of this chapter shall be subject to the compensation provisions of RSA 4:46, but in no event shall the owner thereof be entitled to more than the Medicaid rate for the item that was in effect at the time of the taking. Notwithstanding the provisions of RSA 9:19–9:21, the commissioner may make such expenditures as necessary to carry out the provisions of this chapter; provided, that expenditures are made from funds appropriated to the department that the commissioner determines to be available for this purpose and information regarding the expenditures is promptly submitted to the fiscal committee of the general court and the governor and council.

**Source.** 2008, 336:3, eff. July 7, 2008.

### 141–C:18 Sexually Transmitted Disease.

I. The commissioner may request the examination, and order isolation, quarantine, and treatment of any person reasonably suspected of having been exposed to or of exposing another person or persons to a sexually transmitted disease. Any order of treatment issued under this paragraph shall be in accordance with RSA 141–C:11, RSA 141–C:12, and RSA 141–C:15.

II. Any minor 14 years of age or older may voluntarily submit himself to medical diagnosis and treatment for a sexually transmitted disease and a licensed physician may diagnose, treat or prescribe for the treatment of a sexually transmitted disease in a minor 14 years of age or older, without the knowledge or consent of the parent or legal guardian of such minor.

**Source.** 1986, 198:21. 1995, 310:183, eff. Nov. 1, 1995.

### 141–C:19 Laboratory Support Services; Rules.

I. The commissioner shall make available laboratory tests for the early detection and control of communicable diseases such as acquired immune deficiency syndrome, rubella, herpes virus, legionnaire's disease, eastern equine encephalitis, viral hepatitis, chlamydia, rabies, rotavirus, rubeola, influenza, salmonella, pertussis and toxoplasmosis.

II. The commissioner shall adopt rules, pursuant to RSA 541–A, relative to adding to the list of communicable diseases in paragraph I for which testing shall be available and establishing a fee schedule for all tests available under this section. The commissioner may waive such fees when it is in the best interest of the health of the public to do so.

**Source.** 1986, 198:21. 1995, 310:183, eff. Nov. 1, 1995.

### 141–C:20 Education.

The commissioner or his designee shall prepare and distribute such current public information materials relative to the cause, prevention, and treatment of the various communicable diseases and relative to rules adopted under this chapter as may best instruct health care providers and the public in methods of prevention and control of communicable diseases, including proper treatment methods.

**Source.** 1986, 198:21. 1995, 310:183, eff. Nov. 1, 1995.

### 141–C:20–a Immunization.

I. All parents or legal guardians shall have their children who are residing in this state immunized against certain diseases. These diseases shall include, but not be limited to, diphtheria, mumps, pertussis, poliomyelitis, rubella, rubeola, and tetanus. The commissioner shall adopt rules under RSA 541–A relative to other diseases which require immunization.

II. No child shall be admitted or enrolled in any school or child care agency, public or private, unless the following is demonstrated:

(a) Immunization under paragraph I;

(b) Partial immunization relative to the age of the child as specified in rules adopted by the commissioner; or

(c) Exemption under RSA 141–C:20–c.

III. Nothing in this section shall require an immunization/vaccination requirement for diseases that are noncommunicable. Noncommunicable disease means a disease that is not infectious or transmissible from person-to-person.

**Source.** 1987, 193:7. 1995, 310:183, eff. Nov. 1, 1995. 2017, 137:1, eff. Aug. 15, 2017.

### 141–C:20–b Records.

I. Any person who immunizes a child shall complete a form to be supplied by the commissioner and shall give the completed form to the parent or legal guardian.

II. Schools and child care agencies shall keep immunization records for all enrolled children. Such records shall be available for inspection during reasonable hours upon request by the commissioner or his designee.

**Source.** 1987, 193:7. 1995, 310:183, eff. Nov. 1, 1995.

**141–C:20–c Exemptions.**

A child shall be exempt from immunization if:

I. A physician licensed under RSA 329, or a physician exempted under RSA 329:21, III, certifies that immunization against a particular disease may be detrimental to the child's health. The exemption shall exist only for the length of time, in the opinion of the physician, such immunization would be detrimental to the child. An exemption from immunization for one disease shall not affect other required immunizations.

II. A parent or legal guardian objects to immunization because of religious beliefs. The parent or legal guardian shall sign a form stating that the child has not been immunized because of religious beliefs.

**Source.** 1987, 193:7. 2001, 18:1, eff. Jan. 1, 2002. 2022, 55:1, eff. July 19, 2022.

**141–C:20–d Exclusion During Outbreak of Disease.**

During an outbreak of a communicable disease for which immunization is required under RSA 141–C:20–a, children exempted under RSA 141–C:20–c shall not attend the school or child care agency threatened by the communicable disease. The commissioner shall prepare a written order as required under RSA 141–C:12, I.

**Source.** 1987, 193:7. 1995, 310:183, eff. Nov. 1, 1995.

**141–C:20–e Immunization Reports.**

Schools and child care agencies, whether public or private, shall make an annual report to the commissioner relative to the status of immunization of all enrolled children.

**Source.** 1987, 193:7. 1995, 310:183, eff. Nov. 1, 1995.

**141–C:20–f Immunization Registry.**

I. The department shall establish and maintain a state immunization registry. The registry shall be a single repository of accurate, complete and current immunization records to aid, coordinate, and promote effective and cost-efficient disease prevention and control efforts.

II. No patient, or the patient's parent or guardian if the patient is a minor, shall be required to participate in the immunization registry.

II–a. Each patient, or the patient's parent or guardian if the patient is a minor, shall be given the opportunity to opt-out or opt-in to the immunization registry. No patient's personal data, such as name, address, date of birth, immunization, or vaccination information, shall be entered into the registry without the explicit, written or electronic consent of the patient, or the patient's parent or guardian.

III. Physicians, nurses, and other health care providers may report an immunization to the immunization registry unless the patient, or the patient's parent or guardian if the patient is a minor, refuses to allow reporting of this information.

III–a. A patient, or the patient's parent or guardian if the patient is a minor, may withdraw from participation in, and request the removal of information from, the registry at any time by submitting a request for withdrawal directly to the department of health and human services. The form shall be signed by a health care provider, or the form shall be notarized by an official authorized by a governmental authority to notarize the signature. If the patient is a minor, the form shall require the signature of a health care provider or the notarized signature of the minor's parent or legal guardian. The form provided by the department shall include information and consequences of withdrawing from the registry and that the responsibility to maintain vaccination records becomes the responsibility of the patient or the patient's parent or guardian if the patient is a minor.

IV. Access to the information in the registry shall be limited to primary care physicians, nurses, other appropriate health care providers as determined by the commissioner, schools, child care agencies, and government health agencies or researchers demonstrating a legitimate need for such information as determined by the commissioner.

V. The information contained in the registry shall be used for the following purposes:

(a) To ensure that registrants receive all recommended immunizations in a timely manner by providing access to the registrant's immunization record.

(b) To improve immunization rates by facilitating notice to registrants of overdue or upcoming immunizations.

(c) To control communicable diseases by assisting in the identification of individuals who require immediate immunization in the event of a disease outbreak.

VI. The commissioner shall adopt rules under RSA 541–A concerning the following:

(a) The establishment and maintenance of the immunization registry.

(b) The methods for submitting and content of reports of immunizations.

(c) Procedures for the patient, or the patient's parent or guardian if the patient is a minor, to decline to participate in the registry.

(d) Procedures for the registrant, or the registrant's parent or guardian if the registrant is a minor, to review and correct information contained in the registry.

(e) Procedures for the registrant, or the registrant's parent or guardian if the registrant is a minor, to withdraw consent for participation at any time and to remove information from the registry.

(f) Limits on and methods of access to the registry by those authorized to gain access under paragraph IV of this section.

(g) Procedures for managed care organizations to obtain summary statistics of immunization information on managed care organization members from the immunization registry.

VII. Any person reporting, receiving, or disclosing information to or from the immunization registry as authorized by this section or by any rule adopted pursuant to this section shall not be liable for civil damages of any kind connected with such submission or disclosure of immunization information.

VIII. Nothing in this section is intended to affect the obligations of persons under RSA 141–C:20–a to have their children properly immunized.

IX. Nothing in this section shall preclude the right of the patient, or the patient's parent or guardian if the patient is a minor, to claim exemption from immunization as defined in RSA 141–C:20–c; nor shall anything in this section require such patient to be included in the registry if the patient, or the patient's parent or guardian if the patient is a minor, objects thereto on any grounds, including but not limited to, that such registry conflicts with the religious beliefs of the patient, or the patient's parent or guardian if the patient is a minor.

X. No health care provider or any other entity identified in paragraph IV shall discriminate in any way against a person solely because that person elects not to participate in the immunization registry.

**Source.** 1998, 183:3, eff. Aug. 14, 1998. 2022, 74:1, eff. July 19, 2022; 270:1, eff. July 1, 2023; 307:2, eff. Aug. 30, 2022.

### 141–C:21 Penalty.

Any person who shall violate, disobey, refuse, omit or neglect to comply with any of the provisions of RSA 141–C, or of the rules adopted pursuant to it, shall be guilty of a misdemeanor if a natural person, or guilty of a felony if any other person.

**Source.** 1986, 198:21, eff. Aug. 2, 1986.

### 141–C:22 Penalty for Sale or Use for Personal Gain.

Any natural person selling or disposing of any pharmaceutical agents purchased or distributed under RSA 141–C:17 for personal gain shall be guilty of a misdemeanor. Any other person shall be guilty of a felony.

**Source.** 1986, 198:21. 1990, 61:4, eff. June 5, 1990.

### 141–C:23 Injunction.

A civil action may be instituted in superior court on behalf of the department for injunctive relief to prevent the violation of the provisions of this chapter or rules adopted under this chapter. The court may proceed in the action in a summary manner or otherwise and may enjoin in all such cases any person in violation of any provisions of this chapter or its rules.

**Source.** 1994, 208:4. 1995, 310:175, eff. Nov. 1, 1995.

### 141–C:24 Mosquito Control Districts; Rulemaking.

Contiguous municipalities may establish mosquito control districts for the purposes of applying for moneys from the mosquito control fund established in RSA 141–C:25 and for the purposes of applying for spraying permits. The commissioner, in consultation with the commissioner of the department of agriculture, markets, and food shall adopt rules, pursuant to RSA 541–A, relative to the establishment of such mosquito districts. A mosquito control district established pursuant to RSA 430:13 shall be considered a mosquito control district under this chapter.

**Source.** 2006, 284:1. 2007, 22:1, eff. July 1, 2007.

### 141–C:25 Mosquito Control Fund.

I. There is hereby established a nonlapsing and continually appropriated mosquito control fund to assist cities, towns, and mosquito control districts by providing funding for the purpose of offsetting the cost of mosquito control activities including, but not limited to, the purchase and application of chemical pesticides. The purpose of the fund is to provide financial assistance, when needed, to cities, towns, and mosquito control districts engaging in mosquito control and abatement activities in response to a declared threat to the public health.

II. In order to be eligible to receive funding, a city, town, or mosquito control district shall have in place a comprehensive mosquito control plan approved by the commissioner. This plan shall include at a minimum:

(a) A list of the pesticides (active ingredient) and methods by which these pesticides will be applied to ensure that the application is done in a safe and proper manner.

(b) Safeguards that will be taken to protect the health of the public, wildlife, and resources within the state including provisions for the measuring and monitoring of residual pesticides in the water and soil.

(c) A comprehensive public awareness campaign geared toward prevention and designed to educate the public about the health risks associated with mosquitoes.

(d) Appropriate abatement measures.

III. (a) The commissioner, in consultation with the Centers for Disease Control and Prevention, and with the concurrence of the governor, may determine that a threat to the public health exists that warrants expedited mosquito control and abatement activities within a city, town, or mosquito control district. Such determination shall be based on local factors which may include:

(1) Historical and current climatic conditions.

(2) Historical and current mosquito population indices.

(3) Historical and current mosquito, veterinary, and human arboviral disease surveillance.

(b) An expedited approval process shall be established for the implementation of mosquito control and abatement activities, including the application of pesticides. The commissioner of the department of agriculture, markets, and food may authorize expedited mosquito control and abatement activities pursuant to this paragraph.

IV. A city, town, or mosquito control district shall be eligible to receive funds if the commissioner determines that:

(a) The city, town, or mosquito control district has a comprehensive mosquito control plan approved by the commissioner in accordance with paragraph II;

(b) The city, town, or mosquito control district has engaged or plans to engage in mosquito control and abatement activities pursuant to paragraph III;

(c) The commissioner, after consultation with the Centers for Disease Control and Prevention, has determined that mosquito control and abatement activities are appropriate to mitigate the public health threat; and

(d) A threat to public health has been determined in accordance with paragraph III.

IV–a. Following a determination of eligibility under paragraph IV, the city, town, or mosquito control district shall be eligible for funding for mosquito control and abatement activities occurring during the same calendar year prior to or after a determination of a public health threat under paragraph III.

V. A city, town, or mosquito control district's receipt of funds, as well as the amount of funding, shall be at the discretion of the commissioner. In exercising his or her discretion, the commissioner shall consider the following criteria:

(a) The nature and degree of the declared threat to the public health.

(b) The nature and degree of the city, town, or mosquito control district's mosquito control and abatement activities in response to the declared threat to the public health.

(c) The city, town, or mosquito control district shall show cause why funding assistance from the mosquito control fund is necessary.

(d) Funding from the mosquito control fund shall not exceed 25 percent of the cost of mosquito control and abatement activities pursuant to the declared threat to the public health.

(e) Funding is available.

**Source.** 2006, 284:1. 2008, 73:1, eff. July 20, 2008. 2021, 122:35, eff. July 9, 2021.

### 141–C:26 Acute Care Centers.

The commissioner, with the written approval of the governor, may establish, operate, or authorize the operation of temporary acute care centers for the purpose of the delivery of acute medical services to persons who would normally require admission to an acute care hospital, when there is a public health incident as defined in RSA 508:17–a, II(c) and when the acute care hospitals in the area do not have the physical and human resources necessary to meet the demand or anticipated demand for medical care. Any such facility so established or designated shall be exempt from the provisions of RSA 151. The commissioner shall adopt rules, pursuant to RSA 541–A, regarding the facility and staffing requirements, screening and admission criteria, payment and reimbursements, clinical standards, recordkeeping, and discharge criteria for acute care centers. In adopting such rules, the commissioner shall take into consideration, to the extent feasible, the rights and responsibilities of patients set forth in RSA 151:21. For purposes of immunity, actions taken pursuant to this

section shall be considered an emergency management function under RSA 21–P:41, I.

**Source.** 2008, 271:5. 2012, 282:7, eff. June 30, 2015.

**141–C:27 Ethics Oversight Advisory Committee.**

I. There is hereby established an ethics oversight advisory committee to offer advice to the commissioner relative to the ethical issues that may be identified in the course of planning for, and responding to, outbreaks of communicable disease that threaten to become epidemic or pandemic and to review and provide recommendations for investigations, orders, and treatment ordered by the commissioner.

II. The committee shall:

(a) Consider the ethical implications of any of the powers that may be exercised by the commissioner under the provisions of this chapter including, but not limited to, the confiscation, distribution, and rationing of anti-toxins, serums, vaccines, immunizing agents, antibiotics, and other pharmaceutical agents, and mechanical equipment; the issuance and enforcement of orders of isolation, quarantine, medical examination, and medical treatment; issues relative to information sharing and confidentiality; and the provisions for due process for orders issued pursuant to this chapter.

(b) Review, at least annually, a report of investigations conducted pursuant to RSA 141–C:9 and orders issued under RSA 21–P:53, V and VI, and provide recommendations to the department. Any information furnished to the committee shall be aggregated and de-identified. The department shall not share any confidential information with the committee.

(c) Consider the competing rights of disabled persons who might be unable to comply with certain orders, health care workers who are entitled to a safe workplace, and the need to protect the public from communicable disease, and may recommend modification of orders to address specific concerns.

(d) Consider both the need to protect the most vulnerable members of society as well as the need for the most efficacious means to control a public health emergency when consulting with the commissioner pursuant to RSA 21–P:53, III–b in developing a plan for the distribution of a new treatment or vaccination.

III. The members of the committee shall be as follows:

(a) Two members of the house of representatives, one of whom shall be from the minority party, appointed by the speaker of the house of representatives. The speaker shall give preference to those members who have been trained in ethics.

(b) One member of the senate, appointed by the senate president. The senate president shall give preference to a member who has been trained in ethics.

(c) The commissioner of the department of health and human services, or designee.

(d) The director of the department of health and human services, division of public health services.

(e) The state epidemiologist.

(f) An attorney well-versed in medical ethics, appointed by the president of the New Hampshire Bar Association.

(g) A physician well-versed in medical ethics, appointed by the president of the New Hampshire Medical Society.

(h) The executive director of the governor's commission on disability, or designee.

(i) A nurse well-versed in medical ethics, appointed by the president of the New Hampshire Board of Nursing.

(j) A psychologist well-versed in ethics, appointed by the president of the New Hampshire Psychological Association.

(k) A professor of ethics currently teaching at a college or university in New Hampshire, appointed by the chairperson elected in paragraph IV.

IV. The committee shall elect one of the legislative members as chairperson. Legislative members of the committee shall receive mileage at the legislative rate when attending to the duties of the committee. The committee shall meet initially within 90 days of the effective date of this section and then as regularly as the chairperson shall direct, but no less than annually.

V. The commissioner may at any time direct questions to the committee or request guidance on ethical issues.

VI. The committee may provide advisory opinions, including draft guidance, guidelines, or protocols, which shall be submitted to the commissioner of the department of health and human services and to the health and human services oversight committee established in RSA 126–A:13 and shall not be binding on the commissioner or any member of the public.

**Source.** 2008, 336:4, eff. July 7, 2008. 2021, 211:2, eff. Aug. 11, 2021. 2022, 57:1, 2, eff. July 19, 2022; 323:18, eff. Sept. 6, 2022.

**141–C:28 No Conflict With Emergency Management Powers.**

Nothing in this chapter shall be construed to limit or restrict the exercise of the governor's emergency management powers under RSA 4:45–RSA 4:47.

**Source.** 2008, 336:4, eff. July 7, 2008.

# TITLE XII

# PUBLIC SAFETY AND WELFARE



## CHAPTER 169–B

## DELINQUENT CHILDREN



### 169–B:1 Applicability of Chapter, Purpose.

This chapter shall apply to delinquent children as defined in RSA 169–B:2. This chapter shall be liberally interpreted, construed and administered to effectuate the following purposes and policies:

I. To encourage the wholesome moral, mental, emotional, and physical development of each minor coming within the provisions of this chapter, by providing the protection, care, treatment, counselling, supervision, and rehabilitative resources which such minor needs.

II. Consistent with the protection of the public interest, to promote the minor's acceptance of personal responsibility for delinquent acts committed by the minor, encourage the minor to understand and appreciate the personal consequences of such acts, and provide a minor who has committed delinquent acts with counseling, supervision, treatment, and rehabili-

tation and make parents aware of the extent if any to which they may have contributed to the delinquency and make them accountable for their role in its resolution.

III. To achieve the foregoing purposes and policies, whenever possible, by keeping a minor in contact with the home community and in a family environment by preserving the unity of the family and separating the minor and parents only when it is clearly necessary for the minor's welfare or the interests of public safety and when it can be clearly shown that a change in custody and control will plainly better the minor.

IV. To provide effective judicial procedures through which the provisions of this chapter are executed and enforced and which recognize and enforce the constitutional and other rights of the parties and assures them a fair hearing.

**Source.** 1979, 361:2. 1995, 302:1, 2; 308:99. 1999, 305:1, eff. Jan. 1, 2000.

**169–B:2 Definitions.**

In this chapter:

I. "Adult lock-up or jail" means a locked facility, used primarily to house adults charged with or convicted of violating criminal law. This includes police lock-ups, county correctional facilities, and any facility used by county sheriffs, state police, or local police to securely detain adult offenders and accused offenders.

II. "Alternative to secure detention" means any local program, approved by the court, police, probation, or the department of health and human services, which offers a less restrictive alternative to secure detention for minors. Such programs include, but are not limited to, youth attender, crisis home placement, group homes which have entered into agreements with the department of health and human services to provide such care, truant and runaway programs, and alcohol and drug detoxification programs.

III. "Court" means the district court, unless otherwise indicated.

III–a. "Custody" means a legal status created by court order wherein the department of health and human services has placement and care responsibility for the minor.

IV. "Delinquent" means a person who has committed an offense before reaching the age of 18 years which would be a felony or misdemeanor under the criminal code [1] of this state if committed by an adult, or which is a violation of RSA 318–B:2–c, II or III, and is expressly found to be in need of counseling, supervision, treatment, or rehabilitation as a consequence thereof. No person under 13 years of age shall be subject to proceedings under this chapter unless such person has committed a violent crime as defined in RSA 169–B:35–a, I(c). This provision shall not be construed to limit the filing of a petition for any minor child under RSA 169–D.

IV–a. "Diversion" means a decision made by a person with authority which results in specific official action of the legal system not being taken or being postponed in regard to a juvenile and, in lieu of such inaction or postponement, providing an individually designed program for delivery of services for the juvenile by a specific provider or a plan to assist the juvenile in finding a remedy for his or her inappropriate behavior. The goal of diversion is to prevent further involvement of the juvenile in the formal legal system. Diversion of a juvenile may take place either at prefiling as an alternative to the filing of a petition, or at arraignment.

IV–b. "Court approved diversion program" means a program that has been approved by the administrative judge of the judicial branch family division and has been approved to accept court referrals. An approved diversion program is a community based alternative to the formal court process that integrates restorative justice practices, promotes positive youth development, and reduces juvenile crime and recidivism.

IV–c. "Intervention" means a decision made by a person with authority which results in specific official action of the legal system not being taken or being postponed in regard to a juvenile and, in lieu of such inaction or postponement, providing an individually designed program for delivery of services for the juvenile by a specific provider or a plan to assist the juvenile in finding a remedy for his or her inappropriate behavior. The goal of intervention is to prevent further involvement of the juvenile in the formal legal system. Intervention for a juvenile may take place either at the adjudicatory or dispositional level.

V. "Detention" means the care of a minor in physically restricted facilities and shall not include placement at residential treatment or evaluation facilities, staff-secure shelter facilities, or foster care homes.

V–a. "Home detention" means court-ordered confinement of a minor with the parents or other specified home for 24 hours a day unless otherwise prescribed by written court order, under which the

minor is permitted out of the residence only at such hours and in the company of persons specified in the court order establishing the home detention.

VI. "Minor" means a person under the age of 18.

VII. "Non-secure detention" means the care of a minor in a facility where physical restriction of movement or activity is provided solely through facility staff.

VIII. "Conditional release" means a legal status created by court order following an adjudication that a minor is delinquent and shall be permitted to remain in the community, including the minor's home, subject to:

(a) The conditions and limitations of the minor's conduct prescribed by the court;

(b) Such counselling and treatment as deemed necessary, pursuant to methods and conditions prescribed by the court, for the minor and family;

(c) The supervision of a juvenile probation and parole officer, as authorized by RSA 170–G:16; and

(d) Return to the court for violation of conditions of the release and change of disposition at any time during the term of conditional release.

IX. "Restitution" means moneys, compensation, work, or service which is reimbursed by the offender to the victim who suffered personal injury or economic loss.

X. "Concurrent plan" means an alternate permanency plan in the event that a child cannot be safely reunified with his or her parents.

XI. "Out-of-home placement" means when a minor, as the result of a delinquent petition, is removed from a biological parent, adoptive parent, or legal guardian of the minor and placed in substitute care with someone other than a biological parent, adoptive parent, or legal guardian. Such substitute care may include placement with a custodian, guardian, relative, friend, group home, crisis home, shelter care, or a foster home.

XII. "Permanency hearing" means a court hearing for a minor in an out-of-home placement to review, modify, and/or implement the permanency plan or adopt the concurrent plan.

XIII. "Permanency plan" means a plan for a minor in an out-of-home placement that is adopted by the court and that provides for timely reunification, termination of parental rights or parental surrender when an adoption is contemplated, guardianship with a fit and willing relative or another appropriate party, or another planned permanent living arrangement.

XIII–a. "Psychotropic medication" means a drug prescribed by a licensed medical practitioner, to treat illnesses that affect psychological functioning, perception, behavior, or mood.

XIII–b. "Medication restraint" means the involuntary administration of any medication, including psychotropic medication, for the purpose of immediate control of behavior.

XIV. "Serious threats to school safety" means acts involving weapons; acts involving the possession, sale, or distribution of controlled substances; acts that cause serious bodily injury to other students or school employees; threats to cause bodily injury to students or school employees, where there is a reasonable probability that such threats will be carried out; acts that constitute felonious sexual assault or aggravated felonious sexual assault under RSA 632–A; arson under RSA 634:1; robbery under RSA 636:1; and criminal mischief under RSA 634:2, II and RSA 634:2, II–a.

XV. "Shelter care facility" means a non-secure or staff-secure facility for the temporary care of children no less than 11 nor more than 17 years of age. Shelter care facilities may be utilized for children prior to or following adjudication or disposition. A shelter care facility may not be operated in the same building as a facility for architecturally secure confinement of children or adults.

**Source.** 1979, 361:2. 1987, 402:7. 1988, 197:1, 14. 1989, 285:1, 2. 1994, 212:2. 1995, 302:3, 4; 308:100–102; 310:181. 1999, 305:2. 2000, 294:9. 2001, 162:1. 2007, 236:1; 325:7. 2010, 175:1. 2013, 198:1, eff. Jan. 1, 2014; 249:17, eff. Sept. 22, 2013. 2014, 215:3, 4, eff. July 1, 2015. 2017, 248:8, eff. Sept. 16, 2017. 2021, 182:1, eff. Jan. 1, 2022; 227:6, eff. Oct. 24, 2021.

[1] See RSA 625:1 et seq.

### 169–B:2–a Parental Responsibility.

I. In each case brought pursuant to this chapter, on the date of the arraignment, the court shall identify the parent or parents of the minor or, in their absence, the guardian or other person charged by law with the responsibility for the welfare of the minor. It shall be the obligation of such parent or guardian to:

(a) Personally attend and assure the attendance of the minor at all hearings of the court.

(b) Personally attend and assure the attendance of the minor at all meetings with the department of health and human services and collateral support service agencies occasioned by the action.

(c) Fully participate in all services ordered by the court including, but not limited to, substance

abuse treatment, parenting classes, mediation, diversion, and community service.

(d) [Repealed.]

(e) Supervise the minor's compliance with all orders of the court and conditions of release and probation including, but not limited to, curfew, school attendance and general behavior.

II. Failure to supervise and otherwise accept responsibility as required by this section may be treated as criminal contempt of court punishable by up to a $1,000 fine and 90 days' imprisonment. It shall be a defense to any such charge of contempt that the parent, guardian or such other person or persons having custody and control of the minor made reasonable efforts to comply.

**Source.** 1999, 305:3. 2010, 175:2, eff. Jan. 1, 2011. 2020, 26:29, eff. July 1, 2020.

### 169–B:3 Jurisdiction.

The court shall have exclusive original jurisdiction over all proceedings alleging delinquency.

**Source.** 1979, 361:2, eff. Aug. 22, 1979.

### 169–B:4 Jurisdiction Over Certain Persons.

I. The court shall have jurisdiction over any minor with respect to whom a petition is filed under this chapter after the minor's eighteenth and before the minor's nineteenth birthday for an alleged delinquency offense committed before the minor's eighteenth birthday.

II. The court may retain jurisdiction over any minor during the period after the minor's eighteenth birthday as justice may require for any minor who, prior to the minor's eighteenth birthday, was adjudicated delinquent and:

(a) For whom the department has recommended extension of the court's jurisdiction;

(b) Who has, prior to the minor's eighteenth birthday, consented to the court's retention of jurisdiction; and

(c) Who is attending school for the purpose of obtaining a high school diploma or general equivalency diploma and is considered likely to receive such diploma.

III. At the request of the prosecutor or the department, the court may retain jurisdiction over the minor for a period of up to 2 years following the completion of any appeal if the petition was filed after the minor had attained the age of 17 years. Notwithstanding the provisions of RSA 169–B:19, III, when jurisdiction is retained pursuant to this section, the court may sentence a person to the county correctional facility for a term that may extend beyond the person's eighteenth birthday.

IV. The court shall close the case when the minor reaches age 18 or, if jurisdiction is extended pursuant to paragraph II, when:

(a) The minor revokes the minor's consent in writing and such revocation has been approved by the court;

(b) The minor ceases to be enrolled as a full-time student during sessions of the school;

(c) The minor graduates from high school or receives a general equivalency diploma;

(d) The minor attains 21 years of age; or

(e) The department revokes its consent in writing; whichever event shall first occur. The court shall approve the minor's revocation of consent if it finds that the minor, in seeking to do so, is acting intelligently, knowledgeably, and in acceptance of the legal consequences.

V. Notwithstanding paragraph III, when the court finds by clear and convincing evidence that closing the case would endanger the safety of the minor, any other person, or the community, or the court finds that there is a high probability that continued provision of treatment services is necessary to rehabilitate the minor, the court may retain jurisdiction over any minor:

(a) Who has been found to have committed a violent crime as defined under RSA 169–B:35–a, I(c);

(b) Who has been petitioned to the court on 4 or more occasions and adjudicated delinquent in 4 separate adjudicatory hearings which alleged misdemeanor or felony offenses; or

(c) Who is subject to the jurisdiction of the court prior to the minor's eighteenth birthday and for whom the department has filed a motion with the court requesting that the court retain jurisdiction under this subparagraph; provided that the department's motion is filed within the 90 days prior to the minor's eighteenth birthday and provided further that the court's jurisdiction pursuant to this subparagraph shall continue until the minor's nineteenth birthday.

VI. A minor may be subject to the extended jurisdiction of the court for a period of time no longer than that for which an adult could be committed for a like offense or the minor reaches the age of 21, whichever occurs first. For purposes of this section, the time shall be calculated from the date of the original dispositional order.

VII. In any instance in which the statute of limitations has not tolled and no juvenile petition has been filed based upon acts committed before the minor's eighteenth birthday, the state may proceed against the person in the criminal justice system after that person's eighteenth birthday.

**Source.** 1979, 361:2. 1992, 11:1. 1995, 302:5, 6; 308:103; 310:175. 2002, 170:1, 2. 2004, 79:2. 2006, 190:1, eff. July 1, 2007. 2014, 215:5–9, eff. July 1, 2015. 2015, 260:4, 5, eff. July 1, 2015 at 12:01 a.m.

### 169–B:5 Venue.

I. Proceedings under this chapter may be originated in any judicial district in which the minor is found or resides, or where the offense is alleged to have occurred.

II. By the court, upon its own motion, or that of any party, proceedings under this chapter may, upon notice and acceptance, be transferred to another court as the interests of justice or convenience of the parties require.

III. When a minor who is on conditional release moves from one political subdivision to another, the court may transfer, upon notice and acceptance, to the court with jurisdiction over the political subdivision of the minor's new residence, if such transfer is in the best interest of the minor.

**Source.** 1979, 361:2. 1987, 402:8. 2003, 253:1, eff. July 14, 2003.

### 169–B:5–a Filing Reports, Evaluations, and Other Records.

All reports, evaluations and other records requested by the court from the department of health and human services, school districts, counselors, and guardians ad litem in proceedings under this chapter shall be filed with the court and all other parties at least 5 days prior to any hearing, unless the court sets a different deadline upon the request of any party or agency providing the information. Once filed with the court and given to all other parties, the report, evaluation or other record need not be refiled during the proceeding. Failure to comply with the provisions of this section shall not be grounds for dismissal of the petition.

**Source.** 1991, 57:1. 1994, 212:2. 1995, 310:181. 2008, 274:1, eff. July 1, 2008.

### 169–B:6 Petition.

I. Any person may file a petition, alleging the delinquency of a minor, with a judge or clerk of the court in the judicial district in which the minor is found or resides or where the offense is alleged to have occurred. The petition shall be in writing and verified under oath. The following notice shall be printed on the front of the petition in bold in no smaller than 14 point font size: "See back for important information and financial obligations." The back of the petition shall include a notice of financial responsibility for services, programs, and placement provided under this chapter.

II. To be legally sufficient, the petition must set forth with particularity, but not be limited to, the date, time, manner, and place of the conduct alleged and shall state the statutory provision alleged to have been violated, and shall be entitled, "In the interest of _____, a minor."

III. Absent serious threats to school safety, when a delinquency petition is filed by a school official, including a school resource officer assigned to a school district pursuant to a contract agreement with the local police department, or when a petition is filed by a local police department as a result of a report made by a school official or school resource officer, based upon acts committed on school grounds during the school day, information shall be included in the petition which shows that the legally liable school district has sought to resolve the expressed problem through available educational approaches, including the school discipline process, if appropriate, that the school has sought to engage the parents or guardian in solving the problem but they have been unwilling or unable to do so, that the minor has not responded to such approaches and continues to engage in delinquent behavior, and that court intervention is needed.

IV. When a school official, including a school resource officer assigned to a school district pursuant to a contract agreement with the local police department, or a local police department as a result of a report made by a school official or school resource officer, files a petition involving a minor with a disability pursuant to RSA 186–C, upon submission of a juvenile petition, but prior to the child's initial appearance, the legally liable school district shall provide assurance that prior to its filing:

(a) It was determined whether or not the child is a child with a disability according to RSA 186–C:2, I.

(b) If the school district has determined that the child is a child with a disability, a manifestation review pursuant to 20 U.S.C. section 1415(k)(1)(E) occurred.

(c) If the child's conduct was determined to be a manifestation of the child's disability, the school district followed the process set forth in 20 U.S.C. section 1415(k)(1)(F).

(d) It has reviewed for appropriateness the minor's current individualized education program (IEP), behavior intervention plan, and placement, and has made modifications where appropriate.

**Source.** 1979, 361:2. 1999, 305:4. 2003, 253:2. 2006, 291:4. 2009, 302:1. 2013, 198:2, eff. Jan. 1, 2014. 2020, 26:12, eff. July 1, 2020.

### 169–B:6–a Notice of Petition to Department of Health and Human Services.

Upon the filing of any petition under RSA 169–B:6, the court shall serve the department of health and human services with a copy of the petition and the department shall be a party to and shall receive notice of all proceedings under this chapter from the court and all other parties.

**Source.** 1995, 308:58; 310:175, 181. 2004, 31:1, eff. Jan. 1, 2005.

### 169–B:7 Issuance of Summons and Notice.

I. After a legally sufficient petition has been filed, the court shall issue a summons to be served personally or, if personal service is not possible, at the usual place of abode of the person having custody or control of the minor or with whom the minor may be, requiring that person to appear with the minor at a specified place and time, which time shall not be less than 24 hours nor more than 7 days after service. If the person so notified is not the parent or guardian of the minor, then a parent or guardian shall be notified, provided they and their residence are known, or if there is neither parent nor guardian, or their residence is not known, then some relative, if there be one whose residence is known.

II. A copy of the petition shall be attached to each summons or incorporated therein.

III. Upon receipt of the petition, the court shall appoint counsel for the minor. Such appointment shall occur promptly, and in no event later than the time when the summons is issued. Notice of the appointment shall be transmitted to counsel and to the petitioner by electronic mail and by first class mail on the day of the appointment. The summons shall contain a notice of the right to representation by counsel and the name, address, telephone number, and electronic mail address of the attorney who has been appointed by the court. The summons shall also state as follows: "With limited exception, the department of health and human services shall be responsible for the cost of services provided under this chapter. RSA 186–C regarding children with disabilities grants minors and their parents certain rights to services from school districts at public expense and to appeal school district decisions regarding services to be provided."

**Source.** 1979, 361:2. 1983, 458:7. 1990, 140:2, X. 1995, 302:7. 2006, 291:5. 2008, 274:31, eff. July 1, 2008. 2020, 26:13, eff. July 1, 2020. 2021, 207:2, Pt. I, Sec. 1, eff. Jan. 1, 2022.

### 169–B:8 Failure to Appear; Felony Against Person or Property; Felony Drug Offense; Warrant.

I. Any person summoned who, without reasonable cause, fails to appear with the minor, may be proceeded against as in case of contempt of court.

II. If a summons cannot be served or the party served fails to obey the same, and in any case where it appears to the court that such summons will be ineffectual, a warrant may be issued for the minor's appearance or for the appearance of anyone having custody or control of the minor or for both.

III. Notwithstanding the provisions of paragraphs I and II, a warrant may be issued for the detention of a minor whose offense constitutes a felony against the person or property, or a felony under RSA 318–B.

**Source.** 1979, 361:2. 1995, 302:8, eff. Jan. 1, 1996.

### 169–B:9 Arrest or Taking Minor Into Custody.

I. A police officer or juvenile probation and parole officer may, without taking a minor into custody, refer the minor to the department for a needs assessment. Upon receiving such referral, the department shall conduct the needs assessment using the same process for obtaining consent as required in RSA 169–B:10, I–a for cases referred to the department after a minor is taken into custody.

I–a. Nothing in this chapter shall be construed as forbidding any juvenile probation and parole officer from immediately arresting or taking into custody any minor who is found violating any law, or who is reasonably believed to be a fugitive from justice, or whose circumstances are such as to endanger such minor's person or welfare, unless immediate action is taken.

II. Nothing in this chapter shall be construed as forbidding any police officer from immediately taking into custody any minor who is found violating any law, or whose arrest would be permissible under RSA 594:10, or who is reasonably believed to be a fugitive from justice, or whose circumstances are such as to endanger such minor's person or welfare, unless immediate action is taken.

**Source.** 1979, 361:2. 1987, 402:12. 1995, 302:9. 2000, 294:9, eff. July 1, 2000. 2021, 220:2, eff. Jan. 1, 2022.

**169–B:9–a Use of Alternatives to Secure Detention.**

An officer may release a minor to an alternative to secure detention, with court approval, pending the arrival of the parent, guardian, or custodian. The alternative program may release the minor to the parent, guardian, or custodian upon their arrival. Any court or police or juvenile probation and parole officer, acting in good faith pursuant to this section, shall have immunity from any liability, civil or criminal, which might otherwise be incurred or imposed as a result of release to an alternative to secure detention.

**Source.** 1988, 197:2. 2000, 294:9, eff. July 1, 2000.

**169–B:9–b Recognition of Foreign Probation Officers.**

If a minor has been placed on probation or protective supervision by a juvenile court of another state and the minor is in this state with or without the permission of such court, the probation officer of that court or other person designated by that court to supervise or take custody of the minor has all the powers and privileges in this state with respect to the minor as have like officers or persons of this state, including the right of visitation, counseling, control, direction, taking into custody, and returning the minor to that state.

**Source.** 1990, 201:3, eff. June 26, 1990.

**169–B:10 Juvenile Diversion.**

I. An officer authorized under RSA 169–B:9 to take a minor into custody may dispose of the case without court referral by releasing the minor to a parent, guardian, or custodian. The officer shall make a written report to the officer's department identifying the minor, specifying the grounds for taking the minor into custody and indicating the basis for the disposal of the case. The officer may refer the minor to the department of health and human services for the needs assessment described in paragraph I–a.

I–a. If the arresting agency contemplates the initiation of court proceedings involving a resident minor, prior to filing a delinquency petition with the court, the arresting agency or prosecutor shall refer the minor to the department of health and human services for a voluntary needs assessment within 2 business days of arrest, to be completed as follows:

(a) The department shall obtain the consent of the minor and the minor's parent or guardian, prior to conducting the needs assessment.

(b) If the minor or the minor's parent or guardian does not consent, the department shall report to the prosecutor that the voluntary needs assessment was declined and the prosecutor may proceed with a petition and inform the court that the needs assessment was declined.

(c) The department shall complete the voluntary needs assessment within 30 days from referral or, if an assessment has been completed within the prior 6 months, the department shall provide the referring entity with the report and recommendations from any prior assessments.

(d) If a needs assessment conducted pursuant to this paragraph or RSA 169–B:9 reveals that the child has complex behavioral health needs and is at risk of residential, hospital, or secure placement, or is already involved in multiple service systems, the department shall refer the child and family to the FAST Forward program to determine eligibility for FAST Forward and referral to a care management entity.

(e) A report and recommendations shall be provided to the minor, the minor's parent or guardian, the minor's attorney, and the referring entity and shall include the department's specific recommendation regarding whether a petition should be filed and any recommendations for supports and services.

(f) Absent the consent of the minor following consultation with counsel, the report and recommendations, any additional documents and records, and any statements made by the minor or others providing information for the purpose of the needs assessment shall not be used in any way by law enforcement during any portion of its investigation, nor shall they be admissible at an adjudicatory hearing held pursuant to RSA 169–B:16, proceedings pursuant to RSA 169–B:24, or adult criminal proceedings.

(g) If a finding is made at the adjudicatory hearing, the needs assessment, report, and recommendations shall, with the consent of the minor following consultation with counsel, be admissible at the dispositional hearing, and subsequent hearings pursuant to RSA 169–B:31 and RSA 169–B:31–a, for the purpose of determining appropriate services and supports.

(h) Prior to filing a delinquency petition with the court, the arresting agency or prosecutor shall review the department's report and recommendations to screen the petition for participation in other voluntary services or diversion.

(i) A petition may be filed prior to the completion of the referral and needs assessment if:

(1) The prosecutor or arresting officer determines there is a need to request an order from the court for immediate detention or non-secure placement to protect the minor or the community; or

(2) The minor or the minor's parent or guardian does not consent to the voluntary assessment.

(j) The petitioner shall identify why diversion was not an appropriate disposition prior to seeking court involvement.

(k) If the petition is filed prior to the referral and assessment, and the resident minor has not had an assessment in the prior 6 months, the department shall make the assessment available to the minor after the petition is filed and the confidentiality and admissibility of the report and recommendations and related statements shall be treated the same as assessments completed prior to the petition.

I–b. The department of health and human services shall produce informational materials regarding the process for making referrals to the department pursuant to RSA 169–B:9 in lieu of making formal arrests and shall make such materials available to all New Hampshire law enforcement agencies.

II. At any time before or at arraignment pursuant to this chapter, a minor and the minor's family may be referred to a court-approved diversion program or other intervention program or community resource. Referral may be made by the arresting or prosecuting agency or juvenile probation and parole officer, prior to filing a petition with the court or after the filing of a petition by such agency with the court's approval, or by the court on its own, or any party's motion. When the arresting or prosecuting agency, or juvenile probation and parole officer suspects that a minor has a disability, an administrator at the responsible school district shall be notified. If appropriate, the school district shall refer the minor for evaluation to determine if the child is in need of special education and related services.

II–a. The administrative judge of the judicial branch family division shall have the authority to approve diversion referral procedures for use in all juvenile matters throughout the state.

II–b. Consistent with the referral procedures established pursuant to paragraph II–a, the department of health and human services, division for children, youth and families, shall have the authority establish procedures for the state-funded diversion programs.

III. Referral to diversion or other community resource after filing is appropriate if:

(a) The facts bring the case within the jurisdiction of the court;

(b) Referral of the case is in the best interest of the public and the minor; and

(c) The minor and the parents, guardian, or other custodian give knowing, informed, and voluntary consent.

IV. Referral after filing shall stay the proceedings for a period not to exceed 6 months from the date of referral, unless extended by the court for an additional period not to exceed 6 months and does not authorize the detention of the minor.

V. During the period of referral, the court may require further conditions of conduct on the part of the minor and the minor's parents.

VI. No person who performs public service as part of his or her participation in a court approved diversion program under this chapter shall receive any benefits that such employer gives to its employees, including, but not limited to, workers' compensation and unemployment benefits and no such employer shall be liable for any damages sustained by a person while performing such public service or any damages caused by that person unless the employer is found to be negligent.

**Source.** 1979, 361:2. 1995, 302:10. 1999, 305:5. 2000, 294:9. 2008, 274:2. 2010, 175:3. 2011, 151:1, eff. Jan. 1, 2012. 2021, 91:422, eff. July 1, 2021; 220:3, eff. Jan. 1, 2022. 2023, 56:1, 2, eff. June 1, 2023.

### 169–B:11 Release Prior to Arraignment.

An officer taking a minor into custody pursuant to RSA 169–B:9 may release the minor to a parent, guardian or custodian pending arraignment; however, if the minor is not released within 4 hours of being taken into custody, the court shall be notified, and thereupon, placement, until arraignment, shall be determined by the court.

I. A minor taken into custody pursuant to RSA 169–B:9 shall be released to a parent, guardian, or custodian pending arraignment; or

II. If such a person is not available, the court may release the minor under the supervision of a relative or friend; or may release the minor to the custody of the department of health and human services for placement in a foster home, as defined in RSA 169–C:3, XIII, a crisis home, a shelter care

facility, a group home, or an alcohol crisis center certified to accept juveniles; or

III. If the court determines that continued detention is required, based upon the criteria specified under RSA 169–B:14, I(e)(2), it may order continued detention at an alternative to secure detention, or any facility certified for the detention of minors by the commissioner of the department of health and human services. A minor shall not be held in any facility where adults charged, convicted or committed for criminal offenses are simultaneously detained except that a juvenile alleged or found to be delinquent may be held for up to 6 hours in a metropolitan area or up to 24 hours in a non-metropolitan area for processing and while awaiting release or transfer to a juvenile facility, provided that the detention is in a room or cell separate and removed from all contact, both sight and sound, with all adult inmates.

**Source.** 1979, 361:2. 1982, 39:12. 1985, 379:1. 1988, 197:3. 1989, 285:3. 1992, 18:1. 1994, 212:2. 1995, 310:171. 2001, 117:4. 2007, 325:8, eff. July 16, 2007. 2020, 26:14, eff. July 1, 2020.

**169–B:11–a Minor's Welfare; Findings Regarding Removal.**

I. The court shall, in its first court ruling that sanctions, even temporarily, the removal of a minor from the home, determine whether continuation in the home is contrary to the minor's welfare.

II. The court shall, within 60 days of a minor's removal from the home, determine and issue written findings as to whether reasonable efforts were made or were not required to prevent the minor's removal. In determining whether reasonable efforts were made to prevent the minor's removal, the court shall consider whether services to the family have been accessible, available, and appropriate.

**Source.** 2007, 236:2, eff. Jan. 1, 2008.

**169–B:12 Appointment of Counsel; Waiver of Counsel.**

I. Absent a valid waiver, the court shall appoint counsel for an indigent minor pursuant to RSA 169–B:7, III. For purposes of this section, an indigent minor shall be a minor who satisfies the court, after appropriate inquiry, that the minor is financially unable to independently obtain counsel. If the court has received information indicating that the minor may have an intellectual, cognitive, emotional, learning, or sensory disability, the court shall not permit the minor to waive the right to counsel.

I–a. When an attorney is appointed as counsel for a child, representation shall include counsel and investigative, expert, and other services, including process to compel the attendance of witnesses, as may be necessary to protect the rights of the child.

II. The court may accept a waiver of counsel in a delinquency proceeding only when:

(a) The minor is represented by a non-hostile parent, guardian, or custodian;

(b) Both the minor and parent, guardian, or custodian agree to waive counsel;

(c) In the court's opinion the waiver is made competently, voluntarily, and with full understanding of the consequences;

(d) The petition does not allege a violation of RSA 631:1, RSA 631:2, RSA 635:1, or any violation of RSA 630, RSA 632–A, RSA 633, or RSA 636; and

(e) The prosecution has informed the court that it does not intend to seek certification pursuant to RSA 169–B:24, RSA 169–B:25, or any other provision of law permitting adult prosecution of the minor.

II–a. If the minor and the parent, guardian, or custodian have not consulted with counsel about the possible consequences of the proposed waiver of the right to counsel, the court shall not accept a waiver pursuant to paragraph II.

II–b. [Repealed.]

II–c. A verbatim record shall be made of all proceedings conducted pursuant to this section and of all subsequent proceedings in any case in which a court has accepted a waiver of counsel under this section.

III. Whenever a court appoints counsel pursuant to the provisions of paragraph I, the court shall conduct an appropriate inquiry as to whether any person who pursuant to RSA 546–A:2 is liable for the support of the minor for whom counsel was appointed is financially able to pay for such minor's counsel. If the court determines that the person liable for support is financially able to pay for said counsel, in whole or in part, the court shall enter an appropriate order requiring said person to reimburse the state for the representation provided. For the purposes of this paragraph, the inquiry conducted by the court shall include notice and hearing to the person liable for support.

IV. A juvenile shall not be subject to detention unless:

(a) The juvenile is represented by counsel at the hearing where detention is ordered; or

(b) Detention is ordered on an emergency basis and a detention hearing is scheduled within 24 hours of the emergency detention, Saturdays, Sundays, and holidays excepted, at which hearing the juvenile shall be represented by counsel.

V. No prosecutor, law enforcement officer, juvenile probation and parole officer, juvenile parole board member, or any other state or municipal employee shall advise a juvenile to waive his or her right to counsel under this chapter or under chapter 621, nor shall any such person advise a parent or guardian of a juvenile that the juvenile should waive his or her right to counsel, nor shall any such person provide information to a juvenile or the parent or guardian of a juvenile under circumstances which a reasonable person would know would encourage a waiver of the right to counsel.

VI. Whenever a juvenile is detained, committed, or otherwise placed outside his or her home, the court shall appoint counsel if such appointment has not previously been made in the proceedings. Such appointment shall be made at a time sufficiently in advance of the decision to place the juvenile outside the home to allow counsel to provide effective representation on the issue of placement, and such appointment shall continue until the court no longer has jurisdiction over the juvenile pursuant to this chapter. The court shall not accept a waiver of counsel when appointment is required by this paragraph.

**Source.** 1979, 361:2. 1981, 568:20, IV, V. 1995, 302:11. 1997, 292:1. 2001, 162:2, 3. 2008, 274:3, eff. July 1, 2008. 2014, 215:20, eff. July 1, 2015. 2015, 260:1, eff. July 1, 2015 at 12:01 a.m. 2017, 180:2, eff. Aug. 28, 2017. 2020, 26:31, eff. July 1, 2021. 2021, 207:2, Pt. I, Secs. 2, 3 and 6, eff. Jan. 1, 2022.

### 169–B:12–a Repealed by 2020, 26:36, I, effective July 1, 2021.

### 169–B:13 Arraignment; Court Referrals; Uncompensated Public Service by Minors.

I. No minor shall be detained for more than 24 hours, Sundays and holidays excluded, from the time of being taken into custody without being brought before a court. At any arraignment the court shall:

(a) Advise the minor in writing and orally of any formal charges;

(b) Inform the minor of the applicable constitutional rights;

(c) Appoint counsel pursuant to RSA 169–B:12;

(d) Establish any conditions for release; and

(e) Set a hearing date.

(f)(1) Inquire of the juvenile and a parent or guardian of the juvenile if the juvenile has been:

(A) Determined to have a cognitive disability; or

(B) Determined to have a mental illness, emotional or behavioral disorder, or another disorder that may impede the child's decision-making abilities; or

(C) Identified as eligible for special education services; or

(D) Previously referred to a care management entity as defined in RSA 135–F:4, III.

(2) Such inquiry shall be conducted to gather complete and accurate information. The court shall make a record of the inquiry and of any information provided in response to the inquiry.

I–a. No plea shall be taken until the minor has the opportunity to consult with counsel or until a waiver is filed pursuant to RSA 169–B:12.

II. The court may, at any time after arraignment, dispose of the petition by referring the minor or the minor and family for participation in a court approved diversion program or other intervention program.

II–a. The court may, at the arraignment or at any time thereafter, with the consent of the minor and the minor's family, refer the minor and family to a care management entity, as defined in RSA 135–F:4, III, for evaluation and/or behavioral health services to be coordinated and supervised by that entity.

III. A referral under this section may include an order for the minor to perform up to 50 hours of uncompensated public service subject to the approval of the elected or appointed official authorized to give approval of the city or town in which the offense occurred. The court's order for uncompensated public service shall include the name of the official who will provide supervision to the minor. However, no person who performs such public service under this paragraph shall receive any benefits that such employer gives to its other employees, including, but not limited to, workers' compensation and unemployment benefits and no such employer shall be liable for any damages sustained by a person while performing such public service or any damages caused by that person unless the employer is guilty of gross negligence.

**Source.** 1979, 361:2. 1999, 305:6–8. 2008, 274:4. 2010, 175:4, eff. Jan. 1, 2011. 2019, 44:6, 7, eff. Aug. 2, 2019; 346:334, 335, eff. July 1, 2019.

### 169–B:14 Release or Detention Pending Adjudicatory Hearing.

I. Following arraignment a minor alleged to be delinquent may be ordered by the court to be:

(a) Retained in the custody of a parent, guardian, or custodian; or

(b) Released in the supervision and care of a relative or friend; or

(c) Released to the custody of the department of health and human services for placement in a foster home, as defined in RSA 169–C:3, XIII, a group home, a crisis home, or a shelter care facility; or

(d) [Repealed.]

(e) Detained at a facility certified by the commissioner of the department of health and human services for detention of minors pursuant to the following:

(1) No minor charged with delinquency shall be securely detained following arraignment unless the prosecution establishes probable cause to believe that the minor committed the alleged delinquent acts and unless the prosecution demonstrates by clear and convincing evidence the need for secure detention, based upon the criteria for secure detention specified in subparagraph (e)(2);

(2) A minor shall not be securely detained unless secure detention is necessary:

(A) To insure the presence of the juvenile at a subsequent hearing; or

(B) To provide care and supervision for a minor who is in danger of self-inflicted harm when no parent, guardian, custodian, or other suitable person or program is available to supervise and provide such care; or

(C) To protect the personal safety or property of others from the probability of serious bodily harm or other harm.

(3) Secure detention shall not be ordered for delinquency charges which may not form the basis for commitment under RSA 169–B:19, I(j).

II. The adjudicatory hearing shall be held within 21 days of arraignment for minors detained pending such hearing and within 30 days of arraignment for minors not detained. An extension of these time limits may be permitted, upon a showing of good cause, for an additional period not to exceed 14 calendar days.

II–a. After arraignment, the court shall determine if the legally liable school district shall be joined pursuant to RSA 169–B:22.

III. All orders issued pursuant to this section shall set forth findings in writing and may be subject to such conditions as the court may determine.

**Source.** 1979, 361:2. 1982, 39:13. 1985, 379:2. 1988, 197:4. 1994, 212:2. 1995, 302:12; 310:171. 1997, 19:1. 2001, 117:5. 2007, 325:9, 15, I. 2008, 274:5, eff. July 1, 2008. 2017, 156:158, eff. May 1, 2018. 2020, 26:15, eff. July 1, 2020.

### 169–B:15 No Detention at Jail.

Following arraignment no minor shall be detained in any facility where adults charged, convicted or committed for criminal offenses are simultaneously detained.

**Source.** 1979, 361:2. 1992, 18:2, eff. Jan. 1, 1993.

### 169–B:15–a Inspection of Facilities; Lock-up Log.

Each facility used by law enforcement, county sheriffs, or state police to securely detain minors shall establish a lock-up log for all minors securely detained. The log shall contain the identification number, the charge, the date and time locked in secure detention, the date and time released from secure detention, to whom released, and reason for secure detention. The log shall be kept confidential both by the agency or facility which maintains it and by the department of health and human services, which shall receive copies of the log, January 1 and July 1 of each year, beginning January 1, 1989. To ensure that the requirements of this chapter and of 42 U.S.C. section 5633 are met, any secure or nonsecure facility which detains minors shall provide, upon request and in a timely manner, access to the facility for inspection purposes to the department of health and human services jail compliance monitor, or the monitor's designee. If the facility is required under this section to maintain a log, access to the log shall also be provided.

**Source.** 1988, 197:5, 15. 1992, 18:3. 1994, 212:2. 1995, 310:181. 2008, 175:1, eff. Aug. 10, 2008.

### 169–B:15–b Notification of Right to Request Records.

The court shall notify parties of their right to request in advance of any hearing under this chapter that a record of such hearing shall be preserved and made available to the parties.

**Source.** 1996, 248:1, eff. Jan. 2, 1997.

### 169–B:15–c Facilities; Digital Video Recording.

I. Each facility paid for in whole or in part with general funds and used by law enforcement, county sheriffs, or state police to securely detain minors shall continuously record and store digital video of activity in all common areas. Areas requiring privacy pursuant to federal or state laws or regulations shall be exempt from the recording obligation.

II. The system of video recording, storage, and retrieval shall:

(a) Record using sufficient imaging patterns and quality to visually assess the actions of one person and the interactions between 2 or more people.

(b) Retain data at a minimum length of time as justice may require. The provisions of RSA 169–B:34 through 169–B:38 shall also apply to this section.

(c) Maintain an uptime of 98 percent or above.

(d) Be regularly subject to technological updates and maintenance to maintain the confidentiality, integrity, and availability of all components.

**Source.** 2022, 140:1, eff. Jan. 1, 2023.

### 169–B:16 Adjudicatory Hearing.

I. An adjudicatory hearing under this chapter shall be conducted by the court, separate from the trial of criminal cases.

II. Following arraignment, the court shall proceed to hear the case in accordance with the due process rights afforded a minor charged with delinquency. The prosecution shall present witnesses to testify in support of the petition and any other evidence necessary to support the petition. The minor shall have the right to present evidence and witnesses on behalf of the minor and to cross-examine adverse witnesses. The provisions of RSA 613:3, I, relative to the summoning of out-of-state witnesses, shall apply to the proceedings.

III. If the court finds the minor has committed the alleged offense, it shall, unless a report done on the same minor less than 3 months previously is on file:

(a) Order the department of health and human services or other appropriate agency to make an investigation and written report consisting of, but not limited to, the home conditions, school records and the mental, physical and social history of the minor, and if ordered by the court, a physical and mental examination of the minor conducted pursuant to RSA 169–B:23, RSA 169–B:20 and RSA 169–B:21.

(b) Determine whether the legally liable school district shall be joined pursuant to RSA 169–B:22, and if joined, review the school district's recommendations. The court shall not issue a disposition order until it reviews the investigative report required under this chapter or the school district recommendations required under RSA 169–B:22.

IV. The court shall share the report with the parties. The report shall be used only after a finding of delinquency and only as a guide for the court in determining an appropriate disposition for the minor.

V. The court shall hold a hearing on final disposition within 21 days of the adjudicatory hearing if the minor is detained and within 30 days of the adjudicatory hearing if the minor is released.

VI. Whenever a court contemplates a placement which will require educational services outside the child's home school district, the court shall notify the school district and give the district the opportunity to send a representative to the hearing at which such placement is contemplated. In cases where immediate court action is required to protect the health or safety of the child or of the community, the court may act without providing for an appearance by the school district, but shall make reasonable efforts to solicit and consider input from the school district before making a placement decision.

**Source.** 1979, 361:2. 1987, 402:13. 1994, 212:2. 1995, 302:13; 310:181. 2004, 41:1. 2007, 295:1. 2008, 274:6, eff. July 1, 2008.

### 169–B:16–a Limits on Extended Detention Following Adjudicatory Hearing.

Following the initial dispositional order issued pursuant to RSA 169–B:19 regarding a charge or charges arising out of a single incident, a child shall not be securely detained for a period or periods totaling longer than 21 days while awaiting placement or a hearing regarding a change of disposition, or for any other purpose. The court may permit extended detention beyond this limit if it finds by clear and convincing evidence that extended detention is necessary for the safety of the child or the public and the child consents with the assistance of counsel. In any case involving a child who is detained, the court shall ensure that the child is continuously represented by counsel during any period of detention. In cases where extended detention is permitted pursuant to this section, the court shall hold review hearings with the child and counsel present on a weekly basis to determine whether detention continues to be justified.

**Source.** 2017, 156:160, eff. Jan. 1, 2018.

### 169–B:17 Burden of Proof.

The petitioner has the burden to prove the allegations in support of the petition beyond a reasonable doubt.

**Source.** 1979, 361:2, eff. Aug. 22, 1979.

**169–B:18 Custody Pending Final Disposition.**

Following the adjudicatory hearing, release pending the dispositional hearing shall be determined in accordance with RSA 169–B:14.

**Source.** 1979, 361:2, eff. Aug. 22, 1979.

**169–B:19 Dispositional Hearing.**

I. The department of health and human services shall provide the court with costs of the recommended services, placements and programs. If the court finds that a minor is delinquent, the court shall order the least restrictive of the following dispositions, which the court finds is the most appropriate:

(a) Return the minor to a parent, custodian or guardian.

(b) Fine the minor up to $250, require restitution or both. Restitution ordered by the court may be collected by the department or by the court or by an agency designated by the court to collect it. In any case where a parent is ordered to pay all or any portion of the fine or restitution pursuant to RSA 169–B:2–a, the parents shall have the right to a hearing before the court to contest the amount of restitution or their liability.

(c) Order the minor or the family or both to undergo physical treatment or treatment by a mental health center or any other psychiatrist, psychologist, psychiatric social worker or family therapist as determined by the court, or to attend mediation sessions, parenting programs, or any other such program or programs the court determines to carry out the purposes of this chapter, with expenses charged according to RSA 169–B:40. Utilization of community resource programs shall be encouraged.

(d) Place the minor on conditional release for a term no longer than 5 years.

(e) Release the minor in the care and supervision of a relative or friend; or to home detention for a period not to exceed 6 months. Such home detention shall be subject to the written consent of the parents to the terms and conditions established by the court. The court shall include in its order for home detention any restrictions on the hours of detention.

(f) Release the minor to the custody of the department of health and human services for placement in a foster home, as defined in RSA 169–C:3, XIII, a group home, a crisis home, or a shelter care facility.

(g) [Repealed.]

(h) Order the minor to perform up to 50 hours of uncompensated public service subject to the approval of the elected or appointed official authorized to give approval of the city or town in which the offense occurred. The court's order for uncompensated public service shall include the name of the official who will provide supervision to the minor. However, no person who performs such public service under this paragraph shall receive any benefits that such employer gives to its other employees, including, but not limited to, workers' compensation and unemployment benefits and no such employer shall be liable for any damages sustained by a person while performing such public service or any damages caused by that person unless the employer is guilty of gross negligence.

(i) Any combination of the above.

(j) Commit the minor to the custody of the department of health and human services for the remainder of minority. Commitment under this subparagraph may only be made following written findings of fact by the court, supported by clear and convincing evidence, that commitment is necessary to protect the safety of the minor or of the community, and may only be made if the minor has not waived the right to counsel at any stage of the proceedings. If there is a diagnosis or other evidence that a minor committed under this subparagraph may have a serious emotional disturbance or other behavioral health disorder, the minor shall, with the consent of the minor and the minor's family, be referred to a care management entity pursuant to RSA 135–F:4, III. The care management entity shall develop and oversee the implementation of a care plan for the minor, intended to reduce the period of commitment. Commitment may not be based on a finding of contempt of court if the minor has waived counsel in the contempt proceeding or at any stage of the proceedings from which the contempt arises. Commitment may include, but is not limited to, placement by the department of health and human services at a facility certified for the commitment of minors pursuant to RSA 169–B:19, VI, or administrative release to parole pursuant to RSA 621:19, provided that the appropriate juvenile probation and parole officer is notified. Commitment under this subparagraph shall not be ordered as a disposition for a violation of RSA 262 or 637, possession of a controlled drug without intent to sell under RSA 318–B, or violations of RSA 634, 635, 641, or 644, which would be a misdemeanor if committed by an adult. However, commitment may be ordered under this subparagraph for any offense which would be a felony or class A misdemeanor if committed

by an adult if the minor has previously been adjudicated under this chapter for at least 3 offenses which would be felonies or class A misdemeanors if committed by an adult. A court shall only commit a minor based on previous adjudications if it finds by clear and convincing evidence that each of the prior offenses relied upon was not part of a common scheme or factual transaction with any of the other offenses relied upon, that the adjudications of all of the prior offenses occurred before the date of the offense for which the minor is before the court, and that the minor was represented by counsel at each stage of the prior proceedings following arraignment.

(k) Order the minor to register as a sexual offender or offender against children pursuant to RSA 651–B until the juvenile reaches the age of 18 if the court finds that the minor presents a risk to public safety.

(l) With the consent of the minor and the minor's family, refer the minor and family to a care management entity, as defined in RSA 135–F:4, III, for behavioral health services to be coordinated and supervised by that entity. Such referral may be accompanied by one or more other dispositions in this section, if otherwise authorized and appropriate.

I–a. In the case of a child for whom behavioral health services are being coordinated by a care management entity as defined in RSA 135–F:4, III, the court shall solicit and consider treatment and service recommendations from the entity. If the court orders a disposition which is not consistent with the care management entity's recommendations, it shall make written findings regarding the basis for the disposition and the reasons for its determination not to follow the recommendations.

II. If a minor is placed out of state, the provisions of RSA 169–A and 170–A shall be followed.

II–a. When a minor is in an out-of-home placement, the court shall adopt a concurrent plan other than reunification for the minor. The other options for a permanency plan include termination of parental rights or parental surrender when an adoption is contemplated, guardianship with a fit and willing relative or another appropriate party, or another planned permanent living arrangement.

II–b. No minor may be placed in inpatient treatment at an alcohol or drug treatment facility unless a finding is made that the child requires substance use disorder services pursuant to an evaluation by any licensed health care professional making the decision based on American Society of Addiction Medicine criteria. In addition, no placement at such a facility may be made without the consent of the operator of such facility, and in the case of a serious violent offender as defined in RSA 621:19, IV, unless such consent is made in writing and transmitted to the court.

III. A minor found to be a delinquent on a petition filed after the minor's sixteenth birthday, in addition to or in place of the dispositions provided for in paragraph I, may be committed to a county correctional facility for no greater term than an adult could be committed for a like offense; provided, however, that during minority the minor shall not be confined in a county correctional facility and provided further that the term shall not extend beyond the minor's eighteenth birthday.

III–a. (a) Prior to the eighteenth birthday of a minor who had been adjudicated delinquent for committing a violent crime as defined in RSA 169–B:35–a, I(c), or who had been petitioned to court on 4 or more occasions and adjudicated delinquent in 4 separate adjudicatory hearings which alleged misdemeanor or felony offenses, the prosecutor or the department of health and human services may file a motion with the court to extend jurisdiction pursuant to RSA 169–B:4, V. The department of youth development services may file a motion to extend jurisdiction for any minor committed to its custody pursuant to RSA 169–B:19, I(j). The department of corrections shall be served a copy of the motion and be a party to the proceeding.

(b) For purposes of assessing whether a minor meets the criteria of RSA 169–B:4, V, the department may provide representatives of the department of corrections with access to the minor's case records.

(c) If the court retains jurisdiction over the minor pursuant to RSA 169–B:4, V, the court may modify any dispositional order to transfer supervision from the department of health and human services to the department of corrections, or to transfer the place of detention from the youth development center to an adult facility.

(d) If the court orders a transfer of placement or supervisory authority, the court shall also order the transfer of all of the minor's treatment records to the agency having supervisory authority over the minor.

(e) When a dispositional order is extended beyond the minor's eighteenth birthday, the court may enforce its order with a finding of criminal contempt. Notwithstanding RSA 169–B:35, the

state may utilize any relevant portion of a juvenile's records in a criminal contempt proceeding.

(f) If the court retains jurisdiction over the minor pursuant to RSA 169–B:4, V, and the court has determined that the minor is required to register as a sexual offender or offender against children pursuant to RSA 169–B:19, I(k), the minor shall continue to register pursuant to RSA 651–B; provided, the court retains jurisdiction over the case.

III–b. Notwithstanding any provision of law to the contrary, a minor over whom the court has exercised jurisdiction pursuant to RSA 169–B:4, I or retained jurisdiction pursuant to RSA 169–B:4, V(c), may be committed or continue to be committed at the youth development center pursuant to RSA 169–B:19, I(j) until the minor's eighteenth birthday.

III–c. (a) A minor who meets the criteria for commitment to an adult correctional facility pursuant to RSA 169–B:4, RSA 169–B:19, III, or RSA 169–B:19, III–a, and whose disposition includes an order of conditional release extending beyond the juvenile's age of majority, or suspended, deferred, or imposed incarceration at an adult correctional facility shall not be committed without first being afforded the right to a jury trial or waiving the right to a jury trial.

(b) Any minor sentenced after a contested adjudicatory hearing to an order of conditional release extending beyond the juvenile's age of majority or suspended, deferred, or imposed incarceration at an adult correctional facility may, after the disposition is issued, request a de novo trial before a jury. To obtain a de novo jury trial under this chapter, the juvenile shall file a written request in the clerk's office within 3 days of the dispositional order. A copy of the written request shall also be provided to the local prosecutor and the county attorney. The request shall be given priority on the court's calendar. Whenever possible, any such hearing shall be held in a district court building equipped with jury capability. It shall be conducted by a district court judge specially assigned by the administrative judge of the district court. The jury panel shall be chosen from the jury pool of the superior court serving the county in which the court is located.

(c) The court in which the petition originated shall retain jurisdiction over all matters and orders pertaining to the placement, supervision and treatment of the juvenile during the pendency of the pre-trial and trial proceedings. The request for jury trial shall not suspend any provisions of the original court's order regarding placement, supervision, evaluation, or treatment. All other orders shall be vacated pending the de novo jury trial. The judge assigned to conduct the jury trial shall have authority to preside over the jury trial, decide trial management issues, and rule on all pre-trial and post-trial adjudicatory findings. In the event the juvenile waives the right to jury trial after the case has been specially assigned, the case shall be returned to the court in which the petition originated for continued action pursuant to this chapter.

(d) In the event the jury returns a finding of not true on all charges, the dispositional order in its entirety shall be vacated. In the event the jury returns a finding of true on one or more of the charges, the trial judge shall review and may reinstate or modify only those portions of the dispositional order made by the originating court suspended under this section during the pendency of the de novo process. In all other respects, the original dispositional order shall remain in effect.

(e) The provisions of RSA 169–B:34 through 169–B:38, relating to confidentiality of proceedings and records, shall apply to all de novo trials conducted pursuant to this section.

IV. A summary of the investigative officer's report shall accompany each commitment order.

V. All dispositional orders issued pursuant to this section shall include written findings as to the basis for the disposition, and such conditions as the court may determine.

VI. A minor committed to the youth development center for the remainder of minority may be placed at any facility certified by the commissioner of the department of health and human services for the commitment of minors. The commissioner of the department of health and human services shall be responsible for notifying the court, within 5 business days, of any such placement and of any subsequent changes in placement made within 60 days of the original placement. The commissioner shall maintain certification of at least one Medicaid-eligible residential treatment facility for the transfer pursuant to this paragraph of offenders other than serious violent offenders beginning January 1, 2018, and no fewer than 2 such facilities no later than July 1, 2018. For purposes of this section, a "serious violent offender" is a minor subject to a commitment order for a serious violent offense as defined in RSA 169–B:31–c. The process for identification and certification of residential treatment facilities under this subparagraph may include consultation with the operators of existing facilities in the state about their physical and programmatic capacity and the identification of any

necessary enhancements in programming or rate structure to develop the resources required by this subparagraph.

VII. If the judge orders services, placements or programs different from the recommendations of the department, the judge shall include a statement of the costs of services, placements and programs so ordered.

VIII. When a dispositional order places a minor in an out-of-home placement pursuant to RSA 169–B:19, I(e) or (f), prior to concluding the dispositional hearing the court shall set a date for a permanency hearing pursuant to RSA 169–B:31–a, I.

IX. Prior to any placement which will require educational services outside the minor's home school district, the court shall notify the school district and give the district the opportunity to send a representative to the hearing at which such placement is contemplated. At such hearing the court shall consider the recommendations of the school district and if such an out-of-district placement is ordered the court shall make written findings that describe the reasons for the placement.

X. The court may issue such orders as are necessary to ensure provision of services under this chapter, provided that any order issued involving the department of education or a legally liable school district shall comply with RSA 169–B:22.

**Source.** 1979, 361:2. 1982, 39:14. 1985, 376:3. 1987, 402:9. 1988, 89:16. 1989, 285:4. 1990, 201:4, 5. 1992, 18:4; 284:3. 1994, 81:3; 212:2. 1995, 181:2; 302:14–16; 308:59, 61, 104, 105; 310:171, 175, 181. 1997, 198:1, 2. 1999, 219:1; 305:9, 10. 2000, 294:9. 2001, 117:1; 286:5, 19. 2002, 168:1; 170:3. 2006, 327:23, 24. 2007, 236:3, 4; 295:2; 325:10, 15, II, 16. 2008, 274:7. 2013, 249:16, eff. Sept. 22, 2013. 2014, 215:10, 21, eff. July 1, 2015. 2015, 260:6, eff. July 1, 2015 at 12:01 a.m. 2017, 156:159, eff. Jan. 1, 2018; 156:161, eff. Mar. 1, 2018; 156:170, eff. July 1, 2017. 2019, 44:8, 9, eff. Aug. 2, 2019; 346:336, 337, eff. July 1, 2019. 2020, 26:16, eff. July 1, 2020; 26:47–49, eff. Sept. 18, 2020. 2022, 323:4, eff. Sept. 6, 2022.

### 169–B:19–a Out-of-District Placement.

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 section shall apply to the original order and all subsequent modifications of that order.

**Source.** 1991, 324:1, eff. Aug. 27, 1991.

### 169–B:19–b Presumption in Favor of In-State Placements.

There shall be a presumption that an in-state placement is the least restrictive and most appropriate placement. The court may order an out-of-state placement only upon an express written finding that there is no appropriate in-state placement available.

**Source.** 1995, 308:62, eff. July 1, 1995.

### 169–B:19–c Court Order for Services, Placements, and Programs Required for Minors From Certain Providers Qualified for Third-Party Payment.

The court, wherever and to the extent possible, shall order services, placements, and programs by providers certified pursuant to RSA 170–G:4, XVIII who qualify for third-party payment under any insurance covering the minor.

**Source.** 1996, 286:10, eff. June 10, 1996.

### 169–B:19–d Placement in a Qualified Residential Treatment Program.

For any child placed in a qualified residential treatment program, as defined in the federal Family First Prevention Services Act of 2017,[1] the court shall:

I. Order an assessment to be completed within 30 days of placement by a qualified individual as defined by the federal Family First Prevention Services Act of 2017; and

II. Review the assessment and issue an order approving the placement or changing the placement within 60 days of placement.

**Source.** 2021, 122:69, eff. July 9, 2021.

[1] P.L. 115–123, see 42 U.S.C.A. § 671 et seq.

### 169–B:20 Determination of Competence.

I. As used in this section, unless the context otherwise indicates, the following terms have the following meanings:

(a) "Chronological immaturity" means a condition based on a juvenile's chronological age and significant lack of developmental skills when the juvenile has no significant mental illness or mental retardation.

(b) "Mental illness" means any diagnosable mental impairment supported by the most current edition of the Diagnostic and Statistical Manual of Mental Disorders, published by the American Psychiatric Association.

(c) "Developmental disability" means a disability which is attributable to an intellectual disability, cerebral palsy, epilepsy, autism, or a specific learning disability, or any other condition of an individual found to be closely related to an intellectual disability as it refers to general intellectual functioning or impairment in adaptive behavior or re-

quires treatment similar to that required for persons with an intellectual disability.

(d) "Intellectual disability" means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior.

II. A minor is competent to proceed in a delinquency proceeding if the minor has:

(a) A rational as well as a factual understanding of the proceedings; and

(b) A sufficient present ability to consult with counsel with a reasonable degree of rational understanding.

III. The issue of a competency to proceed may be raised by the minor, by the prosecutor, or by the court at any point in the proceeding. A competency determination is necessary whenever the court has a bona fide or legitimate doubt as to a competency to proceed.

IV. If the court determines that a competency determination is necessary, it shall order that a minor be examined to evaluate the minor's competency to proceed. The court shall set the time within which the competency evaluation report shall be filed with the court, which shall be no later than 21 days of the court's order in cases in which at the time of the order the minor is detained, not later than 30 days of the court's order in cases in which at the time of the order the minor is in an out-of-home placement, and not later than 60 days of the court's order in cases in which at the time of the order the minor remains in the home. So that detention or placement outside the home is not unnecessarily extended by the determination of competency, the time within which the report shall be filed with the court shall be appropriately modified by the court in cases in which during the pendency of the competency evaluation the minor's placement changes. Following notice and an opportunity to be heard to the parties, upon a showing of good cause, the court may extend the time for filing of the evaluation report. Any such extension shall be limited to the time necessary for completion of the evaluation report and shall be set out in a written order which details the basis for the extension.

V. A competency evaluation may be conducted by an entity approved by the commissioner of health and human services, which may include an agency, a psychiatrist, or psychologist licensed in the state of New Hampshire. The commissioner shall adopt standards establishing the process for approval as an examiner as well as the qualifications required for approval, which shall be based on generally accepted standards for forensic psychiatrists and psychologists.

VI. Pending a competency examination, the court shall suspend proceedings on the petition. The suspension shall remain in effect pending the outcome of a competency determination hearing.

VII. (a) The examiner's report shall address the juvenile's capacity and ability to:

(1) Appreciate the allegations of the petition.

(2) Appreciate the nature of the adversarial process, including:

(A) Having a factual understanding of the participants in the juvenile's proceeding, including the judge, defense counsel, prosecutor, and mental health expert; and

(B) Having a rational understanding of the role of each participant in the proceeding.

(3) Appreciate the range of possible dispositions that may be imposed in the proceedings against the minor and recognize how possible dispositions imposed in the proceedings will affect the minor;

(4) Appreciate the impact of the minor's actions on others;

(5) Disclose to counsel facts pertinent to the proceedings at issue including:

(A) Ability to articulate thoughts.

(B) Ability to articulate emotions.

(C) Ability to accurately and reliably relate to a sequence of events.

(D) Display logical and autonomous decision making.

(E) Display appropriate courtroom behavior.

(F) Testify relevantly at proceedings.

(G) Demonstrate any other capacity or ability either separately identified by the court or determined by the examiner to be relevant to the court's determination.

(b) In assessing the minor's competency, the examiner shall compare the minor being examined to juvenile norms that are broadly defined as those skills typically possessed by the average minor defendant adjudicated in the juvenile justice system.

(c) The examiner shall determine and report if the minor suffers from mental illness, developmental disability, or chronological immaturity.

(d) If the minor suffers from mental illness, developmental disability, or chronological immaturity, the examiner shall report the severity of the

impairment and its potential effect on the minor's competency to proceed.

(e) If the examiner determines that the minor suffers from chronological immaturity, the examiner shall report a comparison of the minor to the average juvenile defendant.

(f) If the examiner determines that the minor suffers from a mental illness, the examiner shall provide the following information:

(1) The prognosis of the mental illness; and

(2) Whether the minor is taking any medication and, if so, what medication.

VIII. Following receipt of the competency examination report from the examiner, the court shall provide copies of the report to the parties and hold a competency determination hearing. The court may consider the report of the examiner, together with all other evidence relevant to the issue of competency, including a subsequent evaluation requested by defense under RSA 604–A, in its determination whether the minor is competent to proceed. If the court finds that the minor is competent to proceed, the court shall promptly resume the proceedings. If the court is not satisfied that the minor is competent to proceed, the court shall dismiss the petition.

IX. The prosecution shall have the burden of proving competence by a preponderance of the evidence.

X. Statements made by the minor in the course of a competency examination shall not be admitted as evidence in the adjudicatory or dispositional stage of the proceedings. The evaluation facility, agency, or individual shall keep records; but no reports or records of information shall be made available, other than to the court and parties, except upon the written consent of the minor if an adult at the time of consent or of the minor's parent or guardian.

XI. (a) Notwithstanding a finding by the court that the minor is competent to proceed in a juvenile proceeding, if the minor is subsequently transferred to the superior court, the issue of the minor's competency may be revisited.

(b) If a juvenile is found not competent to stand trial, the judge may refer the juvenile to the department of health and human services to assess eligibility for services through the department.

**Source.** 1979, 361:2. 1985, 195:4. 1990, 3:65. 1995, 302:17; 310:172. 1998, 234:5, eff. Oct. 31, 1998. 2014, 215:19, eff. July 1, 2015. 2020, 26:17, eff. July 1, 2020. 2022, 272:43, eff. June 24, 2022.

**169–B:21 Mental Health and Substance Abuse Evaluation.**

I. Any court, finding that a minor has committed the alleged offense may, before making a final disposition, order the minor, minor's parents, guardian, or person with custody or control to submit to a mental health or substance abuse evaluation to be completed within 60 days. Any substance abuse evaluation of the parent guardian, or person having custody of the child shall be conducted by a provider contracted with the bureau of substance abuse services, or a provider paid by the parent, guardian, or person having custody of the child. The cost of such evaluation shall be paid by private insurance, if available, or otherwise by the department. A written report of the evaluation shall be given to the court before the dispositional hearing. If the parents, guardian, minor, or person having custody or control objects to the mental health or substance abuse evaluation, they shall object in writing to the court having jurisdiction within 5 days after notification of the time and place of the evaluation. The court shall hold a hearing to consider the objection prior to ordering such evaluation. Upon good cause shown, the court may excuse the parents, guardian, minor, or person having custody or control from the provisions of this section.

II. Whenever such an evaluation has been made for consideration at a previous hearing, it shall be jointly reviewed by the court and the evaluating agency before the case is heard. The evaluating facility, agency, or individual shall keep records, but no reports or records of information contained therein shall be made available other than to the court and parties, except upon the written consent of the person examined or treated and except as provided in RSA 169–B:35.

III. In the case of a minor found guilty of possession of marijuana or hashish, the court, finding that a minor has committed the alleged offense, shall refer the minor for a substance abuse assessment to be completed prior to the dispositional hearing. The court may waive the requirement of an assessment if it has access to a similar assessment completed in the previous year or, based on substantial evidence, the court does not find there is a need for an assessment. The assessment shall be completed by a licensed drug and alcohol counselor. The results of the assessment shall be submitted to the court and, if indicated, the court shall order that the minor obtain appropriate treatment. The minor shall furnish the court with evidence of participation and completion of the substance abuse assessment.

**Source.** 1979, 361:2. 1999, 305:11, eff. Jan. 1, 2000. 2017, 248:9, eff. Sept. 16, 2017. 2020, 26:18, eff. July 1, 2020.

### 169–B:22 Disposition of a Minor With a Disability.

I. At any point during the proceedings, the court may, either on its own motion or that of any other person, and if the court contemplates a residential placement, the court shall immediately, join the legally liable school district for the limited purposes of directing the school district to determine whether the minor is a child with a disability or of directing the school district to review the services offered or provided under RSA 186–C, if the minor has already been determined to be a child with a disability. If the court orders the school district to determine whether the minor is a child with a disability, the school district shall make this determination by treating the order as the equivalent of a referral by the child's parent for special education, and shall conduct any team meetings or evaluations that are required under law when a school district receives a referral by a child's parent.

II. Once joined as a party, the legally liable school district shall have full access to all records maintained by the district court under this chapter. The school district shall also report to the court its determination of whether the minor is a child with a disability, and the basis for such determination. If the child is determined to be a child with a disability, the school district shall make a recommendation to the court as to where the child's educational needs can be met in accordance with state and federal education laws. In cases where the court does not follow the school district's recommendation, the court shall issue written findings explaining why the recommendation was not followed.

III. If the school district finds or has found that the minor has a disability, or if it is found that the minor is a child with a disability on appeal from the school district's decision in accordance with the due process procedures of RSA 186–C, the school district shall offer an appropriate educational program and placement in accordance with RSA 186–C. Financial liability for such education program shall be as determined in RSA 186–C:19–b.

IV. In an administrative due process hearing conducted by the department of education pursuant to RSA 186–C, a school district may provide a hearing officer with information from district court records which the school district has accessed pursuant to paragraph II of this section, provided that:

(a) At least 20 days prior to providing any records to the hearing officer, the school district files notice of its intention to do so with the court and all parties to the proceedings, and no party objects to the release of records;

(b) The notice filed by a school district under this section shall include, on a separate sheet of paper, the following statement in bold typeface: "Persons subject to juvenile proceedings have important rights to the confidentiality of juvenile court proceedings. This notice requests the disclosure of some or all of that information. If you object to the disclosure of information, you must file a written objection with the court no later than 10 days after the filing of the school district's notice. If you fail to object in writing, the court may allow private information to be revealed to the New Hampshire Department of Education hearing officer."; and

(c) Any objection by a party shall be filed with the court no later than 10 days after the filing of the school district's notice with the court, unless such time is extended by the court for good cause.

V. The court may, on its own initiative and no later than 13 days after the filing of the school district's notice to the court, issue an order directing the school district to show cause as to why the information should be disclosed to the hearing officer. Upon receipt of an objection or issuance of a show cause order, the court shall schedule an expedited hearing on the matter to determine if the requested records may be released. The court may rule without a hearing if the school district and a parent or legal guardian or the juvenile, if he or she has reached the age of majority, agree in writing to waive a hearing. Upon the filing of an objection or show cause order, the school district may file a reply explaining why the school district believes that the information should be disclosed to the hearing officer. In determining whether to authorize the disclosure of the information requested by the school district, the court shall balance the importance of disclosure of the records to a fair and accurate determination of the merits against the privacy interests of the parties to the proceedings, and render a written decision setting forth its findings and rulings. No information released to a hearing officer pursuant to this paragraph shall be disclosed to any other person or entity without the written permission of the court, the child's parent or legal guardian, or the juvenile if he or she has reached the age of majority, except that a court conducting an appellate review of an administrative due process hearing shall have access to the

same information released to a hearing officer pursuant to this paragraph.

VI. In this section, "child with a disability" shall be as defined in RSA 186–C.

**Source.** 1979, 361:2. 1983, 458:1. 1986, 223:12. 1987, 402:21. 1990, 140:2, X. 2008, 274:8, eff. July 1, 2008.

### 169–B:22–a Notice to School District of Out-of-Home Placement; Development of Transition Plan.

I. If the department of health and human services recommends or initiates an out-of-home placement or a change in placement, whether within or out of the district, the department shall notify the school district as soon as possible of the change in placement and shall work with the school district to determine how, consistent with the best interest of the child, to assure the child's educational stability.

II. When necessary to transition the child to a different school or school district, the department and school district shall develop a transition plan for the child. The objective of the plan shall be to minimize the number of placements for the child and to facilitate any change in placement or school assignment with the least disruption to the child's education. To the extent appropriate, the child may be involved in the formation of the plan.

**Source.** 2018, 51:2, eff. July 14, 2018.

### 169–B:23 Orders for Health Examination and Treatment.

If it is alleged in any petition, or it appears at any time during the progress of the case, that a delinquent is in need of health treatment, the failure to receive which is a contributing cause of delinquency, due notice of that fact shall be given as provided in RSA 169–B:7. If the court, upon hearing, finds that such treatment is reasonably required, it shall be ordered and the expense thereof shall be borne as provided in RSA 169–B:40.

**Source.** 1979, 361:2, eff. Aug. 22, 1979. 2021, 182:2, eff. Jan. 1, 2022.

### 169–B:24 Transfer to Superior Court.

I. All cases before the court in which the offense complained of constitutes a felony or would amount to a felony in the case of an adult may be transferred to the superior court prior to hearing under RSA 169–B:16 as provided in this section. The court shall conduct a hearing on the question of transfer and shall consider, but not be limited to, the following criteria in determining whether a case should be transferred:

(a) The seriousness of the alleged offense to the community and whether the protection of the community requires transfer.

(b) The aggressive, violent, premeditated, or willful nature of the alleged offense.

(c) Whether the alleged offense was committed against persons or property.

(d) The prospective merit of the complaint.

(e) The desirability of trial and disposition of the entire offense in one court if the minor's associates in the alleged offense were adults who will be charged with a crime.

(f) The sophistication and maturity of the minor.

(g) The minor's prior record and prior contacts with law enforcement agencies.

(h) The prospects of adequate protection of the public, and the likelihood of reasonable rehabilitation of the minor through the juvenile court system.

II. The minor shall be entitled to the assistance of counsel. Both the prosecutor and counsel for the minor shall have access to the court records, probation reports, or other agency reports. If the court orders transfer to superior court, it shall provide a written statement of findings and reasons for such transfer to the minor. When persons so certified are accepted by the superior court, the superior court may dispose of all criminal charges arising out of the incident which led to the transfer petition according to the relevant laws of this state without any limitations as to sentence or orders required by this chapter. All original papers in transferred cases shall remain in the court from which transferred and certified copies of the papers shall be filed with and shall constitute the records of the court to which transfer is made. Pending disposition by the superior court, a juvenile who is transferred and accepted by the superior court may be placed under the supervision of the department of corrections or required to recognize with sufficient sureties, or in default of such sureties, be detained at a county correctional facility or the youth development center to await disposition of the case in the superior court.

III. Upon the filing of a petition for transfer to the superior court, the court shall conduct a scheduling hearing and establish a scheduling order for all future hearings necessary to the transfer petition, notwithstanding the provisions of RSA 169–B:14, II.

IV. When the felony offense charged is first degree murder, second degree murder, attempted murder, manslaughter, first degree assault, aggravated felonious sexual assault punishable as a class A felo-

ny, a violation of RSA 318–B:26, I(a) or (b), or when the minor is charged with any felony and, prior to the filing of the felony petition, the minor has been petitioned to the court on 4 or more occasions and adjudicated delinquent in 4 separate adjudicatory hearings which alleged misdemeanor or felony offenses, and the minor commits the act after the minor's fifteenth birthday, there shall be a presumption that the factors listed in RSA 169–B:24, I support transfer to the superior court.

V. [Repealed.]

**Source.** 1979, 361:2. 1987, 402:12. 1988, 89:17. 1995, 302:18; 308:106. 1998, 381:2. 2003, 265:1. 2004, 158:3, eff. May 24, 2004. 2016, 303:1, eff. July 1, 2016. 2021, 227:7, eff. Oct. 24, 2021.

### 169–B:25 Petition by County Attorney or Attorney General.

If facts are presented to the county attorney or attorney general establishing that a person under the age of 18 has been guilty of conduct which constitutes a felony or would amount to a felony in the case of an adult and if such person is not within the jurisdiction of this state, the county attorney or attorney general may file a petition with the judge of the municipal or district court which would otherwise have jurisdiction under the provisions of this chapter. The petition shall set forth the nature of the offense with which the person is charged and shall specify the person's whereabouts if known. On receipt of such petition, the court may summarily authorize the county attorney or attorney general to proceed against such person under regular criminal procedures, and without regard to the provisions of this chapter. Pending determination by the superior court as provided in this section and pending final disposition of the matter, such persons shall be bailable with sufficient sureties as in the case of adults and, in default thereof, may be committed to the custody of the juvenile probation and parole officer or detained at a county correctional facility unless detention elsewhere is ordered by the superior court. The superior court shall determine, after hearing, whether such person shall be treated as a juvenile under the provisions of this section or whether the case shall be disposed of according to regular criminal procedures.

**Source.** 1979, 361:2. 1987, 402:12. 1988, 89:18. 1995, 302:19; 308:107. 2000, 294:9, eff. July 1, 2000. 2014, 215:11, eff. July 1, 2015.

### 169–B:26 Petition by Minor.

At any time prior to hearing pursuant to RSA 169–B:16, a minor who is charged with an act of delinquency committed after the minor's seventeenth birthday may petition the court to be tried as an adult and to have such case dealt with in the same manner as any other criminal prosecution.

**Source.** 1979, 361:2. 1995, 302:19; 308:107, eff. Jan. 1, 1996. 2014, 215:12, eff. July 1, 2015.

### 169–B:27 Treatment of Juvenile as Adult.

Any minor who has been tried and convicted as an adult shall henceforth be treated as an adult for all purposes in connection with any criminal offense with which said minor may be charged.

**Source.** 1979, 361:2, eff. Aug. 22, 1979.

### 169–B:28 Disqualification of Judge.

A judge who conducts a hearing pursuant to RSA 169–B:24, RSA 169–B:25, or RSA 169–B:26 shall not participate in any subsequent proceedings relating to the offense or conduct alleged in the delinquency petition if the minor or counsel for the minor objects to such participation.

**Source.** 1979, 361:2. 1995, 302:20, eff. Jan. 1, 1996.

### 169–B:29 Appeals.

An appeal, under this chapter, may be taken to the supreme court by the minor within 30 days of the final dispositional order; but an appeal shall not suspend the order or decision of the court unless the court so orders.

**Source.** 1979, 361:2. 1995, 308:108, eff. Jan. 1, 1996.

### 169–B:30 Committal of Children Under Eleven.

Notwithstanding any other provision of law, minors under the age of 11 years shall not be committed to the youth development center unless and until the court has referred the matter to and received the recommendation of an appropriate public or private agency or of a juvenile probation and parole officer that there is no other public or private home or institution suitable for such commitment.

**Source.** 1979, 361:2. 1987, 402:12. 2000, 294:9, eff. July 1, 2000.

### 169–B:31 Case Closure and Review of Disposition.

Upon making a finding that the purposes of this chapter have been met with regard to the minor named in the petition, or for such other reason the court may deem appropriate and consistent with the purposes of this chapter, the court may order a case closed. Any case remaining open for 12 months after the date of the disposition shall be reviewed by the court annually and closed, unless the court finds by a preponderance of the evidence that the continued provision of services and court involvement are necessary and shall be fruitful to rehabilitate the minor or

protect the public interest. All such findings shall be in writing and shall include the basis upon which those findings were made. Upon request by the child, the court shall also review any case in which the child remains at the youth development center more than 6 months after the order of commitment without having been released on parole or having been returned to the youth development center following revocation of parole. Successive requests for review shall be granted upon request by the child but the court may deny such requests without a hearing if a review was held less than 90 days prior to receipt of a request for review. In each instance that the court reviews a case in which the child remains at the youth development center at the time of review, the child shall be entitled to the assistance of counsel, which may not be waived except following consultation between the child and a parent or counsel. Consultation between a child and parent is not sufficient to support waiver under this section if the parent was a victim or complainant in the underlying proceeding or has been a witness or provided information in support of the basis for revocation in a parole revocation proceeding involving the child. Children known to the department of health and human services or the court to have an emotional disorder, intellectual disability, or any other condition which may be expected to interfere with a child's ability to understand the proceedings, make decisions, or otherwise handle the proceedings without the assistance of counsel may not waive the right to counsel guaranteed by this section.

**Source.** 1979, 361:2. 1999, 305:12. 2013, 249:22, eff. Sept. 22, 2013. 2014, 215:23, eff. July 1, 2015.

### 169–B:31–a Permanency Hearings.

I. For a minor who enters an out-of-home placement prior to an adjudicatory finding and who is in an out-of-home placement for 12 or more months, the court shall hold and complete an initial permanency hearing within 14 months of the minor's entry into out-of-home placement or within 12 months of the court's adjudicatory finding, whichever is earlier. For a minor who enters an out-of-home placement subsequent to an adjudicatory finding and who is in an out-of-home placement for 12 or more months, the court shall hold and complete an initial permanency hearing within 12 months of the minor's entry into out-of-home placement. For a minor who is in out-of-home placement following the initial permanency hearing, the court shall hold and complete a subsequent permanency hearing within 12 months of the initial permanency hearing and every 12 months thereafter as long as the minor is in an out-of-home placement.

II. At a permanency hearing the court shall consider whether the parent or parents and the minor have met the responsibilities pursuant to the dispositional orders issued by the court. If compliance with the dispositional orders pursuant to RSA 169–B:19 is not met, the court may adopt a permanency plan other than reunification for the minor. Other options for a permanency plan include:

(a) Termination of parental rights or parental surrender when an adoption is contemplated;

(b) Guardianship with a fit and willing relative or another appropriate party; or

(c) Another planned permanent living arrangement.

III. At a permanency hearing the court shall determine whether the department has made reasonable efforts to finalize the permanency plan that is in effect. Where reunification is the permanency plan that is in effect, the court shall consider whether services to the family have been accessible, available, and appropriate.

**Source.** 2007, 236:5. 2008, 213:3, eff. Aug. 15, 2008.

### 169–B:31–b Data Collection; Reporting Requirement.

I. The department shall establish a system to collect data related to:

(a) Charges which led to involvement with the juvenile justice system.

(b) The racial and ethnic identity of the child.

(c) The length of time a child receives services under this chapter, beginning at the time of arraignment.

(d) The identity of paid services or programs to whom the department has referred a child or family.

(e) Any other information, including outcome data, that may assist the department and the court in evaluating the availability and effectiveness of services for children who receive assistance under this chapter.

(f) The type of services ordered by the court after adjudication and disposition.

II. The department shall, upon request, make available to members of the public, compilations of the data which do not contain identifying information.

III. Beginning on or before December 30, 2014, the department shall provide quarterly reports regarding cases handled pursuant to this chapter to the

chair of the house children and family law committee, the chair of the senate health, education and human services committee, or to the chairs of their successor committees, as well as the chair of the joint fiscal committee. The reports shall include:

(a) Total census at Sununu Youth Services Center (SYSC) at the beginning of each quarterly reported period reported by:

(1) Sex.

(2) County of residence.

(3) Status (i.e. pre-trial, confinement).

(4) Criminal charge.

(5) Re-entry into the juvenile justice system.

(b) The number of 6 month parole hearings and the outcomes during the previous quarter and year to date.

**Source.** 2014, 215:24, eff. July 1, 2015.

### 169–B:31–c Dispositions and Case Closure in Certain Cases.

I. Notwithstanding any other provision of this chapter, the court shall close all cases other than those involving serious violent offenses no later than 2 years after the date of adjudication. This section shall not apply if, with the assistance of counsel, the minor consents to continued jurisdiction.

II. In this section, "serious violent offenses" mean first degree murder, second degree murder, attempted murder, manslaughter, negligent homicide under RSA 630:3, II, first degree assault, second degree assault, except when the allegation is a violation of RSA 631:2, I(d), felonious sexual assault, aggravated felonious sexual assault, kidnapping, criminal restraint, robbery punishable as a class A felony, burglary while armed or involving the infliction of bodily harm under RSA 635:1, II, or arson punishable as a felony.

**Source.** 2017, 156:162, eff. June 28, 2017.

### 169–B:32 Limitations of Authority Conferred.

This chapter shall not be construed as applying to persons 16 years of age or over who are charged with the violation of a motor vehicle law, an aeronautics law, a law relating to navigation or boats, a fish and game law, a law relating to title XIII, a law relating to fireworks under RSA 160–B or RSA 160–C, any town or municipal ordinance which provides for a penalty not exceeding $100 plus the penalty assessment, and shall not be construed as applying to any minor charged with the violation of any law relating to the possession, sale, or distribution of tobacco products to or by a person under 21 years of age. However, if incarceration takes place at any stage in proceedings on such violations, incarceration shall be only in a juvenile facility certified by the commissioner of the department of health and human services.

**Source.** 1979, 361:2. 1981, 563:2. 1992, 18:5; 44:7. 1994, 212:2. 1995, 308:64; 310:171. 1999, 348:15, eff. Jan. 21, 2000. 2019, 346:105, eff. Jan. 1, 2020. 2020, 37:115, eff. July 29, 2020.

### 169–B:33 Religious Preference.

The court and officials, in placing minors, shall, as far as practicable, place them in the care and custody of some individual holding the same religious beliefs as the minor or the parents of said minor, or with some association which is controlled by persons of like religious faith. No minor under the supervision of any state institution shall be denied the free exercise of the minor's own religion or the religion of the parents, whether living or dead, nor the liberty of worshipping God according thereto.

**Source.** 1979, 361:2. 1995, 302:21, eff. Jan. 1, 1996.

### 169–B:34 Court Sessions; Access to Information.

I. (a) All juvenile cases shall be heard separately from the trial of criminal cases, and such hearing shall be held wherever possible in rooms not used for such trials. Only such persons as the parties, their witnesses, their counsel, the victim, a victim witness advocate or other person chosen by the victim, the county attorney, the attorney general and the representatives of the agencies present to perform their official duties shall be admitted; provided, however, that if the witness is under 16 years of age, the witness' parent or other appropriate adult shall be permitted to be present during the witness' testimony. In those cases where the delinquent act complained of would constitute a felony if the act of an adult, the attorney general and the county attorney of the county in which the offense took place shall receive notice thereof by the court.

(b) For the purpose of this section, "victim" means a person who suffers direct physical, emotional, psychological, or economic harm as a result of the commission of a crime or delinquent act. "Victim" also includes the immediate family of any victim who is a minor or who is incompetent, or the immediate family of a homicide victim.

II. If the victim is unable to attend the hearing under paragraph I, the prosecution, upon request of the victim, may disclose to the victim information disclosed at the hearing.

III. At any time after the diversion or arraignment of a juvenile, the following information regard-

ing the juvenile shall be disclosed to the victim, and may be disclosed to the victim's immediate family, upon the request of the victim or the victim's immediate family, by a law enforcement agency or the prosecution:

(a) Name.

(b) Age.

(c) Address.

(d) Gender.

(e) Offense charged.

(f) Custody status.

(g) Adjudicatory status and disposition.

IV. It shall be unlawful for a victim or any member of the victim's immediate family to disclose any confidential information to any person not authorized or entitled to access such confidential information. Any person who knowingly discloses such confidential information shall be guilty of a misdemeanor.

V. No minor who is the subject of a petition filed pursuant to RSA 169–B:6 shall be held in or escorted through any part of a court facility that is occupied by the members of the public while the minor is in handcuffs, shackles, or other devices which would indicate that the minor is in law enforcement custody or subject to an order of confinement, unless no reasonable, alternative means of egress is available.

**Source.** 1979, 361:2. 1985, 228:3. 1996, 294:1. 2003, 275:1, eff. Sept. 16, 2003. 2017, 180:1, eff. Aug. 28, 2017.

### 169–B:35 Juvenile Case and Court Records.

I. All case records, as defined in RSA 170–G:8–a, relative to delinquency, shall be confidential and access shall be provided pursuant to RSA 170–G:8–a.

II. Court records of proceedings under this chapter, except for those court records under RSA 169–B:36, II, shall be kept in books and files separate from all other court records. Such records shall be withheld from public inspection but shall be open to inspection by officers of the institution where the minor is committed, juvenile probation and parole officers, a parent, a guardian, a custodian, the minor's attorney, the relevant county, and others entrusted with the corrective treatment of the minor. Additional access to court records may be granted by court order or upon the written consent of the minor. Once a delinquent reaches 21 years of age, all court records and individual institutional records, including police records, shall be closed and placed in an inactive file.

III. Notwithstanding paragraphs I and II:

(a) Police officers and prosecutors involved in the investigation and prosecution of criminal acts shall be authorized to access police records concerning juvenile delinquency, including the files of persons who at the time of the inquiry are over the age of 18, and to utilize for the purposes of investigation and prosecution of criminal cases police investigative files on acts of juvenile delinquency, including information from police reports, exemplars, and forensic investigations.

(b) Prosecutors involved in the prosecution of criminal acts shall be authorized to access police records concerning juvenile delinquency or records of adjudications of delinquency, including the files of persons who at the time of the inquiry are over the age of 18, if the prosecutor has reason to believe that the individual may be a witness in a criminal case. The prosecutor may disclose the existence of an adjudication for juvenile delinquency only when such disclosure is constitutionally required or after the court having jurisdiction over the criminal prosecution orders its disclosure.

(c) [Repealed.]

(d) Pursuant to RSA 651–B, the department of safety shall disclose registration information to law enforcement agencies for juveniles if the court has found that the juvenile is required to register as a sexual offender or offender against children. In no event shall any juvenile required to register be listed on the list of sexual offenders and offenders against children made available to the public pursuant to RSA 651–B:7.

**Source.** 1979, 361:2. 1987, 402:14. 1993, 266:1; 355:2. 1995, 308:109, 110. 1999, 219:2. 2000, 294:10. 2001, 286:21, I. 2006, 327:25, eff. Jan. 1, 2007. 2014, 215:13, eff. July 1, 2015.

### 169–B:35–a Access to Information by Victims of Violent Crime.

I. For the purposes of this section:

(a) "Victim" shall mean a person who suffers direct physical, emotional, or psychological harm as a result of the commission of a violent crime. "Victim" also includes the immediate family of any victim who is a minor or who is incompetent, or the immediate family of a homicide victim.

(b) "Immediate family" shall mean a victim's spouse, parent, sibling, or child; a person acting in loco parentis for the victim; or anyone related to the victim by blood or marriage and living in the same household as the victim.

(c) "Violent crime" shall mean capital, first-degree or second-degree murder, attempted murder, manslaughter, aggravated felonious sexual assault,

felonious sexual assault, first-degree assault, or negligent homicide committed in consequence of being under the influence of intoxicating liquor or controlled drugs, as these crimes are defined by statute.

II. In cases where a minor is charged with a violent crime and in addition to the provisions of RSA 169–B:34, a victim of violent crime shall have the rights provided in this paragraph. Upon request to the prosecution, the victim shall be entitled to the following:

(a) Prior to the disposition of the minor pursuant to RSA 169–B:19 or a transfer hearing pursuant to RSA 169–B:24, to:

(1) Be informed of the name, age, address, and custody status of the minor arraigned or adjudicated for the violent crime;

(2) Be informed of all court proceedings conducted pursuant to RSA 169–B;

(3) Confer with the prosecution and be consulted about the disposition of the case, including plea bargaining;

(4) Be informed of case progress and final disposition;

(5) Have input in the juvenile predispositional report;

(6) Appear and make a written or oral victim impact statement at the dispositional hearing or, in the case of a plea bargain, prior to any plea bargain agreement; and,

(7) Be informed of an appeal, receive an explanation of the appeal process, and receive notice of the result of the appeal.

(b) Subsequent to the disposition of a minor adjudicated for a violent crime, the victim shall receive notice of all review hearings conducted pursuant to RSA 169–B:31 and notice of any change in placement, temporary release or furlough, interstate transfer, parole, runaway, escape, or release of the minor.

(c)(1) When the court's jurisdiction over a minor adjudicated for a violent crime terminates pursuant to RSA 169–B:4 or 169–B:19, the victim and the arresting law enforcement agency shall receive notice of the termination of the court's jurisdiction and any information concerning the minor's intended residence.

(2) The court may authorize the arresting law enforcement agency to provide information concerning the location of the minor's intended residence to the law enforcement agency of that location if public safety requires such notification.

III. [Repealed.]

IV. It shall be unlawful for a victim or member of a law enforcement agency to disclose any confidential information to any person not authorized or entitled to access such confidential information. Any person who knowingly discloses such confidential information shall be guilty of a misdemeanor.

V. (a) Except as expressly provided in this section or RSA 169–B:34, nothing in this section shall be construed to provide victims with the right to attend proceedings conducted pursuant to RSA 169–B, 170–H, or 621; to participate in decisions concerning the changes in placement, temporary release or furlough, interstate transfer, parole, or release of a minor adjudicated of a violent crime; or to have direct access to the case records or the court records of a minor adjudicated for a violent crime.

(b) Nothing in this section or RSA 169–B:34 shall be construed as creating a cause of action against the state, a county or municipality, or any of their agencies, instrumentalities or employees, or private providers of residential services to adjudicated delinquents.

(c) Nothing in this section or RSA 169–B:34 shall be construed as creating any new cause of action or new remedy or right for a criminal defendant.

**Source.** 1994, 357:2. 1995, 181:3. 1996, 294:2–5, 8, eff. Aug. 9, 1996.

### 169–B:36 Penalty for Disclosure of Juvenile Records.

I. It shall be unlawful for any person to disclose court records or any part thereof to persons other than those persons entitled to access under RSA 169–B:35, except by court order. Any person who knowingly violates this provision shall be guilty of a misdemeanor. This prohibition shall not be construed to prevent publication as provided in RSA 169–B:37.

II. Notwithstanding paragraph I, in cases involving a violent crime as defined in RSA 169–B:35–a and when the petition is found to be true, the following information may be disclosed by the court clerk after the adjudicatory hearing:

(a) The name and address of the juvenile charged.

(b) The specific offense found by the court to be true.

(c) The custody status of the juvenile.

(d) The final disposition ordered by the court.

Information provided in subparagraphs (c) and (d) shall not identify the name or address of private providers of residential or other services to the juvenile.

**Source.** 1979, 361:2. 1993, 355:3. 1995, 308:111, eff. Jan. 1, 1996.

### 169–B:37 Publication of Delinquency Restricted.

I. It shall be unlawful for any newspaper to publish, or any radio or television station to broadcast or make public the name or address or any other particular information serving to identify any juvenile arrested, without the express permission of the court; and it shall be unlawful for any newspaper to publish, or any radio or television station to make public, any of the proceedings of any juvenile court. Nothing in this section or RSA 169–B:35 and RSA 169–B:36 shall be construed to prevent publication without using the name of the delinquent of information which shall be furnished by the court about the disposition of a case when the delinquent act would constitute a felony if it were the act of an adult.

II. Notwithstanding paragraph I, the police, with the written approval of the county attorney or the attorney general, may release to the news media the name and photograph of the juvenile if:

(a) The juvenile has escaped from court-ordered custody; and

(b) The juvenile has not been apprehended and there is good cause to believe the juvenile presents a serious danger to the juvenile or to public safety.

**Source.** 1979, 361:2. 1996, 294:6, eff. Aug. 9, 1996.

### 169–B:38 Penalty for Forbidden Publication.

The publisher of any newspaper or the manager, owner or person in control of a radio or television station or agent or employee of any of the above who violates any provision of RSA 169–B:37 shall be guilty of a misdemeanor.

**Source.** 1979, 361:2, eff. Aug. 22, 1979.

### 169–B:39 Repealed by 1989, 285:12, eff. July 28, 1989.

### 169–B:40 Liability for Expenses Incurred.

I. (a) Whenever an order creating liability for expenses is issued by the court under this chapter, any expenses incurred for services, placements, and programs the providers of which are certified pursuant to RSA 170–G:4, XVIII, shall be payable by the department of health and human services.

(b) Subparagraph (a) shall not apply to expenses incurred for special education and related services, or to expenses incurred for evaluation, care, and treatment of the minor when receiving child inpatient psychiatric treatment within the state mental health system, or to expenses incurred for the cost of accompanied transportation.

(c) Notwithstanding subparagraph (a), the department shall have the right to require parents or other people responsible for the minor's support and necessities to assign to the state any insurance benefits that may be available to pay for a mental health evaluation under RSA 169–B:21.

(d) Liability for placement expenses for any court ordered placement of any minor mother under this chapter shall include liability for placement expenses for the child or children of such minor mother if the minor mother and child or children are placed at the same facility.

II. Notwithstanding any provision of law to the contrary, the department of health and human services shall not be responsible for the payment of the cost of assigned counsel for any party under this chapter.

III. The office of reimbursements acting on behalf of the department of health and human services is authorized to compromise or reduce any expense to be charged to the state under this section.

**Source.** 1979, 361:2; 434:81. 1981, 555:1. 1982, 25:2. 1983, 458:4. 1985, 96:6; 380:37. 1987, 402:29, 30. 1988, 107:5; 153:1, 4. 1989, 75:1; 229:1; 286:1. 1990, 3:46; 203:1. 1991, 265:2. 1993, 266:2. 1994, 212:2. 1995, 220:2; 302:22; 308:60, 63, 112; 310:123, 171, 175, 182. 1996, 286:13, 16. 1997, 305:1. 2007, 263:20. 2008, 274:33. 2009, 144:33, 36, eff. July 1, 2009. 2018, 55:1, 4, eff. July 14, 2018. 2020, 26:19, eff. July 1, 2020. 2022, 272:44, 45, eff. June 24, 2022.

### 169–B:41 Intentional Contribution to Delinquency.

I. Any parent or guardian or person having custody or control of a minor, or anyone else, who shall knowingly encourage, aid, cause, or abet, or connive at, or has knowingly or willfully done any act to produce, promote, or contribute to the delinquency of such minor, shall be guilty of a misdemeanor. The court may release such person on probation, subject to such orders as it may make concerning future conduct tending to produce or contribute to such delinquency, or it may suspend sentence, or before trial, with such person's consent, it may allow the person to enter into a recognizance, in such penal sum as the court may fix, conditioned for the pro-

motion of the future welfare of the minor, and the case may be placed on file.

II. Notwithstanding the provisions of paragraph I, any parent, guardian or person having custody or control of a minor, or anyone else, who shall knowingly or wilfully, encourage, aid, cause or abet, or connive at, or has knowingly done any act to produce, promote or contribute to the utilization of a minor in any acts of sexual conduct, as defined in RSA 650:1, VI, in order to create obscene material, as defined in RSA 650:1, IV, of the minor engaged in such conduct, shall be guilty of:

(a) A class B felony if such person has had no prior convictions in this state or another state for the conduct described in this paragraph;

(b) A class A felony if such person has had one or more prior convictions in this state or another state for the conduct described in this paragraph.

**Source.** 1979, 361:2. 1983, 448:4. 1995, 302:23, eff. Jan. 1, 1996.

### 169–B:42 Procedure.

If any minor is found more than once to be delinquent by the court as provided in RSA 169–B:41, the court may, upon complaint of the county attorney or any other person, or upon its own motion, issue a warrant commanding any parent, guardian or person having custody or control of the minor found to be delinquent to be brought before the same court in which the findings of delinquency was made.

**Source.** 1979, 361:2, eff. Aug. 22, 1979.

### 169–B:43 Court Orders.

The court, upon a complaint issued under RSA 169–B:42, may proceed under that section and, in addition, if the court finds, after a hearing, that the parent, guardian, or person having custody or control of the minor has failed to exercise reasonable diligence in the control of such minor to prevent the minor from becoming guilty of juvenile delinquency as defined by statute, or from becoming adjudged by the court to be in need of the care and protection of the state as defined by statute, it may make such order specifying future conduct as is designed to reasonably prevent the reoccurrence of delinquency and to promote the future welfare of the minor. Such order shall remain in effect for a period of not more than one year to be specified by the court, and said order may be extended or renewed by the court. Before issuing any such order, the court shall advise such parent, guardian, or other person of the right to have the reasonableness of the order immediately reviewed; and, in this connection, the superior court is vested with jurisdiction to summarily determine the reasonableness of any question of law or fact relating to such written specifications and to make such further orders upon review thereof as justice may require.

**Source.** 1979, 361:2. 1995, 302:24, eff. Jan. 1, 1996.

### 169–B:44 Civil Action for Compensation.

Nothing in this chapter shall bar civil action to recover damages for the negligence of a person having custody or control of a minor who causes injury to property or persons.

**Source.** 1979, 361:2, eff. Aug. 22, 1979.

### 169–B:45 Vandalism by Minors.

I. For purposes of this section, "vandalism" has the same meaning as "criminal mischief" in RSA 634:2.

II. The court shall, when appropriate, order any child who is found to have committed vandalism of private property to write a formal apology to the victim or victims of such vandalism.

III. The court shall, when appropriate, order any child who is found to have committed vandalism of public property to write a report on the history and significance of that property to the community or on another topic, as determined by the court.

IV. The court shall also order, when appropriate, any child who is found to have committed vandalism to contribute to the restoration of the property or to the restitution to the victim or victims of such vandalism by payment in money, by property repairs, by service to the injured party, or by service to the community.

V. Notwithstanding any other provision of this chapter, the court may order the parent or legal guardian of any child found to have committed vandalism, to submit restitution to the victim or victims of such vandalism by payment in money if the child is in the custody of and residing with such parent or guardian, and if the court finds that the vandalism was a direct result of the parent or legal guardian having neglected to exercise reasonable supervision and control of the child's conduct. For the purposes of this section, liability for compensation shall be limited to $10,000.

VI. If the person violates the court's order to submit restitution under this section, such person shall be guilty of contempt.

VII. The court may permit payments under this section to be made in installments, up to 7 years, to be administered by the court.

**Source.** 1979, 450:1. 1995, 302:25. 1996, 225:1, eff. Jan. 1, 1997.

### 169–B:46 Publication Permitted.

Notwithstanding the provisions of RSA 169–B:36 and 169–B:37, there shall be no restriction on the publishing or broadcasting of the name or address of any child found to have committed vandalism under RSA 169–B:45, or any child who is adjudicated to have committed a second or subsequent offense for the possession with intent to distribute any controlled drug, as defined in RSA 318–B:1, VI, and who is at least 12 years of age at the time of such offense, or the name or address of the parent or guardian.

**Source.** 1979, 450:1. 1989, 174:1. 1995, 302:26, eff. Jan. 1, 1996.

### 169–B:47 Severability.

If any provision of this chapter or the application thereof to any person or circumstances is held to be invalid, the remainder of the chapter and the application of such provision to other persons or circumstances shall not be affected thereby.

**Source.** 1979, 361:2, eff. Aug. 22, 1979.

## Commission to Study Community Impacts of the Secured Youth Development Center

### 169–B:48 Commission to Study Community Impacts of the Secured Youth Development Center.

*[RSA 169–B:48 repealed by 2023, 1:6, effective November 1, 2024.]*

I. There is established a commission to study the impacts of the secured youth development center on surrounding communities. The commission shall consider and, as needed, make recommendations on site selection, public safety, fire safety, and other relevant factors. Notwithstanding RSA 14:49, the commission shall consist of the following members:

(a) Three members of the house of representatives, appointed by the speaker of the house of representatives.

(b) Three senate members, appointed by the senate president.

(c) The commissioner of the department of health and human services or designee.

(d) The commissioner of the department of safety or designee.

(e) The child advocate or their designee.

(f) A representative from the New Hampshire Sheriff's Association, appointed by that organization.

(g) One or more representatives from local law enforcement agencies, appointed by the speaker of the house of representatives.

(h) One or more representatives from municipal governing bodies, appointed by the senate president.

II. Legislative members of the commission shall receive mileage at the legislative rate when attending to the duties of the commission. The commission's study shall include procedures and practices of the secured youth development facility meant to ensure the safety of the youths held at the facility, facility staff, the people of the municipality where the facility is located, and neighboring municipalities.

III. The commission may solicit input from any person or entity the commission deems relevant to its study.

IV. The members of the commission shall elect a chairperson from among the members. The first meeting of the commission shall be held within 45 days of the effective date of this section and be called by the first-named senate member. A majority of members named to the commission shall constitute a quorum.

V. The commission shall submit a preliminary report including its findings, including its recommended site for the secured youth development center, and any recommendations for proposed legislation on or before November 1, 2023 and a final report on or before November 1, 2024 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.

**Source.** 2023, 1:5, eff. Feb. 14, 2023.

# CHAPTER 169–C

# CHILD PROTECTION ACT

### 169–C:1 Short Title.

This chapter shall be known as the Child Protection Act.

**Source.** 1979, 361:2, eff. Aug. 22, 1979.

### 169–C:2 Purpose.

I. It is the primary purpose of this chapter, through the mandatory reporting of suspected instances of child abuse or neglect, to provide protection to children whose life, health or welfare is endangered. The best interest of the child shall be the primary consideration of the court in all proceedings under this chapter.

II. It is a further purpose of this chapter to establish a judicial framework to protect the rights of all parties involved in the adjudication of child abuse or neglect cases. Each child coming within the provisions of this chapter shall receive, preferably in the child's own home, the care, emotional security, guidance, and control that will promote the child's best interest; and, if the child should be removed from the control of his or her parents, guardian, or custodian, adequate care shall be secured for the child. This chapter seeks to coordinate efforts by parents and state and local authorities, in cooperation with private agencies and organizations, citizens' groups, and concerned individuals, to:

(a) Protect the safety of the child.

(b) Take such action as may be necessary to prevent the abuse or neglect of children.

(c) Determine if the preservation of family unity is in the best interest of the child.

(d) Provide protection, treatment, and rehabilitation, as needed, to children placed in alternative care.

(e) Provide assistance to parents to deal with and correct problems in order to avoid removal of children from the family.

III. This chapter shall be liberally construed to the end that its purpose may be carried out, to wit:

(a) To encourage the mental, emotional, and physical development of each child coming within the provisions of this chapter, by providing the child with the protection, care, treatment, counseling, supervision, and rehabilitative resources which the child needs and has a right to receive.

(b) To achieve the foregoing purposes and policies, whenever it is in the best interest of the child, by keeping a child in contact with his or her home community and in a family environment by preserving the unity of the family and separating the child from his or her parents only when the safety of the child is in danger or when it is clearly necessary for the child's welfare or the interests of the public safety and when it can be clearly shown that a change in custody will be in the best interest of the child; and

(c) To provide effective judicial procedures through which the provisions of this chapter are executed and enforced and which recognize and enforce the constitutional and other rights of the parties and assures them a fair hearing.

**Source.** 1979, 361:2. 1983, 331:1, 2, eff. Aug. 17, 1983. 2017, 156:197, eff. July 1, 2017. 2020, 26:37, eff. July 20, 2020.

### 169–C:3 Definitions.

When used in this chapter and unless the specific context indicates otherwise:

I. "Abandoned" means the child has been left by his parent, guardian or custodian, without provision for his care, supervision or financial support although financially able to provide such support.

II. "Abused child" means any child who has been:

(a) Sexually abused; or

(b) Intentionally physically injured; or

(c) Psychologically injured so that said child exhibits symptoms of emotional problems generally recognized to result from consistent mistreatment or neglect; or

(d) Physically injured by other than accidental means; or

(e) Subjected, by any person, to human trafficking as defined in RSA 633:7; or

(f) Subjected to an act prohibited by RSA 632–A:10–d.

III. "Adjudicatory hearing" means a hearing to determine the truth of the allegations in the petition filed under this chapter.

IV. [Repealed].

V. "Child" means any person who has not reached his eighteenth birthday.

VI. "Child care agency" means a "child day care agency" as defined in RSA 170–E:2, IV or a "child care agency" as defined in RSA 170–E:25, II.

VII. "Child placing agency" means the department, Catholic charities of New Hampshire, or child and family services of New Hampshire, or any successor organization.

VII–a. "Compelling reason" for assessing permanency at an early permanency hearing includes circumstances where:

(a) Both parents, or only one parent if the other parent is deceased or not identified, have made no effort or only negligible efforts to comply with the dispositional orders;

(b) A ground exists for termination of parental rights for both parents, or for only one parent if the other parent is deceased or not identified, under one or more paragraphs of RSA 170–C:5; or

(c) There is another compelling reason to assess the permanency plan of reunification earlier than the 12–month permanency hearing.

VII–b. "Concurrent plan" means an alternate permanency plan in the event that a child cannot be safely reunified with his or her parents.

VIII. "Consent order" means a written agreement entered into among or between the parties regarding the facts and the disposition in a neglect or abuse case, and approved by the court.

IX. "Court" means the district court, unless otherwise indicated.

X. "Custodian" means an agency or person, other than a parent or guardian, licensed pursuant to RSA 170–E to whom legal custody of the child has been given by court order.

XI. "Dispositional hearing" means a hearing held after a finding of abuse or neglect to determine what dispositional order should be made on behalf of the child.

XII. "Department" means the department of health and human services.

XIII. "Foster home" means a residential care facility licensed pursuant to RSA 170–E for child care in which family care and training are provided on a regular basis for no more than 6 unrelated children, unless all the children are of common parentage.

XIII–a. "Founded report" means a report made pursuant to this chapter for which the department finds by a preponderance of the evidence that the child who is the subject of such report is abused or neglected.

XIV. "Guardian" means a parent or person appointed by a court having jurisdiction with the duty and authority to make important decisions in matters having a permanent effect on the life and development of the child, and to be concerned about the general welfare of the child. Such duty and authority include but are not necessarily limited either in number or kind to:

(a) The authority to consent: (1) to marriage, (2) to enlistment in the armed forces of the United States, and (3) to major medical, psychiatric and surgical treatment, (4) to represent the child in legal actions; and (5) to make other decisions of substantial legal significance concerning the child;

(b) The authority and duty of reasonable visitation, except to the extent that such right of visitation has been limited by court order; and

(c) The rights and responsibilities of legal custody except where legal custody has been vested in another individual or in an authorized agency.

XIV–a. "Household member" means any person living with the parent, guardian, or custodian of the child from time to time or on a regular basis, who is involved occasionally or regularly with the care of the child.

XV. "Imminent danger" means circumstances or surroundings causing immediate peril or risk to a child's health or life.

XVI. "Institutional child abuse or neglect" means situations of known or suspected child abuse or neglect wherein the person responsible for the child's welfare is a foster parent or is an employee of a public or private residential home, institution or agency.

XVII. "Legal custody" means a status created by court order embodying the following rights and responsibilities unless otherwise modified by court order:

(a) The right to determine where and with whom the child shall live;

(b) The right to have the physical possession of the child;

(c) The right and the duty to protect and constructively discipline the child; and

(d) The responsibility to provide the child with food, clothing, shelter, education, emotional security and ordinary medical care provided that such rights and responsibilities shall be exercised subject to the power, rights, duties and responsibilities of the guardian of the child and subject to residual parental rights and responsibilities if these have not been terminated by judicial decree.

XVIII. "Legal supervision" means a legal status created by court order wherein the child is permitted to remain in his home under the supervision of a child placing agency subject to further court order.

XIX. "Neglected child" means a child:

(a) Who has been abandoned by his or her parents, guardian, or custodian; or

(b) Who is without proper parental care or control, subsistence, education as required by law, or other care or control necessary for the child's physical, mental, or emotional health, when it is established that the child's health has suffered or is likely to suffer serious impairment; and the deprivation is not due primarily to the lack of financial means of the parents, guardian, or custodian; or

(c) Whose parents, guardian or custodian are unable to discharge their responsibilities to and for the child because of incarceration, hospitalization or other physical or mental incapacity;

Provided, that no child who is, in good faith, under treatment solely by spiritual means through prayer in accordance with the tenets and practices of a recognized church or religious denomination by a duly accredited practitioner thereof shall, for that reason alone, be considered to be a neglected child under this chapter.

XX. "Notice" means communication given in person or in writing to the parent, guardian, custodian or other interested party not having custody or control of the child, of the time and place fixed for hearing; and it shall be given in all cases, unless it appears to the court that such notice will be ineffectual.

XX–a. "Out-of-home placement" means the placement of a child in substitute care with someone other than the child's biological parent or parents, adoptive parent or parents, or legal guardian.

XXI. "Parent" means mother, father, adoptive parent, stepparent, but such term shall not include a parent as to whom the parent-child relationship has been terminated by judicial decree or voluntary relinquishment.

XXI–a. "Party having an interest" means the child; the guardian ad litem of the child; the child's parent, guardian or custodian; the state; or any household member subject to court order.

XXI–b. "Permanency hearing" means a court hearing for a child in an out-of-home placement to review, modify, and/or implement the permanency plan or to adopt the concurrent plan.

XXI–c. "Permanency plan" means a plan for a child in an out-of-home placement that is adopted by the court and provides for timely reunification, adoption through termination of parental rights or parental surrender, guardianship with a fit and willing relative or another appropriate party, or another planned permanent living arrangement.

XXII. "A person responsible for a child's welfare" includes the child's parent, guardian or custodian, as well as the person providing out-of-home care of the child, if that person is not the parent, guardian or custodian. For purposes of this definition, "out-of-home care" includes child day care, and any other settings in which children are given care outside of their homes.

XXIII. "Probable cause" means facts and circumstances based upon accurate and reliable information, including hearsay, that would justify a reasonable person to believe that a child subject to a report under this chapter is abused or neglected.

XXIV. "Protective custody" means the status of a child who has been taken into physical custody by a police officer or juvenile probation and parole officer because the child was in such circumstances or surroundings which presented an imminent danger to the child's health or life and where there was not sufficient time to obtain a court order.

XXV. "Protective supervision" means the status of a child who has been placed with a child placing agency pending the adjudicatory hearing.

XXV–a. "Psychological maltreatment" means pervasive and emotionally abusive behavior, which shall include, but not be limited to, patterns of threatening, berating, or demeaning behavior.

XXV–b. "Psychotropic medication" means a drug prescribed by a licensed medical practitioner, to treat illnesses that affect psychological functioning, perception, behavior, or mood.

XXV–c. "Medication restraint" means the involuntary administration of any medication, including a psychotropic medication, for the purpose of immediate control of behavior.

XXVI. "Relative" means parent, grandparent, brother, sister, stepparent, stepbrother, stepsister, uncle, aunt, nieces, nephews or first and second cousins.

XXVII. "Residual parental rights and responsibilities" means those rights and responsibilities remaining with the parent after the transfer of legal custody or guardianship except guardianship pursuant to termination of parental rights, including, but not limited to, right of visitation, consent to adoption, right to determine religious affiliation and responsibilities for support.

XXVII–a. "Serious impairment" means a substantial weakening or diminishment of a child's emotional, physical, or mental health or of a child's safety and general well-being. The following circumstances shall be considered in determining the likelihood that a child may suffer serious impairment:

(a) The age and developmental level of the child.

(b) Any recognized mental, emotional, or physical disabilities.

(c) School attendance and performance.

(d) The child's illegal use of controlled substances, or the child's contact with other persons involved in the illegal use or sale of controlled substances or the abuse of alcohol.

(e) Exposure to incidents of domestic or sexual violence.

(f) Any documented failure to thrive.

(g) Any history of frequent illness or injury.

(h) Findings in other proceedings.

(i) The condition of the child's place of residence.

(j) Assessments or evaluations of the child conducted by qualified professionals.

(k) Such other factors that may be determined to be appropriate or relevant.

XXVII–b. "Sexual abuse" means the employment, use, persuasion, inducement, enticement, or coercion of any child to engage in, or having a child assist any other person to engage in, any sexually explicit conduct or any simulation of such conduct for the purpose of producing any visual depiction of such con-

duct; or the rape, molestation, prostitution, or other form of sexual exploitation of children, or incest with children. With respect to the definition of sexual abuse, the term "child" or "children" means any individual who is under the age of 18 years.

XXVII–c. "Screened-out report" means a report made pursuant to this chapter that the department has determined does not rise to the level of a credible report of abuse or neglect and is not referred for assessment.

XXVIII. "Unfounded report" means a report made pursuant to this chapter for which the department determines that there is insufficient evidence to substantiate a finding that the child is abused or neglected.

XXIX. A report that is "unfounded but with reasonable concern" means a report made pursuant to this chapter for which the department determines that there is probable cause to believe the child was abused or neglected, but for which there is insufficient evidence to establish by a preponderance of the evidence that the child was abused or neglected.

**Source.** 1979, 361:2. 1983, 291:1. 1986, 223:2, 3, 5, 6. 1987, 402:12. 1989, 146:1. 1990, 240:1; 257:5, 6. 1994, 212:2; 411:1, 2, 17, 19, I. 1995, 310:124, 175. 2000, 294:9. 2007, 236:6–8, eff. Jan. 1, 2008. 2014, 271:3, eff. July 28, 2014. 2017, 112:5, 6, eff. June 14, 2017; 156:198, 199, eff. July 1, 2017. 2018, 45:1, eff. July 14, 2018; 57:1, eff. May 23, 2018; 354:3, eff. Jan. 1, 2019. 2020, 26:52, 53, eff. July 1, 2020. 2021, 182:3, eff. Jan. 1, 2022; 219:1, 2, eff. Jan. 1, 2022.

### 169–C:3–a Rulemaking.

The commissioner of the department of health and human services shall adopt rules under RSA 541–A relative to:

I. Information contained in the central registry under RSA 169–C:35.

II. Access to confidential records under RSA 169–C:36.[1]

III. The authority to investigate reports of institutional abuse or neglect under RSA 169–C:37.

**Source.** 1983, 242:8; 291:1, II. 1986, 223:7. 1994, 212:2. 1995, 310:171, eff. Nov. 1, 1995.

[1] RSA 169–C:36 was repealed by 1983, 331:8, eff. Aug. 17, 1983. RSA 169–C:35, as amended by 1983, 331:5, authorizes the director of the division for children and youth services to establish rules relative to access to confidential records in the central registry.

### 169–C:4 Jurisdiction, Continued Jurisdiction, Modification.

I. The court shall have exclusive original jurisdiction over all proceedings alleging the abuse or neglect of a child.

II. The court may, with the consent of the child, retain jurisdiction over any child, who, prior to his or her eighteenth birthday, was found to be neglected or abused and who is attending school until such child completes high school or until his or her twenty-first birthday, whichever occurs first; and the court is authorized to and shall make such orders relative to the support and maintenance of said child during the period after the child's eighteenth birthday as justice may require.

II–a. A child who has consented to the continued jurisdiction of the court pursuant to paragraph II, may revoke his or her consent and request that the case be closed. The revocation of consent and request to close a case shall be made in writing and filed with the court. Upon receipt of the request, the court shall forward copies to all parties of record at their last known address. If no party objects within 10 business days of the date the court forwarded copies of the request to the parties, the court shall accept the child's revocation of consent and shall close the case. If a party objects, the court may, after consideration of the objection, either grant the request and close the case without hearing or schedule the matter for hearing. If the matter is scheduled for hearing, the court shall accept the child's revocation of consent and close the case unless the court finds that immediate closure would create a risk of substantial harm to the child. If the court finds that immediate closure would create a risk of substantial harm to the child, the court shall continue the matter for a period not to exceed 30 days and direct that the department work with the child to develop an independent living plan which shall include referrals to appropriate services. If at the end of such period, the child still wishes to revoke his or her consent and to request that the case be closed, the court shall accept the revocation of consent and close the case.

III. When a custody award has been made pursuant to this chapter, said order shall not be modified or changed nor shall another order affecting the status of the child be issued.

**Source.** 1979, 361:2. 1990, 240:2. 2008, 204:1, eff. Jan. 1, 2009. 2020, 37:126, eff. July 1, 2020.

### 169–C:5 Venue.

I. Proceedings under this chapter may be originated in the judicial district in which the child is found or resides.

II. By the court, upon its own motion, or that of any party, proceedings under this chapter may, upon notice and acceptance, be transferred to another

court as the interests of justice or convenience of the parties require.

**Source.** 1979, 361:2, eff. Aug. 22, 1979.

### 169–C:6 Protective Custody.

I. A police or juvenile probation and parole officer may take a child into protective custody without the consent of the parents or other person legally responsible for the child's care if the child is in such circumstances or surroundings as would present an imminent danger to the child's health or life unless immediate action is taken and there is not enough time to petition for a court order.

II. If a police or juvenile probation and parole officer removes a child under paragraph I above, the officer:

(a) Shall inform the court forthwith whereupon continued protective custody pending a hearing may be ordered by the court;

(b) May take the child to a child protection services worker of the department; or

(c) May place the child in a foster home; if a child is placed directly in a foster home, the department shall be notified of the incident and where the child is placed within 24 hours, unless there is a physician involved and treating the child and the child is or will be taken to and admitted to a hospital; and

(d) Shall, when the child is removed from an individual other than a parent or a person legally responsible for the child, make every reasonable effort to inform both parents or other persons legally responsible for the child's care where the child has been taken.

III. Any police or juvenile probation and parole officer or other individual acting in good faith pursuant to this section, shall have immunity from any liability, civil or criminal, that might otherwise be incurred or imposed as a result of such removal or placement.

IV. The court shall hold a hearing on the matter within 48 hours of taking the child into protective custody, Saturdays, Sundays, and holidays excluded. Notice shall be given by the police to both parents, the department, and all parties designated by the petitioner or the court.

V. [Repealed.]

VI. The court having jurisdiction over a child who appears to be abused or neglected, and in imminent danger may issue ex parte orders pursuant to RSA 169–C:6–a, permitting the child or the alleged perpetrator to be removed from the home at the request of the department or a law enforcement officer.

VII. No child taken into protective custody pursuant to this section shall be securely detained.

VIII. Unless otherwise ordered by the court, the refusal of a parent or other person having control of a child to administer or consent to the administration of any psychotropic drug to such child shall not, in and of itself, constitute grounds for the police or a juvenile probation and parole officer to take the child into custody, or for the court to order that such child be taken into custody. However, if the administration of a decreasing dose of the drug is required during withdrawal from the medication, the refusal may constitute grounds for taking the child into protective custody.

**Source.** 1979, 361:2. 1987, 402:12. 1988, 197:6. 1994, 411:3, 16, 17. 1995, 310:175. 2000, 294:9. 2003, 199:1. 2004, 237:7, eff. June 15, 2004. 2016, 200:2; 201:1, eff. Aug. 5, 2016.

### 169–C:6–a Emergency Interim Relief.

I. If a child is found by a child protection services worker of the department to be in imminent danger in such circumstances or surroundings and where immediate removal appears necessary to protect the child from such imminent danger, the department's child protection services worker shall contact the court for an ex parte order to remove the child. Prior to any order authorizing foster placement, the child protective services worker shall inform the judge of efforts to locate any non-custodial parent or other relatives for temporary placement.

II. The department or law enforcement officer requesting an ex parte order shall, to the extent known, present in person or by telephone, either orally under oath or by sworn written affidavit, the following information:

(a) A statement of the specific danger requiring either immediate placement of the child or removal of the alleged perpetrator.

(b) The time, place, and manner in which the child was removed from danger, if relevant.

(c) If the child was removed prior to the court order, a brief statement why it was not possible to obtain the order prior to removal.

(d) Why there is not sufficient time to notify the parent, guardian, or custodian prior to the order.

(e) The names and addresses of custodial parents, non-custodial parents, legal custodians, other legal guardians of the child, and any other person responsible for the welfare of the child at the time of removal.

(f) When removal of the child is requested, those alternatives to foster care which were considered, such as removal of the alleged perpetrator, or placement of the child with relatives or others with whom the child is familiar.

III. Whenever a petition is filed for abuse or neglect with or prior to the request for ex parte relief, the request need not repeat information included in the petition.

IV. If the court finds reasonable cause to believe that the child is in such circumstances or surroundings as would present an imminent danger to the child's health or life, the court shall issue such ex parte orders as are necessary to protect the child and shall set the matter for hearing no later than 5 days from the date of the ex parte orders, excluding Saturdays, Sundays, and holidays.

V. If the court issues an ex parte order based upon oral testimony provided by the department, the department shall submit a written affidavit supporting the department's request for ex parte relief on the next business day.

VI. If the court issues ex parte orders, the department or law enforcement officer shall file a petition meeting the requirements of RSA 169–C:7 within 72 hours of the issuance of the orders, excluding Saturdays, Sundays, and holidays.

**Source.** 1994, 411:4. 1995, 310:175. 2002, 180:1, eff. July 14, 2002. 2016, 200:1, eff. Aug. 5, 2016.

### 169–C:6–b Child's Welfare and Findings Regarding Removal.

I. The court shall, in its first court ruling that sanctions, even temporarily, the removal of a child from the home, determine whether continuation in the home is contrary to the child's welfare.

II. The court shall within 60 days of a child's removal from the home, determine and issue written findings as to whether reasonable efforts were made or were not required to prevent the child's removal. In determining whether reasonable efforts were made to prevent the child's removal, the court shall consider whether services to the family have been accessible, available, and appropriate.

III. If the court orders that a child be removed from his or her home at the preliminary hearing under RSA 169–C:15, the adjudicatory hearing under RSA 169–C:18, the dispositional hearing under RSA 169–C:19, or the final hearing under RSA 169–C:21, the court order for removal shall include specific written findings regarding the need for the out-of-home placement. The order shall briefly state the facts the court found to exist that justify ordering the placement.

IV. If the order does not comply with the requirements of paragraph III, the judge shall make a written finding to justify the out-of-home placement. Providing a copy of the order, redacted to protect the identity of the parties and children, to the members of the house committee having jurisdiction over child and family issues shall not be considered a violation of RSA 169–C:25.

**Source.** 2007, 236:9, eff. Jan. 1, 2008. 2017, 134:1, eff. Jan. 1, 2018.

### 169–C:7 Petition.

I. A proceeding under this chapter is originated by any person filing a petition, with a judge or clerk in the judicial district in which the child is found or resides, alleging neglect or abuse of a child.

II. The petition shall be entitled "In the Matter of _____," and shall be verified under oath by the petitioner.

III. To be legally sufficient, the petition shall set forth the facts alleged to constitute abuse or neglect, and the statutory grounds upon which the petition is based.

IV. In addition, the petition shall also include, to the extent known:

(a) The name, birth date, and address of the child.

(b) The name and address of any custodial parent.

(c) The name and address of any other individual or agency having custody of the child.

(d) The name of any non-custodial parent.

(e) The name of any household member who is subject to the order.

**Source.** 1979, 361:2. 1990, 240:3. 1994, 411:5, 6, eff. Jan. 1, 1995.

### 169–C:7–a Petition for Protective Order Filed on Behalf of Minor.

I. (a) A parent or guardian may file a petition for a protective order on behalf of a minor, alleging abuse of the minor by a member of the minor's family or household. The court shall not accept a petition under this section that is filed by a child's parent against the other parent. Any order issued under this chapter may be in addition to an order issued under RSA 173–B and any proceeding initiated under this chapter may be consolidated with a proceeding under RSA 173–B.

(b) Any minor plaintiff who seeks a protective order under this chapter need not be accompanied by a parent or guardian to receive relief or services under this chapter.

II. A guardian may file a petition for a protective order on behalf of his or her ward, alleging abuse of the ward by a member of the ward's family or household.

III. Any acts of abuse or neglect alleged in a petition shall be referred to the department pursuant to this chapter.

**Source.** 2019, 109:2, eff. June 21, 2019.

### 169–C:8 Issuance of Summons and Notice.

I. After a petition has been filed or an ex parte order issued, the court shall issue a summons to all persons named in the petition to be served by a law enforcement officer personally, or if personal service is not possible, at their usual place of abode. Such summons shall require the person or persons having custody or control of the child to appear personally, unless otherwise ordered, before the court at a time and place set for a preliminary hearing, which shall not be less than 24 hours nor more than 7 days after return of service of the petition.

I–a. If the location of the parent or parents is unknown as set forth in an affidavit filed with the court in which the petitioner describes its efforts to locate the parent or parents, the court may, upon request of the petitioner, order the petitioner to provide notice by publication once a week for 2 successive weeks in a newspaper of general circulation where that person was last domiciled or by certified mail at the last known address. Notwithstanding the time limits in paragraph I, if service by publication is ordered, the preliminary hearing should not be later than 40 days from the date the petition is filed and no sooner than 7 days from the last date of publication. The need for service by publication shall constitute extraordinary circumstances to extend the time for an adjudicatory hearing, pursuant to RSA 169–C:15, III(d).

II. A copy of the petition shall be attached to each summons or incorporated therein.

III. The summons shall contain a notice that the child shall have a guardian ad litem, appointed by the court. The summons shall also state as follows: "With limited exception, the department of health and human services shall be responsible for the cost of services provided under this chapter. RSA 186–C regarding children with disabilities grants children and their parents certain rights to services from school districts at public expense and to appeal school district decisions regarding services to be provided."

IV. The summons shall also contain a description and explanation of the proceedings and a statement of the rights of the person or persons summoned, under this chapter, RSA 170–C, and under the rules of court.

**Source.** 1979, 361:2. 1983, 458:8. 1990, 140:2, X. 1991, 214:1. 1994, 411:7. 1995, 308:65. 2007, 236:10. 2008, 274:31, eff. July 1, 2008. 2020, 26:20, eff. July 1, 2020. 2022, 272:13, eff. Jan. 1, 2023.

### 169–C:8–a Notice of Petition to Department of Health and Human Services.

The court shall serve the department of health and human services with a copy of any petition filed under RSA 169–C:7 and the department shall have legal standing at and receive notice of all proceedings under this chapter from the time of said service.

**Source.** 1995, 308:66; 310:175, 181, eff. Nov. 1, 1995.

### 169–C:9 Failure to Appear; Warrant.

I. Any person or persons summoned having custody or control of the child who, without reasonable cause, fails to appear, may be proceeded against for contempt of court.

II. In case the summons cannot be served, or the parties served fail to appear, or in the case when it appears to the court that service will be ineffectual, or that the best interest of the child requires that he be brought forthwith into the custody of the court, a warrant may be issued for the child's appearance against anyone having custody or control of the child.

**Source.** 1979, 361:2, eff. Aug. 22, 1979.

### 169–C:10 Attorneys and Guardians Ad Litem.

I. In cases brought pursuant to this chapter involving a neglected or abused child, the court shall appoint a Court Appointed Special Advocate (CASA) or other approved program guardian ad litem for the child. If a CASA or other approved program guardian ad litem is unavailable for appointment, the court may then appoint an attorney or other guardian ad litem as the guardian ad litem for the child. The court shall not appoint an attorney for any guardian ad litem appointed for the child. The CASA or other approved program guardian ad litem shall have the same authority and access to information as any other guardian ad litem. For purposes of this paragraph, "unavailable for appointment" means that there is no CASA or other approved program guardian ad litem available for appointment by the court following a finding of reasonable cause at the preliminary hearing held under RSA 169–C:15 so that the

child's interests may effectively be represented in preparation for and at an adjudicatory hearing.

II. (a) In cases involving a neglected or abused child under this chapter, where the child's expressed interests conflict with the recommendation for dispositional orders of the guardian ad litem, the court may appoint an attorney to represent the interests of the child. In any case of neglect or abuse brought pursuant to this chapter, the court shall appoint an attorney to represent an indigent parent alleged to have neglected or abused his or her child. In addition, the court may appoint an attorney to represent an indigent parent not alleged to have neglected or abused his or her child if the parent is a household member and such independent legal representation is necessary to protect the parent's interest. The court shall not appoint an attorney to represent any other persons involved in a case brought under this chapter.

(b) When an attorney is appointed as counsel for a child, representation may include counsel and investigative, expert and other services, including process to compel the attendance of witnesses, as may be necessary to protect the rights of the child.

III. The New Hampshire supreme court shall adopt rules regarding the duties and responsibilities of the CASA guardian ad litem or other guardian ad litem appointed for the child.

**Source.** 1979, 361:2. 1995, 308:67. 1997, 292:2. 2011, 224:75, 77. 2013, 144:60, eff. July 1, 2013.

### 169–C:10–a Repealed by 1996, 248:10, eff. Jan. 2, 1997.

### 169–C:11 Subpoena.

A subpoena may be issued pursuant to RSA 516, or upon application of a party to the proceedings, or upon the motion of the court. The court may issue subpoenas requiring the production of papers and the attendance of any person whose presence is required by the child, his parents or guardian or any other person whose presence, in the opinion of the court, is necessary.

**Source.** 1979, 361:2, eff. Aug. 22, 1979.

### 169–C:12 Evidence.

In any hearing under this chapter, the court shall not be bound by the technical rules of evidence and may admit evidence which it considers relevant and material. Evidence of prior founded or unfounded reports of abuse or neglect shall be admissible in proceedings under this chapter in order to establish a relevant pattern or course of conduct.

**Source.** 1979, 361:2, eff. Aug. 22, 1979. 2017, 156:201, eff. July 1, 2017.

### 169–C:12–a Testimony During Abuse and Neglect Proceedings.

Testimony by parents who are the subject of an abuse and neglect petition and who are alleged to have abused or neglected a child, which is given during proceedings under this chapter or during a fair hearing conducted by the department, shall not be admissible in criminal proceedings relating to such abuse or neglect allegations.

**Source.** 1990, 240:4. 1995, 310:175, eff. Nov. 1, 1995.

### 169–C:12–b Filing Reports, Evaluations, and Other Records.

All reports, evaluations, and other records from the department of health and human services, counselors, and guardians ad litem in proceedings under this chapter shall be filed with the court and all other parties at least 5 business days prior to any hearing. If a report, evaluation, or other record is not filed at least 5 business days prior to the hearing, a party may request, and the court shall grant, a continuance to a date certain which shall not be more than 10 days from the date of filing. Once filed with the court and given to all other parties, the report, evaluation, or other record need not be refiled during the proceeding. Failure to comply with the provisions of this section shall not be grounds for dismissal of the petition.

**Source.** 1991, 57:2. 1994, 212:2. 1995, 310:181. 2006, 276:2, eff. Jan. 1, 2007.

### 169–C:12–c Medical Examinations of Child.

A parent who is the subject of an abuse or neglect petition not involving sexual abuse shall be entitled to request a medical examination of each child involved by a licensed physician of the parent's choice at the parent's expense within 72 hours of the first official notice of the complaint received by the parent. Where the department has assumed protective supervision or legal custody of the child and an examination of the child is necessary to verify or refute an allegation of injury, the department shall cooperate with the request and shall transport the child to the physician's office for examination provided that the physician's office is within a reasonable distance of the district office that is conducting the abuse or neglect investigation. The transportation of a child to a physician's office that is located within the state of New Hampshire shall be presumed to be reasonable under this section.

**Source.** 2006, 276:3, eff. Jan. 1, 2007.

**169–C:12–d Court-Ordered Alcohol and Drug Testing.**

The court may order alcohol or drug testing at any stage of the proceeding where substance abuse is an ongoing issue in the case, where alcohol or drug use is a disputed issue of fact, or where there is reason to believe that alcohol or drug use may be substantially interfering with a parent's ability to adhere to the case plan. Unless otherwise ordered by the court, the frequency and type of such testing shall be at the discretion of the department.

**Source.** 2016, 308:3, eff. July 1, 2016.

**169–C:12–e Repealed by 2016, 308:5, effective July 1, 2020.**

**169–C:12–f Rebuttable Presumption of Harm.**

*[RSA 169–C:12–f repealed by 2020, 26:56, effective July 1, 2024.]*

There shall be a rebuttable presumption that a child's health has suffered or is likely to suffer serious impairment by exposure to any of the following conduct:

I. Evidence of a parent's, guardian's, or custodian's substance misuse that is adversely affecting a child's care or supervision, when that parent, guardian, or custodian is not actively engaged in treatment;

II. Evidence of a parent's, guardian's, or custodian's impaired driving or operating of a motor vehicle while a child is in the vehicle; or

III. Evidence of a parent's, guardian's, or custodian's exposure of a child to:

(a) Physical violence directed at a sibling, the other parent, or another person living in the home; or

(b) Psychological maltreatment directed at the child, a sibling, the other parent, or another person living in the home.

IV. The rebuttable presumption of harm established in paragraph III shall not apply to victims of domestic violence who are subject to an abuse or neglect petition filed pursuant to this chapter as a result of an incident or incidents in which that parent, guardian, or caregiver was the victim.

**Source.** 2020, 26:54, eff. July 20, 2020, Jan. 1, 2021.

**169–C:12–g Investigatory Interviews and Evaluations.**

The court may order a parent, guardian, custodian, or other caregiver to produce a child for the purpose of an investigatory interview, including a multidisciplinary team interview in accordance with RSA 169–C:34–a or an interview or evaluation by any other expert necessary for the purpose of the investigation of suspected abuse or neglect.

**Source.** 2021, 122:46, eff. July 9, 2021.

**169–C:13 Burden of Proof.**

The petitioner has the burden to prove the allegations in support of the petition by a preponderance of the evidence.

**Source.** 1979, 361:2, eff. Aug. 22, 1979.

**169–C:14 Hearings Not Open to the Public.**

The general public shall be excluded from any hearing under this chapter and such hearing shall, whenever possible, be held in rooms not used for criminal trials. Only such persons as the parties, their witnesses, counsel and representatives of the agencies present to perform their official duties shall be admitted, except that other persons invited by a party may attend, with the court's prior approval. The court may provide docket information to invited persons.

**Source.** 1979, 361:2. 1990, 53:1. 2006, 228:1, eff. July 31, 2006.

**169–C:14–a Records of Hearings.**

The court shall notify parties of their right to request in advance of any hearing under this chapter that a record of such hearing shall be preserved and made available to the parties.

**Source.** 1996, 248:2, eff. Jan. 2, 1997.

**169–C:15 Preliminary Hearing.**

I. After an ex parte order is issued or petition filed, a preliminary hearing shall be conducted by the court to determine if reasonable cause exists to believe that the child is abused or neglected.

II. If the court does not find reasonable cause to believe that the child is abused or neglected, it shall dismiss the petition.

III. Upon a finding of reasonable cause that the child is abused or neglected, the court shall:

(a) Appoint a CASA or other approved program guardian ad litem or an attorney to represent the child pursuant to RSA 169–C:10.

(b) Determine whether any ex parte orders issued should be continued or modified.

(c) Issue orders pursuant to RSA 169–C:16, which shall be immediate and in writing if the court finds that the child's circumstances or surroundings present an imminent danger to the child's health or life.

(d) Set a date for an adjudicatory hearing. In all cases, the adjudicatory hearing shall be held and completed and written findings issued within 60 days from the date that the petition was filed with the court. If a child is in an out-of-home placement, the adjudicatory hearing shall be held and completed within 30 days from the date the petition was filed with the court, unless the court makes a written finding of extraordinary circumstances requiring the time limit to be extended.

IV. The court shall determine whether each parent summoned understands the possible consequences to parental rights should the court find that the child is abused or neglected. Each person shall sign a statement stating that such person understands the consequences to parental rights. Such statement shall be in a form to be determined by the court.

V. Any person who is subject to an ex parte order may challenge the order at the preliminary hearing.

**Source.** 1979, 361:2. 1991, 214:2. 1994, 411:8. 2007, 236:11. 2011, 177:4; 224:76. 2013, 144:59, eff. July 1, 2013. 2022, 272:14, eff. Jan. 1, 2023.

### 169–C:16 Preliminary Disposition.

I. If the court finds sufficient facts to sustain the petition, at a preliminary disposition, the court may:

(a) Permit the child to remain with the parent, relative, guardian, or other custodian, subject to such conditions and limitations as the court may prescribe.

(b) Transfer legal supervision to a child placing agency.

(c) Transfer protective supervision to a child placing agency.

(d) Issue an order of protection setting forth conditions of behavior by a parent, relative, guardian, custodian, or a household member. Such order may require any such person to:

(1) Stay away from the premises, another party, or the child.

(2) Permit a parent or other named person to visit the child at stated periods and under such conditions as the court may order.

(3) Abstain from harmful conduct with respect to the child or any person to whom custody of the child is awarded.

(4) Correct specified deficiencies in the home that make the home a harmful environment for the child.

(5) Refrain from specified acts of commission or omission that make the home a harmful environment for the child.

I–a. Notwithstanding RSA 169–C:25, a copy of each protective order issued pursuant to RSA 169–C:16, I(d)(1) shall be transmitted to the administrative office of the courts electronically or by facsimile. The administrative office of the courts shall enter information regarding the protective order into the state database, which shall be made available to the police and sheriffs' departments statewide. It shall also update the database upon expiration or termination of the order.

II. A neglected or abused child shall not be placed in an institution established for the care and rehabilitation of delinquent children, the youth development center or any institution where an adult is confined.

III. The court may at any time order the child, parents, guardian, custodian, or household member subject to the petition or ex parte order, to submit to a mental health evaluation, or undergo a physical examination or treatment, with a written assessment being provided to the court. The court may order that the child, who is the subject of the petition or the family or both be evaluated by a mental health center or any other psychiatrist, psychologist or psychiatric social worker or family therapist or undergo physical examination or treatment with a written assessment provided to the court. Evaluations performed at a facility providing child inpatient psychiatric treatment within the state mental health system may occur only upon receiving prior approval for such evaluation from the commissioner of the department of health and human services, or designee.

IV. If the child, the parent, guardian or custodian objects to the mental health evaluation, he shall object in writing to the court having jurisdiction within 5 days after notification of the time and place of said evaluation. The court shall hold a hearing to consider the objection prior to ordering said evaluation. Upon good cause shown, the court may excuse the child, the parent, guardian or custodian from the provisions of this section.

V. If an order is made on a person not before the court under subparagraph I(d)(1), it shall be served on such person by a law enforcement officer. A hearing to challenge an order may be requested in writing. The hearing shall be held within 5 days of the request. A request for a hearing shall not stay the effect of the order.

VI. When the party subject to the order has an obligation to support the child in question, the court may order such party to remain out of the residence of the child. When the party subject to the order has no duty to support the child and solely owns or leases the residence of the child, the court may order such party to remain out of the residence of the child for a period of no more than 30 days.

**Source.** 1979, 361:2. 1985, 195:5. 1990, 3:47. 1994, 411:9–12. 1995, 310:182. 2005, 244:3, eff. Jan. 1, 2006. 2022, 272:46, eff. June 24, 2022.

### 169–C:17 Consent Order.

I. At any time after the filing of the petition and prior to an order of adjudication pursuant to RSA 169–C:18, the court may approve a written agreement entered into among or between the parties.

II. A consent order shall not be approved unless the department consents and the child and parents, guardian, or custodian are informed of the consequences of the order by the court and the court determines that the child and parents voluntarily and intelligently consent to the terms and conditions of the order. A consent order under this section may include a finding of abuse or neglect; however, a finding of abuse or neglect shall not be required except where the consent order provides for out-of-home placement of the child.

III. Where a consent order includes a finding and provides for the out-of-home placement of a child, the order shall set a date for a permanency hearing that is within 12 months of the date of the court's approval of the consent order.

**Source.** 1979, 361:2. 1995, 308:68; 310:175. 2002, 152:1. 2007, 236:12, eff. Jan. 1, 2008.

### 169–C:18 Adjudicatory Hearing.

I. An adjudicatory hearing under this chapter shall be conducted by the court separate from the trial of criminal cases.

II. A record of the adjudicatory hearing shall be preserved unless expressly waived in writing by the parties, and the parties shall be notified in writing of their right to appeal.

III. The petitioner shall present witnesses to testify in support of the petition and any other evidence necessary to support the petition. The petitionees shall have the right to present evidence and witnesses on their own behalf and to cross-examine adverse witnesses. The admissibility of all evidence in this hearing shall be determined by RSA 169–C:12. The provisions of RSA 613:3, I, relative to the summoning of out-of-state witnesses, shall apply to the proceedings.

IV. If the court does not find sufficient evidence of neglect or abuse, it shall dismiss the petition.

V. If the court makes a finding that a child has been abused or neglected, the court shall order a child placing agency to make an investigation and a social study consisting of, but not limited to, the home conditions, family background, and financial assessment, school record, mental, physical and social history of the family, including sibling relationships and residences for appropriateness of preserving relationships between siblings who are separated as a result of court ordered placement, and submit it in writing to the court prior to the final disposition of the case. The court shall determine whether the minor's school district shall be joined pursuant to RSA 169–C:20, and if joined, the court shall review the school district's recommendations. No disposition order shall be made by a court without first reviewing the social study and without first reviewing the school district recommendations required under RSA 169–C:20. Preliminary orders, continued pursuant to RSA 169–C:16, may be entered or modified as appropriate until the dispositional hearing.

V–a. Where an adjudicatory order includes a finding and provides for the out-of-home placement of a child, the order shall set a date for a permanency hearing that is 12 months from the date of the finding pursuant to RSA 169–C:17 and/or RSA 169–C:18.

V–b. The department's dispositional report shall include:

(a) A description of efforts made by the department to avoid the need for placement and an explanation of why these efforts were unsuccessful.

(b) An explanation why the child cannot be protected from the identified problems in the home even if services are provided to the child and family.

V–c. If a preliminary order provided for an out-of-home placement of the child, the child shall not be returned to the home unless the court finds that there is no threat of imminent harm to the child and the parent or parents are actively engaged in remedial efforts to address the circumstances surrounding the underlying petition. The court order shall include the facts supporting the placement.

VI. The social study will be used only after a finding of neglect or abuse and only as a guide for the court in determining an appropriate disposition for a child. The court shall share the report with the

parties. Any psychiatric report shall be used by the court only after a finding of neglect or abuse unless such report is submitted for determination of competency.

VII. The court shall hold a hearing on final disposition within 30 days after a finding of neglect or abuse.

VIII. Whenever a court contemplates a placement which will require educational services outside the child's home school district, the court shall notify the school district and give the district the opportunity to send a representative to the hearing at which such placement is contemplated. In cases where immediate court action is required to protect the health or safety of the child or of the community, the court may act without providing for an appearance by the school district, but shall make reasonable efforts to solicit and consider input from the school district before making a placement decision.

**Source.** 1979, 361:2. 1994, 411:13. 1996, 248:3. 1998, 203:1. 2002, 179:1. 2004, 41:2. 2007, 236:13; 295:3. 2008, 274:9, eff. July 1, 2008. 2015, 127:3, eff. Jan. 1, 2016. 2021, 219:3, eff. Jan. 1, 2022.

### 169–C:19 Dispositional Hearing.

The department of health and human services shall provide the court with the costs of the recommended services, placements and programs. If the court finds that a child is abused or neglected or if the court issues a consent order pursuant to RSA 169–C:17, II, the court may order the following disposition:

I. The child may be permitted to remain with the parents, guardian, relative, or other custodian, subject to any or all of the following conditions:

(a) That the parents, guardian, relative, or custodian accept legal supervision by a child placing agency.

(b) That the parents, guardian, relative, or custodian, or the child, or both, accept individual or family therapy, or medical treatment.

(c) That the child attend a day care center.

(d) That a homemaker or parent aide be allowed to visit the home and assist the family.

II. (a) An order of protection may be issued setting forth conditions of behavior by a parent, relative, sibling, guardian, custodian or a household member. Such order may require any such person to:

(1) Stay away from the premises, another party, or the child.

(2) Permit a parent or other named person to visit supervised or otherwise, or have contact with the child at stated periods and under such conditions as the court may order.

(3) Abstain from harmful conduct with respect to the child or any person to whom custody of the child is awarded.

(4) Correct specified deficiencies in the home that make the home a harmful environment for the child.

(5) Refrain from specified acts of commission or omission that make the home or contact with the child a harmful environment for the child.

(b) If an order is made affecting a person not before the court under subparagraph (a), it shall be served on such person by a law enforcement officer. A hearing to challenge an order may be requested in writing. The hearing shall be held within 5 days of the request. A request for a hearing shall not stay the effect of the order.

(c) When the party subject to the order of protection has an obligation to support the child in question, the court may order such party to remain out of the residence of the child. When the party subject to the order has no duty to support the child and solely owns or leases the residence of the child, the court may order such party to remain out of the residence of the child for a period of no more than 30 days.

II–a. Notwithstanding RSA 169–C:25, a copy of each protective order issued pursuant to RSA 169–C:19, II(a)(1) shall be transmitted to the administrative office of the courts electronically or by facsimile. The administrative office of the courts shall enter information regarding the protective order into the state database, which shall be made available to the police and sheriffs' departments statewide. It shall also update the database upon expiration or termination of the order.

III. (a) Legal custody may be transferred to a child placing agency or relative provided, however, that no child shall be placed with a relative until a written social study of the relative's home, conducted by a child placing agency, is submitted to the court. Where a child is in an out-of-home placement, the court shall include in its order the concurrent plan for the child.

(b) If the child is placed out of state, the provisions of RSA 170–A shall be followed.

IV. The court may order any parent, guardian, relative, custodian, household member, or child to undergo individual or family therapy, or medical treatment.

V. If the judge orders services, placements, or programs different from the recommendations of the department, the judge shall include a statement of the costs of the services, placements and programs so ordered.

VI. Prior to any placement which will require educational services outside the child's home school district, the court shall notify the school district and give the district the opportunity to send a representative to the hearing at which such placement is contemplated. At such hearing the court shall consider the recommendations of the school district and if such an out-of-district placement is ordered the court shall make written findings that describe the reasons for the placement.

**Source.** 1979, 361:2. 1994, 411:14. 1995, 308:69, 70; 310:175, 181. 1998, 203:3. 2002, 152:2. 2005, 244:4. 2007, 236:14, eff. Jan. 1, 2008; 295:4, eff. Sept. 11, 2007.

### 169–C:19–a Out-of-District Placement.

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 section shall apply to the original order and all subsequent modifications of that order.

**Source.** 1991, 342:2, eff. Aug. 27, 1991.

### 169–C:19–b Presumption in Favor of In-State Placements.

There shall be a presumption that an in-state placement is the least restrictive and most appropriate placement. The court may order an out-of-state placement only upon an express written finding that there is no appropriate in-state placement available.

**Source.** 1995, 308:71, eff. July 1, 1995.

### 169–C:19–c Court Order for Services, Placements, and Programs Required for Minors From Certain Providers Qualified for Third-Party Payment.

The court, wherever and to the extent possible, shall order services, placements, and programs by providers certified pursuant to RSA 170–G:4, XVIII who qualify for third-party payment under any insurance covering the minor.

**Source.** 1996, 286:11, eff. June 10, 1996.

### 169–C:19–d Visitation With Siblings.

The court shall, whenever reasonable and practical, and based on a determination of the best interests of the child, ensure that children who have an existing relationship with a sibling and who are separated from their siblings as a result of a court decree, court order, consent order, or court-recommended placement, including but not limited to, placement in foster homes, or in the homes of parents or extended family members, have access to and visitation rights with such siblings throughout the duration of such placement, and subsequent to such placement if the children or their siblings are separated by long-term or short-term foster care placement.

**Source.** 1998, 203:2, eff. June 18, 1998.

### 169–C:19–e Custody Hearing for Parent Not Charged With Abuse or Neglect.

I. A parent who has not been charged with abuse or neglect shall be afforded, upon request, a full hearing in the district or family court regarding his or her ability to obtain custody. At the hearing, the parent shall be provided the opportunity to present evidence pertaining to his or her ability to provide care for the child and shall be awarded custody unless the state demonstrates, by a preponderance of the evidence, that he or she has abused or neglected the child or is otherwise unfit to perform his or her parental duties. The court shall make written findings of fact supporting its decision.

II. The department shall notify a parent who has not been charged with abuse or neglect of his or her right to request a hearing under this section at the earliest available opportunity.

**Source.** 2001, 229:1. 2007, 173:1, eff. Jan. 1, 2008.

### 169–C:19–f Placement in a Qualified Residential Treatment Program.

For any child placed in a qualified residential treatment program, as defined in the federal Family First Prevention Services Act of 2017[1], the court shall:

I. Order an assessment to be completed within 30 days of placement by a qualified individual as defined by the federal Family First Prevention Services Act of 2017; and

II. Review the assessment and issue an order approving the placement or changing the placement within 60 days of placement.

**Source.** 2021, 122:70, eff. July 9, 2021.

[1] P.L. 115–123, see 42 U.S.C.A. § 671 et seq.

### 169–C:20 Disposition of a Child With a Disability.

I. At any point during the proceedings, the court may, either on its own motion or that of any other person, and if the court contemplates a residential

placement, the court shall immediately, join the legally liable school district for the limited purposes of directing the school district to determine whether the child is a child with a disability or of directing the school district to review the services offered or provided under RSA 186–C if the child had already been determined to be a child with a disability. If the court orders the school district to determine whether the minor is a child with a disability, the school district shall make this determination by treating the order as the equivalent of a referral by the child's parent for special education, and shall conduct any team meetings or evaluations that are required under law when a school district receives a referral by a child's parent.

II. Once joined as a party, the legally liable school district shall have full access to all records maintained by the district court under this chapter. The school district shall also report to the court its determination of whether the minor is a child with a disability, and the basis for such determination. If the child is determined to be a child with a disability, the school district shall make a recommendation to the court as to where the child's educational needs can be met in accordance with state and federal education laws. In cases where the court does not follow the school district's recommendation, the court shall issue written findings explaining why the recommendation was not followed.

III. If the school district finds or has found that the child is a child with a disability, or if it is found that the child is a child with a disability on appeal from the school district's decision in accordance with the due process procedures of RSA 186–C, the school district shall offer an appropriate educational program and placement in accordance with RSA 186–C. Financial liability for such education program shall be as determined in RSA 186–C:19–b.

IV. In an administrative due process hearing conducted by the department of education pursuant to RSA 186–C, a school district shall not provide a hearing officer with information from or copies of records maintained by the court which the school district has accessed pursuant to paragraph II of this section, unless the court issues an order authorizing such a release by the school district in accordance with the following:

(a) A school district seeking such authorization shall file a motion with the court describing the need for the disclosure in the department of education proceeding, with copies delivered to all parties on the same day the motion is filed with the court;

(b) A motion filed by a school district under this provision shall include, on a separate sheet of paper, the following statement in bold typeface: "Persons subject to juvenile proceedings have important rights to the confidentiality of juvenile court proceedings. This motion requests the disclosure of some of that information. If you object to the disclosure of information, you must file a written objection with the court no later than 10 days after the filing of the school district's notice. If you fail to object in writing, the court may allow private information to be revealed to the New Hampshire Department of Education hearing officer."; and

(c) Any objection by a party shall be filed with the court no later than 10 days after the filing of the school district's notice with the court, unless such time is extended by the court for good cause.

V. The court shall schedule an expedited hearing on the matter to determine if such information may be released. The court may rule without a hearing if there is no objection filed or if the school district and a parent or legal guardian or the juvenile, if he or she has reached the age of majority, agree in writing to waive a hearing. In determining whether to authorize the disclosure of the information requested by the school district, the court shall balance the importance of disclosure of the records to a fair and accurate determination of the merits against the privacy interests of the parties to the proceedings, and render a written decision setting forth its findings and rulings. No information released to a hearing officer pursuant to this paragraph shall be disclosed to any other person or entity without the written permission of the court, the child's parent or legal guardian, or the juvenile if he or she has reached the age of majority, except that any court reviewing an administrative due process hearing on appeal shall have access to the same information released to a hearing officer pursuant to this paragraph.

VI. In this section, "child with a disability" shall be as defined in RSA 186–C.

**Source.** 1979, 361:2. 1983, 458:2. 1986, 223:13. 1987, 402:22. 1990, 140:2, X. 2008, 274:10, eff. July 1, 2008.

### 169–C:20–a Notice to School District of Out-of-Home Placement; Development of Transition Plan.

I. If the department of health and human services recommends or initiates an out-of-home placement or a change in placement, whether within or out of the

district, the department shall notify the school district as soon as possible of the change in placement and shall work with the school district to determine how, consistent with the best interest of the child, to assure the child's educational stability.

II. When necessary to transition the child to a different school or school district, the department and school district shall develop a transition plan for the child. The objective of the plan shall be to minimize the number of placements for the child and to facilitate any change in placement or school assignment with the least disruption to the child's education. To the extent appropriate, the child may be involved in the formation of the plan.

**Source.** 2016, 65:1, eff. July 4, 2016. 2018, 51:1, eff. July 14, 2018.

### 169–C:21 Final Order.

I. If facts sufficient to sustain the petition are established under RSA 169–C:18, the court shall enter a final order in writing finding that the child has been abused or neglected.

II. The order of the court shall include conditions the parents shall meet before the child is returned home. The order shall also include a specific plan which shall include, but not be limited to, the services the child placing agency will provide to the child and family. Prior to the issuance of a final order, the child placing agency shall submit its recommendation for the plan, which the court may use in whole or in part.

**Source.** 1979, 361:2, eff. Aug. 22, 1979.

### 169–C:21–a Violation of Protective Order; Penalty.

I. (a) When a person subject to a protective order under RSA 169–C:16, I(d)(1) or RSA 169–C:19, II(a)(1) violates either a temporary or permanent protective order issued or enforced under this chapter, peace officers shall arrest the defendant and ensure that the defendant is detained until arraignment. Such arrests may be made within 6 hours without a warrant upon probable cause, whether or not the violation is committed in the presence of a peace officer.

(b) Subsequent to an arrest, the peace officer shall seize any firearms and ammunition in the control, ownership, or possession of the defendant and any deadly weapons which may have been used, or were threatened to be used, during the violation of the protective order. The law enforcement agency shall maintain possession of the firearms, ammunition, or deadly weapons until the court issues an order directing that the firearms, ammunition, or deadly weapons be relinquished and specifying the person to whom the firearms and ammunition or deadly weapons will be relinquished.

II. The prosecution and sentencing for criminal contempt for a violation of a protective order shall not preclude the prosecution of or sentencing for other criminal charges underlying the contempt.

III. A person shall be guilty of a class A misdemeanor if such person knowingly violates a protective order issued under this chapter. Charges made under this chapter shall not be reduced to a lesser charge, as permitted in other instances under RSA 625:9.

IV. Any person convicted under paragraph III, or who has been convicted in another jurisdiction of violating a protective order enforceable under the laws of this state, who, within 6 years of such conviction or the completion of the sentence imposed for such conviction, whichever is later, subsequently commits and is convicted of one or more offenses under this chapter may be charged with an enhanced penalty for each subsequent offense as follows:

(a) There shall be no enhanced charge under this section if the subsequent offense is a class A felony or an unclassified felony;

(b) If the subsequent offense would otherwise constitute a class B felony, it may be charged as a class A felony;

(c) If the subsequent offense would otherwise constitute a class A misdemeanor, it may be charged as a class B felony;

(d) If the subsequent offense would otherwise constitute a class B misdemeanor, it may be charged as a class A misdemeanor;

(e) If the subsequent offense would otherwise constitute a violation, it may be charged as a class B misdemeanor.

**Source.** 2000, 189:1, eff. Jan. 1, 2001.

### 169–C:22 Modification of Dispositional Orders.

Upon the motion of a child, parent, custodian, guardian or of the child placing agency alleging a change of circumstances requiring a different disposition the court shall conduct a hearing and pursuant to RSA 169–C:19 may modify a dispositional order; provided that the court may dismiss the motion if the allegations are not substantiated in the hearing.

**Source.** 1979, 361:2, eff. Aug. 22, 1979.

**169–C:23 Standard for Return of Child in Placement.**

In the absence of a guardianship of the person of the minor, governed by the terms of RSA 463, before a child in out-of-home placement is returned to the custody of his or her parents, the parent or parents shall demonstrate to the court that:

I. They are in compliance with the outstanding dispositional court order;

II. The child will not be endangered in the manner adjudicated on the initial petition, if returned home;

III. Return of custody is in the best interests of the child. Upon showing the ability to provide proper parental care, it shall be presumed that a return of custody is in the child's best interests.

**Source.** 1979, 361:2. 1999, 149:1, eff. Jan. 1, 2000.

**169–C:24 Periodic Review Hearings.**

I. The court shall conduct an initial review hearing within 3 months of the dispositional hearing to review the status of all dispositional orders issued under this chapter. The court may conduct additional review hearings upon its own motion or upon the request of any party at any time.

II. At a review hearing the court shall determine whether the department has made reasonable efforts to finalize the permanency plan that is in effect. Where reunification is the permanency plan that is in effect, the court shall consider whether services to the family have been accessible, available, and appropriate.

**Source.** 1979, 361:2. 2007, 236:15, eff. Jan. 1, 2008.

**169–C:24–a Petition for Termination of Parental Rights Required; Reasonable Efforts to Reunify.**

I. The state, through an authorized agency, or if required by a district court, shall file a petition for termination of parental rights or, if such a petition has been filed by another party, the state shall seek to be joined as a party to such petition, where any one or more of the following circumstances exist:

(a) Where a child has been in an out-of-home placement pursuant to a finding of child neglect or abuse, under the responsibility of the state, for 12 of the most recent 22 months;

(b) Where a court of competent jurisdiction has determined that a child has been abandoned as defined by RSA 170–C:5, I; or

(c) Where a court of competent jurisdiction has made any one or more of the following determinations:

(1) That the parent has been convicted of murder, pursuant to RSA 630:1–a or RSA 630:1–b, of another child of the parent, a sibling or step-sibling of the child, the child's other parent, or other persons related by consanguinity or affinity, including a minor child who resided with the defendant.

(2) That the parent has been convicted of manslaughter, pursuant to RSA 630:2, of another child of the parent.

(3) That the parent has been convicted of attempt, pursuant to RSA 629:1, solicitation, pursuant to RSA 629:2, or conspiracy, pursuant to RSA 629:3, to commit any of the offenses specified in subparagraphs I(c)(1) or I(c)(2).

(4) That the parent has been convicted of a felony assault under RSA 631:1, 631:2, 632–A:2, or 632–A:3 that resulted in injury to the child, a sibling or step-sibling of the child, the child's other parent, or other persons related by consanguinity or affinity, including a minor child who resided with the defendant.

II. Concurrent with the filing or joinder in a petition for termination of parental rights as defined in paragraph I of this section, the state shall seek to identify, recruit, and approve a qualified family for adoption in accordance with the provisions of RSA 170–B, and in accordance with the principle that the health and safety of the child shall be the paramount concern.

III. The state may not be required to file a petition for termination of parental rights, or seek to be joined as a party to such a petition, if one or more of the following conditions exist:

(a) The child is being appropriately cared for by a relative;

(b) A state agency has documented in the case file a compelling reason for determining that filing a petition for termination of parental rights would not be in the best interests of the child; or

(c) The state has not provided to the family of the child, consistent with RSA 170–C:5, III, such services and reasonable efforts as the state deems necessary for the safe return of the child to the child's home. In determining whether the state has made reasonable efforts to prevent placement and reunify the family, the district court shall consider whether services to the family have been accessible, available, and appropriate.

IV. The state shall submit a sworn statement prior to any district court hearing in which the court is to determine whether there have been reasonable efforts to prevent placement, reunify the family, or make and finalize a new permanent home for the child. Such statement shall be submitted to the court and to the parties at least 5 days prior to the hearing, and shall describe such reasonable efforts made by the state or the rationale for not making such efforts.

**Source.** 1999, 133:3. 2005, 235:2, eff. July 11, 2005.

### 169–C:24–b Permanency Hearings.

I. A permanency hearing may be scheduled as follows:

(a) For a child who has been in an out-of-home placement for 12 or more months, the court shall hold a permanency hearing 12 months from the finding pursuant to RSA 169–C:17 and/or RSA 169–C:18. For a child who enters an out-of-home placement subsequent to a finding pursuant to RSA 169–C:17 and/or RSA 169–C:18, the court shall hold a permanency hearing 12 months from the date the child enters the out-of-home placement.

(b) If the court at the 12–month permanency hearing grants an extension pursuant to RSA 169–C:24–b, IV, the court shall hold a subsequent permanency hearing no later than 90 days from the 12–month permanency hearing.

(c) If a termination of parental rights petition is withdrawn or dismissed, the court shall hold a subsequent permanency hearing no later than 90 days from the withdrawal or dismissal of the termination of parental rights petition.

(d) If a child has been reunified at or following a permanency hearing, and is thereafter removed from parental care prior to closure of the RSA 169–C case, the court may hold a subsequent permanency hearing.

(e) For a child in an out-of-home placement pursuant to RSA 169–C:24–b, V, the court may hold another permanency hearing upon request of any party at any time.

(f) For a child in an out-of-home placement, at any time 14 days prior to the 6–month review hearing and before the 12–month permanency hearing, the department may request an early permanency hearing for the child. The court may schedule an early permanency hearing if the department alleges sufficient facts to satisfy the standard set forth in RSA 169–C:24–b, II(b).

II. (a) At a permanency hearing pursuant to subparagraph I(a), (b), (c), (d), or (e), the court shall determine whether and, if applicable, when the child will be returned to the parent or parents, pursuant to RSA 169–C:23. Except as provided for in RSA 169–C:24–b, IV, if the standard for return pursuant to RSA 169–C:23 is not met, the court shall identify a permanency plan other than reunification for the child. Other options for a permanency plan include:

(1) Adoption through termination of parental rights or parental surrender when an adoption is contemplated;

(2) Guardianship with a fit and willing relative or another appropriate party; or

(3) Another planned permanent living arrangement.

(b) At an early permanency hearing pursuant to subparagraph I(f), the court shall determine whether the department has proven by clear and convincing evidence that both parents, or only one parent if the other parent is deceased or not identified, cannot currently satisfy the standard of return of the child under RSA 169–C:23 and would be highly unlikely to satisfy such standard at the time of a 12–month permanency hearing such that permanency should be assessed early, based on parents making no effort or only negligible efforts to comply with dispositional orders or based on another compelling reason. If the department does not satisfy its burden, the court shall hold, within 90 days, a periodic review hearing or the 12–month permanency hearing. If the department satisfies its burden, the court shall determine whether it is in the child's best interest to:

(1) Identify a permanency plan other than reunification for the child, as set forth in RSA 169–C:24–b, II(a), and hold a post-permanency hearing within 60 days; or

(2) Maintain reunification as the permanency plan, providing parents additional time to meet the requirements of RSA 169–C:23, and hold, within 90 days, another early permanency hearing or the 12–month permanency hearing.

III. At a permanency hearing the court shall determine whether the department has made reasonable efforts to finalize the permanency plan that is in effect. Where reunification is the permanency plan that is in effect, the court shall consider whether services to the family have been accessible, available, and appropriate.

IV. At a 12–month permanency hearing for both parents, or only one parent if the other parent is

deceased or not identified, the court may grant one extension of time that shall not exceed 90 days, and hold a subsequent permanency hearing for both parents pursuant to RSA 169–C:24–b, I(b). Such extension may be granted if the court finds a parent to be in substantial compliance with the outstanding dispositional orders and if the parent establishes, by clear and convincing evidence, that:

(a) The parent is diligently working toward reunification, which is expected to occur within 90 days;

(b) It is probable the parent will be able to demonstrate, after the extension and at a subsequent permanency hearing held pursuant to RSA 169–C:24–b, I(b), that the parent has met the 3 requirements of RSA 169–C:23; and

(c) The extension is in the best interest of the child.

V. If the standard for return of the child pursuant to RSA 169–C:23 is met, but, due to the unique needs of the child, the child is not returned to the custody of the parent, the court may maintain reunification as the permanency plan, and the court shall provide a written explanation as to what circumstances warrant the continued out-of-home placement for the child. In such cases, the court shall schedule subsequent post-permanency hearings pursuant to RSA 169–C:24–c, I, until the child may be returned to the custody of the parent. Upon the request of any party at any time, based on a material change in circumstances, the court may schedule another permanency hearing at which the court may review, modify, and/or implement the permanency plan, or adopt the concurrent plan.

**Source.** 2007, 236:16, eff. Jan. 1, 2008. 2021, 219:4, eff. Jan. 1, 2022.

### 169–C:24–c Post-Permanency Hearings.

I. For a child who is in an out-of-home placement following the 12–month permanency hearing, the court shall hold a post-permanency hearing within 12 months of the permanency hearing and every 12 months thereafter as long as the child remains in an out-of-home placement. The court may conduct periodic post-permanency hearings upon its motion or upon the request of any party at any time.

II. At a post-permanency hearing the court shall determine whether the department has made reasonable efforts to finalize the permanency plan that is in effect. Where reunification is the permanency plan that is in effect, the court shall consider whether the services to the family have been accessible, available, and appropriate.

III. At a post-permanency hearing, the court may, upon agreement of the parties, modify the permanency plan. In such cases a permanency hearing is not required.

**Source.** 2007, 236:16, eff. Jan. 1, 2008. 2021, 219:5, eff. Jan. 1, 2022.

### 169–C:25 Confidentiality.

I. (a) The court records of proceedings under this chapter shall be kept in books and files separate from all other court records. Such records shall be withheld from public inspection but shall be open to inspection by the parties, child, parent, grandparent pursuant to subparagraph (b), guardian, custodian, attorney, or other authorized representative of the child.

(b) A grandparent seeking access to court records under subparagraph (a) shall file a request for access with the court clerk supported by an affidavit signed by the grandparent stating the reasons for requesting access and shall give notice of such request to all parties to the case and the minor's parents. Any party to the case or parent may object to the grandparent's request within 10 days of the filing of the request. If no objection is made, and for good cause shown, the grandparent's request may be granted by the court. If an objection is made, access may be granted only by court order.

II. It shall be unlawful for any person present during a child abuse or neglect hearing to disclose any information concerning the hearing that may identify a child or parent who is involved in the hearing without the prior permission of the court. Any person who knowingly violates this provision shall be guilty of a violation.

III. All case records, as defined in RSA 170–G:8–a, relative to abuse and neglect, shall be confidential, and access shall be provided pursuant to RSA 170–G:8–a.

**Source.** 1979, 361:2. 1983, 331:3. 1990, 19:2. 1993, 266:3; 355:4. 2002, 243:1. 2008, 258:1, eff. Jan. 1, 2009. 2022, 272:68, eff. Jan. 1, 2023.

### 169–C:25–a Access to Medical Records.

I. A law enforcement agency may request from the court an order compelling the department or a health care provider to disclose a child's medical records for the purpose of the investigation of child abuse or neglect, a child fatality, or any other crime against a child.

(a) The law enforcement agency shall present to the court the following evidence by affidavit or

orally under oath, including telephonically if necessary:

(1) A statement of facts establishing probable cause to suspect that a child has been the victim of a crime, and that the child's medical records will contain evidence of that crime;

(2) A representation that the information is unavailable from another source; and

(3) The names and addresses of the child and the custodial parents, non-custodial parents, legal custodians, or other guardians of the child, if known.

(b) Upon a showing of cause by a law enforcement agency why notice would compromise the investigation, put the child at risk of harm, or for other good cause, the court shall prohibit the health care provider and its attorneys, officers, directors, employees, contractors, or any other agent for the provider from notifying the child and the custodial parents, non-custodial parents, legal custodians, or other guardians of the child about the existence or contents of the order or that information has been furnished pursuant to the order. Such a showing shall be based on facts made by affidavit or orally under oath. Upon issuance of the order, the health care provider shall provide the medical records within 12 hours unless otherwise provided by the court or by agreement. The court shall order the law enforcement agency to notify the child's parent or guardian of the ex parte order within 60 days of issuance; provided, however, that upon a showing of good cause, the court may extend the period beyond 60 days, but in no event beyond 180 days.

(c) If the law enforcement agency satisfies the requirements of subparagraph (a) but not subparagraph (b), the court shall order the law enforcement agency to immediately serve a parent or guardian and the health care provider with notice of the request. The parent or guardian and health care provider shall have 5 days from receipt of notice to file an objection. If no objection is made, the court shall order the health care provider to produce the records to the law enforcement agency within 7 days. If an objection is made, the health care provider shall be ordered to provide the records to the trial court within 7 days from the date of the objection by producing the records under seal for in camera review by the court. The court shall issue an order within 30 days of receipt of the records.

(d) The court may issue such order by telephone, facsimile, or email, and shall include written findings.

(e) Nothing in this section shall be construed to limit the ability of a health care provider to unilaterally disclose to a law enforcement agency a child's medical records or information about a child's medical condition as otherwise permitted by law, including if the health care provider, in the exercise of its professional judgment, believes the disclosure is necessary to prevent serious harm to the child or other potential victims.

II. Upon notice by a law enforcement agency of a court order permitting access to records for use in the investigation of the abuse or neglect of a child, a child fatality, or any other crime against a child pursuant to RSA 169–C or the criminal code, a health care provider shall permit the law enforcement agency to inspect and copy the medical records, including but not limited to prenatal and birth records, of the child or children involved in the investigation without the consent of the child, or parent or guardian of the child.

III. A health care provider who in good faith discloses medical records for the purpose of an investigation of the abuse or neglect of a child to the law enforcement agency shall not be civilly or criminally liable for the disclosure.

IV. The law enforcement agency in possession of medical records pursuant to this section shall, upon the request of the department or another law enforcement agency, be authorized to re-disclose the medical records to the department or other law enforcement agencies solely for the purpose of conducting investigations of child abuse or neglect, child fatalities, other crimes against a child, and any subsequent actions under this chapter or criminal proceedings. Medical records disclosed under this section shall not be used or further disclosed for any other purpose without a court order. Medical records provided pursuant to this section shall be exempt from disclosure under RSA 91–A.

V. For the purposes of this section, the term "law enforcement agency" shall include the attorney general, a county attorney, a county sheriff, the state police, and any local police department.

**Source.** 2016, 202:1, eff. Aug. 5, 2016.

### 169–C:26 Continuances.

Except as otherwise provided, continuances in proceedings under this chapter may be granted by the court only for good cause shown. Whenever the

court grants a continuance under this section, the court shall make written findings as to the circumstances that warranted the continuance.

**Source.** 1979, 361:2. 2007, 236:17, eff. Jan. 1, 2008.

### 169–C:27 Liability for Expenses.

I. (a) Whenever an order creating liability for expenses is issued by the court under this chapter, any expenses incurred for services, placements, and programs the providers of which are certified pursuant to RSA 170–G:4, XVIII, shall be payable by the department of health and human services.

(b) Subparagraph (a) shall not apply to:

(1) Expenses incurred for special education and related services;

(2) Expenses incurred for evaluation, care, and treatment of a child receiving inpatient psychiatric treatment within the state mental health system; or

(3) Expenses incurred for the cost of accompanied transportation.

(c) Liability for placement expenses for any court ordered placement of any minor mother under this chapter shall include liability for placement expenses for the child or children of such minor mother if the minor mother and child or children are placed at the same facility.

II. Voluntary services provided to a child, family, or household in a case that was unfounded but with reasonable concern, as defined in RSA 169–C:3, XXIX, shall be the responsibility of the department. Payment for such services shall be made from available TANF reserve funds or other funds appropriated for such purpose.

III. Notwithstanding any provision of law to the contrary, the department shall not be responsible for the payment of the cost of assigned counsel for any party under this chapter.

IV. The office of reimbursements acting on behalf of the department of health and human services is authorized to compromise or reduce any expense to be charged to the state under this section.

**Source.** 1979, 361:2; 434:81. 1981, 555:2. 1982, 25:3. 1983, 458:5. 1985, 96:6; 380:38. 1987, 402:31, 32. 1988, 107:5; 153:2, 5. 1989, 75:2; 229:2; 286:2. 1990, 3:48; 203:2. 1991, 265:3. 1993, 266:4. 1994, 212:2. 1995, 220:3; 308:72, 73; 310:171, 175, 181, 182. 1996, 286:14, 17. 1997, 305:2. 2007, 263:21. 2008, 274:33. 2009, 144:34, 37. 2011, 224:45, 72. 2013, 144:57, eff. July 1, 2013. 2016, 308:4, eff. July 1, 2016. 2018, 55:2, eff. July 14, 2018; 337:8, eff. July 1, 2018; 338:1, eff. July 1, 2018. 2020, 26:21, eff. July 1, 2020. 2022, 272:47, 48, eff. June 24, 2022.

### 169–C:28 Appeals.

I. An appeal under this chapter may be taken to the supreme court by the child or the child's authorized representative or any party having an interest, including the state, or any person subject to any administrative decision pursuant to this chapter, within 30 days of the final dispositional order; but an appeal shall not suspend the order or decision of the court unless the court so orders. For purposes of this chapter, a "final dispositional order" includes a dismissal of a petition for abuse and neglect by the district court. "Final dispositional order" shall also include any ruling or order arising from an administrative hearing held or initiated by any administrative agency, including the department, in which a finding of child abuse or neglect is made.

II. This section shall apply to all appeals under this chapter, including appeals in proceedings before the family division of the courts.

**Source.** 1979, 361:2. 1989, 40:1. 1998, 235:1. 2000, 254:3, eff. June 12, 2000. 2020, 37:125, eff. July 1, 2020.

### 169–C:28–a Repealed by 1994, 411:19, II, eff. Jan. 1, 1995.

## Reporting Law

### 169–C:29 Persons Required to Report.

Any physician, surgeon, county medical examiner, psychiatrist, resident, intern, dentist, osteopath, optometrist, chiropractor, psychologist, therapist, registered nurse, hospital personnel (engaged in admission, examination, care and treatment of persons), Christian Science practitioner, teacher, school official, school nurse, school counselor, social worker, day care worker, any other child or foster care worker, law enforcement official, priest, minister, or rabbi or any other person having reason to suspect that a child has been abused or neglected shall report the same in accordance with this chapter.

**Source.** 1979, 361:2, eff. Aug. 22, 1979.

### 169–C:30 Nature and Content of Report.

An oral report shall be made immediately by telephone or otherwise, and followed within 48 hours by a report in writing, if so requested, to the department. Such report shall, if known, contain the name and address of the child suspected of being neglected or abused and the person responsible for the child's welfare, the specific information indicating neglect or the nature and extent of the child's injuries (including any evidence of previous injuries), the identity of the person or persons suspected of being responsible for such neglect or abuse, and any other information that

might be helpful in establishing neglect or abuse or that may be required by the department.

**Source.** 1979, 361:2. 1989, 146:2. 1994, 411:17. 1995, 310:175, eff. Nov. 1, 1995.

### 169–C:31 Immunity From Liability.

Anyone participating in good faith in the making of a report pursuant to this chapter or who provides information or assistance, including medical evaluations or consultations, in connection with a report, investigation, or legal intervention pursuant to a good faith report of child abuse or neglect, is immune from any liability, civil or criminal, that might otherwise be incurred or imposed. Any such participant has the same immunity with respect to participation in any investigation by the department or judicial proceeding resulting from such report.

**Source.** 1979, 361:2. 1994, 411:17. 1995, 310:175, eff. Nov. 1, 1995. 2019, 45:1, eff. Jan. 1, 2020.

### 169–C:32 Abrogation of Privileged Communication.

The privileged quality of communication between husband and wife and any professional person and his patient or client, except that between attorney and client, shall not apply to proceedings instituted pursuant to this chapter and shall not constitute grounds for failure to report as required by this chapter.

**Source.** 1979, 361:2, eff. Aug. 22, 1979.

### 169–C:33 Photographs and X-Rays.

I. Any medical person or the department preparing or investigating a report under this chapter, may take, or cause to be taken, photographs of the areas of trauma visible on a child who is the subject of a report and, if medically indicated, cause to be performed a radiological examination of the child without the consent of the child's parents or guardians. All photographs and X-rays taken, or copies of them, shall be sent to the appropriate offices of the department as soon as possible.

II. The reasonable cost of photographs or X-rays taken under this section shall be reimbursed by the department.

**Source.** 1979, 361:2. 1994, 411:17. 1995, 310:175, eff. Nov. 1, 1995.

### 169–C:34 Duties of the Department of Health and Human Services.

I. If it appears that the immediate safety or well-being of a child is endangered, the family may flee or the child disappear, or the facts otherwise so warrant, the department shall commence an investigation immediately after receipt of a report. In all other cases, a child protective investigation shall be commenced within 72 hours of receipt of the report.

II. For each report it receives, the department shall promptly perform a child protective investigation to:

(a) Determine the composition of the family or household, including the name, address, age, sex, and race of each child named in the report, and any siblings or other children in the same household or in the care of the same adults, the parents or other persons responsible for their welfare, and any other adults in the same household;

(b) Determine whether any person in the same family or household was named in a prior report of abuse or neglect, and, if there are 2 or more prior unfounded or unfounded but with reasonable concern reports involving any family or household member, conduct an administrative review of all identified reports;

(c) Determine whether there is probable cause to believe that any child in the family or household is abused or neglected, including a determination of harm or threatened harm to each child, the nature and extent of present or prior injuries, abuse, or neglect, and any evidence thereof, and a determination of the person or persons apparently responsible for the abuse or neglect;

(d) Determine the immediate and long-term risk to each child if the child remains in the existing home environment; and

(e) Determine the protective treatment, and ameliorative services that appear necessary to help prevent further child abuse or neglect and to improve the home environment and the parents' ability to adequately care for the children.

II–a. The department may issue a confidential letter of concern to a person or persons responsible for the safety and welfare of the child that although there is insufficient evidence to substantiate a finding of abuse or neglect or of unfounded but with reasonable concern, the department encourages the person or persons responsible for the safety and welfare of the child to seek family support services and provide contact information to obtain such services. Upon initiating an assessment, the department may offer the family ameliorative services to reduce risk and address child safety concerns.

II–b. The department may make a confidential determination of unfounded but with reasonable concern.

III. The department may request and shall receive from any agency of the state or any of its political subdivisions or any schools, such assistance and information as will enable it to fulfill its responsibilities under this section.

IV. Upon notification by the department that the immediate safety or well-being of a child may be endangered, the court shall, upon finding probable cause to believe that the child's immediate safety or well-being is endangered, order a police officer or a juvenile probation and parole officer or child protection service worker, accompanied by a police officer, to enter the place where the child is located, in furtherance of such investigation.

V. Notwithstanding any other provision of law to the contrary, the department may offer voluntary services to families without making a determination of the person or persons responsible for the abuse or neglect. The department shall adopt rules, pursuant to RSA 541–A, relative to the provision of voluntary services under this paragraph. The rules shall include provisions relative to the development of metrics to measure the effectiveness of voluntary services. The costs of voluntary services provided by the department under this paragraph shall not be eligible for reimbursement under RSA 169–C:27.

V–a. Notwithstanding any other provision of law to the contrary, the department may offer voluntary services to any child who prior to his or her eighteenth birthday was found to be neglected or abused, who was in legal custody of the department as of his or her eighteenth birthday, and who is less than 21 years of age. The costs of voluntary services provided by the department under this paragraph shall not be eligible for reimbursement under RSA 169–C:27.

VI. At the first contact in person, any person investigating a report of abuse or neglect on behalf of the department shall verbally inform the parents of a child suspected of being a victim of abuse or neglect of the specific nature of the charges and that they are under no obligation to allow a social worker or state employee on their premises or surrender their children to interviews unless that social worker or state employee is in possession of a court order to that effect. Upon receiving such information, the parent shall sign a written acknowledgement indicating that the information required under this paragraph was provided by the person conducting the investigation. The parent and department shall each retain a copy of the acknowledgment.

VII. If the child's parents refuse to allow a social worker or state employee on their premises as part of the department's investigation, and the department has probable cause to believe that the child has been abused or neglected, the department shall seek a court order to enter the premises. If the court finds probable cause to believe that the child has been abused or neglected, the court shall issue an order permitting a police officer, juvenile probation and parole officer, or child protection service worker to enter the premises in furtherance of the department's investigation and to assess the child's immediate safety and well-being. Any juvenile probation and parole officer or child protection service worker who serves or executes a motion to enter issued under this paragraph shall be accompanied by a police officer.

VIII. The department shall develop a methodology to notify the child's primary health care provider regarding the nature of the investigation in those cases in which the investigation has identified the primary health care provider.

IX. The use of medication restraint shall be limited as provided in RSA 126–U.

**Source.** 1979, 361:2. 1987, 402:12. 1994, 411:15–17. 1995, 310:175, 181. 2000, 294:9. 2001, 279:1. 2006, 276:1. 2008, 204:2, eff. Jan. 1, 2009. 2015, 127:1, 2, eff. Jan. 1, 2016. 2017, 112:7, 8, eff. June 14, 2017. 2018, 337:6, 7, eff. July 1, 2018. 2019, 45:2, eff. Jan. 1, 2020. 2021, 182:4, eff. Jan. 1, 2022.

### 169–C:34–a Multidisciplinary Child Protection Teams.

I. The department of health and human services may enter into formal cooperative agreements with appropriate agencies and organizations to create multidisciplinary child protection teams to assist with the investigation and evaluation of reports of abuse and neglect under this chapter.

II. Multidisciplinary child protection team members may include licensed physical and mental health practitioners, educators, law enforcement officers, representatives from the local child advocacy center, social workers, and such other individuals as may be necessary to assist with the investigation and evaluation of reports of abuse or neglect.

III. The department may share information from its case records to the extent permitted by law with members of a multidisciplinary child protection team in order to assist the team with its investigation and evaluation of a report of abuse or neglect. Multidisciplinary child protection team members shall be required to execute a confidentiality agreement and shall be bound by the confidentiality provisions of RSA 169–C:25 and RSA 170–G:8–a.

IV. The department, in conjunction with the department of justice and the New Hampshire Network

of Children's Advocacy Centers, shall develop a written protocol for multidisciplinary child protection team investigations. The purpose of the protocol shall be to ensure the coordination and cooperation of the agencies involved in multidisciplinary child protection team investigations, to increase the efficiency in the handling of these cases, and to minimize the impact on the child of the legal and investigatory process. The protocol developed shall be reviewed and, if necessary, revised not less than once every 3 years. The department shall forward a copy of the approved protocol to the speaker of the house of representatives, the senate president, and the governor by November 1 of the year in which they were approved and revised.

**Source.** 2006, 118:1, eff. July 10, 2006.

### 169–C:34–b Coordination with Military Authorities.

I. If a report is screened-in for investigation of abuse or neglect, the department shall collect information concerning the military status of the parent or guardian of the child who is the subject of the report and shall share information about the allegation with the appropriate military authorities.

II. Notwithstanding any other provision of law, the department shall enter into a memorandum of understanding with the military family advocacy program of a military installation with respect to child abuse and neglect investigations. For the purposes of this section, "military family advocacy program" shall mean the program established by the United States Department of Defense to address child abuse and neglect in military families. Such memorandum of understanding shall establish procedures and protocols for:

(a) Identifying an individual alleged to have committed abuse or neglect as military personnel;

(b) Reporting to a military family advocacy program when an investigation implicating military personnel has been initiated; and

(c) Maintaining confidentiality requirements under state and federal law.

**Source.** 2022, 77:3, eff. Nov. 16, 2022.

### 169–C:35 Central Registry.

I. There shall be established a state registry for the purpose of maintaining a record of founded reports of abuse and neglect. The registry shall be confidential and subject to rules on access established by the commissioner of the department under RSA 541–A. The commissioner of the department shall allow the credentialing bureau of the department of education access to the records of applicants for purposes of RSA 21–N:9, II(s) and in accordance with RSA 189:13–c.

II. Upon receipt by the department of a written request and verified proof of identity, an individual shall be informed by the department whether that individual's name is listed in the founded reports maintained in the central registry. It shall be unlawful for any employer other than those providing services pursuant to RSA 169–B, RSA 169–C, RSA 169–D, and RSA 135–C, and those specified in RSA 170–E, RSA 170–G:8–c, and RSA 171–A to require as a condition of employment that the employee submit his or her name for review against the central registry of founded reports of abuse and neglect. Any violation of this provision shall be punishable as a violation.

III. Founded reports of abuse and neglect shall be retained indefinitely, subject to an individual's right to petition for the earlier removal of his or her name from the central registry as provided in this section.

IV. Any individual whose name is listed in the founded reports maintained on the central registry may petition the district court to have his or her name expunged from the registry.

(a) A petition to expunge shall be filed in the district court where the abuse and neglect petition was heard. In cases where the department makes a finding but no petition is filed with the court, a petition to expunge shall be filed in the district court where the petition for the abuse and neglect could have been brought.

(b) A petition to expunge shall be filed on forms promulgated by the district courts and may include any information the petitioner deems relevant.

(c) When a petition to expunge is filed, the district court shall require the department to report to the court concerning any additional founded abuse and neglect reports on the petitioner and shall require that the department submit the petitioner's name, birth date, and address to the state police to obtain information about criminal convictions. The court may require the department to provide any additional information that the court believes may aid it in making a determination on the petition.

(d) Upon the receipt of the department's report, the court may act on the petition without further hearing or may schedule the matter for hearing at the request of either party. If the court deter-

mines that the petitioner does not pose a present threat to the safety of children, the court shall grant the petition and order the department to remove the individual's name from the central registry. Otherwise, the petition shall be dismissed.

V. When an individual's name is added to the central registry, the department shall notify individuals of their right to petition to have their name expunged from the central registry. No petition to expunge shall be brought within one year from the date that the petitioner's name was initially entered on the central registry. If the petition to expunge is denied, no further petition shall be brought more frequently than every 3 years thereafter.

VI. Upon receipt of a written request from a court in conjunction with a petition for guardianship of a minor pursuant to RSA 463 or a petition for guardianship of an incapacitated person pursuant to RSA 464–A, or from another state's child welfare agency or from a private adoption agency that is licensed or certified in another state to check the central registry established under this section for information on a prospective foster or adoptive parent or any other adult living in the home of such a prospective foster or adoptive parent, the department shall conduct the requested check and shall provide the requesting court, state, or private adoption agency with the results of the check along with such additional information from the department's case records as the department deems necessary for the requesting court, state, or private adoption agency to be able to evaluate the results.

VII. (a) Notwithstanding any provision of law or administrative rule to the contrary, upon the receipt of a written request from another state's lead agency to check the name of a child care provider, child care staff member, or prospective child care staff member in its state against the department's state registry of founded reports of abuse and neglect established under this section, the department shall conduct the requested check and shall provide the results of the check to the requesting state's lead agency.

(b) In this paragraph:

(1) "Lead agency" means the state, territorial or tribal entity, or joint interagency office designated or established pursuant to the requirements of the federal Child Care and Development Fund program.

(2) "Child care provider" means a center based child care provider, a family child care provider, or another provider of child care services for compensation and on a regular basis that is not an individual who is related to all children from whom child care services are provided and is licensed, regulated, or registered under state law or eligible to receive assistance provided under the federal Child Care and Development Fund program.

(3) "Child care staff member" means an individual, other than an individual who is related to all children for whom child care services are provided:

(A) Who is employed by a child care provider for compensation, including contract employees or self-employed individuals;

(B) Whose activities involve the care or supervision of children for a child care provider or unsupervised access to children who are cared for or supervised by a child care provider; or

(C) Any individual residing in a family child care home who is age 18 or older.

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

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

**Source.** 1979, 361:2. 1983, 331:5. 1985, 367:1. 1993, 355:5. 1995, 310:173, 175. 2002, 111:1. 2007, 325:1. 2010, 160:1, eff. June 17, 2010. 2017, 39:3, eff. July 8, 2017; 62:1, eff. June 2, 2017. 2020, 26:44, eff. July 1, 2020. 2021, 122:47, eff. July 9, 2021; 209:2, Pt. II, Secs. 2 and 3, eff. Jan. 1, 2022.

### 169–C:35–a Records Management of Abuse and Neglect Reports.

I. The department shall retain a screened-out report for 4 years from the date that the report was screened out. If during the 4-year retention period, the department receives a subsequent report of abuse or neglect concerning the same alleged perpetrator or the same child or any siblings or other children in the same household or in the care of the same adults, the department shall retain information from the prior and subsequent reports for an additional 4 years from the date a subsequent report is screened out, an additional 10 years from the date a subsequent report is deemed unfounded, and indefinitely if the subsequent report is deemed founded or unfounded but with reasonable concern. The department shall delete or destroy all electronic and paper records of the reports when the retention period for the most recent report expires.

II. The department shall retain an unfounded report for 10 years from the date that the department determined the case to be unfounded. If during the 10-year retention period, the department receives a subsequent report of abuse or neglect concerning the same alleged perpetrator or the same child or any siblings or other children in the same household or in the care of the same adults, the department shall retain the information from the prior and subsequent reports for an additional 10 years from the date the subsequent report is screened out or deemed unfounded, or indefinitely if the subsequent report is deemed founded or unfounded but with reasonable concern. The department shall delete or destroy all electronic and paper records of the reports when the most recent report expires.

III. The department shall retain a founded report, or a report that is unfounded but with reasonable concern, indefinitely.

IV. Nothing in this section shall prevent the department from retaining generic, non-identifying information which is required for state and federal reporting and management purposes.

**Source.** 2002, 162:1. 2010, 164:1, eff. July 1, 2011. 2017, 112:9, eff. June 14, 2017. 2018, 57:2, eff. May 23, 2018; 172:2, eff. July 1, 2019.

### 169–C:36 Repealed by 1983, 331:8, eff. Aug. 17, 1983.

### 169–C:37 Institutional Abuse and Neglect.

The department of justice shall be empowered to receive and investigate reports of institutional abuse or neglect at the youth development center, and any facility that provides child inpatient psychiatric treatment within the state mental health system; and the department shall be empowered to receive and investigate reports of all other suspected instances of institutional abuse or neglect. Either the department of justice or the commissioner of the department or both may adopt rules consistent with this authority to investigate such reports and take appropriate action for the protection of children.

**Source.** 1979, 361:2. 1983, 242:9. 1988, 107:5. 1994, 411:17. 1995, 310:173, 175, eff. Nov. 1, 1995. 2022, 272:56, eff. June 24, 2022.

### 169–C:38 Report to Law Enforcement Authority.

I. The department shall immediately by telephone or in person refer all cases in which there is reason to believe that any person under the age of 18 years has been: (a) sexually molested; (b) sexually exploited; (c) intentionally physically injured so as to cause serious bodily injury; (d) physically injured by other than accidental means so as to cause serious bodily injury; or (e) a victim of a crime, to the local law enforcement agency in the community in which the acts of abuse are believed to have occurred. The department shall also make a written report to the law enforcement agency within 48 hours, Saturdays, Sundays and holidays excluded. A copy of this report shall be sent to the office of the county attorney.

II. All law enforcement personnel and department employees shall cooperate in limiting the number of interviews of a child victim and, when appropriate, shall conduct joint interviews of the child. Employees of the department shall share with the investigating police officers all information in their possession which it is lawful for them to disclose to a law enforcement agency. Investigating police officers shall not use or reveal any confidential information shared with them by the department except to the extent necessary for the investigation and prosecution of the case.

III. No staff member of the department shall be held civilly or criminally liable for a telephone referral or a written report made under paragraph I.

IV. Law enforcement personnel or department employees who are trained caseworkers shall have the right to enter any public place, including but not limited to schools and child care agencies, for the purpose of conducting an interview with a child, with or without the consent or notification of the parent or parents of such child, if there is reason to believe that the child has been:

(a) Sexually molested.

(b) Sexually exploited.

(c) Intentionally physically injured so as to cause serious bodily injury.

(d) Physically injured by other than accidental means so as to cause serious bodily injury.

(e) A victim of a crime.

(f) Abandoned.

(g) Neglected.

V. For any interview conducted pursuant to paragraph IV, the interview with the child shall be videotaped if possible. If the interview is videotaped, it shall be videotaped in its entirety. If the interview cannot be videotaped in its entirety, an audio recording of the entire interview shall be made.

**Source.** 1979, 361:2. 1986, 225:1. 1988, 237:1. 1994, 411:17. 1995, 310:175. 1998, 185:1, 2, eff. Jan. 1, 1999.

### 169–C:38–a Standardized Protocol for the Investigation and Assessment of Child Abuse and Neglect Cases.

The department of health and human services and the department of justice shall jointly develop a standardized protocol for the interviewing of victims and the investigation and assessment of cases of child

abuse and neglect. The protocol shall seek to minimize the impact on the victim. The protocol shall also be designed to protect the rights of all parties affected The protocol shall specifically address the need to establish safe and appropriate places for interviewing children.

**Source.** 2002, 113:1, eff. July 2, 2002.

### 169–C:39 Penalty for Violation.

Anyone who knowingly violates any provision of this subdivision shall be guilty of a misdemeanor.

**Source.** 1979, 361:2, eff. Aug. 22, 1979.

## Prevention Program

**169–C:39–a Repealed by 2010, 195:3, eff. Jan. 1, 2011.**

**169–C:39–b Repealed by 2010, 195:3, eff. Jan. 1, 2011.**

**169–C:39–c Repealed by 2010, 195:3, eff. Jan. 1, 2011.**

**169–C:39–d Repealed by 2011, 231:2(3), eff. Dec. 31, 2011.**

**169–C:39–e Repealed by 2010, 368:28, XVI, eff. Dec. 31, 2010.**

**169–C:39–f Repealed by 2010, 368:28, XVII, eff. Dec. 31, 2010.**

**169–C:39–g Repealed by 2010, 195:3, eff. Jan. 1, 2011.**

**169–C:39–h Repealed by 2006, 48:1, eff. June 17, 2006.**

**169–C:39–i Repealed by 2010, 195:3, eff. Jan. 1, 2011.**

## Commission to Study Public-Private Partnerships to Fund Medical Care for Abused and Neglected Children

**169–C:39–j Repealed by 2014, 80:3, eff. Jan. 1, 2015.**

## Commission to Review Child Abuse Fatalities

**169–C:39–k Repealed by 2022, 266:1, II, eff. June 24, 2022.**

## Child Abuse Specialized Medical Evaluation Program

### 169–C:39–l Child Abuse Specialized Medical Evaluation Program Established.

A child abuse specialized medical evaluation program is hereby established in the department. The program shall include the following elements:

I. Child protective service workers shall have on-call access, 24 hours a day and 7 days a week, to an experienced health care professional who is trained in and can advise on the standardized diagnostic methods, treatment, and disposition of suspected child sexual abuse and physical abuse.

II. Department nurses and child protective service workers performing screenings and assessments of reported cases of child abuse shall receive pre-service training in the standardized medical diagnostic methods, treatment, and disposition as well as periodic in-service training by health care providers experienced in child abuse and neglect.

III. Annually, a limited number of designated health care providers geographically distributed shall be trained in nationally recognized curricula to respond to initial presentations of child sexual abuse, physical abuse, and neglect.

IV. Health care professionals who participate in the training or are members of a multidisciplinary team, working with the department of health and human services or law enforcement, shall participate in periodic peer or expert reviews of their evaluations and undertake continuing education in the medical evaluation of child abuse and neglect according to professional standards.

V. The department shall contract with a health care provider with experience in child abuse and neglect to administer the program in collaboration with participating private and public entities.

VI. Reimbursement rates for health care providers who participate in the program shall reflect the average cost to deliver such services, including the participation in multidisciplinary team activities and associated court proceedings. The rates shall be periodically reviewed and, if necessary, revised.

VII. The commissioner of the department shall adopt rules, under RSA 541–A, relative to the medical evaluation program, training and continuing education requirements, and reimbursement rates.

**Source.** 2019, 346:228, eff. July 1, 2019.

## Severability

### 169–C:40 Severability.

If any provision of this chapter or the application thereof to any person or circumstances is held to be invalid, the remainder of the chapter and the application of such provision to other persons or circumstances shall not be affected thereby.

**Source.** 1979, 361:2, eff. Aug. 22, 1979.

# CHAPTER 169–D

# CHILDREN IN NEED OF SERVICES



## 169–D:1 Applicability of Chapter; Purpose.

This chapter shall apply to children in need of services as hereinafter defined and shall be construed and administered in accordance with the following purposes and policies:

I. To recognize that certain behaviors occurring within a family or school environment indicate that a child is experiencing serious difficulties and is in need of services and corrective action in order to protect the child from the irreversibility of certain choices, and to protect the integrity of the family and the authority it must maintain in order to fulfill its responsibilities to raise the next generation. To further provide the child with the treatment, care, guidance, counseling, discipline, supervision, and rehabilitation necessary to assist him in becoming a responsible and productive member of society;

II. To recognize that we must no longer bring the weight of family problems down on the child alone but that parents must be made aware of their contribution to the problem and must account for their role in the solution of the problem, and must accept the responsibility to participate in any program of care ordered by the court in order to assure that the outcome may have a good probability of success while, at the same time, supporting families in their mission to teach values to youth and to exercise reasonable control of their children;

III. To keep a child, whenever possible, in contact with his home community and in a family environment by preserving and strengthening the unity of the family and separating the child from his parents only when it is clearly necessary for his welfare or the interests of public safety, and when it can be clearly shown that a change in custody and control will benefit the child;

IV. To protect the integrity of the family by authorizing adjudication and the imposition of dispositional judgment requiring participation in a plan of services or by offering appropriate voluntary alternatives; and

V. To provide effective judicial procedures through which family service plans are executed and enforced, and which assure the parties fair hearings at which their constitutional and other rights as citizens are recognized and protected.

**Source.** 1979, 361:2. 1990, 201:6. 1999, 266:1, 2. 2013, 249:1, eff. Sept. 1, 2013.

## 169–D:2 Definitions.

In this chapter:

I. "Child" means a person who is under the age of 18 on the date the petition is filed pursuant to RSA 169–D:5.

II. "Child in need of services" means a child under the age of 18:

(a) Who is subject to compulsory school attendance, and who is habitually, willfully, and without good and sufficient cause truant from school;

(b) Who habitually runs away from home, or who repeatedly disregards the reasonable and lawful commands of his or her parents, guardian, or custodian and places himself or herself or others in unsafe circumstances;

(c) Who has exhibited willful repeated or habitual conduct constituting offenses which would be violations under the criminal code of this state if committed by an adult or, if committed by a person 16 years of age or older, would be violations under the motor vehicle code of this state; or

(d) With a diagnosis of severe emotional, cognitive, or other mental health issues who engages in aggressive, fire setting, or sexualized behaviors that pose a danger to the child or others and who is otherwise unable or ineligible to receive services under RSA 169–B or RSA 169–C; and

(e) Is expressly found to be in need of care, guidance, counseling, discipline, supervision, treatment, or rehabilitation.

III. "Conditional release" means a legal status created by a court order following an adjudication that a child is a child in need of services and shall be permitted to remain in the community, including his or her home, subject to:

(a) The conditions and limitations of his or her conduct prescribed by the court.

(b) Such counseling and treatment as are deemed necessary, pursuant to methods and counseling prescribed by the court, for the minor and his or her family.

(c) The supervision of juvenile probation and parole officers as authorized by RSA 170–G:16.

(d) Return to the court for violation of the conditions of the release and change of the disposition at any time during the term of the conditional release.

IV. "Court" means the district court, unless otherwise indicated.

V. "Custody" means a legal status created by court order wherein the department of health and human services has placement and care responsibility for the child.

VI. "Diversion" means a decision made by a person with authority which results in providing an individually designed program for delivery of services for the child by a specific provider, or a plan to assist the child in finding a remedy for his or her inappropriate behavior. The goal of diversion is to prevent further involvement of the child in the formal legal system. Diversion of a child may take place either at pre-filing as an alternative to the filing of a petition or at any time after the filing of the petition.

VII. "Home detention" means court-ordered confinement of a minor with his or her parents or other specified home for 24 hours a day unless otherwise prescribed by written court order, under which the minor is permitted out of the residence only at such hours and in the company of persons specified in the court order establishing the home detention.

VIII. "Restitution" means moneys, compensation, work, or service which is reimbursed by the offender to the victim who suffered personal injury or economic loss.

IX. "Services" means care, guidance, counseling, discipline, supervision, treatment and rehabilitation or any combination thereof.

X. "Concurrent plan" means an alternate permanency plan in the event that a minor cannot be safely reunified with his or her parents.

XI. "Out-of-home placement" means when a minor, as the result of a delinquent petition, is removed from a biological parent, adoptive parent, or legal guardian of the minor and placed in substitute care with someone other than a biological parent, adoptive parent, or legal guardian. Such substitute care may include placement with a custodian, guardian, relative, friend, group home, crisis home, shelter care, or a foster home.

XII. "Permanency hearing" means a court hearing for a minor in an out-of-home placement to review, modify, and/or implement the permanency plan or adopt the concurrent plan.

XIII. "Permanency plan" means a plan for a minor in an out-of-home placement that is adopted by the court and that provides for timely reunification, termination of parental rights or parental surrender when an adoption is contemplated, guardianship with a fit and willing relative or another appropriate party, or another planned permanent living arrangement.

XIII–a. "Psychotropic medication" means a drug prescribed by a licensed medical practitioner, to treat illnesses that affect psychological functioning, perception, behavior, or mood.

XIII–b. "Medication restraint" means the involuntary administration of any medication, including a psychotropic medication, for the purpose of immediate control of behavior.

XIV. "Shelter care facility" means a non-secure or staff-secure facility for the temporary care of children no less than 11 nor more than 17 years of age. Shelter care facilities may be utilized for children prior to or following adjudication or disposition. A shelter care facility may not be operated in the same building as a facility for architecturally secure confinement of children or adults.

XV. "Truant" means a child between the ages of 6 and 18 years who is either not attending school as required by law or who is not participating in an alternative learning plan under RSA 193:1. "Truancy" shall have the same meaning as in RSA 189:35–a.

**Source.** 1979, 361:2. 1987, 402:10. 1989, 285:5, 6. 1990, 201:7, 8. 1995, 308:74. 1999, 266:3. 2000, 294:10. 2007, 236:18; 325:11. 2011, 224:279. 2013, 249:2, 3, eff. Sept. 1, 2013; 249:18, eff. Sept. 22, 2013. 2021, 182:5, eff. Jan. 1, 2022.

### 169–D:3 Jurisdiction.

I. The court shall have exclusive original jurisdiction over all proceedings alleging a child is in need of services.

II. The court may, with the consent of the child, retain jurisdiction over any child who, prior to his eighteenth birthday, was found to be a child in need of services, and who is attending school for the purpose of obtaining a high school diploma or general equivalency diploma. The court shall make orders relative to the support and maintenance of the child during the period after the child's eighteenth birthday as justice may require.

III. The court shall close the case when the child reaches age 18, or if jurisdiction is retained, when the child ceases to be enrolled as a full-time student during sessions of the school, or graduates from such school, or upon reaching the age of 21, whichever shall first occur.

**Source.** 1979, 361:2. 1992, 11:2, eff. July 1, 1992.

### 169–D:4 Venue.

I. Proceedings under this chapter may be originated in any judicial district in which the child is found or resides.

II. By the court, upon its own motion, or that of any party, proceedings under this chapter may, upon notice and acceptance, be transferred to another court as the interests of justice or convenience of the parties require.

III. When a child who is on conditional release moves from one political subdivision to another, the court may transfer, upon notice and acceptance, to the court with jurisdiction over the political subdivision of the child's new residence, if such transfer is in the best interest of the child.

**Source.** 1979, 361:2. 1987, 402:8, eff. Jan. 1, 1988.

### 169–D:4–a Filing Reports, Evaluations, and Other Records.

All reports, evaluations and other records from the department of health and human services, counselors, and guardians ad litem in proceedings under this chapter shall be filed with the court and all other parties at least 5 days prior to any hearing. Once filed with the court and given to all other parties, the report, evaluation or other record need not be refiled during the proceeding. Failure to comply with the provisions of this section shall not be grounds for dismissal of the petition.

**Source.** 1991, 57:3. 1994, 212:2. 1995, 310:181, eff. Nov. 1, 1995.

### 169–D:5 Petition.

I. (a) A petition alleging that a child is in need of services under RSA 169–D:2, II(a) may be filed by a truant officer or school official from the school district where the child is attending school with a judge or clerk of the court in the judicial district where the child is found or resides. In accordance with RSA 189:36, II, a truant officer or school official shall not file a petition alleging that a child is in need of services under RSA 169–D:2, II(a) until all steps in the school district's intervention process under RSA 189:34, II have been followed.

(b) A petition alleging that a child is in need of services under RSA 169–D:2, II(b) or RSA 169–D:2, II(c) may be filed by a parent, legal guardian or custodian, school official, or law enforcement officer with a judge or clerk of the court in the judicial district in which the child is found or resides.

(c) A petition alleging that a child is in need of services under RSA 169–D:2, II(d) may, with the consent of the department, be filed by a parent, legal guardian or custodian, school official, or law enforcement officer with a judge or clerk of the court in the judicial district in which the child is found or resides.

I–a. The petition shall be in writing and verified under oath. The following notice shall be printed on the front of the petition in bold in no smaller than 14 point font size: "See back for important information and financial obligations." The back of the petition

shall include the following notice: "If you have private insurance coverage, you may be required to cooperate with your insurance carrier and assign benefits to the department of health and human services for covered services provided to your child or family in this proceeding.

II. To be legally sufficient, the petition must set forth with particularity, but not be limited to, the date, time, manner and place of the conduct alleged and should state the statutory provision alleged to have been violated.

II–a. Any petition filed shall include language demonstrating whether appropriate voluntary services have been attempted, the nature of voluntary services attempted, and the reason court compulsion is necessary. The petition also shall include information regarding the department's determination as to whether voluntary services are appropriate for the child or family under RSA 169–D:5–c. Refusal of the child to participate in the development of a voluntary family services plan may constitute sufficient information that voluntary service and support options have been unsuccessful.

III. If the parents of a child are filing the petition, they shall include information which shows that the child and family have sought to resolve the expressed problem through available community alternatives, that the problem still remains, and that court intervention is needed.

IV. [Repealed.]

V. Except as provided in paragraph VI, when a school official is filing the petition, information shall be included which shows that the legally liable school district has sought to resolve the expressed problem through available educational approaches, that the school district has sought to engage the parents or guardian in solving the problem but they have been unwilling or unable to do so; that the problem remains, and that court intervention is needed.

VI. When a school official is filing a petition involving a child with a disability pursuant to RSA 186–C, he or she shall include information which demonstrates that the legally liable school district:

(a) Has determined that the child has a disability; and

(b) Has reviewed for appropriateness the child's current individualized education program (IEP) and placement, and has made modifications where appropriate.

VII. Using local law enforcement personnel, the court shall serve both parents, and any other individual chargeable by law for the child's support, with a copy of any petition filed under this section. The court shall request the appropriate contact information from the party filing the petition.

VIII. The department shall develop a brochure that describes the department's responsibility for the cost of services provided under this chapter. The brochure shall include a statement that the department may require a parent or guardian to assign insurance benefits to the department for services provided under this chapter. The brochure shall also clarify that the legally liable school district is responsible for any special education costs. The brochure shall be available to the public and shall be distributed at the earliest available opportunity to parents and others responsible for the minor's support who are requesting or receiving voluntary or court ordered services. The department also shall provide its case workers with information and training on the requirements of this chapter.

**Source.** 1979, 361:2. 1989, 285:7. 1990, 201:9. 1995, 308:75. 1999, 266:4. 2006, 291:1, 2. 2008, 274:11. 2009, 302:2. 2011, 224:280. 2012, 110:1, II. 2013, 249:4, 5, eff. Sept. 1, 2013. 2014, 57:1, 3, eff. Jan. 1, 2015. 2019, 196:1, 4, eff. Sept. 8, 2019. 2020, 26:22, 23, eff. July 1, 2020.

### 169–D:5–a Notice of Petition to Department of Health and Human Services.

Upon the filing of any petition under RSA 169–D:5, the court shall serve the department of health and human services with a copy of the petition and the department shall be a party to and shall receive notice of all proceedings under this chapter from the court and all other parties.

**Source.** 1995, 308:76; 310:175, 181. 2004, 31:2, eff. Jan. 1, 2005.

### 169–D:5–b Consent Order.

I. At any time after the filing of the petition and prior to an order of adjudication pursuant to RSA 169–D:14, the court may suspend the proceedings upon its own motion or upon the motion of any party, and continue the case under terms and conditions established by the parties and approved by the court.

II. A consent order shall not be approved unless the department consents and the child and parents, guardian, or custodian are informed of the consequences of the order by the court and the court determines that the child and parents voluntarily and intelligently consent to the terms and conditions of the order.

**Source.** 1995, 308:76; 310:175, eff. Nov. 1, 1995.

### 169–D:5–c Voluntary Services.

The department shall assess whether to offer the child and family, on a voluntary basis, any services permitted under RSA 169–D:17 except out-of-home placement of the child. The department may decline to offer services to a child or family if it concludes that the child does not meet the definition of child in need of services in RSA 169–D:2, II, or if the department otherwise determines that voluntary services are not appropriate for the child or family. The department shall document the basis for its decision. Notwithstanding RSA 541–A, the department's decision shall not be subject to appeal, nor shall the fact that the department declined to offer voluntary services preclude a person from filing a petition under RSA 169–D:5, I. Voluntary services provided under this section shall not exceed 9 months, unless the department determines that an extension for an additional, specified period of time is appropriate.

**Source.** 2013, 249:6, eff. Sept. 1, 2013.

### 169–D:6 Issuance of Summons and Notice.

I. (a) After a legally sufficient petition has been filed, unless the case is referred to the department pursuant to RSA 169–D:5 or a consent order is entered and approved, the court shall schedule an initial appearance and issue a summons, including a copy of the petition, to be served personally upon the person having custody or control of the child or with whom the child may be, requiring that person to appear with the child on the specified date and time.

(b) If personal service is not possible, service shall occur at the usual place of abode of the person having custody or control of the child or with whom the child may be, requiring that person to appear with the child at a specified place and time which time shall not be less than 24 hours after service. If the person so notified is not the parent or guardian of the child, then a parent or guardian shall be notified, provided they and their residence are known.

II. A copy of the petition shall be attached to each summons or incorporated therein.

III. The summons shall state as follows: "With limited exception, the department of health and human services shall be responsible for the cost of services provided under this chapter. RSA 186–C regarding children with disabilities grants children and their parents certain rights to services from school districts at public expense and to appeal school district decisions regarding services to be provided."

**Source.** 1979, 361:2. 1983, 458:9. 1990, 140:2, X. 1995, 308:77. 1999, 199:1; 266:5. 2006, 291:3. 2008, 274:31. 2013, 249:7, eff. Sept. 1, 2013. 2020, 26:24, eff. July 1, 2020.

### 169–D:7 Failure to Appear; Warrant.

I. Any person summoned who, without reasonable cause, fails to appear with the child, may be proceeded against as in case of contempt of court.

II. If a summons cannot be served or the party served fails to obey the same, and in any case where it appears to the court that such summons will be ineffectual, a warrant may be issued for the child's appearance or for the appearance of anyone having custody or control of the child or for both.

**Source.** 1979, 361:2, eff. Aug. 22, 1979.

### 169–D:8 Temporary Custody.

A child may be taken into temporary custody:

I. Pursuant to a court order; or

II. By a police officer or juvenile probation and parole officer when there are reasonable grounds to believe that a child has run away from his parents, guardian, or other custodian; or the circumstances are such as to endanger the child's health or welfare unless immediate action is taken.

**Source.** 1979, 361:2. 1987, 402:12. 2000, 294:9, eff. July 1, 2000.

### 169–D:9 Pre-adjudicatory Procedure.

I. Except in emergencies, the department, its agent, or any person or agency it designates shall determine whether voluntary service options are appropriate for the child and family. A referral for this determination may be made by any person permitted to bring a petition under RSA 169–D:5, I. To achieve this purpose, the department may designate a multidisciplinary team to consider the facts and circumstances of the case, the needs of the child and family, and available diversion programs, services, and resources. This conference shall be attended by the child, if appropriate, his or her parents, legal guardians or custodians, and representatives of any public institution or agency having legal responsibility over the child, and may be attended by parties invited by the family and representatives of any public or private institutions or agencies having discretionary ability to coordinate and/or supply services to the child or family. If the child does not attend a multidisciplinary conference, an appropriate individual shall be designated to solicit the child's input and help the child understand available service options and supports.

II. If available, a multi-disciplinary conference may be held at any time before or after a petition is

filed but shall be held before the child's initial appearance pursuant to RSA 169–D:11.

III. At any time before or after a petition is filed, the child, his or her caretakers, and the department may effect an individualized voluntary family services plan, which shall include:

(a) Identification of the circumstances which contributed to the need for services.

(b) A description of the services that are needed for the child, the child's caretakers, or other family members, the availability of such services within the community, and a plan for ensuring that any such services that are available will be secured and provided.

(c) The name of the person within each affected public service agency who is directly responsible for assuring that specific services identified in the plan are provided.

(d) An estimate of the time anticipated to be necessary to accomplish the goals set out in the plan.

(e) Any other provisions deemed appropriate by the parties.

(f) Designation of a responsible person or agency for oversight of the plan.

IV. A voluntary family services plan shall set forth in writing the terms and conditions agreed to by the child, the child's caretaker, and all parties responsible for implementation of the voluntary family services plan. A written copy of the plan shall be submitted to each party or person responsible for implementation of the plan.

V. A voluntary family services plan may be amended by agreement of the parties at any time. If a petition has been filed, the amended plan shall be submitted to the court.

VI. If a petition has been filed and the department determines voluntary services are appropriate, a voluntary family services plan shall be submitted to the court. The voluntary family services plan shall stay the proceedings for a period not to exceed 90 days from the date of implementation, unless the parties agree, in writing, to an extension for additional periods not to exceed 90 days.

VII. When the petitioning person or agency, the court, the department, or a member of the multidisciplinary team suspects that a child has a disability, an administrator at the responsible school district shall be notified. If appropriate, the school district shall refer the child for evaluation to determine if the child is in need of special education and related services.

VIII. A voluntary family services plan shall not be considered in an adjudicatory hearing pursuant to RSA 169–B or 169–D, or a criminal trial. Evidence of the existence of such agreement shall not be used against the child over objection in any juvenile adjudicatory hearing or criminal trial.

IX. Any incriminating statement made by the child during discussions or conferences incident to the voluntary family services plan shall not be used against the child, over objection, in adjudicatory hearing pursuant to RSA 169–B or 169–D, or a criminal trial. Any such statement may be reported as the basis for a referral to the department pursuant to RSA 169–C, if there is reasonable basis to believe that a child's physical or mental health or welfare is endangered by abuse or neglect.

X. A voluntary family services plan suspends the proceedings on the petition. If the child satisfies the terms of the voluntary family services plan, he or she shall be discharged from further services or supervision, and the pending complaint or petition shall be dismissed with prejudice.

XI. The cost for any services, placement, or programs provided pursuant to a voluntary family service plan under this section shall not be subject to parental reimbursement under RSA 169–D:29.

**Source.** 1979, 361:2. 1999, 266:6. 2000, 294:9. 2008, 274:12. 2010, 175:5. 2011, 151:2. 2013, 249:8, eff. Sept. 1, 2013. 2014, 271:2, eff. July 28, 2014. 2019, 196:2, 5, eff. Sept. 8, 2019.

### 169–D:9–a Use of Alternative to Secure Detention.

An officer may, with court approval, release a child to an alternative to secure detention as defined in RSA 169–B:2, pending the arrival of the parent, guardian, or custodian. The alternative program may release the child to the parent, guardian, or custodian upon their arrival. Any court, police, or juvenile probation and parole officer, acting in good faith pursuant to this section, shall have immunity from any liability, civil or criminal, which might otherwise be incurred or imposed as a result of release to an alternative to secure detention.

**Source.** 1988, 197:7. 2000, 294:9, eff. July 1, 2000.

### 169–D:9–b Prohibited Manner of Detention.

Notwithstanding any other provisions of law, no child detained under this chapter shall be held for any period of time in a public or private facility, which includes construction fixtures designed to physically restrict the movements and activities of

persons in custody, including but not limited to locked rooms and buildings, fences, or other physical structures. This section shall not be construed to prohibit detention in facilities where physical restriction of movement or activity is provided solely through facility staff.

**Source.** 1988, 197:7. 1992, 18:6, eff. Jan. 1, 1993.

**169–D:9–c Detention in Certain Facilities; CHINS and Juvenile Delinquents.**

I. Facilities which are not physically restricted may receive for placement minors who have been adjudicated as children in need of services or minors who have been adjudicated as juvenile delinquents.

II. Physically restricted facilities shall receive for commitment and detention only those minors who have been adjudicated juvenile delinquents pursuant to RSA 169–B or who are awaiting the court's disposition regarding allegations of juvenile delinquency. Physically restricted facilities which are primarily used for psychiatric treatment or evaluation shall not be limited only to such minors.

**Source.** 1990, 201:10, eff. June 26, 1990.

**169–D:9–d Placement in a Qualified Residential Treatment Program.**

For any child placed in a qualified residential treatment program, as defined in the federal Family First Prevention Services Act of 2017,[1] the court shall:

I. Order an assessment to be completed within 30 days of placement by a qualified individual as defined by the federal Family First Prevention Services Act of 2017; and

II. Review the assessment and issue an order approving the placement or changing the placement within 60 days of placement.

**Source.** 2021, 122:71, eff. July 9, 2021.

[1] P.L. 115–123, see 42 U.S.C.A. § 671 et seq.

**169–D:10 Release Prior to Initial Appearance.**

I. An officer taking a child into custody pursuant to RSA 169–D:8 shall release the child to a parent, guardian or custodian pending initial appearance; however, if a parent, guardian or custodian is not available upon taking the child into custody, the court shall be notified, thereupon the child's release shall be determined by the court.

II. Pending the initial appearance, the court shall release the child to one of the following, which in the court's opinion is the least restrictive and most appropriate:

(a) A parent or guardian;

(b) A relative or suitable adult;

(c) Where there are reasonable grounds to believe that the child is a runaway under RSA 169–D:2, II(b) or that the child is a child in need of services under RSA 169–D:2, II(d), the custody of department of health and human services for placement in a foster home, as defined in RSA 169–C:3, XIII, a group home, a crisis home, or a shelter care facility with expenses chargeable as provided in RSA 169–D:29; or

(d) [Repealed.]

(e) An alcohol crisis center certified to accept juveniles.

III. Where there are reasonable grounds to believe that the child is a runaway under RSA 169–D:2, II(b) or that the child is a child in need of services under RSA 169–D:2, II(d) and there is no shelter care/detention bed available, nor an appropriate parent, guardian, or custodian as defined in paragraph II of this section available, the court or the officer taking the child into temporary custody shall notify the department. If the child cannot be referred to an alternative to secure detention, the court shall make an order authorizing the department to place the child. The department shall then promptly arrange for placement of the child.

**Source.** 1979, 361:2. 1982, 39:15. 1988, 197:13. 1989, 285:8. 1995, 310:175. 2001, 117:6. 2007, 325:12, 15, III. 2013, 249:9, eff. Sept. 1, 2013.

**169–D:10–a Removal of Child From Home.**

No child subject to a petition brought under this chapter shall be removed from his home unless:

I. Clear and convincing evidence is presented to the court to show it is against the child's best interest to remain in the home under the circumstances presented in such petition;

II. A case plan for return of the child to the home has been recommended by the department, which in its recommendation shall address parent and child responsibility, and ordered by the court; provided, however, that in cases brought by a parent, guardian or custodian, the parent, guardian or custodian shall consent to the order.

**Source.** 1990, 201:11. 1995, 310:175, eff. Nov. 1, 1995.

**169–D:10–b Child's Welfare; Findings Regarding Removal.**

I. The court shall, in its first court ruling that sanctions, even temporarily, the removal of a minor

from the home, determine whether continuation in the home is contrary to the minor's welfare.

II. The court shall, within 60 days of a minor's removal from the home, determine and issue written findings as to whether reasonable efforts were made or were not required to prevent the minor's removal. In determining whether reasonable efforts were made to prevent the minor's removal, the court shall consider whether services to the family have been accessible, available, and appropriate.

**Source.** 2007, 236:19, eff. Jan. 1, 2008.

**169–D:11 Initial Appearance.**

I. An initial appearance shall be held not less than 24 hours nor more than 7 days from the filing of a legally sufficient petition.

II. At the initial appearance, the court shall:

(a) Advise the child in writing and orally of any formal charges;

(b) Appoint counsel pursuant to RSA 169–D:12;

(c) Establish any conditions for release;

(d) Set a hearing date; and

(e) Inquire of the child and a parent or guardian of the child if the child has been:

(1) Determined to have an intellectual disability;

(2) Determined to have a mental illness, emotional or behavioral disorder, or another disorder that may impede the child's decision-making abilities;

(3) Identified as eligible for special education services; or

(4) Previously referred to a care management entity as defined in RSA 135–F:4, III.

II–a. However, no plea shall be taken until the child has had the opportunity to consult with counsel or until a waiver is filed pursuant to RSA 169–D:12.

II–b. The court may, at the initial appearance or at any time thereafter, with the consent of the minor and the minor's family, refer the minor and family to a care management entity as defined in RSA 135–F:4, III for evaluation and/or behavioral health services to be coordinated and supervised by that entity.

III. After hearing, the court may, with the consent of the child, dispose of the petition by ordering the child to participate in a court approved diversion program or other intervention program.

**Source.** 1979, 361:2. 2010, 175:6. 2013, 249:10, eff. Sept. 1, 2013. 2014, 271:1, eff. July 28, 2014. 2019, 44:10, 11, eff. Aug. 2, 2019; 346:338, 339, eff. July 1, 2019.

**169–D:12 Appointment of Counsel; Waiver of Counsel.**

I. Absent a valid waiver, the court shall appoint counsel for the child at the time of the initial appearance. If the court believes that the minor has a cognitive, emotional, learning, or sensory disability, the court shall require the minor to consult with counsel.

II. The court may accept a waiver of counsel from a child alleged to be in need of services only when:

(a) The parent, guardian, or custodian did not file the petition;

(b) Both the child and parent, guardian, or custodian agree to waive counsel;

(c) In the court's opinion, the waiver is made competently, voluntarily, and with full understanding of the consequences; and

(d) The petition does not allege that the child is in need of services pursuant to RSA 169–D:2, II(d).

III. Whenever the court places the child outside his or her home, the court shall ensure that the child is continuously represented by counsel until the case is closed pursuant to RSA 169–D:3, III. Appointment of counsel pursuant to this paragraph shall be made at a time sufficiently in advance of the decision to place the child outside the home to allow counsel to provide effective representation on the issue of placement.

**Source.** 1979, 361:2. 1995, 308:78. 1996, 248:4. 2008, 274:13, eff. July 1, 2008. 2020, 26:33, eff. July 1, 2020; 26:34, eff. July 1, 2021.

**169–D:12–a Repealed by 2020, 26:36, II, effective July 1, 2021.**

**169–D:13 Release Pending Adjudicatory Hearing.**

I. Following the initial appearance, a child alleged to be in need of services may be ordered by the court subject to such conditions as the court may order, to be:

(a) Retained in the custody of a parent, guardian, or custodian; or

(b) Released in the supervision and care of a relative; or

(c) Where the petition alleges that the child is a habitual runaway under RSA 169–D:2, II(b) or that the child is a child in need of services under RSA 169–D:2, II(d), released to the custody of the department of health and human services for placement in a foster home, as defined in RSA 169–C:3, XIII, a group home, a crisis home, or a shelter care

facility with expenses chargeable as provided in RSA 169–D:29.

(d) [Repealed.]

I–a. Where the petition alleges that the child is a habitual truant under RSA 169–D:2, II(a), that the child repeatedly disregards the reasonable and lawful commands of his or her parents, guardian, or custodian under RSA 169–D:2, II(b), or that the child repeatedly or habitually engages in conduct that constitutes violation level offenses under RSA 169–D:2, II(c), the court shall not order the out-of-home placement of the child.

II. The adjudicatory hearing shall be held within 21 days of the initial appearance.

III. All orders issued pursuant to this section shall set forth the findings as to the form of release or any conditions in writing and shall state any custody provisions under paragraph I.

**Source.** 1979, 361:2. 1982, 39:16. 2001, 117:7. 2007, 325:13, 15, IV. 2013, 249:11, eff. Sept. 1, 2013.

### 169–D:13–a Notification of Right to Request Records.

The court shall notify parties of their right to request in advance of any hearing under this chapter that a record of such hearing shall be preserved and made available to the parties.

**Source.** 1996, 248:5, eff. Jan. 2, 1997.

### 169–D:14 Adjudicatory Hearing.

I. An adjudicatory hearing under this chapter shall be conducted by the court, separate from the trial of criminal cases.

I–a. A record of the adjudicatory hearing shall be preserved unless expressly waived in writing by the parties, and parties shall be notified in writing of their right to appeal.

II. Following the initial appearance the court shall proceed to hear the case in accordance with the due process rights afforded a child alleged to be in need of services. The prosecution shall present witnesses to testify in support of the petition and any other evidence necessary to support the petition. The child shall have the right to present evidence and witnesses on his behalf and to cross-examine adverse witnesses. The provisions of RSA 613:3, I, relative to the summoning of out-of-state witnesses, shall apply to the proceedings.

III. If the court finds the child is in need of services, it shall, unless a report done on the same child less than 3 months previously is on file, order the department of health and human services or other appropriate agency to make an investigation and written report consisting of, but not limited to, the home conditions, school record and the mental, physical and social history of the child including sibling relationships and residences for the purpose of preserving relationships between siblings who are separated as a result of court ordered placement. Evaluations performed at a facility providing child inpatient psychiatric treatment within the state mental health system may occur only upon receiving prior approval for such evaluation from the commissioner of the department of health and human services or designee. When ordered by the court, such investigation shall include a physical and mental examination of the child, parents, guardian, or person having custody. The court may order a substance abuse evaluation of the child, parents, guardian, or person having custody. Any substance abuse evaluation of the parent, guardian, or person having custody of the child shall be conducted by a provider contracted with the bureau of substance abuse services, or a provider paid by the parent, guardian, or person having custody of the child. The cost of said evaluation shall be paid by private insurance, if available, or otherwise by the person undergoing the evaluation, to whom the evaluation shall be provided free or at a reduced cost if the person is of limited means. The court shall inform the parents, guardian, or person having custody and child of their right to object to the physical examination, mental health evaluation, or substance abuse evaluation. Objections shall be submitted in writing to the court having jurisdiction within 5 business days after notification of the time and place of the examination or evaluation. The court may excuse the child, parents, guardian, or person having custody upon good cause shown. No disposition order shall be made by the court without first reviewing the investigation report, if ordered.

IV. The court shall share the report with the parties. The report will be used only after a finding that the child is in need of services and will be used only as a guide for the court in determining an appropriate disposition for the child.

V. The court shall hold a final dispositional hearing within 30 days of the adjudicatory hearing unless continued for good cause. No dispositional hearing for a child placed outside the child's home may be continued more than once for good cause or for a period longer than 14 days, except by agreement of all the parties.

VI. Whenever a court contemplates a placement which will require educational services outside the child's home school district, the court shall notify the

school district and give the district the opportunity to send a representative to the hearing at which such placement is contemplated. In cases where immediate court action is required to protect the health or safety of the child or of the community, the court may act without providing for an appearance by the school district, but shall make reasonable efforts to solicit and consider input from the school district before making a placement decision.

**Source.** 1979, 361:2. 1985, 195:6. 1987, 402:13. 1990, 3:49. 1994, 212:2. 1995, 310:181, 182. 1996, 248:6. 1998, 203:4. 1999, 266:7, 8. 2004, 41:3. 2007, 295:5, eff. Sept. 11, 2007. 2022, 272:49, eff. June 24, 2022.

### 169–D:15 Burden of Proof.

The petitioner has the burden to prove the allegations in support of the petition beyond a reasonable doubt.

**Source.** 1979, 361:2, eff. Aug. 22, 1979.

### 169–D:16 Release Pending Final Disposition.

Following the adjudicatory hearing, custody pending the dispositional hearing shall be determined in accordance with RSA 169–D:13.

**Source.** 1979, 361:2, eff. Aug. 22, 1979.

### 169–D:17 Dispositional Hearing.

I. If the court finds the child is in need of services, it shall order the least restrictive and most appropriate disposition considering the facts in the case, the investigation report, and the dispositional recommendations of the parties and counsel. The dispositional recommendation of the department of health and human services shall include the costs of the recommended services, placements, and programs. Such disposition may include:

(a) Permitting the child to remain with a parent, guardian, relative, or custodian, subject to such limitations and conditions as the court may prescribe, including:

(1) Ordering the child or parent, guardian, relative, or custodian, or both, to accept individual or family counseling;

(2) Placing the child on conditional release for a term of 2 years or less.

(b)(1) Releasing the child in the supervision and care of a relative or suitable adult; or

(2)(A) Where the petition alleges that the child is a habitual runaway under RSA 169–D:2, II(b) or that the child is a child in need of services under RSA 169–D:2, II(d), releasing the child to the custody of the department of health and human services for placement in a foster home, as defined in RSA 169–C:3, XIII, a group home, a crisis home, or a shelter care facility.

(B) Notwithstanding subparagraph (A), where the petition alleges that the child is a habitual truant under RSA 169–D:2, II(a), that the child repeatedly disregards the reasonable and lawful commands of his or her parents, guardian, or custodian under RSA 169–D:2, II(b), or that the child repeatedly or habitually engages in conduct that constitutes violation level offenses under RSA 169–D:2, II(c), the court shall not order the out-of-home placement of the child.

(c) Imposing a fine or restitution, or both, on a child who has committed an offense which, if committed by an adult, would be a violation under the criminal code[1] of this state; or has committed an offense which, if committed by a person 16 years of age or older, would be a violation under the motor vehicle code[2] of this state; or has violated an ordinance or bylaw of a city or town. Such fine shall not exceed the fine which may be imposed against an adult for the same offense.

(d) Ordering the minor to perform up to 50 hours of uncompensated public service subject to the approval of the elected or appointed official authorized to give approval of the city or town in which the offense occurred. The court's order for uncompensated public service shall include the name of the official who will provide supervision to the minor. However, no person who performs such public service under this subparagraph shall receive any benefits that such employer gives to its other employees, including, but not limited to, workers' compensation and unemployment benefits and no such employer shall be liable for any damages sustained by a person while performing such public service or any damages caused by that person unless the employer is guilty of gross negligence.

(e) Requiring any child to attend structured after-school or evening programs which address some of the child's compliance issues, as well as supervise the child during the time of the day in which the child most values his or her freedom and the time which is most often used to perform unruly acts. The cost of said programs shall be paid by private insurance, if available, or otherwise by the department. Services shall be for those programs that have been certified pursuant to RSA 170–G:4, XVIII.

I–a. In the case of a child for whom behavioral health services are being coordinated by a care man-

agement entity as defined in RSA 135–F:4, the court shall solicit and consider treatment and service recommendations from the entity. If the court orders a disposition which is not consistent with the entity's recommendations, it shall make written findings regarding the basis for the disposition and the reasons for its determination not to follow the recommendations.

II. Any child placed under this section with someone other than a relative shall be placed in a residential care facility licensed pursuant to RSA 170–E. If a child is placed out of state, the provisions of RSA 170–A shall be followed.

II–a. When a minor is in an out-of-home placement, the court shall adopt a concurrent plan other than reunification for the minor. The other options for a permanency plan include termination of parental rights or parental surrender when an adoption is contemplated, guardianship with a fit and willing relative or another appropriate party, or another planned permanent living arrangement.

II–b. When a dispositional order places a minor in an out-of-home placement pursuant to RSA 169–B:19, I(e) or (f), prior to concluding the dispositional hearing the court shall set a date for a permanency hearing pursuant to RSA 169–D:21–a.

II–c. A dispositional order for inpatient treatment at an alcohol or drug treatment facility may only be issued following a finding that the child requires substance use disorder services pursuant to an evaluation by any licensed health care professional making the decision based on American Society of Addiction Medicine criteria.

III. The court may order the child or the family or both to undergo physical treatment or treatment by a mental health center or any other psychiatrist, psychologist, psychiatric social worker or family therapist as determined by the court.

III–a. In addition to any other disposition, the court may, with the consent of the minor and the minor's family, refer the minor and family to a care management entity as defined in RSA 135–F:4 III for behavioral health services to be coordinated and supervised by that entity. Such a referral may be accompanied by one or more other dispositions in this section, if otherwise authorized and appropriate.

IV. All dispositional orders issued pursuant to this section shall include written findings as to the basis for the disposition and such conditions as the court imposes, and a specific plan of the services to be provided, including but not limited to those listed in paragraphs I, II and III.

V. (a) The court may punish a child or his parent or parents for contempt of court for refusal to participate in the specific dispositional plan as ordered by the court pursuant to paragraph IV.

(b) Any child or his parent or parents prosecuted for contempt under this paragraph shall be afforded notice of the essential facts constituting the criminal contempt charged, a hearing, counsel, and shall be adjudged guilty of criminal contempt only upon proof beyond a reasonable doubt.

(c) A child found guilty of contempt may be immediately detained in home detention or placed in a shelter care facility.

VI. If the judge orders services, placements, or programs different from the recommendations of the department, the judge shall include a statement of the costs of the services, placements, and programs so ordered.

VII. Prior to any placement which will require educational services outside the child's home school district, the court shall notify the school district and give the district the opportunity to send a representative to the hearing at which such placement is contemplated. At such hearing the court shall consider the recommendations of the school district and if such an out-of-district placement is ordered the court shall make written findings that describe the reasons for the placement.

VIII. The court may issue such orders as are necessary to ensure provision of services under this chapter, provided that any order issued involving the department of education or a legally liable school district shall comply with RSA 169–B:22.

IX. The department shall ensure that, when psychotropic medication is prescribed for children in foster care, appropriate medication monitoring is provided pursuant to current American Academy of Child and Adolescent Psychiatry (AACAP) Standards.

**Source.** 1979, 361:2. 1981, 401:1. 1982, 39:17. 1983, 416:9. 1987, 402:11. 1989, 285:9. 1990, 201:12; 257:7. 1992, 284:4. 1994, 81:3; 212:2. 1995, 181:4; 308:79, 80; 310:175, 181. 1999, 266:9. 2001, 117:2; 286:19. 2007, 236:20; 295:6; 325:14, 17. 2008, 213:1; 274:14. 2011, 224:29. 2013, 249:12, eff. Sept. 1, 2013. 2017, 156:171, eff. July 1, 2017. 2019, 44:12, 13, eff. Aug. 2, 2019; 346:340, 341, eff. July 1, 2019. 2020, 26:25, 26, eff. July 1, 2020. 2021, 182:6, eff. Jan. 1, 2022.

[1] RSA 625:1 et seq.

[2] RSA 259:1 et seq.

**169–D:17–a Out-of-District Placement.**

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 section shall apply to the original order and all subsequent modifications of that order.

**Source.** 1991, 324:3, eff. Aug. 27, 1991.

**169–D:17–b Presumption in Favor of In-State Placements.**

There shall be a presumption that an in-state placement is the least restrictive and most appropriate placement. The court may order an out-of-state placement only upon an express written finding that there is no appropriate in-state placement available.

**Source.** 1995, 308:81, eff. July 1, 1995.

**169–D:17–c Court Order for Services, Placements, and Programs Required for Minors From Certain Providers Qualified for Third-Party Payment.**

The court, wherever and to the extent possible, shall order services, placements, and programs by providers certified pursuant to RSA 170–G:4, XVIII who qualify for third-party payment under any insurance covering the minor.

**Source.** 1996, 286:12, eff. June 10, 1996.

**169–D:18 Disposition of Child With a Disability.**

I. At any point during the proceedings, the court may, either on its own motion or that of any other person, and if the court contemplates a residential placement, the court shall immediately, join the legally liable school district for the limited purposes of directing the school district to determine whether the child is a child with a disability as defined in RSA 186–C or of directing the school district to review the services offered or provided under RSA 186–C if the child has already been determined to be a child with a disability. If the court orders the school district to determine whether the minor is a child with a disability, the school district shall make this determination by treating the order as the equivalent of a referral by the child's parent for special education, and shall conduct any team meetings or evaluations that are required under law when a school district receives a referral by a child's parent.

II. Once joined as a party, the legally liable school district shall have full access to all records maintained by the district court under this chapter. The school district shall also report to the court its determination of whether the minor is a child with a disability, and the basis for such determination. If the child is determined to be a child with a disability, the school district shall make a recommendation to the court as to where the child's educational needs can be met in accordance with state or federal education laws. In cases where the court does not follow the school district's recommendation, the court shall issue written findings explaining why the recommendation was not followed.

III. If the school district finds or has found that the child is a child with a disability, or if it is found that the child is a child with a disability on appeal from the school district's decision in accordance with the due process procedures of RSA 186–C, the school district shall offer an appropriate educational program and placement in accordance with RSA 186–C. Financial liability for such educational program shall be as determined in RSA 186–C:19–b.

IV. In an administrative due process hearing conducted by the department of education pursuant to RSA 186–C, a school district may provide a hearing officer with information from district court records which the school district has accessed pursuant to paragraph II of this section, provided that:

(a) At least 20 days prior to providing any records to the hearing officer, the school district files notice of its intention to do so with the court and all parties to the proceedings, and no party objects to the release of records.

(b) The notice filed by a school district under this provision shall include, on a separate sheet of paper, the following statement in bold typeface: "Persons subject to juvenile proceedings have important rights to the confidentiality of juvenile court proceedings. This notice requests the disclosure of some of that information. If you object to the disclosure of information, you must file a written objection with the court no later than 10 days after the filing of the school district's notice. If you fail to object in writing, the court may allow private information to be revealed to the New Hampshire Department of Education hearing officer."; and

(c) Any objection by a party shall be filed with the court no later than 10 days after the filing of the school district's notice with the court, unless such time is extended by the court for good cause.

V. The court may, on its own initiative and no later than 13 days after the filing of the school district's notice to the court, issue an order directing

the school district to show cause why the information should be disclosed to the hearing officer. Upon receipt of an objection or issuance of a show cause order, the court shall schedule an expedited hearing on the matter to determine if the requested records may be released. The court may rule without a hearing if the school district and a parent or legal guardian or the juvenile, if he or she has reached the age of majority, agree in writing to waive a hearing. Upon the filing of an objection or show cause order, the school district may file a reply explaining why the school district believes that the information should be disclosed to the hearing officer. In determining whether to authorize the disclosure of the information requested by the school district, the court shall balance the importance of disclosure of the records to a fair and accurate determination of the merits against the privacy interests of the parties to the proceedings, and render a written decision setting forth its findings and rulings. No information released to a hearing officer pursuant to this paragraph shall be disclosed to any other person or entity without the written permission of the court, the child's parent or legal guardian, or the juvenile if he or she has reached the age of majority, except that a court conducting an appellate review of an administrative due process hearing shall have access to the same information released to a hearing officer pursuant to this paragraph.

VI. In this section, "child with a disability" shall be as defined in RSA 186–C.

**Source.** 1979, 361:2. 1983, 458:3. 1986, 223:14. 1987, 402:23. 1990, 140:2, X. 2008, 274:15, eff. July 1, 2008.

### 169–D:18–a Determination of Competence.

I. At any point during the proceedings, the court may, either on its own motion or that of any of the parties, order the child to submit to a mental health evaluation for the purpose of determining whether the child is competent to have committed the offenses or acts alleged in the petition. The evaluation shall be completed within 60 days of the date of such order and shall be conducted by an agency which is approved by the commissioner of health and human services, or conducted by a psychologist licensed in New Hampshire or a qualified psychiatrist, or by a facility providing child inpatient psychiatric treatment within the state mental health system only upon receiving prior approval for admission of the child for such evaluation by the commissioner of the department of health and human services. The evaluation shall be submitted to the court in writing prior to the hearing on the merits.

II. The court shall inform the child of his right to object to the evaluation; if he does object, he shall do so in writing to the court within 5 days of the court's order for the evaluation. The court shall hold a hearing to consider the objection, and may, for good cause, excuse the child from the evaluation.

III. Whenever such an evaluation has been made previously for consideration at a prior proceeding, it shall be jointly reviewed by the court and the evaluating agency before the case is heard. The evaluator shall keep records of having conducted the evaluation, but no reports or records shall be made available, other than to the court and parties, except upon the written consent of the child or his legal representative, parent or guardian or pursuant to RSA 169–B:35.

**Source.** 1990, 201:13. 1994, 212:2. 1995, 310:182. 1998, 234:6, eff. Oct. 31, 1998. 2020, 26:27, eff. July 1, 2020. 2022, 272:50, eff. June 24, 2022.

### 169–D:18–b Notice to School District of Out-of-Home Placement; Development of Transition Plan.

I. If the department of health and human services recommends or initiates an out-of-home placement or a change in placement, whether within or out of the district, the department shall notify the school district as soon as possible of the change in placement and shall work with the school district to determine how, consistent with the best interest of the child, to assure the child's educational stability.

II. When necessary to transition the child to a different school or school district, the department and school district shall develop a transition plan for the child. The objective of the plan shall be to minimize the number of placements for the child and to facilitate any change in placement or school assignment with the least disruption to the child's education. To the extent appropriate, the child may be involved in the formation of the plan.

**Source.** 2018, 51:3, eff. July 14, 2018.

### 169–D:19 Modification of Dispositional Orders.

Upon the motion of a child, parent, custodian, guardian, counsel, or the department alleging a change of circumstances requiring a different disposition, the court shall conduct a hearing and pursuant to RSA 169–D:17 may modify a dispositional order; provided that the court may dismiss the motion if the allegations are not substantiated in the hearing.

**Source.** 1979, 361:2. 1995, 308:82; 310:175, eff. Nov. 1, 1995.

### 169–D:20 Appeals.

An appeal, under this chapter, may be taken to the superior court by the child, parent, guardian or custodian, within 30 days of the final dispositional order, but an appeal shall not suspend the order or decision of the court unless the court so orders. The superior court shall hear the matter de novo, and shall give an appeal under this chapter priority on the court calendar.

**Source.** 1979, 361:2, eff. Aug. 22, 1979.

### 169–D:21 Periodic Review of Disposition Required.

I. The court shall conduct periodic review hearings to review the disposition of a child under RSA 169–D:17. The court may review a case at any time.

II. At this hearing, the court shall determine whether the department has made reasonable efforts to finalize the permanency plan that is in effect. Where reunification is the permanency plan that is in effect, the court shall consider whether services to the family have been accessible, available, and appropriate.

**Source.** 1979, 361:2. 2007, 236:21, eff. Jan. 1, 2008.

### 169–D:21–a Permanency Hearings.

I. For a child who enters an out-of-home placement prior to an adjudicatory finding and who is in an out-of-home placement for 12 or more months, the court shall hold and complete an initial permanency hearing within 14 months of the child's entry into out-of-home placement or within 12 months of the court's adjudicatory finding, whichever is earlier. For a child who enters an out-of-home placement subsequent to an adjudicatory finding and who is in an out-of-home placement for 12 or more months, the court shall hold and complete an initial permanency hearing within 12 months of the child's entry into out-of-home placement. For a child who is in out-of-home placement following the initial permanency hearing, the court shall hold and complete a subsequent permanency hearing within 12 months of the initial permanency hearing and every 12 months thereafter as long as the child is in an out-of-home placement.

II. At a permanency hearing the court shall consider whether the parent or parents and child have met the responsibilities pursuant to the dispositional orders issued by the court. If compliance with the dispositional orders pursuant to RSA 169–D:17 is not met, the court may adopt a permanency plan other than reunification for the child. Other options for a permanency plan include:

(a) Termination of parental rights or parental surrender when an adoption is contemplated;

(b) Guardianship with a fit and willing relative or another appropriate party; or

(c) Another planned permanent living arrangement.

III. At a permanency hearing the court shall determine whether the department has made reasonable efforts to finalize the permanency plan that is in effect. Where reunification is the permanency plan that is in effect, the court shall consider whether services to the family have been accessible, available, and appropriate.

**Source.** 2007, 236:22. 2008, 213:2, eff. Aug. 15, 2008.

### 169–D:22 Limitations of Authority Conferred.

This chapter shall not be construed as applying to persons 16 years of age or over who are charged with the violation of a motor vehicle law, an aeronautics law, a law relating to navigation of boats, a fish and game law, a law relating to title XIII, or a law relating to fireworks under RSA 160–B or RSA 160–C, and shall not be construed as applying to any minor charged with the violation of any law relating to the possession, sale, or distribution of tobacco products to or by a person under 21 years of age.

**Source.** 1979, 361:2. 1995, 308:83. 1999, 348:16, eff. Jan. 21, 2000. 2019, 346:106, eff. Jan. 1, 2020. 2020, 37:116, eff. July 29, 2020.

### 169–D:23 Religious Preference.

The court and officials in placing children shall, as far as practicable, place them in the care and custody of some individual holding the same religious belief as the child or parents of the said child, or with some association which is controlled by persons of like religious faith. No child under the supervision of any state institution shall be denied the free exercise of his religion or that of his parents, whether living or dead, nor the liberty of worshipping God according thereto.

**Source.** 1979, 361:2, eff. Aug. 22, 1979.

### 169–D:24 Court Sessions.

All hearings shall be held separate from the trial of criminal cases and such hearings shall be held wherever possible in rooms not used for such trials. Only such persons as the parties, their witnesses, counsel and representatives of the agencies present to perform their official duties shall be admitted.

**Source.** 1979, 361:2, eff. Aug. 22, 1979.

### 169–D:25 Case and Court Records.

I. All case records, defined in RSA 170–G:8–a, relative to children in need of services, shall be confidential and access shall be provided pursuant to RSA 170–G:8–a.

II. The court records of proceedings under this chapter shall be kept in books and files separate from all other court records. Such records shall be withheld from public inspection but shall be open to inspection by juvenile probation and parole officers, a parent, a guardian, a custodian, the relevant county, the minor's attorney and others entrusted with the supervision of the child. Additional access to court records may be granted by court order or upon the written consent of the minor. Once a child in need of services reaches 18 years of age, all court and police records shall be destroyed.

**Source.** 1979, 361:2. 1987, 402:14. 1993, 266:5; 355:6. 2000, 294:10, eff. July 1, 2000.

### 169–D:26 Penalty for Disclosure of Records.

It shall be unlawful for any person to disclose court records, or any part thereof, to persons other than those entitled to access under RSA 169–D:25, except by court order. Any person who knowingly violates this provision shall be guilty of a misdemeanor.

**Source.** 1979, 361:2. 1993, 355:7, eff. Sept. 1, 1993.

### 169–D:27 Publication Restricted.

It shall be unlawful for any newspaper to publish, or any radio or television station to broadcast or make public the name or address or any other particular information serving to identify any child taken into custody, without the express permission of the court; and it shall be unlawful for any newspaper to publish, or any radio or television station to make public, any of the proceedings of any court hearing.

**Source.** 1979, 361:2, eff. Aug. 22, 1979.

### 169–D:28 Penalty for Forbidden Publication.

The publisher of any newspaper or the manager, owner or person in control of a radio or television station or agent or employee of any of the above who may violate any provision of RSA 169–D:27 shall be guilty of a misdemeanor.

**Source.** 1979, 361:2, eff. Aug. 22, 1979.

### 169–D:29 Liability for Expenses.

I. (a) Whenever an order creating liability for expenses is issued by the court under this chapter, any expenses incurred for services, placements, and programs the providers of which are certified pursuant to RSA 170–G:4, XVIII, shall be payable by the department of health and human services.

(b) Subparagraph (a) shall not apply to expenses incurred for special education and related services, or to expenses incurred for evaluation, care, and treatment of a child receiving inpatient psychiatric treatment within the state mental health system or to expenses incurred for the cost of accompanied transportation.

(c) Liability for placement expenses for any court ordered placement of any minor mother under this chapter shall include liability for placement expenses for the child or children of such minor mother if the minor mother and child or children are placed at the same facility.

II. Services, programs, and placements payable by the department under this section shall include diversion services and services provided through a voluntary service plan.

III. Notwithstanding paragraphs I and II, the parents or other persons responsible by law for the minor's support and necessities shall promptly notify the department of any insurance benefits that may be available to pay for all or a portion of the services provided. If insurance coverage is available, the parents or other persons responsible by law for the minor's support and necessities shall cooperate with the insurance carrier and assign such insurance benefits to the department for services delivered by the department.

IV. The office of reimbursements acting on behalf of the department of health and human services is authorized to compromise or reduce any expense to be charged to the state under this section.

**Source.** 1979, 361:2. 1981, 555:3. 1982, 25:4. 1983, 458:6. 1985, 96:6; 380:39. 1987, 402:33, 34. 1988, 107:5; 153:3, 6. 1989, 75:3; 229:3; 286:3. 1990, 3:50; 203:3. 1991, 265:4. 1993, 266:6. 1994, 212:2. 1995, 220:4; 308:84, 85; 310:175, 181–183. 1996, 286:15, 18. 1997, 305:3. 2007, 263:22. 2008, 274:33. 2009, 144:35. 2010, 175:7, eff. Jan. 1, 2011. 2014, 57:2, eff. Jan. 1, 2015. 2017, 219:1, eff. July 10, 2017. 2018, 55:3, eff. July 14, 2018. 2019, 196:3, eff. Sept. 8, 2019. 2020, 26:28, eff. July 1, 2020. 2022, 272:51, 52, eff. June 24, 2022.

### 169–D:30 Severability.

If any provision of this chapter or the application thereof to any person or circumstances is held to be invalid, the remainder of the chapter and the application of such provision to other persons or circumstances shall not be affected thereby.

**Source.** 1979, 361:2, eff. Aug. 22, 1979.

**169–D:31 Data Collection; Reporting Requirement.**

I. The department shall establish a system to collect data related to:

(a) The person or entity who referred the child for services and/or filed the petition.

(b) The racial and ethnic identity of the child.

(c) The insurance status and coverage of child served.

(d) The length of time a child receives services under this chapter, including the time prior and subsequent to the filing of a petition.

(e) The identity of any public or private organization to whom the department has referred a child or family.

(f) Any other information, including outcome data, that may assist the department and the court in evaluating the availability and effectiveness of services for children who receive assistance under this chapter.

(g) The number of cases in which the department determined that voluntary services under RSA 169–D:5–c were not appropriate, and the basis for those decisions.

(h) The type of services offered and/or provided to a child on a voluntary basis and the type of services ordered by the court after adjudication and disposition.

II. The department shall, upon request, make available to members of the public, compilations of the data which do not contain identifying information.

III. Beginning on or before December 30, 2013, the department shall provide quarterly reports regarding cases handled pursuant to this chapter to the chair of the house children and family law committee, the chair of the senate health, education and human services committee, or to the chairs of their successor committees, as well as the chair of the joint fiscal committee. The reports shall include:

(a) The number of cases assessed pursuant to RSA 169–D:5–c.

(b) The number of cases declined for voluntary services and the bases for the declinations.

(c) The number of cases accepted for voluntary services and their ultimate disposition.

(d) The number of petitions filed pursuant to RSA 169–D:5, I, and their dispositions.

(e) The number of voluntary and court-based cases pending in each definition category of RSA 169–D:2, II at the beginning and end of the quarter.

(f) The type and cost of services provided in cases accepted for voluntary services and cases handled through the court, in each definition category of RSA 169–D:2, II.

**Source.** 2013, 249:13, eff. Sept. 1, 2013.

## CHAPTER 170–E

## CHILD DAY CARE, RESIDENTIAL CARE, AND CHILD-PLACING AGENCIES

**Child Day Care Licensing**



**Residential Care and Child-Placing Agency Licensing**

## Child Day Care Licensing

### 170–E:1 Purpose.

The purpose of this subdivision is to provide for the licensing of child day care agencies.

**Source.** 1990, 257:8, eff. Jan. 1, 1991.

### 170–E:2 Definitions.

In this chapter:

I. "Applicant" means a person, institution or agency who intends to receive for child day care one or more children unrelated to the operator and who indicates that intent to the department by filling out the forms prescribed by rule adopted by the commissioner pursuant to RSA 541–A.

II. "Child" means any person under 18 years of age.

III. "Child day care" means the care and supervision of a child away from the child's home and apart from the child's parents.

IV. "Child day care agency" means any person, corporation, partnership, voluntary association or other organization, either established for profit or otherwise, which regularly receives for child day care one or more children, unrelated to the operator or staff of the agency. The total number of hours in which a child may remain in child day care shall not exceed 13 hours per day, except in emergencies. The types of child day care agencies are defined as follows:

*[Paragraph IV(a) effective until June 30, 2024; see also paragraph IV(a) set out below.]*

(a) "Family day care home" means an occupied residence in which child day care is provided for less than 24 hours per day, except in emergencies, for up to 6 children from one or more unrelated families. The 6 children shall include any foster children residing in the home and all children who are related to the caregiver except children who are 10 years of age or older. In addition to the 6 children, up to 3 children attending a full day school program may also be cared for up to 5 hours per day on school days and all day during school holidays.

*[Paragraph IV(a) effective June 30, 2024; see also paragraph IV(a) set out above.]*

(a) "Family day care home" means an occupied residence in which child day care is provided for less than 24 hours per day, except in emergencies, for up to 6 children from one or more unrelated families. The 6 children shall include any foster children residing in the home and all children who are related to the caregiver except children who are 10 years of age or older. In addition to the 6 children, up to 3 children attending a full day school program may also be cared for up to 5 hours per day on school days and all day during school holidays, provided that the after school and holiday increase in capacity is permitted by the state fire code and in compliance with any local ordinance.

*[Paragraph IV(b) effective until June 30, 2024; see also paragraph IV(b) set out below.]*

(b) "Family group day care home" means an occupied residence in which child day care is provided for less than 24 hours per day, except in emergencies, for 7 to 12 children from one or more unrelated families. The 12 children shall include all children related to the caregiver and any foster children residing in the home, except children who are 10 years of age or older. In addition to the 12 children, up to 5 children attending a full day school program may also be cared for up to 5 hours per day on school days and all day during school holidays.

*[Paragraph IV(b) effective June 30, 2024; see also paragraph VI(b) set out above.]*

(b) "Family group day care home" means an occupied residence in which child day care is provided for less than 24 hours per day, except in emergencies, for 7 to 12 children from one or more unrelated families. The 12 children shall include all children related to the caregiver and any foster children residing in the home, except children who are 10 years of age or older. In addition to the 12 children, up to 5 children attending a full day school program may also be cared for up to 5 hours per day on school days and all day during school holidays, provided that the after school and holiday increase in capacity is permitted by the state fire code and in compliance with any local ordinance.

(c) "Group child day care center" means a child day care agency in which child day care is provided for preschool children and up to 5 school-age children, whether or not the service is known as day nursery, nursery school, kindergarten, cooperative, child development center, day care center, center for the developmentally disabled, progressive school, Montessori school, or by any other name.

(d) "Infant and toddler program" means a child day care agency in which child day care is provided for any part of a day, for 5 or more children under the age of 3 years.

(e) "Night care agency" means a center or family home in which child day care is provided during the evening and night hours. A child day care agency may be licensed for day care, night care, or both.

(f) "Preschool program" means a child day care agency providing care and a structured program for children 3 years of age and older who are not attending a full day school program. The total amount of hours a child may be enrolled in a preschool program shall not exceed 5 hours per day.

(g) "School-age program" means a child day care agency providing child day care before or after, or before and after, regular school hours, and all day any time school is not in session, for 6 or more children enrolled in school, who are 4 years and 8 months of age or older, and which is not licensed under RSA 170–E:56. The number of children shall include all children present during the period of the program, including those children related to the caregiver.

(h) "Dual licensure" means the issuance of 2 licenses by the department of health and human services to operate both a child day care agency and a family foster care agency, as provided by RSA 170–E:8, II.

*[Paragraph IV(i) effective June 30, 2024.]*

(i) "Small group child day care center" means a child day-care agency in which child day care is provided for not more than 12 preschool children, whether or not the service is known as day nursery, nursery school, kindergarten, cooperative, child development center, day-care center, center for the developmentally disabled, progressive school, Montessori school, or by any other name.

V. "Commissioner" means the commissioner of the department of health and human services.

VI. "Corrective action plan" means a written proposal setting forth the procedures by which a child day care agency will come into compliance with the standards set by rules adopted by the commissioner under RSA 541–A, and subject to the approval of the department. The proposal shall include the time

needed to assure compliance and the steps proposed by the agency to reach compliance.

VII. "Department" means the department of health and human services.

VIII. "Guardian" means the guardian of the person of a minor, as defined in RSA 463.

IX. "License" means an authorization granted by the commissioner to provide one or more types of child day care.

X. "Monitoring visit" means a visit made to the child day care agency by department personnel for the purpose of assessing compliance with the standards set by rule adopted by the commissioner pursuant to RSA 541–A.

XI. "Permit" means the initial authorization to operate issued to an operator of a child day care agency, which shall not be renewable except for good cause shown.

XI–a. "Recreational program" means any before and/or after school, vacation, or summer program for children 4 years and 8 months of age or older offered by a school or religious group, the Boys and Girls Clubs of America, Girls, Incorporated, the YMCA, or the YWCA, provided that the program:

(a) Does not operate in a private home;

(b) Notifies parents or guardians that the program is not subject to licensure under RSA 170–E:4;

(c) Has policies and procedures to address the filing of grievances by parents and guardians; and

(d) Is a member in good standing and in compliance with the national organization's minimum standards and procedures.

XII. "Regularly" or "on a regular basis" means supervision and care up to and including 7 days a week, whether paid or unpaid, for the following as defined in RSA 170–E:2, IV: (a) family day care home, (b) family group day care home, (c) group child day care center, (d) day care nursery, (e) night care agency, (f) preschool program, and (g) school-age program.

XIII. "Related" means any of the following relationships by blood, marriage, or adoption: parent, grandparent, brother, sister, stepparent, stepgrandparent, stepbrother, stepsister, uncle, aunt, niece and nephew, first cousin, or second cousin.

**Source.** 1990, 257:8. 2005, 156:1, eff. Aug. 20, 2005. 2019, 346:132, eff. Jan. 1, 2020. 2021, 122:48, eff. July 9, 2021. 2023, 167:1, eff. July 28, 2023; 209:1, eff. Oct. 3, 2023; 218:2, 3, eff. June 30, 2024.

**170–E:3 Exemptions; Child Endangerment Prohibited.**

I. The definitions in RSA 170–E:2, IV shall not apply to the following:

(a) Kindergartens, nursery schools, or any other daytime programs operated by a public or private elementary or secondary school system or institution of higher learning.

(b) Programs offering instruction to children, including but not limited to athletics, crafts, music, or dance, the purpose of which is the teaching of a skill.

(c) Private homes in which any number of the provider's own children, whether related biologically or through adoption, and up to 3 additional children are cared for regularly for any part of the day, but less than 24 hours, unless the caregiver elects to comply with the provisions of this chapter and be licensed.

(d) Child care services offered in conjunction with religious services attended by the parent or offered solely for the purpose of religious instruction.

(e) Facilities operated as a complimentary and limited service for the benefit of the general public in connection with a shopping center, ski area, bowling alley, or other similar operation where the parents or custodians of the serviced children are on the premises or in the immediate vicinity and are readily available.

(f) Municipal recreation programs, including after-school and summer recreation programs.

(g) Any recreational program as defined in RSA 170–E:2, XI–a.

(h) Private homes in which the only children in care are the provider's own children, children related to the provider, and children residing with the provider.

(i) A facility licensed as a family child care provider by a branch of the United States Department of Defense, Army, Navy, Marine Corps, Air Force, Space Force, or by the United States Coast Guard.

II. Persons administering programs exempted from licensing pursuant to this section shall be subject to the provisions of RSA 170–E:4, II.

III. Whenever a child day care that is license exempt under subparagraphs I(c), (e), (f), or (g) accepts a new child into the program, the provider shall inform the child's parent or legal guardian that the program is not licensed and is operating as a legally license exempt program.

IV. If a licensed child day care agency ceases operating as a licensed program and continues to provide child care services as a legally license exempt provider, it shall notify the department of the date it ceased being licensed, return its license to the department, and notify the parent or legal guardian of all children in the program or who enroll in the program that it is no longer licensed by the department.

**Source.** 1990, 257:8. 1994, 375:1. 1995, 114:1. 1998, 119:1. 2004, 235:1. 2005, 156:2, eff. Aug. 20, 2005. 2016, 161:6, eff. June 3, 2016. 2023, 21:5, eff. July 3, 2023.

### 170–E:3–a Criminal Records and Central Registry Check of Child Day Care Providers Exempt From Licensing.

Any child day care providers exempt from licensing under RSA 170–E:3 which receive state funds or subsidies in payment for the provision of child day care shall, as a condition of receiving state funds or subsidies, provide their names, birth names, birth dates and addresses, and the same information for any individual residing in the child day care provider's household who may be responsible for the care of, or is in regular contact with children, to the department prior to the receipt of state funds or subsidies on or before July 1, 1999, and every 3 years thereafter. The department shall conduct criminal records and central registry checks on these names in accordance with the provisions of RSA 170–E:7.

**Source.** 1998, 147:1, eff. Jan. 1, 1999.

### 170–E:4 License Required; Prohibition Against Child Endangerment.

I. No person shall establish, maintain, operate or conduct any child day care agency without a license or permit issued by the department under this subdivision. The requirements of this chapter applicable to licensed child day care agencies shall apply with equal force to any child day care agency required to be licensed under this chapter that is not so licensed.

II. No child care provider, whether licensed as a child day care agency, required to be licensed as a child day care agency under paragraph I, or exempted from licensing pursuant to RSA 170–E:3, I, shall care for a child in a manner which endangers the health, safety or welfare of the child. For purposes of this paragraph, endangerment shall mean the negligent violation of a duty of care or protection owed to such child or negligently inducing such child to engage in conduct which endangers his or her health or safety. Endangerment shall also include corporal punishment, as defined by the department. Licensees in violation of this paragraph shall be subject to the provisions of RSA 170–E:12. Persons exempted from licensing who are in violation of this paragraph shall be enjoined by a court of competent jurisdiction in accordance with the provisions of RSA 170–E:22 from caring for such child and may be enjoined, as the court may determine, from caring for other children. Persons operating a child day care agency without a license in violation of paragraph I who engage in negligent conduct that endangers the health, safety, or welfare of the children in their care shall be subject to the criminal penalties in RSA 170–E:21 and may be enjoined from caring for children in accordance with the provisions of RSA 170–E:22.

**Source.** 1990, 257:8, eff. Jan. 1, 1991. 2016, 161:2, 9, eff. June 3, 2016. 2023, 146:1, eff. Aug. 29, 2023.

### 170–E:5 Assistance From Department.

The department, in applying the standards adopted by rule under this subdivision, shall offer consultation through employed staff or other qualified persons to assist applicants and licensees in meeting and maintaining minimum requirements for a license.

**Source.** 1990, 257:8, eff. Jan. 1, 1991.

### 170–E:5–a Child Care Resource and Referral Services.

The department of health and human services shall develop and implement a plan, such plan to be fully funded by federal moneys for child care resource and referral services, which shall have the following responsibilities and duties to the public:

I. Provide referrals to a variety of licensed child care options which meet the parent's or guardian's child care needs.

II. Provide information on child care subsidies, including public and private program eligibility requirements and on tax credits and employer options.

III. Provide counselling on selecting quality child care and early childhood issues.

IV. Provide information on training opportunities for parents, guardians, and child care providers.

V. Provide assistance to state human service agencies in seeking child care for such agencies' clients.

VI. Provide information to parents, guardians and providers through workshops, provider groups, and library resources.

VII. Provide assistance in seeking funding for local providers to develop and improve child care services.

VIII. Provide start-up assistance to prospective center and family day care providers.

IX. Provide information on child care supply and demand data.

X. Provide technical assistance to employers and public and private sector decision-makers to support their efforts to expand and improve quality child care in New Hampshire.

XI. Establish a resource library for parents, providers, employers and the public which includes information on child development, child care options, licensing, model programs, employer options, and other related topics.

XII. Recruitment of, and technical assistance to, existing and prospective local child care providers to encourage the development of special needs child care, protective child care, subsidized child care, mildly ill child care and second-shift child care.

**Source.** 1991, 327:2, eff. Sept. 1, 1991.

**170–E:5–b Nonprofit Child Day Care Loan Program.**

I. There is established the child day care loan program to provide low interest loans for nonprofit child day care providers. The primary purposes of these low interest loans include:

(a) To construct wheelchair and handicap access ramps, van conversions, and bathroom renovations to accommodate children with disabilities.

(b) To pay for expansion or construction costs to serve more children under the state voucher program for low-income families to meet the expected increase of families receiving temporary assistance to needy families entering the work force.

(c) To renovate or upgrade current facilities to maintain or exceed code requirements.

(d) To renovate or expand facilities to serve priority populations, such as infants and toddlers, and families in need of night, weekend, drop-in, and mildly-ill care.

(e) To allow after-school programs to expand and purchase startup supplies, including storage, for school-age children.

(f) To enable child day care providers to secure a more stable environment and continuity of services through ownership or extended lease arrangements.

(g) To allow the purchase or lease of vans to transport children.

(h) To fund any other program-related costs as necessary.

II. Criteria for consideration of loan applicants shall include the provider's commitment to enroll low-income children, children subsidized through the Child Care and Development Fund, and children with disabilities, or legally-operating providers who provide services to these populations. In addition, applicants shall:

(a) Be fiscally sound as shown in a financial statement.

(b) Meet or exceed state and local operating and zoning regulations, including public health, fire, and safety requirements, or present a local exemption from regulations.

(c) Demonstrate a commitment to providing quality child day care through one or more of the following:

(1) Local child care resource and referral relationship.

(2) Family day care support group participation.

(3) Enrollment in the United States Department of Agriculture food program (Child and Adult Food Program).

(4) Documentation of training in the Child Care Basics program or other training approved by the department of health and human services.

(d) Address a geographic or community need for projected child day care services.

III. (a) The department of health and human services may, after consultation with the state child care advisory committee established in RSA 126–A:17, adopt rules pursuant to RSA 541–A, relative to the implementation and administration of the child day care loan program under this section.

(b) The department shall have the responsibility for notifying providers of the availability of the loans and shall provide guidelines for loan application. Notification shall be made publicly, as well as through child care associations and the child care resource and referral network of New Hampshire.

(c) The department of health and human services shall have the authority to designate a statewide, nonprofit community development financial institution as recipient of the funds, or a portion of the funds, to be used as a loan loss reserve or interest subsidy, or both.

(d) The department may elect to contract with a statewide, nonprofit community development financial institution for provision of the following services:

(1) To establish programmatic and credit criteria.

(2) To establish a mechanism for making lending decisions related to project feasibility.

(3) To maintain documentation on the borrower's organization, collateral, and on-going repayment ability.

(4) To collect and report the number of day care slots retained, created, or improved and the number of low-income families served through the child day care loan program or related activities.

IV. The terms and conditions of the loan shall be contained in a binding agreement between the child day care provider and the lender and may include provisions for a lien on the property. Loans subsidized by an interest-rate subsidy shall carry a term of no more than 15 years and shall, to the extent possible and consistent with this section, be determined to match the useful life of the improvements funded by the loan. The department shall annually, on or before July 1, account for any subsidy or loss reserve expended, as well as for the repayment status of all loans made under this program.

**Source.** 1998, 303:2, eff. June 26, 1998.

### 170–E:6 Applications; Compliance With Local Codes Required.

Any person who intends to operate a child day care agency as defined in RSA 170–E:2, IV, shall apply for a license to operate one or more types of child day care agencies. Application for a license to operate a child day care agency shall be made to the department in the manner and on forms prescribed by rules adopted by the commissioner pursuant to RSA 541–A. Such forms shall provide for the names, birth names, birth dates, and addresses of all persons having responsibility for care of or regular contact with children at the agency. The applicant shall obtain approvals in accordance with state and local requirements pertaining to health, safety and zoning, as applicable. School age programs located in currently operating public or private schools shall be exempt from the requirement to provide documentation of approval pertaining to fire, health, and zoning.

**Source.** 1990, 257:8. 1999, 326:1, eff. Jan. 1, 2000.

### 170–E:6–a Registration of Day Care Providers Receiving State Funds.

I. Any person who provides child day care services and receives state funds for such services, but is not required to be licensed under RSA 170–E:4 as a child day care agency, shall register with the department of health and human services.

II. The department of health and human services shall maintain a registry of all providers of child day care services who are not required to be licensed under RSA 170–E:4, but who receive state funds for their services.

**Source.** 1998, 256:1, eff. Jan. 1, 1999.

### 170–E:6–b Insurance Disclosures.

Every person required to be licensed as a child day care agency under RSA 170–E:4 and every child day care provider required to be registered under RSA 170–E:6–a shall either maintain liability insurance or provide a disclosure to parents that the facility is uninsured.

**Source.** 1998, 256:1, eff. Jan. 1, 1999. 2016, 161:3, eff. June 3, 2016.

### 170–E:7 State Registry and Criminal Records Check; Revocation of Registration and Withholding of State Funds.

I. Child day care agencies and providers who are required to be licensed or registered according to the provisions of this chapter shall submit to the department the names, birth names, aliases, birth dates, and resident addresses during the preceding 5 years of all owners, household members, and directors prior to the issuance of a permit or license, and subsequent to licensure, for all individuals as required by the department in rules adopted under RSA 541–A.

I–a. The persons described in paragraph I shall complete a Federal Bureau of Investigation fingerprint check using the biometric identification system through a qualified law enforcement agency or an authorized employee of the division of state police, department of safety and authorize the release of the person's criminal records, if any, to the department. In the event that the first set of fingerprints is invalid due to insufficient pattern, a second set of fingerprints shall be necessary to complete the criminal history records check. If, after 2 attempts, a set of fingerprints is invalid due to insufficient pattern, the department may, in lieu of the criminal history records check, accept police clearances from every city, town, or county where the person has lived during the past 5 years.

II. (a) For every name submitted on an application, in the registration process, and for each individual for whom information is required to be submitted pursuant to paragraph I, the department shall search for such persons against the New Hampshire sex offender and abuse and neglect registries, and the

sex offender registries of each state where the individual resided in the past 5 years. The individual shall submit all forms and any required payments to the department to request from each state a check of the criminal history repository and abuse and neglect registry offices where the individual resided in the past 5 years.

(b) Under the authority of the Child Care and Development Block Grant Act of 2014, the division of state police shall conduct the criminal history records check pursuant to paragraph I–a, through its records and through the Federal Bureau of Investigation, to include a check of the National Sex Offender Registry file in the National Crime Information Center records. Upon completion of the background investigation, the division of state police shall release copies of the criminal conviction records to the department and shall indicate whether the individual is registered on the National Sex Offender Registry file in the National Crime Information Center records. The department shall maintain the confidentiality of all criminal history records information received.

(c) The costs of criminal history record and abuse and neglect registry checks shall be borne by the child day care agency or provider; provided, that the child day care agency or provider may require an applicant to pay the actual costs of the criminal history check and abuse and neglect registry checks of the employee.

(d) Any individual who refuses to consent to the criminal background check or knowingly makes a materially false statement in connection with such criminal background checks shall be ineligible for employment.

II–a. An individual shall not be required to submit a request under paragraph I–a if:

(a) In the previous 5 years, the individual submitted a state criminal records release form and fingerprints and completed a criminal records check under this section;

(b) The individual is currently employed by a child care provider within the state, or has been separated from employment from a child care provider within the state for a period of not more than 180 consecutive days; and

(c) The department made a determination that when the individual completed the criminal records check within the previous 5 years as described in this section, the individual was eligible for employment as provided in paragraphs III and IV.

III. The department shall make a determination regarding the individual's eligibility for employment no later than 45 days from submission of all required information as described in paragraphs I and I–a. If any individual whose name has been submitted for a check under this section is registered or required to be registered on a state sex offender registry or repository, or the National Sex Offender Registry, or has been convicted of a felony consisting of murder, child abuse or neglect, an offense involving child sexual abuse images, trafficking, spousal abuse, a crime involving rape or sexual assault, kidnapping, arson, physical assault or battery, or a drug-related offense committed during the previous 5 years, or any other violent or sexually-related misdemeanor against a child, including child abuse, child endangerment, sexual assault, or a misdemeanor involving child sexual abuse images, or of a crime which shows that the person might be reasonably expected to pose a threat to a child, such as a violent crime or a sexually-related crime against an adult, the department shall:

(a) If the individual is the applicant or owner, revoke or deny the license or permit, or withhold state funds if the child day care provider is not required to be licensed.

(b) For any other individual, inform the child day care agency or registered provider that the individual is ineligible for employment and give the agency or registered provider an opportunity to take immediate corrective action to remove the individual from the agency, and, in conjunction with the department, to develop a corrective action plan, approved by the department, which shall ensure that the individual will not be on the premises of the child day care program and shall have no contact with children enrolled in the child day care program.

(c) Suspend, deny, or revoke the license or permit, and withhold state funding, if the child day care program refuses to take corrective action as indicated in subparagraph (b), or subsequently fails to comply with the corrective action plan approved by the department.

(d) Upon a finding of criminal activity as described in this paragraph, withhold state funding to registered child day care providers that are exempt from the licensing requirements of RSA 170–E:4 if the provider refuses to take corrective action as indicated in subparagraph (b), or fails to comply with the corrective action plan approved by the department.

IV. If any individual whose name has been submitted for this check has been convicted of a felony offense deemed directly or indirectly harmful to children in child day care, crimes against minors or adults, except crimes as provided in paragraph III, or is the subject of a founded complaint of child abuse or neglect, the department may deny, revoke, or suspend a license, permit, or registration pending the development and implementation of a corrective action plan approved by the department. In addition, the department may, upon a finding of criminal activity or a founded complaint of child abuse or neglect as described in this paragraph, withhold state funding to registered child day care providers that are exempt from the licensing requirements of RSA 170–E:4 pending the development and implementation of a corrective action plan approved by the department. The department shall conduct an investigation in accordance with rules adopted under this subdivision to determine whether the individual poses a present threat to the safety of children. The investigation shall include an opportunity for the individual to present evidence on his or her behalf to show that the individual does not pose a threat to the safety of children.

IV–a. After the department has made a determination that an individual required to complete a criminal record check under paragraph I does not pose a present threat to the safety of children, the department may issue a child care employment eligibility card, which shall be valid for 5 years provided that no disqualifying convictions are subsequently submitted, and the individual remains eligible as described in subparagraph II–a(b). The department may require additional background checks to be completed based upon reliable information that the individual received one or more additional convictions subsequent to the previous criminal record check submission. If the department receives confirmation from a law enforcement agency that an individual has been charged with a crime as described in paragraph III or IV, the department shall suspend the individual's child care employment eligibility card and inform the child day care agency or registered provider that the individual is ineligible for employment and give the agency or registered provider an opportunity to take immediate corrective action to remove the individual from the agency, and, in conjunction with the department, to develop a corrective action plan, approved by the department, which shall ensure that the individual shall not be on the premises of the child day care program and shall have no contact with children enrolled in the child day care program while charges are pending.

IV–b. Child day care providers who are required to be licensed or registered according to the provisions of this chapter shall, for every individual submitted for a check under paragraph I who is not required to complete the criminal background check pursuant to paragraph II–a, have on file a signed statement from the individual stating since the day the individual's background check was completed, that he or she:

(a) Has not been convicted of any crimes; and

(b) Has not had a finding by the department or any administrative agency in this or any other state for abuse, neglect, or exploitation.

IV–c. Child day care agencies or providers, whether registered or licensed, and individuals as described in paragraph I, shall complete the background check process described in this section no later than 5 years from the previous background check submission.

IV–d. The fee for a child care employment eligibility card issued under paragraph IV–a shall be $25 and the card shall be valid for 5 years from the date of issuance, or a prorated amount of $5 per year from the most recently completed criminal background check. A replacement card may be requested for a $10 fee.

V. The commissioner shall adopt rules, pursuant to RSA 541–A, relative to the confidentiality of information collected under this section and to the release, if any, of such information.

**Source.** 1990, 257:8. 1994, 212:2. 1995, 310:134. 1998, 147:2, 3; 256:2; 390:1. 1999, 326:2. 2000, 157:1. 2006, 289:8. 2009, 144:255. 2011, 100:1, eff. July 26, 2011. 2016, 158:1–5, eff. Oct. 1, 2016. 2017, 91:3, eff. Aug. 6, 2017. 2018, 318:9, 10, eff. Aug. 24, 2018. 2019, 313:1, eff. July 1, 2019. 2022, 272:58, eff. July 1, 2022.

### 170–E:7–a Child Care Licensing Fund Established.

There is hereby established a nonlapsing fund to be known as the child care licensing fund, which shall be administered by the commissioner of the department of health and human services and which shall be kept distinct and separate from all other funds. All fees for state registry and criminal records checks collected by the department pursuant to RSA 170–E:7 and RSA 170–E:29–a shall be deposited in the fund and all moneys in the fund shall be continually appropriated to the department of health and human services for the purpose of paying costs associated with administering the provisions of this chapter.

**Source.** 2019, 313:3, eff. July 1, 2019.

### 170–E:8 Issuance.

I. Licenses shall be issued in such form and manner as prescribed by rules adopted by the commissioner under RSA 541–A and shall be valid for 3 years from the date issued unless revoked or suspended by the department or voluntarily surrendered by the licensee. Licenses shall not be transferable and shall be surrendered in the event of change of ownership.

II. The department may provide dual licensure to operate a child day care agency and a family foster care agency. Such licensure shall be granted only upon application and shall be contingent upon a determination that the standards of both programs have been met without compromising any licensing requirements.

III. The department shall make monitoring visits a minimum of once yearly during each licensing period. At least one such visit during the licensing period shall be unannounced. Clear and comprehensive records shall be maintained by the department on each licensed agency showing the dates and findings of each such visit. Such records shall be made available to the child day care agency. If the child day care agency is found not to be in compliance with the statute or with rules adopted by the commissioner, a corrective action plan shall be submitted to the department. Failure to submit an acceptable plan shall result in license suspension, denial, or revocation.

IV. The department may, in lieu of a license, issue a permit to a newly established facility for child day care for the purpose of demonstrating compliance with this subdivision and the rules adopted under it during actual operation. At the end of the permit period, the department shall renew the permit for good cause, issue a license for the balance of the license period, or deny the license.

**Source.** 1990, 257:8. 1999, 326:3, eff. Jan. 1, 2000.

### 170–E:8–a Retaliation Prohibited.

The department shall not retaliate against an applicant, licensee, or permittee for any reason. Any applicant, licensee, or permittee who believes that the department's actions regarding licensure or permit status, or the findings of a monitoring visit, were retaliatory in nature may submit a complaint to the commissioner. The department shall investigate the complaint in order to take appropriate action against any department employee having found to be in violation of this section.

**Source.** 2022, 287:3, eff. Aug. 30, 2022.

### 170–E:9 License Renewal.

I. A licensed child day care agency shall file for renewal of its license or permit no later than 3 months prior to the expiration date of the license or permit on forms prescribed by rules adopted by the commissioner under RSA 541–A. An application for the renewal of a license shall not be considered complete until the applicant submits any additional information required by the department, which shall include a corrective action plan if an inspection conducted following receipt of the application for renewal finds the agency out of compliance with a provision or provisions of the applicable licensing rules.

II. The department shall reexamine every child day care agency for renewal of its license or permit, including examination of the premises, program and such records of the agency as the department considers necessary to determine that minimum standards for licensing continue to be met. If the department is satisfied that the agency continues to comply with the minimum standards established by rule for that category of care, which includes the receipt of corrective action plans as defined under RSA 170–E:2 and as established in rule, it shall renew the license to operate.

III. The commissioner may designate an agency or person to carry out the reexamination specified in paragraph II.

IV. If the department is unable to examine the premises and program due to the program not currently operating after the renewal application is received, the department may renew the license to operate provided the program has submitted the local health and safety approvals required under RSA 170–E:6. The department shall examine the premises and program operations no later than 30 days after the program reopens.

**Source.** 1990, 257:8, eff. Jan. 1, 1991. 2023, 209:2, 3, eff. Oct. 3, 2023.

### 170–E:10 Record of Licenses and Investigatory and Monitoring Visits.

I. The department shall keep in a central depository records of licenses issued under this subdivision and all investigatory and monitoring reports, and final decisions relative to licensure that have been made relative to licensees. When a license is issued to a child day care agency, the department shall give notice to the health officer and fire department of the city or town in which the licensee is located stating the granting of such license and its terms. A like

notice shall be given of any suspension or revocation of such license.

II. Information submitted in the application process shall be private, confidential, and not available for review. However, the license itself, the findings of investigatory and monitoring visits, and final decisions relative to licensure of the child day care agency shall be considered public information, posted on the department's website, and available for review by members of the public. The findings of investigatory and monitoring visits and final decisions relative to licensure shall be posted on the department's website not less than 21 business days from the date of the finding or decision, and shall be available on the website for a period of 3 years.

III. At least 15 business days before posting the results or findings of an investigatory visit, monitoring visit, or a final decision relative to licensure on the department's website, the department shall notify the child day care agency of its findings and the date on which the information shall be posted on the department's website. The department may provide such notice by email or, if the child day care agency has not provided an email address, by United States mail. If the child day care agency submits a response prior to the date of posting, the child day care agency's response shall also be posted on the department's website.

**Source.** 1990, 257:8, eff. Jan. 1, 1991. 2014, 128:1, eff. Aug. 15, 2014. 2022, 202:1, eff. Aug. 16, 2022; 287:1, eff. Aug. 30, 2022.

### 170–E:10–a Informal Dispute Resolution.

I. The department shall offer an opportunity for informal dispute resolution to any child day care agency that disagrees with the results or findings of a monitoring visit. The child day care agency shall submit a written request for informal dispute resolution no later than 14 days from the date the findings were issued by the department. Within 30 days of receipt of a request for informal dispute resolution and receipt of information from the child day care agency, the department shall review the evidence presented and provide written notice of its decision to the child day care agency.

II. Informal dispute resolution shall not be available to any child day care agency against which the department has initiated action to suspend, revoke, deny, or refuse to renew a license or permit under this chapter.

**Source.** 2014, 128:2, eff. Aug. 15, 2014.

### 170–E:11 Rulemaking.

The commissioner shall adopt rules, under RSA 541–A, relative to:

I. Minimum standards for licensing which apply to the various types of child day care agencies. The department shall seek the advice and assistance of persons representative of the various types of child day care agencies in adopting rules. The standards prescribed shall include:

(a) The operation and conduct of the agency and the responsibility it assumes for child day care.

(b) The character, qualifications, mental and physical ability and competence of the applicant as well as all persons directly responsible for the care and welfare of children served, or of persons who will be providing necessary care for children and maintaining prescribed standards, or of persons who will do both.

(c) The number of individuals or staff required to insure adequate supervision and care of the children received.

(d) The appropriateness, safety, environmental health and general adequacy of the premises, including maintenance of adequate fire prevention and health standards conforming to state laws and municipal codes, to provide for the physical comfort, health and care of children received; provided that, health and safety requirements with regard to school-age children shall be no more stringent than those required for the public schools.

(e) Provisions for food, clothing, educational opportunities, program, equipment and individual supplies to assure the health and the physical and mental development of children served.

(f) Provisions to safeguard the legal rights of children served.

(g) Maintenance of records pertaining to the admission, progress, health and discharge of children.

(h) Filing of reports with the department, including format, frequency and content of such reports.

(i) Discipline of children.

(j) Protection and fostering of the particular religious faith of the children served, where applicable.

(k) Provisions to provide for a report of any new staff, paid or unpaid, or resident of the facility which shall include the name, birth name, date of birth and previous addresses of the person, or other information as required by rules of the department.

(l) The process and forms for application and renewal of licenses.

(m) The process and forms for requesting waivers to minimum standards and for placing conditions on licenses.

(n) The following qualification for certification as an associate teacher: a minimum of 1,000 hours of supervised child care experience in a licensed child care program and 30 hours of training in child growth and development, the latter of which may be documented life experience. Documented life experience in lieu of training in child growth and development shall include experience with the same age children the associate teacher supervises, such as a family child care provider; service as a foster parent; work as a school teacher; work as a camp counselor; and experience as a group leader for children in sports or other activities, such as scouts or little league, or closely related experience.

II. The confidentiality of information collected pursuant to RSA 170–E:7, 170–E:10, 170–E:17, III and 170–E:19.

III. The procedures for the appeals processes provided by RSA 170–E:13, II and III.

IV. Policy and procedures concerning monitoring visits, investigation of complaints and disciplinary proceedings, including corrective action plans, against licensees.

V. Policy and procedures concerning suspension or revocation of licenses.

VI. A schedule of administrative fines which may be imposed under RSA 170–E:21–a for a violation of this chapter or the rules adopted pursuant to it.

VII. Procedures for notice and hearing prior to the imposition of an administrative fine imposed under RSA 170–E:21–a.

VIII. Administration and enforcement of the registration process and maintenance of the registry established under RSA 170–E:6–a.

**Source.** 1990, 257:8. 1991, 355:45. 1998, 256:3, 4, eff. Jan. 1, 1999. 2021, 205:2, Pt. XI, Sec. 1, eff. Oct. 9, 2021.

### 170–E:12 License or Permit Suspension, Revocation, or Denial.

The department may suspend, revoke, deny or refuse to renew any license or permit if the licensee or permit holder:

I. Neglects or abuses children in his care;

II. Does not comply with this subdivision or the rules adopted under this subdivision relative to the supervision of children in his care;

III. Violates any provision of this subdivision, or is unable to meet and maintain standards adopted by the commissioner;

IV. Substantially or repeatedly violates any provisions of the license or permit issued;

V. Furnishes or makes any misleading or any false statement or report to the department;

VI. Refuses or fails to submit any reports or to make available to the department any records required by it in making an investigation of the facility for licensing purposes;

VII. Refuses or fails to submit to an investigation or to the required visits by the department;

VIII. Refuses or fails to admit authorized representatives of the department at any time child care is being provided for the purpose of investigation or visit;

IX. Fails to provide, maintain, equip and keep in safe and sanitary condition premises established or used for child day care as required under standards prescribed by rules adopted by the commissioner under RSA 541–A or as otherwise required by any law, rule, ordinance, or term of the license applicable to the location of such facility;

X. Retaliates against an employee who in good faith reports a suspected violation of the provisions of this subdivision and rules adopted under it;

XI. Meets the conditions specified in RSA 170–E:7, III;

XII. Fails to comply with the corrective action plan submitted by the child day care agency and approved by the department;

XIII. Loses health, safety or zoning approval ; or

XIV. Fails to comply with applicable public health laws and regulations concerning lead.

**Source.** 1990, 257:8. 1999, 326:4, eff. Jan. 1, 2000. 2018, 4:9, eff. Apr. 9, 2018.

### 170–E:13 Notice and Hearing.

I. Should the department determine to suspend, revoke, deny, or refuse to renew a license or permit, it shall send to the applicant, licensee or permittee, by registered mail, an order setting forth the particular reasons for the determination. The suspension, revocation or denial shall become final 10 days after receipt of such order unless the applicant, licensee or

permittee requests a hearing under paragraph II of this section.

II. Any applicant, licensee or permittee aggrieved by a decision of the department to suspend, revoke, deny or refuse to renew a license or permit may appeal to the commissioner. For purposes of carrying out the provisions of this section, the commissioner may, in accordance with the rules adopted by the department of personnel pursuant to RSA 541–A, appoint a hearings officer or officers, as necessary, to preside over such hearings. A hearings officer may affirm, deny or modify the decision of the department. The commissioner shall adopt rules, pursuant to RSA 541–A, relative to procedures for the appeal process provided under this paragraph.

III. When the department decides to suspend, revoke, deny, or refuse to renew a license or permit, and it expressly finds that the continued operation of a child day care agency poses a present and credible threat to the health or safety of children served by the agency, the department shall include in its order issued under paragraph I an order of closure directing that the operation of the agency terminate immediately or on the date specified. Unless the department has ordered the agency to terminate immediately, the agency shall be permitted to operate during the pendency of any proceeding for the review of the decision of the department. Notwithstanding the above, the agency shall retain the right to seek injunctive relief in accordance with RSA 170–E:22.

IV. Rehearings and appeals from a decision of the hearings officer shall be in accordance with rules adopted under RSA 541–A.

**Source.** 1990, 257:8, eff. Jan. 1, 1991. 2022, 287:2, eff. Jan. 1, 2023.

### 170–E:14 Appeal.

Any person aggrieved by any decision rendered after a rehearing held or an appeal brought under RSA 170–E:13, IV may appeal the decision to the superior court.

**Source.** 1990, 257:8, eff. Jan. 1, 1991.

### 170–E:15 Operation Without a License.

Whenever the department is advised, or has reason to believe, that any person is operating a child day care agency without a license or permit, or in violation of any of the provisions of this subdivision, it may make an investigation to ascertain the facts. If it finds that such person is operating or has operated without a license or permit, or in violation of any of the provisions of this subdivision, the department shall issue by certified mail a notice informing such person of the violation and requesting that it cease operating within 24 hours of the date notice is received. The department may report the results of its investigation to the attorney general or to the appropriate county attorney for prosecution.

**Source.** 1990, 257:8, eff. Jan. 1, 1991.

### 170–E:16 Advertising.

A child day care agency licensed or operating under a permit issued by the department may publish advertisements of the services for which it is specifically licensed or issued a permit under this subdivision. No person who is required to obtain a license or permit under this subdivision may advertise or cause to be published an advertisement soliciting a child for child day care unless the person has obtained the requisite license or permit. A child care provider that is legally operating as a license exempt provider under RSA 170–E:3 shall not hold itself out in any way or advertise that it is licensed by the department, including using forms developed by the department for use by licensed child day care agencies.

**Source.** 1990, 257:8, eff. Jan. 1, 1991. 2016, 161:7, eff. June 3, 2016.

### 170–E:17 Investigation.

I. If the department has reason to believe that state or federal funds solicited and received by a corporation for conduct of a child day care agency are not being used for the purpose for which the funds were awarded, or are being fraudulently used by the corporation or its members, or purportedly are being used for a facility or agency which is actually defunct, or are being used by or for an agency which no longer carries a valid license or permit, the department shall report these facts to the attorney general and request an investigation of the corporation to determine if the corporation should be dissolved or whether other action should be taken against the corporation or its members.

II. The department shall conduct an investigation of any complaint of violations of any licensing or operating standards against permitted or licensed child day care agencies. All investigations shall be conducted at reasonable times, with the cooperation of other state or municipal authorities, if required, and may include unannounced visits. The commissioner shall request an annual narrative summary of complaints received by the department.

III. Records compiled during an investigation shall be confidential and shall not be made public by the department.

**Source.** 1990, 257:8. 1995, 310:135, eff. Nov. 1, 1995.

### 170–E:18 Oaths; Subpoenas.

I. The department shall have the power to administer oaths in any disciplinary proceedings.

II. Upon request of the commissioner, the attorney general shall be authorized, for good cause shown, to subpoena witnesses and to compel, by subpoena duces tecum, the production of papers and records in any disciplinary proceedings under this subdivision.

**Source.** 1990, 257:8, eff. Jan. 1, 1991.

### 170–E:19 Records.

Every child day care agency shall keep and maintain such records as the department shall prescribe by rule pertaining to the admission, progress, health and discharge of children under the care of the child day care agency and shall report relative to such matters to the department whenever called for, upon forms prescribed by rule. All records regarding children and all facts learned about children and their relatives shall be kept confidential both by the child day care agency and by the department.

**Source.** 1990, 257:8, eff. Jan. 1, 1991.

### 170–E:20 Notice of Death.

If any child under the control of any licensed child day care agency dies, the licensee shall give notice of such event to the department within 24 hours.

**Source.** 1990, 257:8, eff. Jan. 1, 1991.

### 170–E:21 Penalty.

I. Any natural person shall be guilty of a class A misdemeanor, and any other person shall be guilty of a class B felony, who conducts, operates, or acts as a child day care agency without a license or permit to do so in violation of RSA 170–E:4, I.

II. Any person shall be guilty of a misdemeanor who:

(a) Makes materially false statements to obtain or retain a license or permit.

(b) Fails to keep the records and make the reports required under this subdivision.

(c) Is required to obtain a license or permit under this subdivision and who advertises or causes to be published an advertisement soliciting a child for child day care which is not authorized by any license or permit held.

(d) Violates any other provision of this subdivision or any rule adopted under RSA 541–A by the commissioner for the enforcement of this subdivision.

(e) Holds themselves out in any way or advertises that they are licensed if they do not hold a license issued by the department.

II–a. Any person who operates a licensed or unlicensed child day care agency in violation of RSA 170–E:4, and, as a direct result of that persons' negligent operation, a child suffers permanent impairment to brain function, permanent paralysis, or other permanent debilitating injury, or death, shall be guilty of a class B felony.

III. Each day a violation continues to exist shall constitute a separate offense.

**Source.** 1990, 257:8. 2006, 76:2, eff. July 1, 2006. 2016, 161:4, 5, 8, eff. June 3, 2016.

### 170–E:21–a Administrative Fines.

The commissioner of the department of health and human services, after notice and hearing, pursuant to rules adopted under RSA 541–A, may impose an administrative fine not to exceed $2,000 for each offense upon any person who violates any provision of this chapter or rules adopted under this chapter. Rehearings and appeals from a decision of the commissioner shall be in accordance with RSA 541. Any administrative fine imposed under this section shall not preclude the imposition of further penalties or administrative actions under this chapter. The commissioner shall adopt rules in accordance with RSA 541–A relative to administrative fines which shall be scaled to reflect the scope and severity of the violation. The sums obtained from the levying of administrative fines under this chapter shall be forwarded to the state treasurer to be deposited into the general fund.

**Source.** 1991, 355:46, eff. July 1, 1991.

### 170–E:22 Injunctive Relief.

Any person may institute in any court of competent jurisdiction an action to prevent, restrain, correct or abate any violation of this subdivision or of the rules adopted under RSA 170–E:11; and the court shall adjudge relief, by way of injunction, which may be mandatory or otherwise as may be proper under all the facts and circumstances of the case, in order fully to effectuate the purpose of this subdivision and the rules adopted under it. In a prosecution under this subdivision, a defendant who relies upon the relationship of any child to himself has the burden of proof as to that relationship.

**Source.** 1990, 257:8, eff. Jan. 1, 1991.

### 170–E:23 Confidentiality and Investigations.

State registry files and all other related confidential information kept by any state agency may be used by the department for the purpose of investigation and licensure. The department shall strictly observe the confidentiality requirements of the agency from which it receives information.

**Source.** 1990, 257:8, eff. Jan. 1, 1991.

## Residential Care and Child-Placing Agency Licensing

### 170–E:24 Purpose.

The purpose of this subdivision is to provide for the licensing of residential care and child-placing agencies.

**Source.** 1990, 257:8, eff. Jan. 1, 1991.

### 170–E:25 Definitions.

In this subdivision:

I. "Child" means any person under 21 years of age, or up to the age of a child with a disability as defined in RSA 186–C:2, I and is receiving special education or special education and related services as identified by the child's school district.

II. "Child care agency" means any person, corporation, partnership, voluntary association or other organization either established for profit or otherwise, who regularly receives for care one or more children, unrelated to the operator of the agency, apart from the parents, in any facility as defined in this subdivision and maintained for the care of children. The types of child care agencies are defined as follows:

(a) "Child care institution" means a child care agency where more than 12 children are received and maintained for 24–hour care for the purpose of providing them with care or training, or both. The term "child care institution" shall not include:

(1) Any state operated institution for child care or juvenile detention established by law.

(2) Any institution, home, place, or facility operating under a license pursuant to RSA 151:2.

(3) Any boarding school in which children are primarily taught branches of education corresponding to those taught in public elementary schools or high schools, or both, and which operates on a regular academic school year basis, and which is approved by the department of education.

(4) Any licensed recreation camp.

(b)(1) "Foster family home" means child care in a residence in which family care and training are provided on a regular basis for no more than 6 unrelated children, unless all the children are of common parentage. The maximum of 6 children includes the children living in the home and children received for child care who are related to the residents.

(2) If the limit of 6 children under subparagraph (a)(1) is reached, the foster family is willing and able to take a sibling or a group of siblings of a child already in their care, and the department has concluded that the foster family is able to provide for the safety, permanency, and well-being of the child or children, the department may, notwithstanding the limitations of subparagraph (a)(1), place the sibling or group of siblings in the foster family home.

(c) "Group home" means a child care agency which regularly provides specialized care for at least 5 but no more than 12 children who can benefit from residential living either on a short-term or long-term basis.

(d) "Independent living home" means a child care agency which regularly provides specialized services in adult living preparation in an experiential residential setting for persons 16 years of age or older who have a legal relationship with the department of health and human services and who can benefit from independent living training.

(e) "Specialized care" means a child care agency which regularly provides general care for children who are diagnosed as mentally ill, intellectually disabled, or physically disabled and who are determined to be in need of special mental treatment or nursing care, or both.

(f) "Homeless youth program" means a program, including any housing facilities utilized by such program, which receives any child for the purpose of providing services to facilitate independent living including all of the following program components: individual assessment, referral, housing, and case management. Such services may be provided directly by the agency or through one or more contracts for services.

(g)(1) "Kinship care home" means a type of foster home in which an individual or individuals are licensed to provide care exclusively to kin. There shall be a maximum of 6 children including the children living in the home and children received for child care who are related to the residents.

(2) Notwithstanding the limit of 6 children under subparagraph (e)(1), if the kinship care

family is willing and able to take a sibling or a group of siblings of a child already in their care, and the department has concluded that the kinship care family is able to provide for the safety, permanency, and well-being of the child or children, the department may place the sibling or group of siblings in the kinship care home.

III. "Child-placing agency" means any firm, corporation or association which:

(a) Receives any child for the purpose of providing services related to arranging for the placement of children in a foster family home, group home, or child care institution; or

(b) Receives any child for the purpose of providing services related to arranging for the placement of children in adoption.

IV. "Commissioner" means the commissioner of the department of health and human services.

V. "Corrective action plan" means a written proposal setting forth the procedures by which a child care agency, or child-placing agency will come into compliance with the standards set by rule adopted by the commissioner under RSA 541–A and subject to the approval of the department. The proposal shall include the time needed to assure compliance and the steps proposed by the agency to reach compliance.

VI. "Department" means the department of health and human services.

VII. "Guardian" means the guardian of the person of a minor, as defined in RSA 463.

VIII. "Kin" means a child or children who for which there is a connection or history between a child or their parents and another responsible adult, including but not limited to related adults.

IX. "License" means a complete license issued to an operator of a child care agency or child-placing agency, authorizing the licensee to operate in accordance with the term and conditions of the license, this subdivision, and the rules of the department.

X. "Permit" means an issuance to an operator of a child care agency or child-placing agency which shall not be renewable except for good cause shown and which may be granted for a period not exceeding 6 months to agencies whose services the department finds are needed, but which are temporarily unable to conform to the qualification for a license.

XI. "Regularly" or "on a regular basis" means supervision and care up to and including 7 days a week service, whether continuous or not, for all types of child care subject to the provisions of this subdivision.

XII. "Related" means any of the following relationships by blood, marriage, or adoption: parent, grandparent, brother, sister, stepparent, stepgrandparent, stepbrother, stepsister, uncle, aunt, niece, nephew, first cousin or second cousin.

XIII. "Respite care" means substitute care provided by a person or agency which is licensed as a child care or child-placing agency.

**Source.** 1990, 257:8. 1992, 11:3. 1994, 212:2. 1995, 310:181. 2001, 188:1. 2006, 92:1. 2008, 52:12, eff. July 11, 2008. 2022, 272:15, 16, eff. June 24, 2022. 2023, 209:4, eff. Oct. 3, 2023.

**170–E:26 Exemptions; Child Endangerment Prohibited.**

I. The definitions in RSA 170–E:25, II and III shall not apply to the following:

(a) Families housing exchange students or up to 4 children in summer exchange programs.

(b) Nonresident families visiting the state for purposes of a vacation who have in their care foster children from their home state and have written approval of the out-of-state agency which supervises the foster children.

II. Families exempted from licensing pursuant to this section shall be subject to the provisions of RSA 170–E:27, II.

**Source.** 1990, 257:8, eff. Jan. 1, 1991.

**170–E:27 License Required; Prohibition Against Child Endangerment.**

I. No person may establish, maintain, operate or conduct any agency for child care or for child-placing without a license or permit issued by the department under this subdivision.

II. No person, whether licensed as a child care agency or institution or child-placing agency, or exempted from licensing pursuant to RSA 170–E:26, I, shall care for a child in a manner which endangers the health, safety or welfare of the child. For purposes of this paragraph, endangerment shall mean the negligent violation of a duty of care or protection owed to such child or negligently inducing such child to engage in conduct which endangers his health or safety. Licensees in violation of this paragraph shall be subject to the provisions of RSA 170–E:35. Persons exempted from licensing who are in violation of this paragraph shall be enjoined by a court of competent jurisdiction in accordance with the provisions of RSA 170–E:46 from caring for such child and may be enjoined, as the court may determine, from caring for

other children. The court in its order for injunctive relief shall provide for removal and placement of the child who is the subject of the order with an organization licensed pursuant to this subdivision.

**Source.** 1990, 257:8, eff. Jan. 1, 1991.

**170–E:27–a Homeless Youth Programs; Special Provisions.**

Any child care agency which receives children for the purpose of providing a homeless youth program, as defined in RSA 170–E:25, II(d), shall be subject to the following provisions:

I. When a child 16 or 17 years of age contacts a homeless youth program requesting emergency shelter or homeless services, the program shall:

(a) Assess the child's essential needs, physical and mental health condition, and the circumstances that led the child to seek services.

(b) Upon completion of the assessment, but in no case later than 72 hours from the child's initial request for services, attempt to notify the child's parent or legal guardian that such child is present at the agency's facility. If compelling circumstances become evident during assessment which justify not notifying the parent or legal guardian, the program shall instead notify the department according to RSA 169–C:29. In this paragraph, the term "compelling circumstances" means circumstances which indicate that notifying the parent or legal guardian would subject the child to risk of abuse or neglect as defined in RSA 169–C:3.

(c) Notify the department no later than 30 days after the child's initial request for services if the program is unable to make contact with either of the child's parents or the legal guardian after reasonable attempts to do so.

II. Nothing in this section shall alter the legal relationship between parent or legal guardian and child, and in the absence of a court order directing otherwise, the program shall release the child to the custody of his or her parent or legal guardian upon request by the parent or guardian.

III. If the child is discharged from the program or voluntarily terminates participation in the program, the program shall immediately notify the parents or legal guardian; or the department if the parent or legal guardian has never consented to the child's placement in the program.

IV. A parent or legal guardian who consents in writing to the child's participation in a licensed homeless youth program shall not be deemed neglectful under RSA 169–C:3, XIX.

V. The agency may charge the child a reasonable fee for the services provided the child is working and/or has other regular income and such fee is within his or her ability to pay.

**Source.** 2001, 188:2, eff. Sept. 3, 2001.

**170–E:27–b Immunization Requirements for Foster Family Homes.**

There shall be no vaccination or immunization requirements required of any children residing in a foster home that exceed vaccination or immunization requirements under RSA 141–C:20–a, either in type of vaccination or quantity of doses.

**Source.** 2023, 193:1, eff. Aug. 4, 2023.

**170–E:28 Applications; Compliance With State and Local Codes Required.**

I. Any entity which intends to receive children, or arranges for child care or child placement of one or more children unrelated to the operator, shall apply for a license to operate one or more of the types of facilities for child care. Application for a license to operate a child care agency or institution or a child-placing agency shall be made to the department in the manner and on forms prescribed by rules adopted by the commissioner under RSA 541–A. Such forms shall provide for the birth names, birth dates and addresses of all persons having responsibility for care or placement of children or regular contact with children at the institution or agency. The agency or institution shall obtain approvals in accordance with state and local requirements pertaining to health, safety and zoning as applicable; and, if the department is satisfied that the person, institution, agency, or program conforms to standards prescribed for the type of child care or child placement for which application is made, the department shall issue a license in proper form designating on that license the type of child care or child placement, the name and address of the person or institution, the duration of the license and, except for child-placing agencies, the age range, the gender, and the number of children to be served.

II. Either the state fire marshal or the local fire department shall review compliance of the foster family home with the state fire code. In conducting the review, the state fire marshal or local fire department shall apply the appropriate single family or multi-unit dwelling provisions of the state fire code. A foster family home shall be exempt from local fire regulations and ordinances, provided that the home complies with the requirements of the state fire code.

**Source.** 1990, 257:8. 2001, 77:1, eff. Aug. 18, 2001. 2019, 70:1, eff. Aug. 6, 2019.

**170–E:29 State Registry and Criminal Records Check for Foster Family Homes, Institutions, and Child-Placing Agencies.**

I. Foster family homes, institutions, and child-placing agencies shall, within 30 days of adding new staff members responsible for care of or in regular contact with children, submit the names, birth dates, and addresses of such staff members to the department.

II. Except in the case of an initial application for a foster family home, the department shall, for every name submitted on the application and for each new staff member, or at each renewal, review the names, birth names, birth dates, and current and previous addresses of such persons against the state registry of founded abuse and neglect reports. The department shall submit the names, birth names, birth dates, and addresses to the state police files to obtain information about criminal convictions.

II–a. In the case of an initial application for a foster family home, the department shall conduct a background check of the prospective foster parents and any other adult living in the home. The background check shall consist of a fingerprint-based criminal record check of national crime information databases for the prospective foster parents and any other adults living in the home, as well as a central registry check for the prospective foster parents and any other adult living in the home.

(a) For the criminal record check required under this paragraph, the department shall submit the prospective foster parents' fingerprints and the fingerprints of any other adults living in the home to the department of safety, division of state police, for forwarding to the Federal Bureau of Investigation. Upon completion of the criminal record check, the division of state police shall forward the results to the department.

(b) The central registry check shall include a check of the department's central registry of founded reports of child abuse and neglect under RSA 169–C:35 and shall include a check of the child abuse and neglect registries in any other state in which the prospective foster parents or other adult living in the home has resided in the preceding 5 years. Information obtained from another state pursuant to this subparagraph shall be used only for the purposes of conducting the background checks.

III. If any individual whose name has been submitted for a check under this section has been convicted of a violent or sexually-related crime against a child, or of a crime which shows that the person might be reasonably expected to pose a threat to a child, such as a violent crime or a sexually-related crime against an adult, the department shall deny the license, pending the development and implementation of a corrective action plan approved by the department.

IV. If any individual whose name has been submitted for this check has been convicted of crimes against minors or adults, except crimes as provided in paragraph III, or is the subject of a founded complaint of child abuse or neglect, the department may deny the license or permit, revoke a license, or suspend a license pending the development and implementation of a corrective action plan approved by the department. The department shall conduct an investigation in accordance with rules adopted under this subdivision to determine whether the individual poses a present threat to the safety of children. The investigation shall include an opportunity for the individual to present evidence on his behalf to show that he does not pose a threat to the safety of children.

V. The commissioner shall adopt rules, pursuant to RSA 541–A, relative to the confidentiality of information collected under this section and to the release, if any, of such information.

VI. A kinship care home shall be considered a foster family home for purposes of this section.

**Source.** 1990, 257:8. 1994, 212:2. 1995, 310:136. 2007, 325:4, 5. 2013, 216:1, eff. Sept. 8, 2013. 2017, 136:2, eff. June 16, 2017. 2022, 272:17, eff. June 24, 2022.

**170–E:29–a State Registry and Criminal Records Check for Child Care Institutions and Child Care Agencies.**

I. Child care institutions and child care agencies, with the exception of foster family homes, that are required to be licensed according to the provisions of this chapter shall submit to the department the names, birth names, aliases, birth dates, and resident addresses during the previous 5 years of all owners, household members, and program directors prior to the issuance of a permit or license and prior to making a final offer of employment, for all individuals as required by the department in rules adopted under RSA 541–A.

I–a. The persons described in paragraph I shall complete a Federal Bureau of Investigation fingerprint check using the biometric identification system

through a qualified law enforcement agency or an authorized employee of the division of state police, department of safety and authorize the release of the person's criminal records, if any, to the department. In the event that the first set of fingerprints is invalid due to insufficient pattern, a second set of fingerprints shall be necessary to complete the criminal history records check. If, after 2 attempts, a set of fingerprints is invalid due to insufficient pattern, the department may, in lieu of the criminal history records check, accept police clearances from every city, town, or county where the person has lived during the past 5 years.

II. (a) For every name submitted on an application and for each person for whom information is required to be submitted pursuant to paragraph I, the department shall search for such persons against the New Hampshire sex offender and abuse and neglect registries, and the sex offender and abuse and neglect registries of each state where the individual resided in the past 5 years. The individual shall submit all forms and any required payments to the department to request from each state a check of the abuse and neglect registry records where the individual resided in the past 5 years.

(b) Under the authority of the Child Care and Development Block Grant Act of 2014, the division of state police shall conduct the criminal history records check pursuant to paragraph I–a, through its records and through the Federal Bureau of Investigation, to include a check of the National Sex Offender Registry file in the National Crime Information Center records. Upon completion of the background investigation, the division of state police shall release copies of the criminal conviction records to the department and shall indicate whether the individual is registered on the National Sex Offender Registry file in the National Crime Information Center records. The department shall maintain the confidentiality of all criminal history records information received.

(c) The costs of criminal history record and abuse and neglect registry checks shall be borne by the licensee; provided, that the licensee may require an applicant to pay the actual costs of the criminal history check and abuse and neglect registry checks of the employee.

(d) Any individual who refuses to consent to the criminal background check or knowingly makes a materially false statement in connection with such criminal background checks shall be ineligible for employment.

III. Notwithstanding paragraph I, a licensee may make a final offer of employment and allow a person to begin working in the program while the results of the state and national criminal background check is pending provided that, prior to beginning employment, the applicant completes a statement stating that he or she:

(a) Does not have any felony conviction in this or any other state.

(b) Has not been convicted of a sexual assault, assault including simple assault, any other violent crime, abuse, neglect, or any other crime that shows that they may pose a threat to well-being of children, such as a violent crime or a sexually-related crime against an adult.

(c) Has not had a finding by the department or any administrative agency in this or any other state for abuse, neglect, or exploitation of children.

IV. The results of the criminal background check shall be valid for 5 years. Prior to the expiration of that 5-year period, the individuals described in paragraph I shall undergo a background check pursuant to this section.

IV–a. If a person who is or has been employed or volunteered at a child care institution or child care agency is offered employment or volunteers at another child care institution or child care agency or a child day care agency, the person shall not be required to undergo the criminal records check described in paragraph I–a if the previous criminal records check was completed within the last 5 years as provided in paragraph IV, and the person was determined by the department to be eligible for employment. Before entering employment or volunteering with the new agency, the person shall complete a statement as set forth in paragraph III.

V. The department shall make a determination regarding the individual's eligibility for employment no later than 45 days from submission of all required information as described in paragraphs I and I–a. If any person whose name has been submitted for a check under this section is registered or required to be registered on a state sex offender registry or repository, or the National Sex Offender Registry, or has been convicted of a felony consisting of murder, child abuse or neglect, an offense involving child sexual abuse images, trafficking, spousal abuse, a crime involving rape or sexual assault, kidnapping, arson, physical assault or battery, or a drug-related offense committed during the previous 5 years, or any other violent or sexually related misdemeanor or against a child, including child abuse, child endanger-

ment, sexual assault, or a misdemeanor involving child sexual abuse images, or of a crime which shows that the person might be reasonably expected to pose a threat to a child, such as a violent crime or a sexually-related crime against an adult, the department shall:

(a) If the person is the applicant or owner, revoke or deny the license.

(b) If the person is a board member, household member, or child care institution or child care agency personnel, or any other person having regular contact with the enrolled children inform the child care institution or child care agency that the person is ineligible for employment and give the program an opportunity to take immediate corrective action to remove the person from the program, and, in conjunction with the department, to develop a corrective action plan, approved by the department, which shall ensure that the person will not be on the premises of the child care institution or child care agency and shall have no contact with children enrolled in the child care institution or child care agency.

(c) Suspend, deny, or revoke the license or permit if the child care institution or child care agency refuses to take corrective action as indicated in subparagraph (b), or subsequently fails to comply with the corrective action plan approved by the department.

VI. If any person whose name has been submitted for this check has been convicted of a felony offense or violent crime deemed directly or indirectly harmful to children in child residential care, crimes against minors or adults, except crimes as provided in paragraph V, or is the subject of a founded complaint of child abuse or neglect, the department may deny, revoke, or suspend a license or permit pending the development and implementation of a corrective action plan approved by the department. The department shall conduct an investigation in accordance with rules adopted under this subdivision to determine whether the person is ineligible for employment. The investigation shall include an opportunity for the person to present evidence on his or her behalf to show that the person does not pose a threat to the safety of children.

VII. (a) Once the department has made a determination that the individual required to complete a criminal record check under paragraph I–a is eligible for employment, the department shall issue a residential child care employment eligibility card, which shall be valid for 5 years provided that no disqualifying convictions are subsequently submitted, and the individual remains eligible as described in paragraph V. The department may require additional background checks to be completed based upon reliable information that the individual received one or more additional convictions subsequent to the previous criminal record submission. If the department receives confirmation from a law enforcement agency that an individual has been charged with a crime as described in paragraph III or V, the department shall suspend the individuals residential child care eligibility card and inform the agency that the individual is ineligible for employment and give the agency an opportunity to take immediate corrective action to remove the individual from the agency, and, in conjunction with the department, to develop a corrective action plan, approved by the department, which shall ensure that the individual will not be on the premises of the program and shall have no contact with children enrolled in the program while charges are pending.

(b) The fee for a residential child care employment eligibility card shall be $25, and the card shall be valid for 5 years from the date of issuance, or a prorated amount of $5 per year from the most recently completed criminal background check. The fee for a replacement card shall be $10.

VIII. The commissioner shall adopt rules, pursuant to RSA 541–A, relative to the confidentiality of information collected under this section and to the release, if any, of such information.

**Source.** 2013, 216:2, eff. Sept. 8, 2013. 2016, 158:6, eff. Oct. 1, 2016. 2017, 91:4, eff. Aug. 6, 2017. 2018, 318:11, eff. Aug. 24, 2018. 2019, 313:2, eff. July 1, 2019. 2022, 272:59, eff. July 1, 2022.

### 170–E:30 Child Care Institution; Child-Placing Agency; Information Required.

In addition to the steps required in RSA 170–E:29, the department, upon receiving an application and authorization filed by a child care institution or child-placing agency in proper order, shall, in cooperation with the operator, examine the facility or agency, and investigate the program and person or persons responsible for the care of children. When the facility or agency is administered through an executive board, board of trustees, board of directors, or other governing body, the names, addresses, and any connection of individuals on such bodies with the facility or agency shall be included. The institution or child-placing agency shall obtain and provide receipts of approval of state and local requirements pertaining to health, safety and zoning, as applicable. If the department is satisfied that the institution or child-placing agency conforms to the standards prescribed for the type of facility or agency to be operated, a

license shall be issued. The commissioner or his designee may inspect the facility or agency at any time.

**Source.** 1990, 257:8, eff. Jan. 1, 1991.

### 170–E:31 Issuance.

I. Licenses shall be issued in such form and manner as prescribed by rules adopted by the commissioner under RSA 541–A and, for foster family homes, kinship care homes, and specialized care, shall be valid for 2 years from the date issued, unless revoked by the department, or voluntarily surrendered by the licensee, or subject to conditions attached to the license which provide for a shorter license period than 2 years.

II. The department may provide dual licensure to a facility or child-placing agency. Such licensure shall be granted only upon application and shall be contingent upon a determination, by the appropriate licensing units consulting with each other, that the standards of both programs have been met without compromising any licensing requirements. If the licensing units are unable to agree, the final decision shall be made by the commissioner.

III. Licensure for child care institutions and child-placing agencies shall be valid as follows:

(a) Group homes and child care institutions: 3 years from the effective date of the license.

(b) Child-placing agencies: 4 years from the effective date of the license.

IV. The department shall make monitoring visits a minimum of once yearly each licensing period. At least one such visit during the licensing period shall not be announced in advance; however, such unannounced visit is optional for foster family homes. Clear and comprehensive records shall be maintained by the department on each licensed facility showing the dates and findings of each such visit. Such records shall be made available to the facility. If the facility is found not to be in compliance either with the statute or the rules adopted by the commissioner, a corrective action plan shall be submitted to the department. Failure to submit an acceptable plan shall result in license suspension or revocation.

V. The department may issue a 6-month permit to a newly established facility for child care, or to an established facility which has changed its physical location, to allow that facility reasonable time to become eligible for full licensure. The 6-month permit may be issued immediately upon completion of the necessary licensing inspections. If the language on such permit allows it, the facility may begin operation immediately without waiting for the state office to complete the processing of the application.

**Source.** 1990, 257:8, eff. Jan. 1, 1991. 2022, 272:18, eff. June 24, 2022.

### 170–E:31–a Deemed Licensed.

Any qualified residential treatment program accredited by organizations as specified in Title 42 of the Social Security Act, 42 U.S.C. section 672(k)(4)(G), as amended, shall submit a completed license application or renewal application. Such child care institutions and child care agencies defined as group homes, specialized care, or homeless youth programs, shall be deemed licensed under this subdivision and shall be exempt from inspections carried out under RSA 170–E:31, IV. This section shall only apply to the activities or portions of the facility or agency accredited under Title 42 of the Social Security Act, 42 U.S.C. section 672(k)(4)(G), as amended.

**Source.** 2021, 122:49, eff. July 9, 2021.

### 170–E:32 License Renewal.

I. A licensed child care agency, child care institution, or child-placing agency shall file for renewal of its license 3 months prior to the expiration date of the license on forms prescribed by rules adopted by the commissioner under RSA 541–A.

II. The department, a duly licensed child-placing agency, or a person designated by the department as its agent, shall reexamine every child care facility for renewal of its license, including examination of the premises, program, and such records of the facility as the department considers necessary to determine that minimum standards for licensing continue to be met. If the department is satisfied that the person, institution, or child-placing agency continues to maintain the minimum standards established by rule for that category of child care or child-placing, it shall renew the license to operate.

**Source.** 1990, 257:8, eff. Jan. 1, 1991.

### 170–E:33 Record of Licenses.

I. The department shall keep in a central depository records of licenses issued under this subdivision and all monitoring reports that have been made relative to licensees. When a license is issued to a person or institution, the department shall give notice to the health officer and the fire department of the city or town in which the licensee is located stating the granting of such license and its terms. A like notice shall be given of any suspension or revocation of such license.

II. The license itself shall be considered public information and available for review by members of the public; information submitted in the application process, however, shall be private, confidential and not available for review.

III. For kinship family care licenses, the name of the children for which the license is issued shall be confidential and exempt from RSA 91–A.

**Source.** 1990, 257:8, eff. Jan. 1, 1991. 2022, 272:19, eff. June 24, 2022.

### 170–E:34 Rulemaking; Consultation.

I. The commissioner shall adopt rules, under RSA 541–A, relative to:

(a) Minimum standards for licensing which apply to the various types of facilities for child care and child placement. The department shall seek the advice and assistance of persons representative of the various types of child care and child-placing agencies in establishing such standards. The standards prescribed shall include:

(1) The operation and conduct of the person, institution, or child-placing agency and the responsibility it assumes for child care or child placement, or both.

(2) The character, qualifications, mental and physical ability and competence of the applicant as well as all persons directly responsible for the care and welfare of children served, or of persons who will be providing necessary care for children and maintaining prescribed standards, or of persons who will do both.

(3) The number of individuals or staff required to insure adequate supervision and care of the children provided the particular type of care.

(4) The appropriateness, safety, environmental health and general adequacy of the premises, including maintenance of adequate fire prevention and health standards conforming to state laws and municipal codes, to provide for the physical comfort, health and care of children received.

(5) Provisions for food, clothing, educational opportunities, program, equipment and individual supplies to assure the health and the physical and mental development of children served.

(6) Provisions to safeguard the legal rights of children served.

(7) Maintenance of records pertaining to the admission, progress, health and discharge of children.

(7–a) Provisions for the permanent retention of records pertaining to the placement of children for adoption, including maintenance of such records in the event that a licensed agency ceases to operate as a licensed child-placing agency.

(8) Filing of reports with the department, including format, frequency and content of such reports.

(9) Discipline of children.

(10) Protection and fostering of the particular religious faith of the children served, where applicable.

(11) Provisions to provide for a report of any new staff, paid or unpaid, or resident of the facility which shall include the name, birth name, date of birth and previous addresses of the person, or other information as required by rules of the department.

(12) Duties and responsibilities of the board of directors or other governing body of the facility or child-placing agency with respect to compliance with this subdivision and the standards relating to this subdivision as established by the department.

(13) Retention of records and, in the event the facility or child-placing agency is no longer functioning, transfer of records.

(14) The process for requesting waivers to minimum standards.

(b) Minimum standards for facilities for specialized care, where there are children diagnosed as mentally ill, intellectually disabled, or physically disabled, who are determined to be in need of special mental treatment or nursing care, or both, when the facility is not subject to licensure under RSA 151. The department shall seek the advice and recommendation of the department of education, as appropriate, regarding the residential treatment, education, and nursing care provided by the facility.

(c) The confidentiality of information gathered pursuant to RSA 170–E:28, 170–E:29, 170–E:33 and RSA 170–E:42.

(d) The procedures for the appeals processes provided by RSA 170–E:36, II and IV.

(e) Policy and procedures concerning the investigation of licensees and all disciplinary proceedings, including corrective action plans, against licensees.

(f) Compensation to foster family homes for the costs of caring for each child placed in their home.

(g) The release of information to persons receiving the child which pertains to the life and safety of

the child either about to be placed or already in placement, and which may pertain to the life and safety of the persons who are receiving or who have received the child for placement, including any physical and mental health issues, history of abuse or neglect, behaviors that may be expected, and recommended ways of handling the child's problems. For purposes of this subparagraph, placement shall mean out-of-home placements, including placements for adoption.

(h) Establishing, maintaining, and directing a system of child care resource and referral pursuant to RSA 170–E:5–a.

(i) Compliance with RSA 126–U, regarding the use of physical and medication restraint.

II. The department, in applying the standards adopted by rule under paragraph I, shall offer consultation through employed staff or other qualified persons to assist applicants and licensees in meeting and maintaining minimum requirements for a licensee.

**Source.** 1990, 257:8. 1991, 327:3. 1995, 310:138. 1996, 234:4. 2004, 98:1. 2008, 52:13, eff. July 11, 2008. 2021, 182:7, eff. Jan. 1, 2022. 2023, 209:5, eff. Oct. 3, 2023.

### 170–E:35 License or Permit Suspension, Revocation, or Denial.

The department may suspend, revoke, deny, or refuse to renew any license, or revoke or refuse to issue a full license to any permit holder, whether or not the person, institution or agency is approved by a child-placing agency, if the licensee or permit holder:

I. Neglects or abuses children in his care;

II. Does not comply with this subdivision or the rules adopted under this subdivision relative to the supervision of children in his care;

III. Violates any provision of this subdivision, or is unable to meet and maintain standards adopted by the commissioner;

IV. Substantially or repeatedly violates any provisions of the license or permit issued;

V. Furnishes or makes any misleading or any false statement or report to the department or to the child-placing agency;

VI. Refuses or fails to submit any reports or to make available to the department any records required by it in making an investigation of the facility for licensing purposes;

VII. Refuses or fails to submit to an investigation or to the required visits by the department;

VIII. Refuses or fails to admit authorized representatives of the department at any reasonable time for the purpose of investigation or visit;

IX. Fails to provide, maintain, equip and keep in safe and sanitary condition premises established or used for child care as required under standards prescribed by rules adopted by the commissioner under RSA 541–A or as otherwise required by any law, rule, ordinance, or term of the license applicable to the location of such facility;

X. Refuses to display its license or permit or to make it readily available to view, if requested;

XI. Fails to exhibit, meet or maintain financial or other resources, or both, adequate for the satisfactory care of children served in regard to upkeep of premises and provisions for personal care, medical services, clothing, education and other essentials in the proper care, rearing, training and placement of children, so long as such lack of financial resources is not due primarily to delays in state payments for care;

XII. Retaliates against an employee who in good faith reports a suspected violation of the provisions of this subdivision and rules adopted under it;

XIII. Continues to employ a person without taking corrective action, after receipt of written notification from the department that the person poses a risk to children, such notification including the basis for the department's determination that the risk exists; or

XIV. Fails to comply with the corrective action plan jointly developed between the department and the person, institution or agency.

XV. Demonstrates a repeated failure to cooperate with the department, other service providers, or the parents of a child who is placed with the child care agency, as necessary to implement the child's case plan or the department's treatment decisions.

XVI. Fails to comply with applicable public health laws and regulations concerning lead.

**Source.** 1990, 257:8. 2010, 70:1, eff. July 18, 2010. 2018, 4:10, eff. Apr. 9, 2018.

### 170–E:36 Notice and Hearing.

I. Should the department determine to suspend, revoke or deny, or refuse to renew a license or permit, it shall send to the applicant, licensee or permittee, by registered mail, a notice which sets forth the particular reasons for the determination. The suspension, revocation, or denial shall become final 10 days after receipt of such notice unless the

applicant, licensee or permittee requests a hearing under paragraph II of this section.

II. Any applicant, licensee or permittee aggrieved by a decision of the department to suspend, revoke, deny, or refuse to renew a license or permit may appeal to the commissioner through an administrative hearings process. For purposes of carrying out the provisions of this section, the commissioner may, in accordance with the rules adopted by the department of personnel pursuant to RSA 541–A, appoint a hearings officer or officers, as necessary, to preside over such hearings. A hearings officer may affirm, deny or modify the decision of the department. The commissioner shall adopt rules, pursuant to RSA 541–A, relative to procedures for the appeals process provided under this paragraph.

III. When the department decides to suspend, revoke, deny, or refuse to renew a license or permit, and it expressly finds that the continued operation of a child care facility or child-placing agency violates any minimum standard prescribed by law or rule, or otherwise jeopardizes the health, safety, morals, well-being or welfare of children served by the facility or child-placing agency, the department shall include in its notice an order of closure directing that the operation of the facility or child-placing agency terminate immediately. In this event, the facility or child-placing agency shall not operate during the pendency of any proceeding for the review of the decision of the department, except under court order.

IV. Rehearings and appeals from a decision of the hearings officer shall be in accordance with rules adopted under RSA 541–A.

V. On or before December 31, 2010, and each year thereafter, the department shall submit a report to the chair of the house standing committee on children and family law relative to the number of license or permit suspensions, revocations, denials, and appeals for that year.

**Source.** 1990, 257:8. 2010, 70:2, eff. July 18, 2010.

### 170–E:37 Appeal.

Any person aggrieved by any decision rendered after a rehearing held or an appeal brought under RSA 170–E:36, IV may appeal the decision to the superior court.

**Source.** 1990, 257:8, eff. Jan. 1, 1991.

### 170–E:38 Operation Without a License.

Whenever the department is advised, or has reason to believe, that any entity is operating a child care facility or child-placing agency without a license or permit, it may make an investigation to ascertain the facts. If it finds that the child care facility or child-placing agency is operating or has operated without a license or permit, the department may report the results of its investigation to the attorney general or to the appropriate county attorney for prosecution.

**Source.** 1990, 257:8, eff. Jan. 1, 1991.

### 170–E:39 Advertising.

A child care agency, child care institution, or child-placing agency licensed or operating under a permit issued by the department may publish advertisements of the services for which it is specifically licensed or issued a permit under this subdivision. No person who is required to obtain a license or permit under this subdivision may advertise or cause to be published an advertisement soliciting or offering care for a child for care or placement unless the person has obtained the requisite license or permit.

**Source.** 1990, 257:8, eff. Jan. 1, 1991.

### 170–E:40 Investigation.

I. If the department has reason to believe that state or federal funds solicited and received by a corporation for conduct of a child care facility or child-placing agency are not being used for the purpose for which the funds were awarded, or are being fraudulently used by the corporation or its members, or purportedly are being used for a facility or child-placing agency which is actually defunct, or are being used for a facility or child-placing agency which no longer carries a valid license or permit, the department shall report these facts to the attorney general and request an investigation of the corporation to determine if the corporation should be dissolved or whether other action should be taken against the corporation or its members.

II. The department shall conduct an investigation of any complaint of violations of any licensing or operating standards against permitted or licensed child care or child-placing agencies. All investigations shall be conducted at reasonable times, with the cooperation of other state or municipal authorities, if required, and may include unannounced visits. The commissioner shall request an annual narrative summary of complaints received by the department.

III. Records compiled during an investigation shall be confidential and shall not be made public by the department.

**Source.** 1990, 257:8. 1995, 310:137, eff. Nov. 1, 1995.

**170–E:41 Oaths; Subpoenas.**

I. The department shall have the power to administer oaths in any disciplinary proceedings.

II. Upon request of the commissioner, the attorney general shall be authorized, for good cause shown, to subpoena witnesses and to compel, by subpoena duces tecum, the production of papers and records in any disciplinary proceedings under this subdivision.

**Source.** 1990, 257:8, eff. Jan. 1, 1991.

**170–E:42 Records.**

Every child care facility and child-placing agency shall keep and maintain such records as the department prescribes pertaining to the admission, progress, health, and discharge or placement, or both, of children under the care of the facility or child-placing agency, and shall report relative to such matters to the department whenever called for, upon forms prescribed by rule. All records regarding children and all facts learned about children and their relatives shall be kept confidential by the child care facility, the child-placing agency, and the department.

**Source.** 1990, 257:8, eff. Jan. 1, 1991.

**170–E:42–a Transfer or Discharge of Residents.**

I. In this section:

(a) "Discharge" means movement of a resident from a child care agency to a non-institutional setting or the termination of services by a child care agency when the child care agency ceases to be legally responsible for the care of the resident.

(b) "Transfer" means movement of a resident from one child care agency to another child care agency when legal responsibility for the care of the resident changes from the transferring to the receiving child care agency.

II. A resident shall be transferred or discharged after appropriate discharge planning only for medical reasons, for the resident's welfare or that of other residents, or if the child care agency ceases to operate.

III. Transfer or discharge of a resident from a child care agency shall in all instances be preceded by written notice which shall contain the following:

(a) The reason for the proposed transfer or discharge;

(b) The effective date of the proposed transfer or discharge;

(c) The location to which the resident is transferred or discharged; and

(d) The name, address, and telephone number of the office of the ombudsman, established under RSA 126–A:4, III, and the name, address, and telephone number of the federally-designated protection and advocacy agency for individuals with disabilities.

IV. Except as provided in paragraph V, written notice of transfer or discharge shall be given at least 30 days before the resident is transferred or discharged. A copy of the notice shall be placed in the resident's file and a copy shall be transmitted to the resident's parent or legal guardian and the agency responsible for the resident's placement.

V. Written notice as provided in paragraph III shall be given as soon as practicable before transfer or discharge in the following circumstances:

(a) If an emergency transfer or discharge is mandated by the resident's health care needs;

(b) If the transfer or discharge is mandated by the health or safety of other individual's in the child care agency;

(c) If the transfer or discharge is appropriate because the resident's needs cannot be met in the child care agency;

(d) If the transfer or discharge is appropriate because the resident's health has improved sufficiently so the resident no longer needs the services provided by the child care agency;

(e) If the transfer or discharge is mandated by court order;

(f) If the resident has reached the age of 21; or

(g) If the resident has resided in the child care agency for less than 30 days.

VI. For the purposes of this section, "transfer" or "discharge" shall not include transfers or discharges initiated at the request of the resident's parent or legal guardian.

VII. If the resident's parent or legal guardian wishes to have the resident relocate to another child care agency or place, the resident shall be relocated according to the resident's parent's or legal guardian's wishes; provided that the resident's parent or legal guardian gives written notice of such relocation to the child care agency.

VIII. For the purposes of this section, transfer shall not include the temporary movement of a resident from a facility to a hospital or other location for emergency medical treatment.

IX. The provisions of this section shall not apply to foster family homes, as defined in RSA 170–E:25.

**Source.** 2022, 272:60, eff. June 24, 2022.

### 170–E:43 Notice of Death.

If any child under the control of any licensed child care agency or institution dies, the licensee shall give notice of such event to the department within 24 hours thereafter stating the date and cause of death, to the extent known, duration of the most recent illness, and the names and addresses of the attending physician and undertaker.

**Source.** 1990, 257:8, eff. Jan. 1, 1991.

### 170–E:44 Reports to the Department of Health and Human Services.

I. Any child care facility or child-placing agency receiving a child for care or supervision from a foreign state or country shall report that child to the department of health and human services in the same manner as it is required for reporting other children pursuant to RSA 170–A:1.

II. A person other than a licensed child care institution or child-placing agency shall not receive a child from a foreign state or country without prior notice to and approval of the department of health and human services. Any placement of children shall conform to RSA 170–A and RSA 170–B:28.

III. The department of health and human services may require a guarantee that a child accepted for care or supervision from a foreign state or country will not become a public charge upon this state.

IV. The department of health and human services may enter into agreements with public or voluntary social agencies headquartered in states adjacent to this state regarding the placement of children in licensed foster family homes within the boundaries of this state if the agencies meet the standards and criteria required for license as a child-placing agency in this state. The agreements may allow foreign agencies to place and supervise children for whom they have responsibility with this state without regard to paragraph I. These agreements shall, however, include a requirement that the agencies cooperate fully with the department in its inquiry or investigation into the activities and standards of those agencies, and provide that the department of health and human services may, at any time upon 15 days' written notice to an agency by registered mail, void the agreement and require the observance of paragraph I.

V. The department of health and human services shall perform its duties under this section with the approval of the commissioner.

**Source.** 1990, 257:8. 1994, 212:2. 1995, 310:175, 181. 2004, 255:5, eff. Jan. 2, 2005.

### 170–E:45 Penalty.

I. Any person shall be guilty of a misdemeanor who:

(a) Conducts, operates or acts as a child care facility or child-placing agency without a license or permit to do so in violation of RSA 170–E:27, I;

(b) Makes materially false statements in order to obtain or retain a license or permit;

(c) Fails to keep the records and make the reports required under this subdivision;

(d) Is required to obtain a license or permit under this subdivision and who advertises or causes to be published an advertisement for a service which is not authorized by any license or permit held;

(e) Violates any other provision of this subdivision or any rule adopted under RSA 541–A by the commissioner for the enforcement of this subdivision;

(f) Fails to comply with the requirements for notifying parents, legal guardians, or the department under RSA 170–E:27–a, I.

II. Foster family homes and kinship care homes which have not been licensed but which have been asked to receive children by the department or another child-placing agency on an emergency basis shall not be subject to the penalty provided in subparagraph I(a). The exemption provided in this paragraph is valid for a period of 180 days from the date of placement of the child in the home.

III. Each day a violation continues to exist shall constitute a separate offense.

**Source.** 1990, 257:8. 1995, 310:175. 2001, 188:3, eff. Sept. 3, 2001. 2022, 272:20, eff. June 24, 2022.

### 170–E:46 Injunctive Relief.

Any person may institute in any court of competent jurisdiction an action to prevent, restrain, correct or abate any violation of this subdivision or of the rules adopted under RSA 170–E:34; and the court shall adjudge relief, by way of injunction, which may be mandatory or otherwise as may be proper under all the facts and circumstances of the case, in order fully to effectuate the purpose of this subdivision and the rules adopted under it. In a prosecution under this subdivision, a defendant who relies upon the relationship of any child to himself has the burden of proof as to that relationship.

**Source.** 1990, 257:8, eff. Jan. 1, 1991.

### 170–E:47 License Remains in Effect.

Any license issued under this subdivision remains valid until its expiration date, unless revoked by the department, or until the date established by conditions placed on the license.

**Source.** 1990, 257:8, eff. Jan. 1, 1991.

### 170–E:48 Retaliation Prohibited.

A child care agency or child-placing agency license holder shall not retaliate, through discharge, harassment, or other discrimination, against an employee who in good faith reports a suspected violation of the provisions of this subdivision and rules adopted under it. Such retaliation shall constitute grounds for license revocation.

**Source.** 1990, 257:8, eff. Jan. 1, 1991.

### 170–E:49 Confidentiality and Investigations.

The department may request and shall receive cooperation from other state agencies in connection with investigations and licensure. Because certain information kept by other state agencies and requested by the department may be confidential, the department shall strictly observe the confidentiality requirements of the agency from which it receives information.

**Source.** 1990, 257:8, eff. Jan. 1, 1991.

## Credentialing of Personnel in Early Care and Education Programs

### 170–E:50 Credentialing of Personnel in Early Care and Education Programs; Rulemaking.

I. The commissioner shall adopt rules, under RSA 541–A, relative to accepting applications and issuing a credential to early care and education personnel including, but not limited to child care, preschool, and Head Start program personnel who have requested such a credential and who have satisfied the education and training requirements set forth in the child care program licensing rules established by the department of health and human services. Each application for a credential shall be accompanied by a fee which shall be credited to the general fund. The commissioner shall adopt rules, under RSA 541–A, establishing a fee for this purpose.

II. The department of health and human services shall incorporate this program, funded by the fee established in paragraph I of this section, into the next biennial department budget after the effective date of this section.

**Source.** 1999, 185:1, eff. Aug. 31, 1999.

## Foster Parents

### 170–E:51 Collaboration Between the Department of Health and Human Services and Foster Parents.

The general court finds that foster parents providing care for children who are in the custody of the department of health and human services play an integral, indispensable, and vital role in the department's effort to care for dependent children displaced from their homes. The general court further finds that it is in the best interest of the department of health and human services to acknowledge foster parents as active and participating members of this system and to support them through the following foster parent rights, as primary caregivers for children in the care and custody of the state of New Hampshire.

**Source.** 2018, 301:1, eff. Aug. 24, 2018.

### 170–E:52 Foster Parents.

When a child is placed in a foster home pursuant to a juvenile court order:

I. The foster parent shall be treated with consideration and respect.

II. The department of health and human services shall consult with the foster parent prior to the release of the foster parent's address, phone number, or other personally identifying information to the child's parent or guardian.

III. The department of health and human services shall make a representative of the department available 24 hours a day, 7 days a week, for the purpose of aiding the foster parent in caring for the acute needs of the foster child.

IV. The foster parent shall be given timely notice of scheduled meetings and appointments involving the foster child. The foster parent shall:

(a) Be provided with a written copy of information pertinent to the care of the child.

(b) Receive reasonable notice of any changes to the case plan as related to the child.

(c) Be apprised of the number of times the child has moved from one foster home to another and, as appropriate, the reasons therefor, as related to the child.

(d) Have the ability to request a team meeting to address concerns specific to the child.

V. The foster parent shall be given reasonable notice of any plan to remove a child from the foster home. The notice shall include the reason for the

change or termination in placement, provided there is no concern for the safety and welfare of the child.

VI. Pursuant to RSA 169–C:14, the foster parent shall receive notice of all court proceedings, may submit written reports, and, at the court's discretion, may attend such hearings and provide oral reports of the child's behavior, progress, and developmental, educational, and healthcare needs.

**Source.** 2018, 301:1, eff. Aug. 24, 2018.

### 170–E:53 Extension of Foster Care Beyond the Age of 18.

I. The commissioner of the department of health and human services shall, not later than 6 months after the effective date of this section, submit an amendment to the state plan required by 42 U.S.C. section 671 to the United States secretary of health and human services to implement 42 U.S.C. section 675(8) to make federal payments for foster care under Title IV-E directly on behalf of any person who meets the following requirements:

(a) The person has attained the age of 18 but not attained the age of 21.

(b) The person was in the custody of the department of health and human services upon attaining the age of 18.

(c) The person signs a voluntary participation agreement.

(d) The person:

(1) Is completing secondary education or a program leading to an equivalent credential; or

(2) Is enrolled in an institution that provides postsecondary or vocational education; or

(3) Is participating in a program or activity designed to promote, or remove barriers to, employment; or

(4) Is employed for at least 80 hours per month; or

(5) Is incapable of doing any of the activities described in subparagraphs (1)–(4) due to a medical condition, which incapacity is supported by regularly updated information in the person's case record or plan.

II. Any person who meets the requirements of paragraph I may apply for extended foster care payments and services pursuant to such application as the department may require. If a person who meets the requirements of paragraph I refused services at the time of the person's eighteenth birthday, such person may apply to regain services at any time prior to his or her twenty-first birthday.

III. Such services shall be in addition to any other transitional services or programs for which the individual may be eligible, including but not limited to those provided pursuant to 42 U.S.C. section 677, the John H. Chafee Foster Care Program for Successful Transition to Adulthood. Not less than 6 months after the effective date of this section, the commissioner of the department of health and human services shall submit any amendment to the state plan or certification required under 42 U.S.C. section 677(b)(3) to provide assistance and services to individuals who have aged out of foster care and have not attained 23 years of age.

**Source.** 2019, 175:1, eff. Sept. 8, 2019.

## Recreation Camp Licensing

### 170–E:53–a Purpose.

The purpose of this subdivision is to provide for the licensing of recreation camps and certification of criminal background checks for youth skill camps.

**Source.** 2019, 346:133, eff. Jan. 1, 2020.

### 170–E:54 Rulemaking.

I. The commissioner shall adopt rules under RSA 541–A relative to:

(a) Issuance of licenses to recreation camp operators under RSA 170–E:56, I.

(b) Requirements for performing criminal background checks at youth skill camps and certifying acceptable results as required under RSA 170–E:56 and establishing appropriate sanctions and penalties for failing to perform the required background checks.

II. The commissioner shall adopt all other necessary rules under RSA 541–A, relative to public health and safety issues for the protection of persons attending recreation camps regulated under RSA 170–E:56, I.

**Source.** 2019, 346:133, eff. Jan. 1, 2020.

### 170–E:55 Definitions.

I. "Recreation camp" means any place set apart for recreational purposes for children. It shall not apply to group child day care centers and preschool programs as defined in RSA 170–E:2, private camps owned or leased for individual or family use, or to any camp operated for a period of less than 10 days in a year.

II. "Youth skill camp" means a nonprofit or for-profit program that lasts 8 hours total or more in a year for the purpose of teaching a skill to minors.

Such camps include, but are not limited to, the teaching of sports, the arts, and scientific inquiry.

**Source.** 2019, 346:133, eff. Jan. 1, 2020. 2023, 209:6, eff. Oct. 3, 2023.

### 170–E:56 Recreation Camp License; Youth Skill Camp Certification of Criminal Background Check.

I. No person shall for profit or for charitable purposes operate any recreation camp, as defined in RSA 170–E:55, I, designed or intended as a vacation or recreation resort, without a license issued by the department. Such license shall be conditioned upon the maintenance of clean, healthful sanitary conditions and methods, as determined and approved by said department, good only for the calendar year in which it is issued and subject to suspension or revocation at any time for cause. The fee for such license shall be $200 which shall be paid into the recreation camp and youth skill camp fund established in RSA 170–E:57.

II. (a) No person or entity shall for profit or for charitable purposes operate any youth skill camp, as defined in RSA 170–E:55, II without maintaining an appropriate policy regarding background checks for camp owners, employees and volunteers who may be left alone with any child or children. Certification of background checks shall be made to the department demonstrating that no individual has a criminal conviction for any offense involving:

(1) Causing or threatening direct physical injury to any individual; or

(2) Causing or threatening harm of any nature to any child or children.

(b) Any person or entity required to perform background checks and provide certification to the department pursuant to subparagraph (a) shall pay a fee of $25 to the department. All such fees collected by the department shall be deposited into the recreation camp and youth skill camp fund established in RSA 170–E:57.

(c) Subparagraphs (a) and (b) shall not apply to any person or entity which owns property used to operate a youth skill camp or any buildings or structures on such property used in the operation of a youth skill camp, provided such person or entity obtains written certification signed by the youth skill camp operator stating that background checks in accordance with this paragraph have been completed.

(d) Nothing in this section shall preclude more stringent requirements for background checks on the part of camp owners, directors, or operators.

(e) Such policies shall be made available to the department and shall include the frequency of the background checks and the sources used to conduct the background checks. The department shall provide information on each youth skill camp's policy on the department's website.

(f) If an employee or volunteer has been the subject of a background check performed by another person or entity within 12 months, the previous background check may, with the signed and written consent of the employee or volunteer, be shared with the operator of the youth skill camp and may be used to satisfy the requirements of this paragraph, notwithstanding any other law providing for the confidentiality of such information.

**Source.** 2019, 346:133, eff. Jan. 1, 2020.

### 170–E:57 Recreation Camp and Youth Skill Camp Fund.

There is established the recreation camp and youth skills camp fund. This fund shall be nonlapsing and continually appropriated to the commissioner of the department of health and human services, for the purpose of paying costs associated with administering the provisions of this subdivision.

**Source.** 2019, 346:133, eff. Jan. 1, 2020.

### 170–E:58 Statement of Health for Recreational Camps.

Notwithstanding any law or rule to the contrary, any physical examination which is required before a child may enter a recreational camp may be conducted by a physician, an advance practice registered nurse, or a physician assistant.

**Source.** 2019, 346:133, eff. Jan. 1, 2020.

### 170–E:59 Possession and Use of Epinephrine Auto-Injectors at Recreation Camps.

A recreation camp shall permit a child with severe, potentially life-threatening allergies to possess and use an epinephrine auto-injector, if the following conditions are satisfied:

I. The child has the written approval of the child's physician and the written approval of the parent or guardian. The camp shall obtain the following information from the child's physician:

(a) The child's name.

(b) The name and signature of the licensed prescriber and business and emergency numbers.

(c) The name, route, and dosage of medication.

(d) The frequency and time of medication administration or assistance.

(e) The date of the order.

(f) A diagnosis and any other medical conditions requiring medications, if not a violation of confidentiality or if not contrary to the request of the parent or guardian to keep confidential.

(g) Specific recommendations for administration.

(h) Any special side effects, contraindications, and adverse reactions to be observed.

(i) The name of each required medication.

(j) Any severe adverse reactions that may occur to another child, for whom the epinephrine auto-injector is not prescribed, should such a child receive a dose of the medication.

II. The recreational camp administrator or, if a nurse is assigned to the camp, the nurse shall receive copies of the written approvals required by paragraph I.

III. The child's parent or guardian shall submit written verification from the physician confirming that the child has the knowledge and skills to safely possess and use an epinephrine auto-injector in a camp setting.

IV. If the conditions provided in this section are satisfied, the child may possess and use the epinephrine auto-injector at the camp or at any camp-sponsored activity, event, or program.

V. In this section, "physician" means any physician or health practitioner with the authority to write prescriptions.

**Source.** 2019, 346:133, eff. Jan. 1, 2020.

### 170–E:60 Use of Epinephrine Auto-Injector.

Immediately after using the epinephrine auto-injector, the child shall report such use to the nurse or another camp employee to enable the nurse or camp employee to provide appropriate follow-up care.

**Source.** 2019, 346:133, eff. Jan. 1, 2020.

### 170–E:61 Availability of Epinephrine Auto–Injector.

The recreational camp nurse or, if a nurse is not assigned to the camp, the recreational camp administrator shall maintain for the use of a child with severe allergies at least one epinephrine auto-injector, provided by the child or the child's parent or guardian, which shall be readily accessible to the recreational camp staff caring for children requiring such medications.

**Source.** 2019, 346:133, eff. Jan. 1, 2020. 2021, 122:50, eff. July 9, 2021.

### 170–E:62 Immunity.

No recreational camp or camp employee shall be liable in a suit for damages as a result of any act or omission related to a child's use of an epinephrine auto-injector if the provisions of RSA 170–E:59 have been met, unless the damages were caused by willful or wanton conduct or disregard of the criteria established in that section for the possession and self-administration of an epinephrine auto-injector by a child.

**Source.** 2019, 346:133, eff. Jan. 1, 2020.

### 170–E:63 Possession and Use of Asthma Inhalers at Recreation Camps.

A recreation camp shall permit a child to possess and use a metered dose inhaler or a dry powder inhaler to alleviate asthmatic symptoms, or before exercise to prevent the onset of asthmatic symptoms, if the following conditions are satisfied:

I. The child has the written approval of the child's physician and the written approval of the parent or guardian. The camp shall obtain the following information from the child's physician:

(a) The child's name.

(b) The name and signature of the licensed prescriber and business and emergency numbers.

(c) The name, route, and dosage of medication.

(d) The frequency and time of medication administration or assistance.

(e) The date of the order.

(f) A diagnosis and any other medical conditions requiring medications, if not a violation of confidentiality or if not contrary to the request of the parent or guardian to keep confidential.

(g) Specific recommendations for administration.

(h) Any special side effects, contraindications, and adverse reactions to be observed.

(i) The name of each required medication.

(j) At least one emergency telephone number for contacting the parent or guardian.

II. The recreational camp administrator or, if a nurse is assigned to the camp, the nurse shall receive copies of the written approvals required by paragraph I.

III. The child's parent or guardian shall submit written verification from the physician confirming that the child has the knowledge and skills to safely possess and use an asthma inhaler in a camp setting.

IV. If the conditions provided in this section are satisfied, the child may possess and use the inhaler at

the camp or at any camp sponsored activity, event, or program.

V. In this section, "physician" includes any physician or health practitioner with the authority to write prescriptions.

**Source.** 2019, 346:133, eff. Jan. 1, 2020.

### 170–E:63–a Availability of Asthma Inhalers.

The recreational camp nurse or, if a nurse is not assigned to the camp, the recreational camp administrator shall maintain for the use of a child with asthma at least one metered dose inhaler or a dry powder inhaler, provided by the child or the child's parent or guardian, which shall be readily accessible to the recreational camp staff caring for children requiring such medications.

**Source.** 2021, 122:51, eff. July 9, 2021.

### 170–E:64 Immunity.

No recreational camp or camp employee shall be liable in a suit for damages as a result of any act or omission related to a child's use of an inhaler if the provisions of RSA 170–E:63 have been met, unless the damages were caused by willful or wanton conduct or disregard of the criteria established in that section for the possession and self-administration of an asthma inhaler by a child.

**Source.** 2019, 346:133, eff. Jan. 1, 2020.

### 170–E:65 Injunction.

Any person operating or maintaining a recreation camp or youth skill camp without the same having been approved by the department may be enjoined by the superior court or any justice of the court upon petition brought by the attorney general.

**Source.** 2019, 346:133, eff. Jan. 1, 2020.

### 170–E:66 Penalty; Administrative Fines.

I. Whoever violates any of the provisions of this subdivision, or rules adopted under this subdivision shall be guilty of a violation if a natural person, or guilty of a misdemeanor if any other person.

II. The commissioner, after notice and hearing, may impose an administrative fine not to exceed $2,000 for each offense upon any person who violates any provision of this subdivision, any rule adopted under this subdivision, or any license or approval issued under this subdivision. Re-hearings and appeals from a decision of the commissioner under this paragraph shall be in accordance with RSA 541. Any administrative fine imposed under this section shall not preclude the imposition of further penalties under this chapter. The proceeds of administrative fines levied pursuant to this paragraph shall be deposited in the general fund. The commissioner shall adopt rules, under RSA 541–A, relative to:

(a) A schedule of administrative fines which may be imposed under this paragraph; and

(b) Procedures for notice and hearing prior to the imposition of an administrative fine.

**Source.** 2019, 346:133, eff. Jan. 1, 2020.

### 170–E:67 Confidentiality and Investigations.

The department may request and shall receive cooperation from other state agencies in connection with investigations and licensure. The department shall strictly observe the confidentiality requirements of the agency from which it receives information.

**Source.** 2022, 272:12, eff. July 1, 2022.

### 170–E:68 License Suspension, Revocation, or Denial.

The department may suspend, revoke, or deny any license if the license holder:

I. Neglects or abuses children in his or her care;

II. Does not comply with this subdivision or the rules adopted under this subdivision relative to the health and safety of children;

III. Violates any provision of this subdivision, or is unable to meet and maintain standards adopted by the commissioner;

IV. Substantially or repeatedly violates any provisions of the license issued;

V. Furnishes or makes any misleading or any false statement or report to the department;

VI. Refuses or fails to submit any reports or to make available to the department any records required by it in making an investigation of the facility for licensing purposes;

VII. Refuses or fails to submit to an investigation or to the required visits by the department;

VIII. Refuses or fails to admit authorized representatives of the department at any time the camp is in operation for the purpose of investigation or visit;

IX. Fails to provide, maintain, equip, and keep in safe and sanitary condition premises established or used for recreation camps as required under standards prescribed by rules adopted by the commissioner under RSA 541–A or as otherwise required by any law, rule, ordinance, or term of the license applicable to the location of such facility; or

X. Retaliates against an employee who in good faith reports a suspected violation of the provisions of this subdivision and rules adopted under it.

**Source.** 2022, 272:12, eff. July 1, 2022.

### 170–E:69 Confidentiality and Investigations.

I. The department shall conduct an investigation of any complaint of non-compliance of any licensing or operating standards against licensed recreation camps. All investigations shall be conducted at reasonable times, with the cooperation of other state or municipal authorities, if required, and may include unannounced visits. The commissioner shall request an annual narrative summary of complaints received by the department.

II. Records compiled during an investigation shall be confidential and shall not be made public by the department.

**Source.** 2023, 209:7, eff. Oct. 3, 2023.

## CHAPTER 171–A

## SERVICES FOR THE DEVELOPMENTALLY DISABLED



### 171–A:1 Purpose and Policy.

The purpose of this chapter is to enable the department of health and human services to establish, maintain, implement and coordinate a comprehensive service delivery system for developmentally disabled persons. The policy of this state is that persons with developmental disabilities and their families be provided services that emphasize community living and programs to support individuals and families, beginning with early intervention, and that such services and programs shall be based on the following:

I. Participation of people with developmental disabilities and their families in decisions concerning necessary, desirable, and appropriate services, recognizing that they are best able to determine their own needs.

II. Services that offer comprehensive, responsive, and flexible support as individual and family needs evolve over time.

III. Individual and family services based on full participation in the community, sharing ordinary places, developing meaningful relationships, and learning things that are useful, as well as enhancing the social and economic status of persons served.

IV. Services that are relevant to the individual's age, abilities, and life goals, including support for gainful employment that maximizes the individual's potential for self-sufficiency and independence.

V. Services based on individual choice, satisfaction, safety, and positive outcomes.

VI. Services provided by competent, appropriately trained and compensated staff.

**Source.** 1975, 242:1. 1979, 322:2, I. 1987, 206:2. 1995, 310:181. 2006, 229:1, eff. July 31, 2006.

**171–A:1–a Full Funding of Services Budget; Limits of Waiting Lists.**

I. The department of health and human services and area agencies shall provide services to eligible persons under this chapter and persons eligible for the brain injury program under RSA 137–K in a timely manner. The department and area agencies shall provide funding for services in such a manner that:

(a) For persons in school and already eligible for services from the area agencies, funds shall be allocated to them 90 days prior to their graduating or exiting the school system or earlier so that any new or modified services needed are available and provided upon such school graduation or exit.

(b) For newly found eligible adults, the period between the time of completion of an individual service agreement pursuant to RSA 171–A:12 and the allocation by the department of the funds needed to carry out the services required by the agreement shall not exceed 90 days.

(c) For persons already receiving services who experience significant life changes, such as a significant change in their medical conditions, the period of time for initiation of new services shall not exceed 90 days from the amendment of the individual service agreement except by mutual agreement between the area agency and the person specifying a time limited extension.

(d) Notwithstanding subparagraphs I(a)–(c) of this section, for fiscal years 2008 and 2009, the timelines set forth in each such subparagraph may be exceeded, provided that best efforts shall be made to meet the timelines for children graduating or exiting school and for other individuals the department determines most in need and to minimize delays with respect to others within the limits of available funding and to provide them interim services when the timelines have been exceeded by 60 days for fiscal year 2008 and 30 days for fiscal year 2009.

II. The department of health and human services shall incorporate in its appropriation requests the cost of fully funding services to eligible persons, in accordance with the requirements of paragraph I, and as otherwise required under RSA 171–A, and the legislature shall appropriate sufficient funds to meet such costs and requirements.

**Source.** 1997, 151:2. 2007, 363:2, eff. July 1, 2007. 2021, 122:55, 57, eff. July 9, 2021.

**171–A:1–b Repealed by 1998, 248:2, eff. July 1, 2002.**

**171–A:1–c Repealed by 2010, 268:5, II, eff. Sept. 4, 2010.**

**171–A:1–d Repealed by 2010, 268:5, III, eff. Sept. 4, 2010.**

**171–A:1–e Budget Flexibility.**

*[RSA 171–A:1–e repealed by 2023, 199:2, effective pursuant to the terms 2023, 199:3.]*

I. For persons with approved budgets older than 24 months who require additional funds to carry out the services required in their individual service agreement, due to additional expenditures, such as cost-of-living or other wage and compensation increases, area agencies and authorized agencies may seek additional funds from the department for such funding needs. The department shall allocate existing budget appropriations as set forth in RSA 171–A:8–b as required to meet such funding needs, provided the requested expenditures would promote efficiency, economy, and quality of care pursuant to section 1902(a)(30)(A)[1] of the Social Security Act.

II. The department shall record and track all requests for funding under this section including, but not limited to, the amount of each request, the reason for the request, whether the request was approved and, if denied, the reason for denial. Upon approval of a funding request, area agencies and authorized agencies shall record, and provide the department with, details of the expenditure of such funds, including, but not limited to, the amount of additional funds that are paid to direct support providers, and all details of how the funding is allocated to the person's services and service providers.

**Source.** 2023, 199:1, eff. Aug. 4, 2023.

[1] 42 U.S.C.A. § 1396a(a)(30)(A).

**171–A:2 Definitions.**

In this chapter:

I. "Administrator" means the superintendent or chief administrative officer of any facility or of any program or service for the developmentally disabled conducted under the supervision of the commissioner or any employee he so designates as his deputy.

I–a. "Area" means a geographic region established by rules adopted by the commissioner for the purpose of providing services to developmentally disabled persons.

I–b. "Area agency" means an entity established as a nonprofit corporation in the state of New Hampshire which is established by rules adopted by the commissioner to provide or coordinate services to developmentally disabled persons in the area in accordance with 42 C.F.R. section 441.301.

I–c. "Area board" means the governing body or board of directors of an area agency.

I–d. "Assistive technology" means assistive technology as defined by 29 U.S.C. section 3002(3).

I–e. "Authorized agency" means an entity providing direct service to developmentally disabled persons, including, but not limited to, community living arrangements, employment and day services, and programs designed to enhance personal and social competence.

II. "Client" means any developmentally disabled person receiving services provided under this chapter.

III. "Commissioner" means the commissioner of health and human services.

IV. "Department" means the department of health and human services.

V. "Developmental disability" means a disability:

(a) Which is attributable to an intellectual disability, cerebral palsy, epilepsy, autism, or a specific learning disability, or any other condition of an individual found to be closely related to an intellectual disability as it refers to general intellectual functioning or impairment in adaptive behavior or requires treatment similar to that required for persons with an intellectual disability; and

(b) Which originates before such individual attains age 22, has continued or can be expected to continue indefinitely, and constitutes a severe disability to such individual's ability to function normally in society.

V–a. "Direct support staff" means any person employed by an area agency or contract provider in which at least 50 percent of the person's time is providing direct care or support to a client.

VI, VII. [Omitted.]

VIII. [Repealed.]

IX. "Habilitation" means the process by which program personnel assist clients to acquire and maintain those life skills which enable them to cope more effectively with the demands of their own persons and of their environment, to be economically self-sufficient and to raise the level of their physical, mental and social efficiency. Habilitation includes but is not limited to programs of formal, structured education and treatment.

X. "Individual service agreement" means a written document for a client's services and supports which is specifically tailored to meet the needs of each client.

XI. "Informed decision" means a choice made by a client or potential client or, where appropriate, his legal guardian that is reasonably certain to have been made subsequent to a rational consideration on his part of the advantages and disadvantages of each course of action open to him.

XI–a. "Intellectual disability" means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior, and manifested during the developmental period. A person with an intellectual disability may be considered mentally ill provided that no person with an intellectual disability shall be considered mentally ill solely by virtue of his or her intellectual disability.

XII. "Least restrictive environment" means the program or service which least inhibits a client's freedom of movement, informed decisions and participation in the community, while achieving the purposes of habilitation and treatment.

XIII. "Mental illness" means mental illness as defined in RSA 135–C:2, X.

XIV. [Repealed.]

XV. [Repealed.]

XV–a. [Repealed.]

XV–aa. "Receiving facility" means any facility designated by the commissioner pursuant to RSA 171–A:20.

XV–b. [Repealed.]

XVI. "Service delivery system" means a comprehensive array of services for the diagnosis, evaluation, habilitation and rehabilitation of developmentally disabled persons, including but not limited to, service coordination, community living arrangements,

employment and day services and supports to families of individuals with developmental disabilities.

XVII. "Treatment" means the prevention, amelioration and improvement of a client's disabilities and illnesses.

**Source.** 1975, 242:1. 1979, 322:2–5, 9, IX, 19. 1981, 492:20. 1983, 291:1, I. 1987, 206:2, 3. 1988, 107:5. 1990, 140:2, XI. 1994, 248:4; 408:3. 1995, 310:128, 172. 2001, 101:1, 2, 18, I, II. 2007, 363:4, 5. 2008, 52:14, 15, 21, eff. July 11, 2008. 2019, 287:4, 5, eff. July 1, 2019.

### 171–A:3 Rulemaking.

The commissioner of the department of health and human services shall adopt rules pursuant to RSA 541–A to implement this chapter.

**Source.** 1975, 242:1. 1981, 492:21. 1995, 310:172, eff. Nov. 1, 1995.

### 171–A:4 State Service Delivery System.

The department shall maintain a state service delivery system for the care, habilitation, rehabilitation, treatment and training of developmentally disabled persons. Such service delivery system shall be under the supervision of the commissioner.

**Source.** 1975, 242:1. 1979, 322:2, I. 1987, 206:2. 1988, 107:5. 1995, 310:172, 175. 2001, 101:3, eff. Aug. 20, 2001.

### 171–A:5 Voluntary Entry Into Service Delivery System.

I. Applications for service shall be made by the developmentally disabled person seeking such service, and all placements shall be voluntary. If the client is under the age of 18, the application for service may be initiated by a parent or legal guardian. If the client is over the age of 18 and has been found to be incapacitated by the probate court, the application for service may be initiated by the court-appointed guardian.

II. Notwithstanding paragraph I, a person may be involuntarily admitted to the service delivery system pursuant to RSA 171–B.

**Source.** 1975, 242:1. 1979, 322:2, I, II. 1987, 206:2. 1994, 408:4. 1995, 310:175. 2001, 101:4, eff. Aug. 20, 2001.

### 171–A:6 Entry Into the Service Delivery System.

I. A person seeking service shall make application in accordance with rules adopted by the commissioner to the area agency in his or her appropriate geographic region as designated by rule pursuant to RSA 171–A:2, I–b.

II. A comprehensive screening evaluation, coordinated by the staff of the area agency, shall determine the scope of the person's disability and the locus and nature of services to be provided and shall include an assistive technology evaluation both as part of the person's initial evaluation and at least on an annual basis thereafter when the person is screened for an assistive technology evaluation. The commissioner shall adopt rules pursuant to RSA 541–A relative to the evaluation. The initial evaluation shall include, but not be limited to, a physical examination and individual intellectual assessment and functional behavior scales and shall take into account the provisions of and services established under RSA 186–A.[1]

III. A recommendation for services by the area agency shall utilize the criterion of the least restrictive environment for the client and shall be made to the service which best meets the needs of the client. Preliminary evaluations shall be completed and preliminary recommendations for services made within 21 days after application for service.

IV. In an emergency situation and in the discretion of the commissioner, temporary service arrangements may be made prior to the completion of the screening evaluation.

V. The commissioner shall adopt rules pursuant to RSA 541–A establishing hearing procedures to determine the appropriateness of a service recommendation which is challenged by the client, his or her attorney or family.

**Source.** 1975, 242:1. 1979, 322:2, II. 1981, 492:22, 23. 1995, 310:172. 2001, 101:5. 2007, 363:6, eff. July 1, 2007.

[1] RSA 186–A was repealed by 1981, 100:2, eff. June 30, 1981. See, now, RSA 186–C.

### 171–A:7 Withdrawal From Service Delivery System.

Except for a person admitted involuntarily pursuant to RSA 171–B, a client at any time may seek a change in services or withdraw entirely from the service delivery system. A parent or legal guardian may seek a change of services for or withdraw entirely a minor or ward in his or her custody at any time, unless such minor has reached the age of majority. The administrator shall notify the area agency of any such withdrawal and may, if appropriate, indicate in the client's record that such withdrawal was against professional advice.

**Source.** 1975, 242:1. 1979, 322:2, II. 1994, 408:5. 2001, 101:6, eff. Aug. 20, 2001.

### 171–A:8 Termination of Service.

I. The administrator may terminate service to a client at any time that such termination is deemed in the best interest of the client or when the client can function independently without such service or when

the client has received optimal benefit from such service.

II. In every instance of termination, the administrator shall refer the client to the area agency which, in turn, shall recommend an appropriate service, or be responsible for contacting the client at regular intervals after termination for as long as deemed necessary.

III. Prior to any termination of service, the administrator shall give 30 days' notice to the client, if over 18 years of age, or to the parent or guardian, if the client is a minor or has been found to be legally incapacitated. Consent of the parent or guardian is required prior to termination if the client is a minor or has been declared legally incapacitated. Service may be terminated sooner than 30 days with the consent of the client, his or her parent or guardian.

IV. The client or, where appropriate, his parent or legal guardian, may seek review of the decision to terminate from the commissioner. The decision of the commissioner shall be final.

V. Notwithstanding this section, the administrator shall not terminate service to a person involuntarily admitted pursuant to RSA 171–B without prior approval of the commissioner, except:

(a) Upon transfer of the person to another receiving facility or to the secure psychiatric unit; or

(b) Upon expiration of the order of commitment.

**Source.** 1975, 242:1. 1979, 322:6. 1994, 408:6. 1995, 310:172. 2001, 101:7, eff. Aug. 20, 2001.

**171–A:8–a Transfer of Involuntary Admittees; Rules.**

I. A receiving facility to which a person is ordered for involuntary admission or to which such person has been transferred may transfer the person to another receiving facility if the receiving facility to which the person is to be transferred can better provide the degree of security or treatment required by the person. All transfers shall require the approval of the chief administrator of the state developmental services system. The commissioner shall adopt rules pursuant to RSA 541–A, relative to transfer criteria and procedures for the challenge of transfer decisions by the persons so transferred.

II. Transfers to the secure psychiatric unit of involuntary admittees may be made pursuant to RSA 171–B:15.

**Source.** 1994, 408:7. 1995, 310:129, eff. Nov. 1, 1995.

**171–A:8–b Establishing Certain Dedicated Funds and Transfers of Certain Appropriations.**

I. There is hereby established the developmental services fund. The fund, from appropriations provided in accounting unit 05–95–93–930010–7100, shall be used to carry out the provisions of this chapter. The fund shall be nonlapsing and shall be continually appropriated to the commissioner for the purposes of this chapter.

II. There is hereby established the acquired brain disorder services fund. The fund, from appropriations provided in accounting unit 05–95–93–930010–7016, shall be used to carry out the provisions of this chapter. The fund shall be nonlapsing and shall be continually appropriated to the commissioner for the purposes of this chapter.

III. There is hereby established the in-home support waiver fund. The fund, from appropriations provided in accounting unit 05–95–93–930010–7110, shall be used to carry out the provisions of this chapter. The fund shall be nonlapsing and shall be continually appropriated to the commissioner for the purposes of this chapter.

IV. The funds in paragraphs I through III shall only be transferred between these funds and/or accounting units for those particular services for the purposes of this chapter.

**Source.** 2019, 346:70, eff. July 1, 2019.

## Restraint and Seclusion

**171–A:9 Residential Services.**

I. The commissioner shall adopt rules pursuant to RSA 541–A relative to clients in residential services, including but not limited to such matters as restraint and seclusion.

II. Restraint or seclusion may be used only in cases of emergency such as the occurrence or serious threat of extreme violence, personal injury or attempted suicide.

**Source.** 1975, 242:1. 1981, 492:24. 1995, 310:172. 2001, 101:8, eff. Aug. 20, 2001.

**171–A:10 Residential Services; Legal Counsel and Guardianship.**

I. [Repealed.]

II. Whenever a client over the age of 18 years is considered incapable of managing his or her own affairs and is at risk of substantial harm to person or estate as a result, and the person does not have a legal guardian, the administrator shall take such steps as are appropriate to safeguard the person as

may be consistent with RSA 464–A and 547–B, including the nomination of a guardian when no less restrictive alternative is available.

III. [Repealed.]

**Source.** 1975, 242:1. 1977, 587:1. 1979, 322:2, II, 20. 1983, 409:4. 1988, 107:5. 1995, 310:27. 2001, 101:9, 10, 18, III, eff. Aug. 20, 2001.

### 171–A:11 Periodic Review.

I. The needs and services of every client in the service delivery system shall be subject to a periodic review under the supervision of the administrator, which shall include but not be limited to:

(a) A thorough clinical examination including an annual health assessment;

(b) An assessment of the client's capacity to make informed decisions; and

(c) Consideration of less restrictive alternatives for service, particularly for those clients in residential services.

II. Such periodic review shall take place at least once during the first 6 months of service and annually thereafter. The administrator shall give written notice to the client and his or her nearest relative or legal guardian at least 10 days prior to a periodic review. The results of each periodic review shall become part of the client's clinical record, and recommendations resulting from such review shall be shared with the client, and, where appropriate, with his or her guardian, parent or nearest relative.

III. Following any review or at any other time, the administrator may recommend termination of service or may refer the client to a more appropriate service pursuant to RSA 171–A:8.

IV. The commissioner shall adopt rules pursuant to RSA 541–A relative to the conduct of the review and the personnel who shall carry out the review.

**Source.** 1975, 242:1. 1981, 492:25. 1995, 310:172. 2001, 101:11, eff. Aug. 20, 2001.

### 171–A:12 Individual Service Agreement.

I. There shall be an individual service agreement for every client in the service delivery system who receives services. A service coordinator chosen by the client shall develop a preliminary written individual service agreement based upon a comprehensive screening evaluation established under RSA 171–A:6 for such client within 14 days after the initial service planning meeting. The individual service agreement shall be continually reviewed by the area agency and shall be modified if necessary. The commissioner shall adopt rules pursuant to RSA 541–A relative to the development of such individual service agreements.

II. Each individual service agreement shall include but not be limited to:

(a) A statement of the nature of the specific strengths, interests, capacities, disabilities, and specific needs of the client;

(b) A description of intermediate and long-range habilitation and treatment goals chosen by the individual and his or her guardian with a projected timetable for their attainment;

(c) A statement of specific services to be provided and the amount, frequency, and duration of each service;

(d) Specification of the providers to furnish each service identified in the agreement; and

(e) Criteria for transfer to less restrictive settings for habilitation, including criteria for termination of service and a projected date for termination of service from the service.

**Source.** 1975, 242:1. 1981, 492:26. 1995, 310:172. 2001, 101:12, eff. Aug. 20, 2001. 2019, 287:6, eff. July 1, 2019.

### 171–A:13 Service Guarantees.

Every developmentally disabled client has a right to adequate and humane habilitation and treatment including such psychological, medical, vocational, social, educational or rehabilitative services as his condition requires to bring about an improvement in condition within the limits of modern knowledge.

**Source.** 1975, 242:1. 1979, 322:2, I. 1987, 206:2, eff. July 1, 1987.

### 171–A:14 Rights of Developmentally Disabled Persons.

I. No person shall be deemed incompetent to manage his or her affairs, to contract, to hold professional, occupational or vehicle operator's licenses, to vote, to marry or to make a will solely by reason of his or her developmental disability or of his or her participation in the service delivery system, nor shall department rules restrict such rights. The client's right to individual dignity shall be respected at all times and upon all occasions.

II. A client in a residential service shall be provided with stationery and postage in reasonable amounts and shall have free and unrestricted mailing privileges.

III. A client shall have the right to be visited at all reasonable times unless the administrator determines that such a visit would adversely affect the client. Any denial of visiting rights and the reasons for such denial shall be entered in the client's record

and may be subject to the review of the human rights committee established under RSA 171–A:17.

IV. A client in a residential service shall have the right to wear his or her own clothes, to keep and use his or her own personal possessions including toilet articles, to keep and be allowed to spend his or her own money, to have access to individual storage space for private use, to have reasonable access to telephones to make and receive confidential calls and any other rights specified by rules of the department; provided, however, that any of these rights may be denied for good cause by the administrator or designee. Any denial of these rights and the reasons for such denial shall be entered in the client's record and may be subject to the review of the human rights committee established under RSA 171–A:17.

V. The commissioner may adopt rules pursuant to RSA 541–A relative to the protection of the rights, dignity, autonomy and integrity of clients, including specific procedures to protect the rights established in this chapter.

**Source.** 1975, 242:1. 1979, 322:2, I. 1981, 492:27. 1987, 206:2. 1995, 310:172, 175. 2001, 101:13, eff. Aug. 20, 2001.

### 171–A:15 Rights of Clients to be Provided.

Written materials describing the rights of clients as set forth in this chapter and in the rules of the department shall be provided to each client and his or her guardian, if any. Such materials shall be presented in clearly understandable language and form.

**Source.** 1975, 242:1. 1995, 310:175. 2001, 101:14, eff. Aug. 20, 2001.

### 171–A:16 Repealed by 2001, 101:18, IV, eff. Aug. 20, 2001.

### 171–A:17 Human Rights Committee.

I. The commissioner shall establish, in each area agency, a human rights committee of 5 or more persons. The majority of the members of each human rights committee shall be persons who represent the interests of developmentally disabled clients and who are not employees of the department.

II. The duties of the human rights committee shall include, but not be limited to, the following for each program or service with which the committee is concerned:

(a) Evaluating the treatment and habilitation provided;

(b) Regularly monitoring the implementation of individual service agreements;

(c) Monitoring the use of restrictive or intrusive interventions designed to address challenging behavior;

(d) Fostering the capacity of individuals served by the area agency to exercise more choice and control in their lives; and

(e) Promoting advocacy programs on behalf of the clients.

**Source.** 1975, 242:1. 1979, 322:8. 1981, 492:28. 1987, 206:2. 1995, 310:172. 2001, 101:15, eff. Aug. 20, 2001.

## Miscellaneous

### 171–A:18 Area Agency Responsibilities and Operations.

I. The commissioner may designate by rules adopted pursuant to RSA 541–A for each area one area agency which shall be responsible for administering area-wide programs and services for developmentally disabled persons. Each area agency so designated shall be the primary recipient of funds that may be dispensed by the commissioner for use in establishing, operating, and/or administering such programs and services. The programs and services for which an area agency is responsible include, but are not limited to, diagnosis and evaluation, service coordination, community living arrangements, employment and day services, and programs designed to enhance personal and social competence.

II. The commissioner may enter into contracts with, make grants to, or otherwise make funds available to an area agency or authorized agency for the provision of programs and services to developmentally disabled persons. Subject to the written approval of the commissioner, an area agency or authorized agency may enter into contracts with individuals or organizations for the expenditure of portions of such funds on programs or services for developmentally disabled persons. Area agencies, authorized agencies, and other organizations under contract to provide services in accordance with this chapter shall administer programs and services in accordance with 42 C.F.R. section 441.301, and any subsequent amendments thereto.

III. Each area board shall appoint an executive director who shall be accountable to the board for administering the area-wide programs and services for developmentally disabled persons. The executive director shall serve at the pleasure of the area board and shall serve as a full-time employee of the area board.

IV. The commissioner shall, in accordance with RSA 541–A, adopt rules establishing standards for

the provision of services by area agencies and authorized agencies to developmentally disabled persons. The commissioner shall further adopt rules establishing standards relating to the professional qualifications of the executive director of the area board and to the size and composition of area boards in order to assure that membership is representative of the area as a whole and reflects the concerns and interests of developmentally disabled persons and their families. The commissioner shall also adopt rules establishing a reapproval process and shall require area agencies to be subject to reapproval every 5 years.

V. With such frequency as may be determined by the commissioner, each area agency shall prepare and submit to the department for approval a plan for provision of programs and services to developmentally disabled persons who live in the area.

VI. A community mental health program established pursuant to RSA 135–C may also be designated an area agency by the commissioner, providing that the area agency is in full compliance with the requirements of this chapter and with all standards and rules adopted pursuant thereto.

VII. The department of health and human services shall assume all or any part of the responsibilities provided for in paragraphs I and II at any time during which an area agency is not designated.

**Source.** 1979, 322:7. 1981, 492:29. 1987, 206:2. 1988, 107:5. 1995, 310:130, 172, 175, 181. 1998, 168:2. 2001, 101:16, eff. Aug. 20, 2001. 2019, 287:7, eff. July 1, 2019.

### 171–A:18–a Family-Centered Early Supports and Services Program.

The department shall administer a family-centered early supports and services (FCESS) program designed for children birth up to age 3 who have a diagnosed, established condition that has a high probability of resulting in delay, are experiencing developmental delays, or are at risk for substantial developmental delays if supports and services are not provided. All children under the age of 3 who are born substance-exposed shall be considered at risk for substantial developmental delays and shall be referred to FCESS. In this section, a "substance-exposed newborn" means a newborn who was exposed to alcohol, or other drugs in utero, which may have adverse effects, whether or not this exposure is detected at birth through a drug screen or withdrawal symptoms. The department shall adopt rules under RSA 541–A relative to the FCESS program, including application procedures, program administration, and eligibility criteria consistent with this section.

**Source.** 2020, 26:43, eff. Sept. 18, 2020.

### 171–A:19 Client and Legal Services Section.

A client and legal services section shall be established in the department. Its functions and responsibilities shall include but not be limited to:

I. Assisting the commissioner in responding to inquiries and complaints by or on behalf of mentally ill or developmentally disabled persons.

II. Assisting the commissioner in securing needed services and information for mentally ill persons, developmentally disabled persons, or their respective families.

III. Assisting the commissioner in assuring that the human rights of mentally ill persons and of developmentally disabled clients in the service delivery system are protected.

**Source.** 1979, 322:7. 1987, 206:2. 1995, 310:172, 181. 2001, 101:17, eff. Aug. 20, 2001.

### 171–A:19–a Committee for the Protection of Human Subjects.

I. There is hereby established within the department an institutional review board which shall be known as the committee for the protection of human subjects. The committee shall oversee research conducted in department-funded programs that serve people with mental illness, developmental disabilities, and substance abuse or dependence disorders. No research shall be conducted in these programs until it has been reviewed and approved by the committee. In matters of cooperative research involving more than one institution, if the federal agency funding the research determines that a single institutional review board will provide oversight, the committee shall defer oversight to that institutional review board.

II. The committee shall have, at a minimum, 7 members with varying backgrounds to promote complete and adequate review of research activities. The commissioner shall appoint the members. The committee shall be sufficiently qualified through the experience, expertise, and diversity of its members to promote respect for its advice and counsel in protecting human subjects in research and safeguarding the privacy and confidentiality of medical records information that is used for the purposes of research. In addition to possessing the professional competence necessary to review specific research activities, the committee shall be able to ascertain the acceptability of proposed research in terms of applicable laws and regulations and standards of professional conduct and practice. The committee shall therefore include per-

sons knowledgeable in these areas. Members of the committee shall be appointed to 3-year terms.

III. The committee shall include at least one member whose primary area of expertise is scientific and one member whose primary area of expertise is non-scientific.

IV. The committee shall include at least 2 members who are not otherwise affiliated with the department and who are not part of the immediate family of a person who is affiliated with the department.

V. The committee shall include at least 2 members who are consumers or family members of consumers.

VI. No member of the committee shall participate in initial or continuing review of any research project in which the member has a conflicting interest, except to provide information requested by the committee.

VII. The committee may, in its discretion, invite individuals with competence in special areas to assist in the review of issues that require expertise beyond or in addition to that possessed by the members of the committee. These individuals may only offer advice and guidance and shall not participate in the decision as to whether or not to approve the research.

VIII. The committee shall choose a chairperson and vice-chairperson from its membership. The commissioner may assign department staff to assist the committee as needed.

IX. The commissioner may establish fees, through rules adopted under RSA 541–A, as deemed necessary, after consultation with the committee, to offset departmental costs of providing assistance to the committee pursuant to paragraph VIII. Fee revenue shall not be deposited into the general fund, but may be used by the department to offset such costs.

**Source.** 2005, 183:1. 2007, 263:94, eff. July 1, 2007. 2019, 287:10, eff. July 19, 2019.

### 171–A:19–b Rulemaking.

The commissioner may adopt rules, pursuant to RSA 541–A, relative to the operation of the committee for the protection of human subjects, established in RSA 171–A:19–a, the procedures, conditions, and criteria for the conduct and approval of research, and fees charged by the committee.

**Source.** 2005, 183:1. 2007, 263:95, eff. July 1, 2007.

## Involuntary Admission

### 171–A:20 Receiving Facility; Rules.

The commissioner shall adopt rules, pursuant to RSA 541–A, relative to the criteria and procedures for designation of receiving facilities which receive persons for involuntary admissions under RSA 171–B. A receiving facility may be designated by the commissioner for one or more purposes, including, but not limited to:

I. Receiving persons for involuntary admission directly pursuant to a court order; and

II. Receiving involuntarily admitted persons by transfer with the approval of the commissioner or designee.

**Source.** 1994, 408:8. 1995, 310:172, eff. Nov. 1, 1995.

### 171–A:21 Discharge by Administrator.

I. When any person has been involuntarily admitted to a receiving facility pursuant to RSA 171–B or conditionally discharged pursuant to paragraph II of this section, the administrator of the receiving facility most recently providing services to the person may grant an absolute discharge to the person with the consent of the chief administrator of the state developmental services system or designee who has reviewed the person's situation, provided that the chief administrator or designee determines that an absolute discharge shall not create a potentially serious likelihood of danger to others or a potentially serious likelihood of substantial damage to real property. The administrator shall, in writing, immediately notify the court entering the original order of commitment and the attorney general that the person has been given an absolute discharge from the receiving facility. Upon receipt of the notice, the court shall make the notice part of the person's file and shall enter the discharge and date of discharge upon the docket.

II. The administrator of the facility may, with prior approval of the chief administrator of the state developmental services system or designee, grant a person, whose condition is not considered appropriate for absolute discharge, a conditional discharge.

**Source.** 1994, 408:8. 1995, 310:131, eff. Nov. 1, 1995.

### 171–A:22 Conditions of Conditional Discharge.

I. The administrator of a receiving facility may, with prior approval of the chief administrator of the state developmental services system or designee, grant a conditional discharge to any person who consents, by an informed decision, to participate in

continuing services from an area agency, who agrees to be subject to any rules adopted by the chief administrator relative to conditional discharge, and who agrees to comply with the conditions of the discharge. The administrator of the facility or designee shall prepare, deliver a copy of, and read and explain to the person being conditionally discharged a written statement in clear and understandable language of the conditions of conditional discharge and a warning that violation of those conditions may result in revocation of the conditional discharge pursuant to RSA 171–A:23.

II. A conditional discharge shall not exceed the period of time remaining on the order of involuntary admission and shall become absolute at the end of its term, unless extended by the court.

**Source.** 1994, 408:8. 1995, 310:132, eff. Nov. 1, 1995.

### 171–A:23 Revocation of Conditional Discharge.

I. If an administrator at an area agency providing continuing services to a person conditionally discharged pursuant to RSA 171–A:22 or the administrator's designee reasonably believes that:

(a) The person has violated a condition of the discharge; or

(b) A condition or behavior exists as a result of which the person may pose a potentially serious likelihood of danger to others or a potentially serious threat of substantial damage to real property, the administrator or designee may conduct a review of the acts, behavior or condition of the person to determine if the conditional discharge shall be revoked. The review may be conducted only after the person has been given written and verbal notice of the belief, and the reasons for such belief, that a violation of the conditional discharge has occurred or other circumstance or condition exists which may result in a potentially serious likelihood of danger to others or a potentially serious threat of substantial damage to real property, and the person has been given an opportunity to provide information to the administrator or designee as to why the revocation should not occur.

II. If the person refuses or is otherwise unavailable for the review under paragraph I, the administrator or other representative of the area agency may sign a complaint for delivery of the person for the review. The complaint and the written notice required by paragraph I shall be provided to a law enforcement officer who shall take custody of the person and immediately deliver such person to the place specified in the complaint.

III. If the administrator or designee, following the review, finds that either the person has violated a condition of the discharge or a condition or behavior exists as a result of which the person may pose a potentially serious likelihood of danger to others or a potentially serious threat of substantial damage to real property, he or she may temporarily revoke the conditional discharge. If the conditional discharge is temporarily revoked, the administrator or designee shall inform the person affected verbally and in writing, giving the reasons for the revocation and shall identify the receiving facility to which the person is to be delivered.

IV. A law enforcement officer shall take custody of the person whose conditional discharge was temporarily revoked under paragraph II and deliver the person, together with a copy of the notice and the reasons for the temporary revocation, to the receiving facility identified by the administrator or designee where the reasons for temporary revocation of the discharge shall be reviewed. Following such review, if the administrator of the receiving facility or designee finds that either the person conditionally discharged has violated a condition of the discharge or a condition or behavior exists as a result of which the person may pose a potentially serious likelihood of danger to others or a potentially serious threat of substantial damage to real property, the administrator or designee may revoke absolutely the conditional discharge and shall provide to the person written and verbal notice of the reasons for the absolute revocation. Following such revocation the person shall be subject to the terms and conditions of the order of involuntary admission from which conditional discharge was granted as if the conditional discharge had not been granted.

V. If the administrator or designee performing a review under paragraph III or paragraph IV finds no basis for temporary or absolute revocation of the discharge, the person shall be returned by the program or facility which has custody of the person to the location where the person was initially taken into custody or to another location agreed to by the person.

**Source.** 1994, 408:8, eff. Jan. 1, 1995.

### 171–A:24 Review by Chief Administrator; Appeal; Rules.

A person whose conditional discharge is revoked pursuant to RSA 171–A:23 may appeal the decision to the chief administrator of the state developmental services system. The person shall be entitled to a hearing on the appeal, before the chief administrator

of the state developmental services system or designee, within 5 days, excluding weekends and holidays, of the receipt of request for the hearing in accordance with rules adopted by the chief administrator pursuant to RSA 541–A. Such rules shall include provision for legal counsel and for waiver of the hearing.

**Source.** 1994, 408:8. 1995, 310:133, eff. Nov. 1, 1995.

### 171–A:25 Action for Discharge.

Any person subject to an order for involuntary admission pursuant to RSA 171–B:12 may file in probate court a petition setting forth such person's name, the underlying circumstances and date of the prior order of the court ordering such person's involuntary admission, a request for discharge from involuntary admission, and the reasons for such request. The petition shall be accompanied by the certificate of a physician, psychiatrist, or psychologist with experience and training in developmental and intellectual disabilities stating that the person is no longer in need of involuntary admission and setting forth the facts upon which such opinion is based. Upon receipt of the petition and the certificate, the court shall conduct a hearing pursuant to RSA 171–B.

**Source.** 1994, 408:8. 2008, 52:16, eff. July 11, 2008.

### 171–A:26 Habeas Corpus.

RSA 171–A:25 shall not be construed to deprive any person of the benefits of the writ of habeas corpus. If the court issuing the writ of habeas corpus grants relief, the court shall enter an order discharging the person and shall transmit a certified copy of it to the probate court entering the original order of involuntary admission. Upon receipt of the certified copy, the probate court shall enter an order finding that such person has been discharged by order of the court.

**Source.** 1994, 408:8, eff. Jan. 1, 1995.

### 171–A:27 Custody and Transportation.

I. Any law enforcement officer shall take custody of persons who are subject to proceedings for involuntary admission under the following circumstances:

(a) Upon issuance by an administrator or designee of a complaint for delivery for review pursuant to RSA 171–A:23, II;

(b) Upon a determination to revoke a conditional discharge temporarily pursuant to RSA 171–A:23, III; or

(c) As necessary to ensure the presence of the person at hearings or examinations conducted under RSA 171–A or 171–B, to effect a transfer between receiving facilities, or to carry out any other lawful order of a court.

II. A law enforcement officer shall also transport any person taken into custody to the appropriate receiving facility, court, place of examination, or other location.

**Source.** 1994, 408:8, eff. Jan. 1, 1995.

### 171–A:28 Duty to Transport.

Upon request, the office of the sheriff of the county in which any person is located who is to be taken into custody in accordance with RSA 171–A:27 shall take such person into custody and transport that person to the appropriate destination.

**Source.** 1994, 408:8, eff. Jan. 1, 1995.

### 171–A:29 Rights Guaranteed.

All rights guaranteed by RSA 171–A to persons with developmental disabilities shall be retained by persons involuntarily admitted under RSA 171–B except where safety or security mandates restriction of such rights. Any restriction of rights under this section may be appealed to the commissioner pursuant to rules adopted by the commissioner under RSA 171–A:3.

**Source.** 1994, 408:8. 1995, 310:172, eff. Nov. 1, 1995.

## Autism Registry

### 171–A:30 Autism Registry.

I. There shall be established a state registry in the department which shall include a record of all reported cases of autism spectrum disorder (ASD) that occur in New Hampshire and other information relevant and appropriate to conduct thorough and complete epidemiologic surveys of ASD, to enable analysis of this problem, and to facilitate planning for services to children with ASD and their families. The department may enter into an agreement with an appropriate entity for the management of the registry; provided, that any records and data submitted to the department pursuant to this subdivision shall be the property of the department.

II. Physicians, psychologists, and any other licensed or certified health care provider who is qualified by training to make the diagnosis and who then makes the diagnosis that a child is affected with ASD shall report all new cases of this diagnosis to the department in a form and manner prescribed by the commissioner. The report shall be in writing and shall include the name and address of the person submitting the report and the child's date of birth, gender, and zip code at birth residence, and the

specific diagnosis of the child diagnosed as having ASD. The department shall assign a unique identification code to identify the child diagnosed as having ASD. The code shall not include the name or address of the child.

III. All information required to be reported under this subdivision shall be confidential. A physician, psychologist, or health care provider providing information to the department in accordance with this section shall not be deemed to be, or held liable for, divulging confidential information.

IV. Nothing in this section shall be construed to compel a child who has been reported as affected with ASD to submit to medical or health examination or supervision by the department.

**Source.** 2006, 106:2, eff. Aug. 7, 2006.

### 171–A:31 Rulemaking.

The commissioner shall adopt rules, pursuant to RSA 541–A, relative to:

I. Procedures for reporting cases of ASD under RSA 171–A:30.

II. Content of all forms required under this subdivision.

III. Confidentiality of records and information reported pursuant to this subdivision.

**Source.** 2006, 106:2, eff. Aug. 7, 2006.

## New Hampshire Council on Autism Spectrum Disorders

### 171–A:32 New Hampshire Council on Autism Spectrum Disorders Established; Duties.

I. There is established a council on autism spectrum disorders to provide leadership in promoting comprehensive and quality education, health care, and services for individuals with autism spectrum disorders and their families. The members of the council shall be as follows:

(a) The governor, or designee.

(b) The commissioner of the department of education, or designee.

(c) The commissioner of the department of health and human services, or designee.

(d) The director of the division of public health services, department of health and human services, or designee.

(e) The bureau chief of the bureau of developmental services, department of health and human services, or designee.

(f) The bureau chief of the bureau of behavioral health, department of health and human services, or designee.

(g) The director of the Institute on Disability, University of New Hampshire, or designee.

(h) A special education director, appointed by the New Hampshire Association of Special Education Administrators, Inc.

(i) The president of the New Hampshire Medical Society, or designee.

(j) A representative of the New Hampshire Developmental Disabilities Council, appointed by the council.

(k) An individual who has an autism spectrum disorder, appointed by the governor.

(l) A family member of a person who has an autism spectrum disorder, appointed by the governor.

(m) A representative of the Community Support Network, Inc., appointed by such organization.

(n) A representative of the New Hampshire Psychological Association, appointed by the association.

(o) The director of the office of Medicaid business and policy, department of health and human services, or designee.

(p) Up to 5 additional members, nominated by the council and appointed by the governor.

(q) A person who has an autism spectrum disorder, appointed by the council.

(r) A representative of the New Hampshire Nurses' Association, appointed by the association.

(s) A licensed speech-language pathologist, appointed by the New Hampshire Speech–Language–Hearing Association, Inc.

I–a. A quorum of the council shall be a majority plus one member of the appointed members of the council.

II. The council shall:

(a) Provide leadership on training, policy, research, and coordination of supports and services for individuals and their families.

(b) Provide information to families and individuals with autism spectrum disorder about evidenced-based and promising practices for community-based education, support, and treatment.

(c) Collaborate with schools and other service systems to identify exemplary supports and services and promote successful practices throughout New Hampshire.

(d) Increase resources for individuals with autism spectrum disorders and their families by accessing federal and state grants and pursuing development opportunities through foundations, corporations, and planned giving.

(e) Serve as an information clearinghouse for individuals, families, and providers seeking diagnosticians, behavioral specialists, speech pathologists, occupational therapists, psychologists, and others who have expertise in working with individuals with autism spectrum disorders.

(f) Encourage the establishment of regional collaboratives with representation from educational, health care, and community service providers to ensure that individuals with autism spectrum disorders and their families receive necessary services.

(g) Make an annual report beginning on April 1, 2009 to the governor, the speaker of the house of representatives, the president of the senate, the commissioners of the department of health and human services and department of education, the members of the house committees on education, health, human services and elderly affairs, and finance, and the members of the senate committees on education, health and human services, and finance.

III. The department of health and human services shall provide administrative support to the council.

**Source.** 2008, 190:1. 2013, 11:1–3, eff. July 6, 2013. 2018, 315:11, eff. Aug. 24, 2018. 2022, 158:1, 2, eff. Aug. 6, 2022.

### Developmental Services Quality Council

**171–A:33 Developmental Services Quality Council Established; Membership; Duties.**

I. There is established the developmental services quality council to provide leadership for consistent, systemic review and improvement of the quality of the developmental disability and acquired brain disorder services provided within New Hampshire's developmental services system. At least 51 percent of the members of the council shall be individuals with disabilities served by the system or parents of individuals served by the system. The members of the council shall be as follows:

(a) The commissioner of the department of health and human services, or designee.

(b) A representative of People First of New Hampshire, appointed by such organization.

(c) A representative of Advocates Building Lasting Equality in New Hampshire (ABLE NH), appointed by such organization.

(d) A representative of the New Hampshire council on autism spectrum disorders who shall be either the individual who has an autism spectrum disorder or the family member of a person who has an autism spectrum disorder, appointed by the council.

(e) A representative of the Brain Injury Association of New Hampshire, appointed by the association.

(f) Two representatives of the New Hampshire Developmental Disabilities Council, at least one of whom shall be a person with a developmental disability, appointed by the council.

(g) Three representatives of local Family Support Councils, appointed by the state Family Support Council.

(h) One direct support professional and one enhanced family care provider, appointed by the New Hampshire Developmental Disabilities Council.

(i) Three representatives of area agency boards of directors including at least 2 persons with a developmental disability or family members of such persons, appointed by the Community Support Network Incorporated.

(j) A representative of the Community Support Network Incorporated, appointed by such organization.

(k) A representative of the Private Provider Network, appointed by such organization.

(l) The director of the Institute on Disability, University of New Hampshire, or designee.

(m) A representative of the Disability Rights Center - NH, appointed by the center.

(n) Up to 5 additional members, nominated by the council and appointed by the governor.

II. The groups represented under paragraph I are encouraged to provide, according to their ability, the in-kind and other resources necessary for the council to succeed. The council may request information and analysis on quality from the department of health and human services, area agencies, and providers. The council shall have access to all non-confidential information on quality for services funded all or in part by public funds.

III. The council shall regularly review information on the quality of developmental services in New Hampshire and make recommendations for improving service quality and the quality assurance and continuous improvement systems, including, but not limited to:

(a) Standards of quality and performance expected of area agencies and provider agencies.

(b) Types of data to be collected, analyzed, and disseminated to determine whether standards are being met.

(c) Quality assurance and oversight mechanisms to be used to gather data and information.

(d) Content, frequency, and recipients of quality evaluation and improvement reports.

(e) Expectations and procedures for following up on identified areas where improvements are needed.

(f) Structures, policies, rules, and practices, including staffing or organizational changes, to ensure that the developmental services system works as intended in RSA 171–A:1, including:

(1) Ways of supporting values-based and person-centered service planning and provision, as well as problem solving, innovation, and learning;

(2) Recognizing and disseminating what is working well (best/model practices);

(3) Significant changes proposed by the department relating to, or which may impact any of, the practices, policies, standards, rates, budgets, funding formulae, or rights pertaining to eligibility or provision of supports and services under RSA 171–A; and

(4) Reviewing, clarifying, and disseminating data and information on a regular basis to bring about transparency for all stakeholders and the public.

IV. The council shall provide the department with recommendations for improving service quality and the quality assurance and continuous improvement systems, no more frequently than quarterly. The department shall respond in writing within 30 business days of receipt of the council's recommendations with a statement indicating whether it agrees or disagrees with each of the council's recommendations. Following receipt of the department's response, the council shall place the response on the next council meeting agenda for discussion by the commissioner's designee on the council. Within 60 business days of the council meeting, discussion, and record of the discussion in the minutes, the department shall provide:

(a) For each recommendation it agrees with, a detailed plan for how the department will address the areas identified as needing improvement including the specific steps the department plans to take, along with a timeline for each step;

(b) For any recommendation it does not agree with, an explanation of the basis for its disagreement and rationale for its decision not to take action on any specific recommendation; and

(c) If the department is unable to respond to the council's recommendations within the time frames above, the department shall inform the council in writing and include the reasons for not being able respond within the time frames.

V. The quarterly limit as described in paragraph IV is not intended restrict the council's ability to comment on rules, regulations, proposals, or other initiatives impacting the quality of services for people with developmental disabilities and acquired brain disorders as needed throughout the year.

VI. The council shall make an annual report beginning on November 1, 2010 that includes its recommendations and an assessment of the actions taken in response to previous recommendations to the governor, the speaker of the house of representatives, the president of the senate, the members of the house committee on health, human services and elderly affairs and the members of the senate committee on health and human services.

VII. The meetings shall be convened by the chair or vice chair of the council or commissioner of the department of health and human services, or designee, and shall meet regularly as determined by the council. The meetings shall be open to the public and subject to the provisions of RSA 91–A, the right-to-know law. The council may establish bylaws for governing its meetings, decisions, and other operations. For the purpose of convening council meetings in compliance with RSA 91–A, a quorum of the council shall be a majority plus one member of the appointed members of the council. Members who are not able to be physically present at council meetings due to their disabilities or the disability of a family member shall be counted as attending "in person" for the purpose of the establishment of a quorum provided that each member participating electronically or otherwise is able to simultaneously hear and speak to each of the other council members during the meeting, and shall be audible or otherwise discernable to public in attendance at the meeting's location. Any member participating in such fashion shall identify the persons present in the location from which the member is participating.

**Source.** 2009, 104:1, eff. Aug. 14, 2009. 2014, 102:1, eff. Aug. 10, 2014. 2022, 158:3, 4, eff. Aug. 6, 2022. 2023, 183:1, eff. Oct. 3, 2023.

**Commission To Study the Needs of Certain Individuals in New Hampshire's Developmental Services System**

**171–A:34 Repealed by 2019, 269:2, effective Nov. 30, 2019.**

# TITLE XV

# EDUCATION



## CHAPTER 186

## THE STATE SCHOOL ORGANIZATION

**State Board of Education**

## State Board of Education

**186:1 Repealed by 1986, 41:29, I, eff. April 3, 1988.**

**186:2 Repealed by 1986, 41:29, I, eff. April 3, 1988.**

**186:3 Repealed by 1986, 41:29, I, eff. April 3, 1988.**

**186:4 Repealed by 1986, 41:29, I, eff. April 3, 1988.**

### 186:5 Powers.

The state board shall have the same powers of management, supervision, and direction over all public schools in this state as the directors of a business corporation have over its business, except as otherwise limited by law. It may make all rules and regulations necessary for the management of its own business and for the conduct of its officers, employees, and agents, and to secure the efficient administration of the public schools and the administration of the work of Americanization, in teaching English to non-English-speaking adults and in furnishing instruction in the privileges, duties, and responsibilities of citizenship, which is hereby declared to be an essential part of public school education. It shall be the duty of school boards and employees of school districts to comply with the rules and regulations of the state board.

**Source.** 1919, 106:5. 1921, 85, I:5. PL 116:5. RL 134:5.

### 186:6 Compliance With Federal Provisions.

The state board may also make the regulations necessary to enable the state to comply with the provisions of any law of the United States intended to promote vocational or other education, to abolish

illiteracy and Americanize immigrants, to equalize educational opportunities, to promote physical health and recreation, and to provide an adequate supply of trained teachers.

**Source.** 1919, 106:5. 1921, 85, I:5. PL 116:6. RL 134:6.

### 186:6–a Limitation of Education.

Notwithstanding any other provision of law, the authority of the state department of education shall be limited to the problems associated with kindergarten and grades one through 12, provided, however, that the state board of education shall be authorized to accept, distribute and supervise funds for prekindergarten programs.

**Source.** 1963, 303:12. 1971, 371:3. 1989, 303:1. 1995, 182:22. 1998, 272:32, eff. Jan. 1, 1999.

### 186:7 Federal Funds; Cooperation.

The state treasurer shall be custodian of any money that may be allotted to the state by the federal government for general educational purposes. He shall also be the custodian of all moneys received by the state from appropriations made by congress for vocational rehabilitation of persons disabled in industry or otherwise, together with moneys received for this purpose from other sources, and is authorized to make disbursements therefrom upon the order of the state board. The state board is authorized and directed to cooperate with the proper authorities of the United States in educational work and in carrying out the provisions of the federal civilian vocational rehabilitation act.

**Source.** 1917, 226:2. 1921, 85, I:5. 1925, 18:1. PL 116:7. 1931, 48:1. RL 134:7.

### 186:7–a Special Teacher Competence Fund.

The state treasurer shall invest as a permanent fund the proceeds of the sale of the state lands affected under the authority of a joint resolution approved June 28, 1867 and the annual income thereof may be used by the state board of education for any activity calculated to increase the professional competence of the teachers of New Hampshire.

**Source.** 1969, 69:6, eff. June 3, 1969.

### 186:8 Rulemaking Authority; Standards; Employee Qualifications.

The state board of education shall adopt rules, pursuant to RSA 541–A, relative to:

I. Academic standards for all grades of the public schools.

II. Minimum standards for public school approval for all grades of the public schools.

III. Qualifications and duties for school superintendents, principals, school administrative unit professionals and other public school employees.

IV. Certification standards for educational personnel, including those listed in RSA 21–N:9, II(s), 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, provide for recertification based on another state's procedures if the other state's professional development plan is approved by the New Hampshire department of education.

V. Establishing requirements for teachers and teacher preparation programs to ensure that all teachers are prepared to teach to a broad range of students' needs, including, but not limited to, the needs of exceptional learners.

VI. Certification standards for advanced teaching credentials, including administering the master teacher credential as provided in RSA 189:14–f.

VII. Appeals from a school board on the matter of nonrenewal of teacher contracts, providing that the appeal to the state board of education shall be limited to the record developed at the school board hearing, except where the state board of education determines that new evidence is available which could not have been reasonably discovered at the time of the school board hearing and that such evidence may have materially affected the outcome of the school board hearing. In such cases, the state board of education shall render a final decision in the matter or remand it to the school board for a new hearing.

VIII. Requiring a high school pupil to attain competency in mathematics for each year in which he or she is in high school through graduation to ensure career and college readiness. A pupil may meet this requirement either by satisfactorily completing a minimum of 4 courses in mathematics or by satisfactorily completing a minimum of 3 mathematics courses and one non-mathematics content area course, including, but not limited to, a CTE program under RSA 188–E, in which mathematics knowledge and skills are embedded and applied, as may be approved by the school board. The rules shall be implemented in the 2015-16 school year.

IX. Implementing the provisions of RSA 193:26–a.

**Source.** 1919, 106:5. 1921, 35, 1:5. PL 116:8. RL 134:8. 1951, 255:2. RSA 186:8. 1986, 41:7. 1998, 174:3; 314:2. 1999, 224:1. 2003, 204:1. 2014, 119:1. 2016, 84:1, eff. July 18, 2016. 2018, 108:1, eff. July 24, 2018. 2021, 209:2, Pt. I, Sec. 2, eff. July 1, 2023.

**186:9 Repealed by 1986, 41:29, I, eff. April 3, 1988.**

**186:9–a Repealed by 1986, 41:29, I, eff. April 3, 1988.**

**186:9–b Repealed by 1986, 41:29, I, eff. April 3, 1988.**

**186:10 Repealed by 1986, 41:29, I, eff. April 3, 1988.**

**186:10–a Hearing Officer.**

The state board of education upon nomination of the commissioner shall appoint a qualified hearing officer to preside over such preliminary hearings as may be held prior to formal hearings held by the state board, and to render decisions which shall be binding until the state board's formal hearings are held.

**Source.** 1977, 57:1. 1986, 41:30, eff. April 3, 1988.

**186:11 Duties of State Board of Education.**

The state board of education shall, in addition to the duties assigned by RSA 21–N:11:

I. [Repealed.]

II. SUPERVISION. Supervise the expenditure of all moneys appropriated for public schools, and inspect all institutions in which or by which such moneys are used.

III. BUDGET: INFORMATION. Prepare a budget for such expenditures, give to the public information as to the educational conditions in different parts of the state and the opportunities open to pupils in the public schools, and all such further information in respect to educational matters as will promote the cause of education. For this purpose it may employ lecturers and publish and distribute books and pamphlets on education and educational subjects.

IV, V. [Repealed.]

VI. SCHOOL REGISTERS. Prescribe the form of the register to be kept concerning the schools, the form of blanks and inquiries for the returns to be made by the school boards, and seasonably send the same to the clerks of the several cities and towns for the use of the school boards therein.

VII. PUBLIC DOCUMENTS. Keep on file in its office and distribute all state documents in relation to public schools and education.

VIII. DISTRICT RETURNS. Preserve in accessible form the returns of school boards and of all other officers required to make returns to the board.

IX. INSTRUCTION AS TO CHILD ABUSE PREVENTION, YOUTH SUICIDE PREVENTION, INTOXICANTS, DRUGS, HIV/AIDS, AND SEXUALLY TRANSMITTED DISEASES.

(a) Direct the department to develop academic standards to serve as a guide and reference in health, physiology, and hygiene as they relate to the effects of alcohol and other drugs, child abuse, human immunodeficiency virus (HIV)/acquired immunodeficiency syndrome (AIDS), and sexually transmitted diseases on the human system, and which are designed to help students lead longer, healthier lives.

(b) Provide information about HIV/AIDS to all public and private schools to facilitate the delivery of appropriate courses and programs.

(c) Review HIV/AIDS curriculum materials to assure relevancy in assisting students to become health-literate citizens and lead longer, healthier lives.

(d) Provide information about youth suicide prevention to all public and private schools to facilitate the delivery of appropriate courses and programs.

(e) Submit a report no later than December 1, 2010, and biennially thereafter, prepared in conjunction with the commissioner of the department of education, to the chairpersons of the house and senate education committees, the house health, human services and elderly affairs committee, and the senate health and human services committee, detailing the state's efforts in fulfilling the policies relating to health education in kindergarten through grade 12 as set forth in subparagraphs (a)–(d).

IX–a. [Repealed.]

IX–b. HEALTH AND SEX EDUCATION. Require school districts to adopt a policy allowing an exception to a particular unit of health or sex education instruction based on religious objections. Such policy shall include a provision for alternative learning sufficient to enable the child to meet state requirements for health education.

IX–c. REQUIRE SCHOOL DISTRICTS TO ADOPT A POLICY ALLOWING AN EXCEPTION TO SPECIFIC COURSE MATERIAL BASED ON A PARENT'S OR LEGAL GUARDIAN'S DETERMINATION THAT THE MATERIAL IS OBJECTIONABLE. Such policy shall include a provision requiring the parent or legal guardian to notify the school principal or designee in writing of the specific material to which they object and a provision requiring an alternative agreed upon by the school district and the parent, at the parent's expense, sufficient to enable the child to meet state requirements for education in

the particular subject area. The policy shall also require the school district or classroom teacher to provide parents and legal guardians not less than 2 weeks advance notice of curriculum course material used for instruction of human sexuality or human sexual education. The policy shall address the method of delivering notification to a parent or legal guardian. To the extent practicable, a school district shall make curriculum course materials available to parents or legal guardians for review upon request. The name of the parent or legal guardian and any specific reasons disclosed to school officials for the objection to the material shall not be public information and shall be excluded from access under RSA 91–A.

IX–d. Require School Districts to Adopt a Policy Governing the Administration of Non-academic Surveys or Questionnaires to Students. The policy shall require school districts to notify a parent or legal guardian of a non-academic survey or questionnaire and its purpose. The policy shall provide that no student shall be required to volunteer for or submit to a non-academic survey or questionnaire, as defined in this paragraph, without written consent of a parent or legal guardian unless the student is an adult or an emancipated minor. The policy shall include an exception from the consent requirement for the youth risk behavior survey developed by the Centers for Disease Control and Prevention. The policy shall also allow a parent or legal guardian to opt-out of the youth risk behavior survey developed by the Centers for Disease Control and Prevention. The school district shall make such surveys or questionnaires available, at the school and on the school or school district's website, for review by a student's parent or legal guardian at least 10 days prior to distribution to students. In this paragraph, "non-academic survey or questionnaire" means 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.

X. Adopt rules, pursuant to RSA 541–A, relative to:

(a) Certification of teachers, supervisors, and administrators in the public schools. The state board shall also examine the qualifications of candidates for those positions and issue certificates to those who meet the requirements of said rules.

(b) Fees to be paid to the commissioner of education for the administration of proficiency exams and other competence evaluations and other related fees including, but not limited to, fees for late filing and duplicate credentials, and for the issuance of educational credentials. These fees must bear a reasonable relationship to the actual costs related to such activities. Funds collected from these fees shall be expended only for purposes of fulfilling the requirements of this paragraph. No portion of the funds collected from these fees shall lapse, nor be used for any other purpose than fulfilling the requirements of this paragraph, nor be transferred to any other appropriation.

(c) Approval of professional preparation programs.

(d) Procedures for the electronic certification of educational credentials.

(e) Establishment and enforcement of a code of ethics and a code of conduct for licensed or certified educational personnel as provided in RSA 21–N:9, II(cc).

XI. [Repealed.]

XII. Vocational Education. Cooperate with the U.S. Department of Education for the purpose of carrying the Carl D. Perkins Vocational Education Act of 1984 and its successor acts into effect insofar as that act relates to this state.

XIII. Education for Persons with Disabilities. Prepare, develop and administer plans to provide educational facilities for persons with disabilities.

XIV. Lectures. Lecture on educational subjects in as many cities and towns in this state as the time occupied by the commissioner's other duties will permit.

XV. Truant Officers. Report frequently to the chairman of the several school boards the relative efficiency of the several truant officers in the state.

XVI. [Repealed.]

XVII. District Contracts. Examine contracts made by districts with academies, high schools and other literary institutions, for the purpose of deciding whether they are calculated to promote the cause of education.

XVIII. School Attendance. Enforce the laws relative to school attendance and the employment of minors; and for this purpose the board and its deputies are vested with the power given by law to truant officers.

XIX. School Laws. Compile and issue, at the close of each session of the legislature, an edition of the school laws.

XX–XXIV. [Repealed.]

XXV. ASSISTANTS. Employ as many supervisors, inspectors, stenographers, accountants, clerks and agents as may be necessary to enable it to perform the duties imposed on it by law.

XXVI. CONFERENCES. Hold conferences from time to time with superintendents, other school administrative unit personnel, principals, and teachers, or their representatives, for the purpose of inspiring mutual cooperation in the carrying on of their work and of unifying educational aims and practices.

XXVII. PROGRAMS. Prepare, publish and distribute such school programs, outlines of work and courses of study as will best promote education interests of the state.

XXVIII. HEALTH. Have authority to employ a competent person or persons to examine and care for the health of pupils, subject to the provisions of RSA 200.

XXIX. Adopt rules, pursuant to RSA 541–A, relative to reasonable criteria for approving non-public schools for the purpose of compulsory attendance requirements. The rules may contain criteria for conditional approval as specified by the state board. The state board of education may, upon request, designate which schools meet those criteria, and may, upon the request of a non-public school, approve or disapprove its education program and curriculum.

XXIX–a. Adopt rules pursuant to RSA 541–A, relative to establishing a process for receiving, investigating, and resolving complaints from parents or legal guardians concerning school safety and school violence in nonpublic schools.

XXX. [Repealed.]

XXXI. DRIVER EDUCATION. Establish jointly with the department of safety, teacher qualifications, course content and standards, in connection with the driver education program conducted in secondary schools in this state; and adopt such rules as may be necessary to carry out the program and supervise the driver education program in the secondary schools of the state. Driver education instructors shall not be required to be certified as secondary school teachers. Although authority is shared by the departments of safety and education, those regulations, directions and procedures that have a direct or indirect relationship to a life or safety issue shall rest with the department of safety as the final and ultimate authority.

XXXII. LEARNING DISABILITY TEACHER. Establish the qualifications, conditions and exceptions for providing a learning disability teacher in each school district.

XXXIII. DISCRIMINATION. Ensure that there shall be no unlawful discrimination in any public school against any person on the basis of sex, race, creed, color, marital status, or national origin in educational programs, and that there shall be no denial to any person on the basis of sex, race, creed, color, marital status, national origin, or economic status of the benefits of educational programs or activities.

XXXIV. MISSING CHILD EDUCATION PROGRAM. Administer the missing child education program as established in RSA 193:31.

XXXV. CERTIFICATION STANDARDS for the CREDENTIAL OF MASTER TEACHER. Adopt rules creating the educational credential of master teacher based on the provisions of RSA 189:14–f.

XXXVI. PUPIL SAFETY AND VIOLENCE PREVENTION. Develop and distribute to school districts a technical assistance advisory for the purpose of providing guidance to school districts on the implementation of pupil safety and violence prevention policies as required under RSA 193–F.

XXXVII. SCHOOL RESOURCE OFFICERS. Require each school district in the state to which a school resource officer is assigned to develop and implement a policy which shall include, at a minimum, a requirement for a signed memorandum of understanding between the school district and the law enforcement agency from which the school resource officer is deployed. The memorandum of understanding shall be made available as a public document.

**Source.** 1919, 106:9. 1921, 85, I:8. PL 116:11. 1929, 145:3. 1939, 8:1. RL 134:11. 1953, 243:1–4. RSA 186:11. 1957, 252:1, 2. 1961, 196:1–3. 1963, 117:2; 147:1; 303:7; 305:1–3. 1965, 199:1; 339:4. 1967, 448:1. 1969, 69:1–3. 1971, 371:4, 5; 443:4. 1973, 140:15; 209:2; 242:1. 1974, 28:1. 1975, 23:1; 207:1; 505:6. 1977, 432:1; 452:6. 1979, 53:1; 459:4, 9, 10. 1981, 318:1. 1985, 318:4. 1986, 41:8–10, 29, II. 1987, 161:1. 1988, 262:7. 1989, 266:37. 1990, 28:1; 140:2, III. 1992, 123:1. 1993, 322:9, I, II. 1996, 298:5, I. 1998, 174:4, 5; 314:3; 389:8, 9. 1999, 157:1. 2000, 190:2. 2003, 39:1; 186:2. 2005, 92:1. 2008, 251:1, 4, 5. 2009, 105:1; 280:1. 2011, 271:1. 2014, 62:1. 2015, 161:6. 2016, 14:1; 84:2. 2017, 9:1, eff. June 16, 2017; 22:2, eff. June 24, 2017; 251:1, eff. Sept. 16, 2017. 2019, 258:2, eff. Sept. 17, 2019. 2021, 227:3, eff. Oct. 24, 2021.

### National Defense Education Aid

**186:11–a to 186:11–e Repealed by 1990, 28:11, eff. May 14, 1990.**

### Appeals and Appropriations

**186:12 Repealed by 1986, 41:29, I, eff. April 3, 1988.**

**186:13 Appropriations, How Used.**

All money appropriated by the legislature for general educational purposes, in addition to the literary

fund and all other funds created for the purposes enumerated in this section, shall be used for the following purposes:

I. ILLITERACY. For the abolition of illiteracy and for the instruction of illiterates over 14 years of age in common school branches and in the privileges, duties, and responsibilities of citizenship.

II. AMERICANIZATION. For the Americanization of immigrants, for the teaching of those 14 years of age and over to speak and read English and to appreciate and respect the civic and social institutions of the United States, and for instruction in the duties of citizenship.

III. EQUALIZATION AND GENERAL AID. For equalizing educational opportunity and improving the public elementary and high schools.

IV. HEALTH. For promotion of the physical health and recreation of pupils, and for their medical and dental examination.

V. EXAMINATION, ETC. For the determination of mental and physical defects, for the employment of school nurses and the instruction of pupils in the principles of health and sanitation.

VI. INSTRUCTING TEACHERS. For preparing teachers for the schools, particularly for rural schools, for encouraging a more nearly universal preparation of prospective teachers, and for extending the facilities for the improvement of teachers already in the service.

VII. EXPENSES. For the expense of administration of the department of education.

VIII. FEDERAL AID. For making available the funds provided by federal law for vocational or other education.

IX. TUITION. For the payment of tuition as provided in this title.

X. EDUCATION FOR THE DEAF. For the expense of providing educational facilities for the deaf.

XI. (a) To share with local school districts, under Public Law 91–248, the cost of the national school lunch program, excluding state salary and administrative expenses, the state board of education shall from appropriated funds disburse such funds to schools in such manner that each school receives the same proportionate share of such funds as it receives of the federal funds apportioned to New Hampshire for the same federal fiscal year, under section 4 of the National School Lunch Act, as amended.

(b) To accomplish the requirements for school food service and nutrition education which each school board is required to implement under RSA 189:11–a, the state board of education may allocate from such matching funds, as required to be appropriated under Public Law 91–248, an amount not to exceed ½ of the appropriation. These funds are to be disbursed to school districts for the purchase of food service equipment and nutrition education learning materials as required to meet the requirements of RSA 189:11–a. Such disbursements are to be used first to meet the school district's share of non-food assistance matching under the federal program and to assist with the purchase of food service equipment in schools ineligible for federal non-food assistance funding; residual amounts available under this appropriation authority may be utilized to institute nutrition education programs, at the discretion of the state board of education.

(c) Subject to available appropriations, a chartered public school, nonpublic school approved by the department of education, or any residential facility for children, which meets state and federal school nutrition program requirements, may apply for reimbursement pursuant to RSA 189:11–a, VII, for all approved meals.

XII. REVOLVING FUND. For a nonlapsing revolving fund to be known as the printed materials revolving fund which is hereby established to be administered by the department of education. The moneys in said fund shall be used for the purpose of printing materials for distribution. A reasonable charge shall be established for each copy of a document. Charges made shall be in the amount necessary to pay the cost of producing such documents. Receipts from the sale of any documents shall be credited to the fund established in this paragraph. The receipts from such charges shall be used for no other purpose than the subsequent printing of documents of the department of education. State agencies and members of the general court shall not be charged for printed materials which are paid for by the fund. Any available balance in this fund in excess of $50,000 on June 30 of each year shall be deposited in the general fund as unrestricted revenue.

**Source.** 1919, 106:11. 1921, 85, I:11. PL 116:14. 1929, 145:3. 1939, 8:2. RL 134:14. 1947, 198:1. RSA 186:13. 1971, 250:1. 1975, 347:1. 1986, 145:1. 1993, 227:1. 1996, 179:2. 2007, 76:1. 2008, 354:1, eff. Sept. 5, 2008.

**186:13–a Repealed by 1973, 533:14, eff. July 1, 1973.**

**Approval of Branches of Out-Of-State Institutions**

**186:13–b Repealed by 2013, 164:7, II, eff. June 28, 2013.**

**186:13–c Repealed by 2013, 164:7, III, eff. June 28, 2013.**

**The Teachers Colleges**

**186:14 to 186:24 Repealed by 1963, 303:7, eff. July 1, 1963.**

**Examination of Candidates for Teachers**

**186:25 to 186:34 Repealed by 1969, 69:4, eff. June 3, 1969.**

**Teachers' Institutes**

**186:35 to 186:38 Repealed by 1969, 69:5, eff. June 3, 1969.**

**Vocational Education**

**186:39 State Board of Education.**

The state board of education is hereby designated as the sole agency for the receipt of federal funds under the provisions of federal vocational education acts. The commissioner, department of education, shall administer programs for which the state may be entitled to receive such federal funds. The state is pledged to make available for the several purposes of said federal acts funds sufficient to meet the state's obligations from time to time and to meet all conditions necessary to entitle the state to accept the benefits thereof.

**Source.** 1917, 226:1. 1921, 85, I:35. 1925, 18:1. PL 116:38. RL 134:38. RSA 186:39. 1990, 28:2, eff. May 14, 1990.

**186:40 Administration.**

The commissioner, department of education, is authorized to arrange with institutions and with school boards of towns or city districts in the state to furnish the necessary buildings, equipment, and additional funds required in carrying out the provisions of the federal acts, so far as those acts apply to this state; and school districts are authorized to enter into such contracts with the commissioner. The commissioner is further authorized to approve certain schools and educational institutions within the state as vocational training centers for the purpose of enlarging the opportunities for such training and putting into effect the provisions of RSA 186:39 and to make suitable arrangements with such schools and institutions to receive pupils for vocational training who may not reside in the town or school district where such school or institution is located.

**Source.** 1917, 226:4, 5. 1921, 85, I:36. PL 116:39. RL 134:39. 1943, 91:1. RSA 186:40. 1990, 28:3, eff. May 14, 1990.

**186:40–a Technical Assistance.**

A primary responsibility of the department of education shall be to provide technical assistance and information to school districts to assist the districts to effectively and efficiently implement state and federal vocational education policies and programs. The department shall place less emphasis on regulation and shall give high priority to increasing and improving technical assistance efforts.

**Source.** 1985, 297:3, eff. June 14, 1985.

**Handicapped Children**

**186:41 to 186:50 Repealed by 1965, 378:2, eff. July 1, 1965.**

**Intellectually Retarded Children**

**186:50–a to 186:50–c Repealed by 1961, 226:3, eff. July 1, 1961.**

**186:50–d to 186:50–g Repealed by 1965, 378:2, eff. July 1, 1965.**

**Commissioner's Salary**

**186:51 Repealed by 1986, 41:29, I, eff. April 3, 1988.**

**Board of Nurse Examiners**

**186:52, 186:53 Repealed by 1991, 132:1, I, eff. July 19, 1991.**

**Higher Education Loan Program**

**186:54 to 186:58 Repealed by 1991, 132:1, II, eff. July 19, 1991.**

**School Volunteer Programs**

**186:59 School Volunteer Programs Authorized.**

The commissioner of education is authorized to contract with appropriate private organizations to provide volunteer services to public schools. Such organizations would serve as centralized agencies for recruiting, orienting, training and placing volunteers in public schools. The commissioner of education shall request the attorney general to prepare a contract which will outline the obligations of the parties.

**Source.** 1973, 327:1, eff. July 1, 1973.

## Professional Standards Board

### 186:60 Professional Standards Board.

I. There is hereby established a professional standards board to advise the state board of education regarding professional growth, certification, and governance of the education profession in this state. The board shall consist of the following 21 members:

(a) The commissioner of the department of education, or designee, who shall be the executive secretary of the board;

(b) 9 members representing classroom teachers, education specialists, or instructional specialists;

(c) 9 members representing higher education and education administration with at least 3 employed by a community college system of New Hampshire member institution education department, or university system of New Hampshire member institution education department; and

(d) 2 members representing qualified lay persons.

II. The state board of education shall appoint the 20 members of the board specified in paragraph I(b), (c) and (d) from nominations submitted by the education profession and interested persons.

III. The appointed members of the board shall serve for 3–year terms and may not serve for more than 3 consecutive full terms.

IV. The appointed members of the board shall serve without compensation and shall be entitled to reimbursement by the state board of education for mileage and expenses incurred in performing required duties. The state board of education shall furnish the board with materials, secretarial assistance, and meeting facilities.

V. The members of the board shall annually elect a chairperson from among their membership. The chairperson shall present budget requests to the state board of education.

VI. The board shall have the following powers and duties:

(a) The board shall recommend policies to the state board of education including, but not limited to, pre-service education, continuing education, professional growth, initial certification, recertification, para-professional training and certification, revocation of credentials, performance evaluation and staffing patterns. In making policy recommendations on the certification process, the board shall consider complaints it receives from persons who feel aggrieved by the process.

(b) The board shall meet at least 5 times annually.

(c) The board shall annually submit a report to the state board of education concerning its activities and containing policy recommendations.

(d) The board shall maintain records and minutes of its meetings and shall file them in the bureau of credentialing for 25 years.

**Source.** 1975, 122:1. 1986, 41:12. 1994, 379:4, eff. June 9, 1994. 2018, 315:9, eff. Aug. 24, 2018. 2019, 132:1, 2, eff. Aug. 24, 2019. 2022, 315:1, eff. Aug. 30, 2022.

## Adult Education

### 186:61 Establishment of Adult High School Education Program.

I. The state board of education shall establish and promote an educational program for adults to earn a high school diploma or its equivalent. This program shall be administered by the division of learner support, department of education, in accordance with the rules adopted by the state board.

II. The state board of education shall adopt rules, pursuant to RSA 541–A, relative to:

(a) The issuance of high school diplomas to adults.

(b) The issuance of high school equivalency certificates based on uniform educational criteria.

(c) Designation of public schools and institutions of higher education to serve as testing centers for high school equivalency certificate examinations.

**Source.** 1975, 363:1. 1986, 41:13. 1994, 379:5, eff. June 9, 1994. 2018, 315:12, eff. Aug. 24, 2018.

### 186:62 Establishment of Other Adult Education Programs.

I. The state board of education shall promote and encourage other programs of adult and continuing education. The board shall adopt rules, pursuant to RSA 541–A, relative to standards and accreditation of those adult and continuing education programs which involve certification of adult learners at the high school level.

II. These programs shall be administered by the division of learner support. The division shall:

(a) Receive applications from school district officials seeking those funds which have been designated for adult education programs operating within school district auspices and grant funds to school districts for such programs.

(b) Accept grants, gifts and funds for such programs.

(c) Request, receive and expend federal funds for such programs.

III. It is the intent of this subdivision to:

(a) Encourage the development of adult and continuing education programs by persons and organizations operating both within and outside of the public school system and to encourage such persons and organizations to apply for federal or state funds which are available for the support of programs in adult education, continuing education, and community education.

(b) Encourage the use of public school facilities by various educational groups and organizations within the community, subject to those guidelines and policies which might be established by local school boards.

IV. This subdivision should not be construed to:

(a) Restrict through certification or other procedures the ability of individuals or organizations to act in a teaching capacity with respect to adult, continuing, or community education programs for which no diploma or certification is offered.

(b) Extend control over adult or continuing education programs organized by public or private institutions of higher or postsecondary education to the state board of education, except where such programs are already under its jurisdiction.

**Source.** 1975, 363:1. 1986, 41:14. 1994, 379:6, eff. June 9, 1994. 2018, 315:13, eff. Aug. 24, 2018.

### 186:63 Funding of Educational Programs.

Funding for the programs authorized by this subdivision shall be from monies appropriated by the state and the school districts for such programs and from such other funds as may be made available by the state board of education.

**Source.** 1975, 363:1, eff. Aug. 6, 1975.

## Comprehensive Health Education

**186:64 to 186:67 Repealed by 1986, 41:29, III, eff. April 3, 1988.**

**186:67–a Repealed by 2009, 105:2, eff. June 15, 2009.**

## Military Recruiters Access

### 186:68 Military Recruiters; Access; Reporting.

I. Notwithstanding any other provision of law to the contrary, all public high schools and all institutions within the state university system, and all private high schools, colleges, and universities which receive state funds shall offer the same on-campus recruiting opportunities to representatives of state or United States armed services as they offer to nonmilitary recruiters.

II. (a) A public school subject to this section shall provide notice to each student and to the parent or guardian of each student enrolled at the school that, in accordance with federal law, the student or the parent or guardian of the student may request that the student's name, address, and telephone number not be released to military recruiters.

(b) The notice described under subparagraph (a) shall:

(1) Be included in a clear and conspicuous manner and in the same size type as the other statements on the card requesting emergency contact information that is distributed by the school to each student or parent or guardian of the student; and

(2) Request that the student or the parent or guardian of the student indicate if the student's name, address, and telephone number is not to be released to military recruiters by checking the box "Do not release contact information."

III. (a) In this paragraph, "ASVAB" means the Armed Services Vocational Aptitude Battery.

(b) Each public school that administers the ASVAB shall choose "option 8" as the score reporting option for military recruiter contact to prohibit the general release of any student information to military recruiters.

(c) Each public school that administers the ASVAB shall:

(1) Send a written notice to the ASVAB representative coordinating the school's administration of the ASVAB of the requirement set forth in subparagraph (b); and

(2) Notify students taking the ASVAB and the parent or guardian of students taking the ASVAB of the release of student information requirements set forth in subparagraphs (b) and (d).

(d) A student or a student's parent or guardian may choose to release the student's personal information and ASVAB scores to recruiting representatives of the military services by individually submitting the required forms to the military services authorizing the release of the information.

**Source.** 1983, 464:1. 2014, 220:1, eff. July 1, 2014.

### School Improvement Program

**186:69 Repealed by 1996, 300:7, eff. July 1, 1996.**

### Reading Recovery Training Program

**186:70 Reading Recovery Training Program.**

I. There is established a reading recovery training program to provide reading recovery training to all eligible first-grade teachers so that reading recovery programs may be made available to all eligible first-grade pupils in those local school districts that choose to implement reading recovery programs.

II. The department of education shall administer the reading recovery training program in accordance with the program requirements outlined in the Guidelines and Standards for the North American Reading Recovery Council.

III. Each biennium, the department shall, subject to the extent of funds appropriated, provide for the training needs of the participating local districts and shall also provide continuing education to teachers who have completed the initial training.

IV. Local districts shall be responsible for all salaries, benefits, and materials for local reading recovery teachers during program training and implementation.

V. Unless excused by the department of education, a teacher who completes reading recovery training shall agree to provide reading recovery programs to New Hampshire pupils for at least 2 years following such training.

**Source.** 1997, 286:2, eff. July 1, 1997.

## CHAPTER 186–A

## PROGRAM OF SPECIAL EDUCATION

[Repealed by 1981, 100:2, eff. June 30, 1981.]

## CHAPTER 186–B

## EDUCATION AND TRAINING OF THE BLIND



**186–B:1 Statement of Purpose.**

To enable the state to more effectively provide services to the blind of all ages in the state, it is the intent of this chapter to place the functions of education, training, vocational rehabilitation, and related services of the blind under one administration. By this transfer of functions, all of the responsibility for the education and training of all disabled children in the state becomes the responsibility of the department of education.

**Source.** 1970, 34:1. 1990, 140:2, X, eff. June 18, 1990.

**186–B:2 Repealed by 1994, 379:24, I, eff. June 9, 1994.**

**186–B:3 Program for Blind Established.**

I. The department of education shall establish a program for the education, training, and vocational rehabilitation for the blind of all ages, whether or not they are eligible for aid to the needy blind under the department of health and human services.

II. The department of education shall develop or cooperate with other agencies in providing services to the blind, including the locating of blind persons, vocational guidance and training of the blind, placement of blind persons in employment, instruction of the adult blind in their homes and other services to blind persons. In connection with assistance to needy blind persons the board of education shall give due consideration to the special needs associated with the condition of blindness and, in cooperation with the department of health and human services, shall: (a) adopt rules stating in terms of ophthalmic measurements the amount of visual acuity which an applicant may have and be eligible for assistance and providing for an examination by an ophthalmologist or physician skilled in diseases of the eye or by an optometrist, whichever the individual may select, in making the determination whether the individual is eligible and fixing the fee for such examination; (b) establish the procedure for securing competent medical examination; (c) designate or approve a suitable number of ophthalmologists or physicians skilled in diseases of the eye, and optometrists, who must be duly licensed or registered under the laws of this state and actively engaged in the practice of their professions, to examine applicants and recipients of aid to determine their eligibility for assistance; (d) fix the fees to be paid

for medical examination from funds available to the department of health and human services.

**Source.** 1970, 34:1. 1983, 291:1. 1994, 379:7. 1995, 310:175, 181, eff. Nov. 1, 1995.

### 186–B:4 Aid to the Blind.

The department of education shall furnish aid to the blind of the state, as follows:

I. The blind services program, bureau of vocational rehabilitation, shall prepare and maintain a register of the blind in the state, which shall describe their condition, cause of blindness, capacity for education and industrial training, and such other data as deemed appropriate.

II. The blind services program, bureau of vocational rehabilitation, shall provide information and industrial aid for the blind, and for this purpose may furnish materials and tools to any blind person. The bureau may assist blind persons engaged in home industries in marketing their products, in finding employment, and in developing home industries. The bureau may ameliorate the condition of the blind by devising means to facilitate the circulation of books, by promoting visits among the aged or helpless blind in their homes, and by such other methods as are expedient. However, the bureau shall not undertake the permanent support or maintenance of any blind person.

III. The blind services program, bureau of vocational rehabilitation, shall furnish assistance to such blind persons, in such amounts and at such asylums, schools, or other institutions designed for the purpose of industrial aid to the blind as the department of education directs.

IV. The commissioner of education at the commissioner's discretion may contribute to the support of the blind persons from New Hampshire receiving instruction in industrial institutions outside the state.

V. The commissioner of education with approval of the state board may appoint other officials and agents necessary to assist in carrying into effect the provisions of this chapter, subject to rules of the division of personnel.

**Source.** 1970, 34:1. 1986, 12:4; 41:16. 1994, 379:8, eff. June 9, 1994.

### 186–B:5 Repealed by 1986, 41:29, IV, eff. April 3, 1988.

### 186–B:6 Repealed by 1994, 379:24, II, eff. June 9, 1994.

### 186–B:7 Repealed by 1994, 379:24, II, eff. June 9, 1994.

### 186–B:8 Nesmith Fund.

I. There is hereby appropriated annually the entire income derived from the Nesmith Trust Fund to be expended by the department of education for the aid, support, maintenance and education of the indigent blind of the state of New Hampshire. The governor is authorized to draw his warrants which shall be a charge against the Nesmith Fund.

II. In the event that the annual income derived from said Nesmith Fund shall be less than $4,800, there is hereby appropriated from the general fund of the state a sum equal to the difference between the amount of income from the Nesmith Fund and $4,800 which shall be added to the income and expended by the department of education for the aid, support, maintenance and education of the indigent blind to comply with the terms of the trust under the will of John Nesmith. The governor is authorized to draw his warrant for said sum out of any monies in the treasury not otherwise appropriated.

**Source.** 1970, 34:1. 1972, 31:2, eff. March 17, 1972.

## Vending Facilities Operated by Blind Persons

### 186–B:9 Purpose.

For the purpose of providing blind persons with remunerative employment, enlarging the economic opportunities of the blind and stimulating the blind to greater efforts in striving to make themselves self-supporting, blind persons licensed under this subdivision shall be authorized to operate vending facilities on state property.

**Source.** 1975, 260:1, eff. Aug. 5, 1975.

### 186–B:10 Definitions.

In this subdivision:

I. "Blind person" means a person whose central acuity does not exceed 20/200 in the better eye with correcting lenses or whose visual acuity, if better than 20/200 is accompanied by a limit to the field of vision in the better eye to such a degree that its widest diameter subtends an angle of no greater than 20 degrees. In determining whether an individual is blind, there shall be an examination by a physician skilled in diseases of the eye, or by an optometrist, whichever the individual shall select.

II. "Blind services" means the administrative unit for the blind services program within the bureau of vocational rehabilitation, department of education.

III. "State property" means any building or land owned, leased or controlled by the state.

IV. "Vending facility" means a vending machine, cafeteria, snack bar, cart service, shelter, counter or any other facility for the vending of newspapers, periodicals, confections, tobacco products, foods or beverages, or any combination of them, whether dispensed automatically or manually, and which are prepared on or off the property.

V. "Vending machine income" means receipts other than those of a blind licensee from the operation of vending machines on state property, after cost of goods sold, where the machines are operated, serviced or maintained by, or with the approval of the state, or commissions paid other than to a blind licensee by a commercial vending concern which operates, services or maintains vending machines on state property for, or with the approval of the state.

**Source.** 1975, 260:1. 1981, 403:2. 1986, 41:17. 1994, 379:9, eff. June 9, 1994.

**186–B:11 Duties.**

Blind services shall:

I. Survey the vending facility opportunities on all state property;

II. Establish, whenever feasible, vending facilities on state property to the extent that such facilities do not adversely affect the interests of the state;

III. License blind persons for the operation of vending facilities on state property;

IV. Provide vending facility equipment and an adequate initial stock of suitable articles to licensed blind persons;

V. Provide the necessary training and supervision to licensed blind persons;

VI. [Repealed.]

VII. Conduct mandatory training seminars for operators of its vending facilities, which shall address topics concerning the management of vending facilities, including, but not limited to, the following:

(a) Customer relations,

(b) Marketing techniques,

(c) Personnel hiring and training,

(d) Inventory control,

(e) New products,

(f) Machine repair and maintenance, and

(g) Accounting.

**Source.** 1975, 260:1. 1985, 232:3. 1994, 379:24, III, eff. June 9, 1994.

**186–B:11–a Rulemaking Authority; Board of Education.**

The state board of education shall adopt rules, pursuant to RSA 541–A, to carry out the provisions of this chapter.

**Source.** 1994, 379:10, eff. June 9, 1994.

**186–B:12 Licenses.**

Blind services shall issue a license for the operation of a vending facility only to a blind person who is able, with such disability, to operate a vending facility. In issuing any license, blind services shall give preference to a blind person who is a resident of this state. Each license issued shall be for an indefinite period, but may be terminated by blind services if it is satisfied that the facility is not being operated in accordance with rules adopted by the board of education under RSA 186–B:11–a.

**Source.** 1975, 260:1. 1990, 140:2, XI. 1994, 379:11, eff. June 9, 1994.

**186–B:13 Vending Facilities.**

I. No person in control of the maintenance, operation and protection of any state property may offer or grant to any other party a contract or concession to operate a vending facility unless:

(a) He has notified blind services and has attempted to make an agreement with blind services for a licensed blind person to operate a vending facility; and

(b) He has determined in good faith that blind services is not willing to establish a vending facility on such property.

II. [Repealed.]

III. Blind services, with the cooperation of the person in control of the maintenance, operation and protection of any state property, shall select the type of location of the vending facility to be provided and the person to operate such facility.

IV. If blind services determines that a vending facility operated by a full-time licensed blind person is not feasible on any state property, blind services may install vending machines on such property with income accruing pursuant to RSA 186–B:14.

V. The contract for the operation of any vending facility shall specify that it shall be operated at a reasonable cost consistent with a fair return, high quality food and reasonable prices.

VI. This section shall not apply to Franconia Notch state park, Mount Sunapee state park and Mount Washington state park; nor shall it apply to

any state property which operates its own vending facility unless the person in control of the maintenance, operation and protection of the property contracts with blind services to operate the vending facility.

**Source.** 1975, 260:1. 1981, 403:1. 1994, 379:24, IV, eff. June 9, 1994.

### 186–B:14 Vending Machine Income.

I. If a new vending machine or a replacement for an existing vending machine is installed after August 5, 1975, on any state property, vending machine income shall accrue to the licensed blind person operating a vending facility on the same property, or if none, to blind services. The licensed blind person or blind services shall be responsible for servicing and maintaining the vending machines from which vending machine income is received.

II. Vending machine income which accrues to blind services pursuant to paragraph I may be used to:

(a) Purchase new equipment and replace existing equipment for new and existing vending facilities;

(b) Purchase initial stock and supplies;

(c) Provide training services; and

(d) Establish retirement funds, health insurance contributions, paid sick leave and vacation time for licensed blind persons.

III. If vending machine income which accrues to blind services pursuant to paragraph I is limited, it may be used to earn federal funds on a matching basis.

**Source.** 1975, 260:1, eff. Aug. 5, 1975.

### 186–B:15 Appeal.

Any person aggrieved by a decision of blind services under this subdivision may apply for rehearing and appeal pursuant to RSA 541.

**Source.** 1975, 260:1, eff. Aug. 5, 1975.

## CHAPTER 186–C

## SPECIAL EDUCATION

### 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. 2008, 274:31, eff. July 1, 2008; 302:34, eff. Jan. 1, 2009.

### 186–C:2 Definitions.

In this chapter:

I. "Child with a disability" means any person between the ages of 3 and 21, inclusive, 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 person between the ages of 18 and 21 inclusive, 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 learner support, 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. 2008, 52:20, eff. July 11, 2008; 274:29 to 31, 33, eff. July 1, 2008; 302:35 eff. Jan. 1, 2009. 2018, 315:6, eff. Aug. 24, 2018. 2022, 230:1, eff. June 17, 2022; 264:1, eff. June 24, 2022.

### 186–C:3 Division of Learner Support; 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 learner support 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. 2008, 302:3, eff. Jan. 1, 2009. 2018, 315:7, eff. Aug. 24, 2018.

### 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 inclusive 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. 2008, 302:36. 2010, 184:1. 2011, 231:4, eff. June 29, 2011. 2023, 7:1, eff. June 25, 2023.

**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. 2008, 302:36, eff. Jan. 1, 2009; 354:2, eff. Sept. 5, 2008.

### 186–C:3–c Supported Decision-Making.

If adult guardianship is being discussed by the IEP team with a student or the student's family, the team shall inform the student and family of the availability of supported decision-making pursuant to RSA 464–D as an alternative to guardianship. This shall be done promptly when guardianship is first discussed. The IEP team shall make available resources to assist in establishing a supported decision-making agreement. If a supported decision-making agreement is executed, the IEP team shall abide by decisions made by the student pursuant to the supported decision-making agreement.

**Source.** 2021, 206:2, Pt. VI, Sec. 14, eff. Jan. 1, 2022.

### 186–C:3–d Alternatives to Guardianship; Information Resources.

The commissioner of the department of education shall develop information resources regarding alternatives to guardianship, including supported decision-making agreements pursuant to RSA 464–D, for children with disabilities who are approaching the age of 18. These resources shall be developed in consultation with New Hampshire disability advocacy organizations and other stakeholders and made available to local education agencies to facilitate their responsibility to provide information to students and families regarding alternatives to guardianship under RSA 186–C:3–c.

**Source.** 2021, 206:2, Pt. VI, Sec. 14, eff. Jan. 1, 2022.

### 186–C:4 Repealed by 1994, 379:24, VI, eff. June 9, 1994.

### 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 learner support 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. 2008, 274:31; 302:39. 2013, 226:1, eff. Sept. 13, 2013. 2018, 315:8, eff. Aug. 24, 2018.

**186–C:6 Repealed by 1994, 134:2, eff. July 22, 1994.**

**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.

*[Paragraph IV effective January 1, 2024.]*

IV. If a functional behavioral assessment exists for the student and if the IEP team has determined a positive intervention plan is appropriate after review of the functional behavioral assessment, the child's individualized education program shall include data from the functional behavioral assessment with recommendations and reference to a positive behavior intervention plan that is developed in addition to the IEP. Districts shall refer to 34 C.F.R. 530 in its entirety to determine their responsibilities for discipline procedures under IDEA.

**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. 2008, 274:29–32, eff. July 1, 2008; 302:40, eff. Jan. 1, 2009. 2022, 238:3, eff. Jan. 1, 2024.

**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. 2008, 274:31; 302:41. 2012, 264:1, I, eff. Aug. 17, 2012.

### 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.

### 186–C:7–c Rate Setting.

I. The division of learner support of the department of education shall ensure that each school dis-

trict develops approved programs for children with disabilities in the school district.

II. The division of learner support of the department of education shall set an approved rate for private providers of special education services pursuant to RSA 21–N:6, II.

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 learner support of the department of education.

**Source.** 2008, 302:8, eff. Jan. 1, 2009. 2018, 315:3, eff. Aug. 24, 2018.

### 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. 2008, 274:31, eff. July 1, 2008; 302:42, eff. Jan. 1, 2009.

### 186–C:8–a Voter Registration Planning.

When an individualized education program (IEP) team or planning team for accommodations pursuant to Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 701 et seq) meets for the purpose of reviewing or developing an IEP or accommodation plan for a student who is 17 years of age or older, or will be during that academic year, the team shall discuss voter registration as an appropriate community living/citizenship training goal or competency to be included in the IEP or Section 504 plan, and, if appropriate, when and how voter registration should be accomplished. Any resulting decisions shall be included in the IEP or Section 504 plan.

**Source.** 2022, 209:1, eff. Aug. 16, 2022.

### 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 inclusive, 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. 2008, 302:42, eff. Jan. 1, 2009. 2023, 7:2, eff. June 25, 2023.

### 186–C:9–a Repealed by 2008, 302:33, I, eff. Jan. 1, 2009.

### 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. 2008, 274:31, eff. July 1, 2008; 302:43, eff. Jan. 1, 2009.

### 186–C:10–a Retention of Individualized Education Programs.

I. Upon a student's graduation from high school, his or her parents may request the local education agency in writing to have the student's records and final individualized education program destroyed at that time or request that the records be retained until the student's twenty-sixth birthday. The parents may, at any time prior to the student's twenty-sixth birthday, request, in writing, that the records be retained until the student's thirtieth birthday.

II. Absent any request by a student's parents at the time of graduation, the local education agency shall destroy a student's records and final individualized education program within a reasonable time after the student's twenty-sixth birthday, provided that all such records be destroyed by the student's thirtieth birthday.

**Source.** 2018, 76:1, eff. July 24, 2018.

**186–C:11 Repealed**

**186–C:11 Repealed by 2008, 302:33, II, eff. Jan. 1, 2009.**

**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. 2008, 274:31, eff. July 1, 2008; 302:44, eff. Jan. 1, 2009.

**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. 2008, 274:30, 31; 302:45. 2010, 316:3, eff. Sept. 11, 2010.

**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.

III–a. The department shall complete a criminal history records check of each surrogate parent as it would a credentialing applicant pursuant to RSA 189:13–c. The department shall adopt rules under RSA 541–A, relative to the procedures for conducting criminal history records checks of surrogate parents.

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 inclusive 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. 2008, 274:30, 31, eff. July 1, 2008; 302:46, eff. Jan. 1, 2009. 2023, 7:3, eff. June 25, 2023; 88:1, eff. Aug. 19, 2023.

### 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. 2008, 302:14–16, eff. Jan. 1, 2009.

### 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. 2008, 274:30, eff. July 1, 2008; 302:47, eff. Jan. 1, 2009.

### 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. 2008, 274:31, eff. July 1, 2008; 302:48, eff. Jan. 1, 2009.

### 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.

### 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.

III–a. In all hearings the school district shall have the burden of proof, including the burden of persuasion and production, of the appropriateness of the child's program or placement, or of the program or placement proposed by the public agency. This burden shall be met by a preponderance of the evidence.

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. 2008, 274:32, eff. July 1, 2008; 302:19, eff. Jan. 1, 2009. 2021, 158:1, eff. July 29, 2021.

### 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.

### 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.

### 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 special education 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 and episodes of treatment 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 to mitigate the impact of special education costs. The state may designate up to an additional $250,000 of the funds which are appropriated under this paragraph for each fiscal year for any community of 1,000 or fewer residents to mitigate the impact of special education costs when emergency assistance is necessary to prevent significant financial harm to such district or community. 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 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 special education cost increases in their special education programs as provided by this paragraph.

(b) The school district shall be liable for 3½ 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 3½ 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 special education aid under paragraph III;

(e) School districts identifying special education costs under paragraph III;

(f) Establishing standards for statewide special education programs under paragraph IV.

(g) Administering and distributing payment for episode of treatment costs as defined in RSA 193:27, VII.

VI. The state board of education shall distribute through the commissioner:

(a) Special education aid payments under paragraph III on or before January 1, provided that school districts shall annually submit their special education 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 special education student costs as provided under this section, 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 3½ 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 special education 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 special education aid the school district received from the previous school year, which would constitute the base year; in year 2,

50 percent of the special education aid the school district received during the base year, and in year 3, 30 percent of the special education 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. 2008, 274:31; 302:21. 2011, 224:227. 2017, 156:96–100, eff. July 1, 2017. 2021, 209:2, Pt. IV, Sec. 1, eff. Oct. 9, 2021. 2023, 79:141, 142, eff. July 1, 2023.

### 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. 2008, 274:30 to 33, eff. July 1, 2008; 302:49, eff. Jan. 1, 2009.

### 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. 2008, 274:30–32, eff. July 1, 2008.

### 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 chil-

dren 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 or placement for an episode of treatment, the appropriate court shall notify the department of education on the date that the court order is signed, or the need for an episode of treatment is determined, stating the initial length of time for which such placement is made. This subparagraph shall apply to the original order or determination and all subsequent modifications of that order or determination.

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. Any costs of special education or special education and related services related to an episode of treatment and the determination of placement by the department of health and human services shall be covered in full for students with disabilities by the department of education.

(b) The department of health and human services shall be liable for all court-ordered and episode of treatment 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. If the total amount required for court ordered placements or placements for an episode of treatment exceeds the amount appropriated to the department for such payments, the governor is authorized to draw a warrant from the education trust fund for such sum to satisfy the state's obligation under this section.

**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. 2008, 274:30, 31, 33, eff. July 1, 2008. 2023, 79:143, eff. July 1, 2023.

### 186–C:20 Special Education Program of the Youth Services Center.

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.

**Source.** 1982, 39:2. 1985, 195:8. 1990, 3:60; 140:2, X. 1994, 212:2. 1995, 181:11. 2001, 286:19. 2008, 274:30; 302:50. 2017, 195:2, eff. Sept. 3, 2017.

### 186–C:21 Repealed by 2011, 231:2(5), eff. Dec. 31, 2011.

### 186–C:22 Repealed by 2007, 328:3, eff. July 1, 2007.

## Alternative Dispute Resolution

### 186–C:23 Alternative Dispute Resolution.

I. In order to encourage informal resolution of differences of opinion regarding the provision of spe-

cial education, the following methods of alternative dispute resolution shall be available to parents and school districts:

(a) Neutral conference.

(b) Mediation.

(c) [Repealed.]

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, which may be continued if mutually agreed to by the parties. 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. Such schedule may be continued if mutually agreed to by the parties. 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. 2008, 302:20. 2015, 24:1, eff. July 4, 2015. 2023, 72:1, eff. Aug. 6, 2023.

### 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:7, II, 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. 2018, 315:4, eff. Aug. 24, 2018.

### 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. 2008, 302:27, eff. Jan. 1, 2009.

**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, which may be continued if mutually agreed to by the parties, 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. 2008, 302:28, eff. Jan. 1, 2009. 2023, 72:2, eff. Aug. 6, 2023.

### Medicaid to Schools Program

**186–C:25 Medicaid to Schools Program Established.**

I. The department of health and human services Medicaid reimbursement program shall be known as the "Medicaid to schools" program, providing medical assistance for covered services furnished to children with disabilities who are enrolled in Medicaid. The purpose of the program is to seek any and all Medicaid reimbursement for medical and health-related 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. The program shall be administered in the same, or similar, manner as the Medicaid to schools for medical services program established in RSA 167:3–k. 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. A reimbursable service under this section shall be:

(a) A covered New Hampshire Medicaid state plan service determined by a Medicaid qualified provider to meet accepted standards of medical practice for the service, or such other necessary health care, diagnostic services, treatment, and other measures described in section 1905(a) of the Social Security Act [1] through the Early and Periodic Screening Diagnosis and Treatment (EPSDT) benefit if medically necessary, meaning that the item or service is reasonably calculated to prevent, diagnose, correct, cure, alleviate, or prevent the worsening of conditions that endanger life, cause pain, result in illness or infirmity, threaten to cause or aggravate a handicap, or cause physical deformity or malfunction, and no other equally effective course of treatment is available or suitable for the student or individual requesting the medically necessary service;

(b) Provided to a Medicaid enrolled child after obtaining parental consent;

(c) Provided by a Medicaid qualified provider; and

(d) Provided in compliance with applicable state and federal law and rules.

(e) Services delivered through telehealth, as defined in RSA 167:4–d.

III. Services provided under this subdivision shall:

(a) Offer the least restrictive setting for children receiving the services.

(b) Be in addition to any special education program as defined in the New Hampshire rules for the education of children with disabilities.

III–a. Any provider who orders, refers, prescribes, renders, or provides services under this section shall do so in accordance with the relevant health professional practice act and regulations including, but not limited to, RSA 137–F, RSA 317–A, RSA 326–B, RSA 326–C, RSA 326–E, RSA 326–F, RSA 326–H, RSA 327, RSA 328–A, RSA 328–D, RSA 328–F, RSA 329, RSA 329–B, RSA 330–A, and RSA 330–C.

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.

VII. Beginning on September 1, 2018, the commissioner of the department of health and human services shall submit an annual report to the senate president, the speaker of the house of representatives, and the chairpersons of the house and senate finance committees regarding the total cost of the Medicaid to schools program and the number of students who received services through the program during the prior school year.

**Source.** 1990, 272:1. 1995, 310:151. 2008, 302:26. 2017, 187:2, eff. Aug. 28, 2017. 2020, 6:2, eff. Mar. 9, 2020; 27:34, eff. July 21, 2020.

[1] 42 U.S.C.A. § 1396d(a).

**186–C:26 Repealed by 2008, 302:33, III, eff. Jan. 1, 2009.**

**186–C:27 Repealed by 2008, 302:33, IV, eff. Jan. 1, 2009.**

**186–C:28 Repealed by 2008, 302:33, V, eff. Jan. 1, 2009.**

**186–C:28–a Repealed by 2019, 46:2, eff. Nov. 1, 2019.**

### Medicaid-Funded Services

**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.

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

**186–C:30 Repealed by 2015, 120:2, eff. Nov. 1, 2016.**

### Deaf Children's Bill of Rights

**186–C:31 Definitions.**

In this subdivision:

I. "American Sign Language" means the visual/gestural language used by deaf people in the United States and Canada, with semantic, syntactic, morphological, and phonological rules which are distinct from English.

II. "Deaf student" means an individual who has a severe or complete absence of auditory sensitivity which adversely affects educational performance and which is so severe that the student is impaired in processing linguistic information through hearing, with or without amplification.

III. "English sign systems" means sign systems developed for educational purposes, which use manual signs in English word order, sometimes with added

affixes which are not present in American Sign Language.

IV. "Hard of hearing student" means an individual who has some absence of auditory sensitivity with residual hearing, whether permanent or fluctuating, which adversely affects a child's educational performance but which is not included under the definition of "deaf student" in this section.

V. "Individualized education plan (IEP)" means a written educational plan developed for a student eligible for special education services pursuant to RSA 186–C and the federal Individual with Disabilities Education Act, 20 U.S.C. section 1400, et seq.

VI. "Primary communication mode, style, and language" means the communication mode, style, and language which is preferred by and most effective for a particular student, as determined by appropriate language assessment undertaken by individuals proficient in the communication mode, style, or languages being assessed. Communication mode may include one or more of the following systems or methods of communication applicable to deaf or hard of hearing children:

(a) American Sign Language;

(b) Cued speech;

(c) English-or other spoken language-based manual or sign systems; or

(d) Oral, aural, or speech-based training.

**Source.** 2019, 217:1, eff. July 12, 2019.

### 186–C:32 Deaf Children's Bill of Rights.

I. Children who are deaf or hard of hearing have the right to appropriate screening and assessment of hearing and vision capabilities and language and communication needs at the earliest possible age and to the continuation of intermittent screening services throughout their educational experience.

II. Children who are deaf or hard of hearing have a right to early interventions to provide for the acquisition of a solid language base developed at the earliest possible age. Any infant with a documented hearing loss, prior to demonstration of any developmental delay, shall qualify for services as determined by the infant's individualized family service plan team.

III. Children who are deaf or hard of hearing have the right to an education in which their parents or guardians have full informed participation in determining the extent, content, and purpose of all their educational planning and programs.

IV. Children who are deaf or hard of hearing have the right to placement in the least restrictive educational environment and services based on their unique communication, language, and educational needs, consistent with the federal Individuals with Disabilities Education Act, 20 U.S.C. section 1400, et seq.

V. Children who are deaf or hard of hearing have the right to an education in which their communication mode, style, and language is respected, used, and developed to an appropriate level of proficiency.

VI. Children who are deaf or hard of hearing have the right to a high-quality, ongoing and fluid means of communication, both inside and outside the classroom.

VII. Children who are deaf or hard of hearing shall have the opportunity to choose from a variety of language modes and languages and technologies to enhance language learning. They have a right to teachers or interpreters proficient in appropriate language modes and certified in appropriate language modes if certification is available.

VIII. Children who are deaf or hard of hearing have the right to an education in which teachers of the deaf and hard of hearing, related service providers, and assessors understand the unique nature of deafness, are specifically trained to work with deaf and hard of hearing students, and can communicate spontaneously and fluidly with these children.

IX. Children who are deaf or hard of hearing have the right to contact with and to be exposed to adult role models who are deaf or hard of hearing.

X. Children who are deaf or hard of hearing have the right to receive an education with a sufficient number of language mode peers with whom they can communicate directly and who are the same, or approximately the same, age and ability, whenever possible.

XI. Children who are deaf or hard of hearing have the right to direct and appropriate access to all components of the educational process, including recess, lunch, and extracurricular, social, and athletic activities.

XII. Children who are deaf or hard of hearing have the right to a placement best suited to their individual needs, including, but not limited to age, hearing loss, academic level, modes of communications, style of learning, motivational levels and family support.

**Source.** 2019, 217:1, eff. July 12, 2019.

**186–C:33 Right of Parents or Guardians of Children Who Are Deaf or Hard of Hearing.**

The parents or guardians of deaf or hard of hearing children have a right to balanced and complete information regarding:

I. Their child's educational and communication needs.

II. Available programmatic, placement, and resource options.

III. Support services and advocacy resources from private and public agencies and institutions.

IV. Available resources pertaining to hearing loss and the needs of children who are deaf or hard of hearing.

**Source.** 2019, 217:1, eff. July 12, 2019.

**186–C:34 Rulemaking.**

The department of education and the department of health and human services shall adopt rules under RSA 541–A to implement this chapter. At a minimum, such rules shall address:

I. Qualifications of personnel providing professional services to deaf and hard-of-hearing children within the school system.

II. Composition of the individualized family service plan team and the individualized education plan team.

III. The individualized communication plan for every deaf and hard-of-hearing student.

IV. Procedures and materials for assessment and placement.

V. Psychological counseling and mental health services.

VI. Evaluation of the effectiveness of programs for students who are deaf or hard of hearing.

**Source.** 2019, 217:1, eff. July 12, 2019.

**186–C:35 Advisory Council Established.**

There is hereby established an advisory council on the education of children who are deaf or hard of hearing.

I. Members of the council shall be as follows:

(a) One professional with experience in using assistive technology.

(b) Two teachers of the deaf, one of whom is a regular and effective user of American Sign language and one of whom is a regular and effective user of oral/aural or speech based English.

(c) Two parents of deaf or hard of hearing students, one of whom is a regular and effective user of American sign language and one of whom is a regular and effective user of oral/aural or speech based English.

(d) Two representatives of the deaf and hard of hearing community, one of whom is a user of American sign language and one of whom is a user of oral/aural or speech based English.

(e) One administrator of a college or university program in interpreter training.

(f) One director of special education in a public school system.

(g) One public school administrator.

(h) One member of the New Hampshire Speech-Language-Hearing Association, appointed by the association.

(i) One representative of the department of health and human services familiar with services for children who are deaf or hard of hearing, appointed by the commissioner of the department of health and human services.

(j) One representative of the early hearing detection and intervention program, in the department of health and human services, appointed by the commissioner of the department of health and human services.

(k) One representative of the department of education, division of special education, appointed by the commissioner of the department of education.

(l) One member of the New Hampshire Association or Audiologists, appointed by the association.

(m) One member of the New Hampshire Association of the Deaf, appointed by the association.

II. The commissioner of the department of education shall appoint the members under subparagraphs I(a)–I(c) and the commissioner of the department of health and human services shall appoint the members under subparagraphs I(d)–I(g). Each member shall serve a 2-year term.

III. The members of the council shall elect a chairperson from among the members. The first meeting of the council shall be called by the member appointed under subparagraph I(a). The first meeting of the council shall be held within 45 days of the effective date of this section.

IV. The council shall advise the department of education and the department of health and human services on the needs and services provided to deaf and hard of hearing children in New Hampshire. In addition to such duties as may be assigned by the

departments, the council shall determine the number of children within the state who are identified as being deaf and hard of hearing, the number of those children currently receiving services from both public and private agencies, the types of services being received, the types of services requested by parents or guardians, and areas of need.

V. On or before November 1, the council shall submit an annual report its findings and any recommendations for proposed legislation to the speaker of the house of representatives, the president of the senate, the education committees in the house and senate, the New Hampshire commission on deafness and hearing loss established in RSA 125–Q, the house clerk, the senate clerk, the governor, and the state library.

**Source.** 2019, 217:1, eff. July 12, 2019.

## Advocate for Special Education

### 186–C:36 Advocate for Special Education.

I. There is established an office of the advocate for special education which shall be an independent agency, administratively attached to the department of administrative services pursuant to RSA 21–G:10, under the direction of the advocate for special education (the "advocate").

II. The advocate for special education shall be independent of the department of education and shall serve as an advocate, coordinator, and point of contact for those parents, guardians, and caretakers of students with disabilities or students with disabilities when dealing with school districts and the districts' compliance with the applicable individualized education program (IEP) pursuant to RSA 186–C:7 and the Individuals with Disabilities Education Act (IDEA), 504 plans established pursuant to the Rehabilitation Act of 1973 (29 U.S.C. section 701 et seq.) and related supports and services for students with disabilities who are provided special services pursuant to this chapter and federal law, including, but not limited to, the Individuals with Disabilities Education Act (20 U.S.C. Section 1400 et seq.), and the minimum requirements as they pertain to the individual student.

III. The governor and council shall appoint an advocate for special education, who shall be a person qualified by training and experience to perform the duties set forth in this section. The advocate shall hold office for a term of 5 years and shall continue to hold office until his or her successor is appointed and qualified.

**Source.** 2022, 316:1, eff. July 31, 2022.

### 186–C:37 Application of Subdivision.

For purposes of this subdivision, the term "students with disabilities" shall apply to all children with disabilities, regardless of residence, enrolled in a public school, including a chartered public school.

**Source.** 2022, 316:1, eff. July 31, 2022.

### 186–C:38 Duties and Responsibilities.

I. The office of the advocate for special education shall:

(a) Serve as a resource for disability related information and referrals to available programs and services for families of children with disabilities.

(b) Serve as a source of information and referral regarding state and federal laws and regulations governing special education.

(c) Have the discretion to ensure all IEP documents, 504 plans, related supports and services to students with disabilities are properly documented and implemented, and the goals and objectives are being met, and that appropriate related supports and services are being provided.

(d) Have authority to inquire of, investigate, and review all documents from any school, district, or special education department in this state. The advocate shall have access to all IEP documents, 504 plans, related supports and services, treatment plans, progress reports, and report cards of all students with disabilities.

(e) Have the discretion to review all documents relating to IEP documents, 504 plans, related supports and services being provided to students throughout the state, and ensure that proper documentation is being maintained by all schools and districts.

(f) Track metrics of the type of disagreements or complaints between a parent, guardian, or caretaker of the student with disabilities and the district; the types of suspect disabilities, which may uncover an unmet need in the education system; and the types of interventions and supports required by a segment of children.

(g) Ensure protections and safeguards are provided to school staff. To this end, all conversations between teachers, health professionals, and/or any school district personnel and the advocate shall be deemed confidential and not subject to disclosure absent a court order.

(h) Implement measures to track and monitor district achievement, success, and challenges in the

implementation of IEPs, 504 plans, and related supports and services.

(i) Establish minimum compliance measures to ensure that copies of all relevant documents which are discussed at any family meeting involving a student receiving services pursuant to this chapter are given to the student's family at least 5 days in advance of any scheduled meeting at which these documents are to be discussed.

(j) Investigate any retaliatory act alleged or committed by any administrator, school district, state department, or other agency with the appropriate referrals to judicial departments or agencies for action, and any and all complaints filed by a parent, guardian, or caretaker of student with disabilities.

II. The advocate may appoint those assistants that may be deemed necessary whose powers and duties shall be similar to those imposed upon the advocate by law and any other staff as is deemed necessary. The duties of the assistants and other staff members shall be performed under and by the advice and direction of the advocate.

III. All student records shall remain confidential and compliant with state and federal privacy laws.

IV. The advocate shall not be held liable for any lack of compliance of an IEP or 504 plan.

V. All records or files of the advocate shall be readily available to any parent, guardian, or caretaker of a student with disabilities to inspect and/or copy for purposes of any agency or judicial proceeding.

**Source.** 2022, 316:1, eff. July 31, 2022.

### 186–C:39 Annual Report.

I. The advocate shall prepare a detailed report to the governor, the speaker of the house of representatives, the president of the senate, the chairpersons of the house and senate education committees, and the department of education advising on the status of services being provided to students with disabilities and summarizing the work of the office of the advocate for special education during the previous school year.

II. The annual report shall also include a summary of the parent complaints being filed against schools by families in regard to these services. The complaints shall remain confidential and shall not be made available to the public. For purposes of this section, the complaints are as to the lack of compliance of IEP and 504 plans or the denial of eligibility and/or lack of services.

**Source.** 2022, 316:1, eff. July 31, 2022.

### 186–C:40 Evaluation of Process; Meeting Evaluation Form.

I. The department, in conjunction with the advocate shall develop a meeting evaluation form to be provided to parents, guardians, and caretakers of students with disabilities. The meeting evaluation form shall be provided to parents, guardians, and caretakers of students with disabilities after every meeting with representatives from the school regarding a student with disabilities. The department shall make this form available on its website.

II. The meeting evaluation form shall be designed to allow parents, guardians, and caretakers of students with disabilities to provide feedback on their experience, understanding, and level of satisfaction with the processes involving IEPs, 504 plans, and related supports and services. The meeting evaluation form shall also include sample or suggested questions that may be asked by parents, guardians, and caretakers during this process. Schools shall ensure that any parents, guardians, and caretakers of students with disabilities are given meeting evaluation forms in a language understood by the person receiving the form.

III. Persons receiving the meeting evaluation forms shall be encouraged to return those forms to the issuing school within 10 days upon receipt and may provide a copy of the meeting evaluation form to the advocate. Copies of the completed meeting evaluation forms shall be retained in the student's file, and shall also be distributed to the school's special education team chair or department head, as applicable, and to the school district's director of special education. Schools shall review the forms and shall respond appropriately, if necessary.

IV. Meeting evaluation forms shall not be deemed to be public records pursuant to RSA 91–A.

V. The meeting evaluation forms shall inquire regarding:

(a) Whether documents received by the family related to special education services were given in a timely manner;

(b) The quality of the student's special education team interaction with the parents;

(c) The family's level of confidence in the school or district's explanation, development, and implementation of the IEP, 504 plan, or related supports and services;

(d) The family's level of confidence in the collaboration with their student's team members;

(e) The family's satisfaction level that their voices were heard and that the family's concerns were recognized by the district; and

(f) The family's level of confidence that there are avenues to address any concerns or complaints the family may have in the future regarding their student.

VI. Each school district shall provide written notification which shall be distributed to the family at the time a student with disabilities is referred to special education, in conjunction with the meeting evaluation form.

**Source.** 2022, 316:1, eff. July 31, 2022.

## CHAPTER 186–D

## SPECIAL EDUCATION RISK MANAGEMENT ASSOCIATION



### 186–D:1 Definitions.

In this chapter:

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

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

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

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

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

**Source.** 2021, 209:2, Pt. IV, Sec. 5, eff. Oct. 9, 2021.

### 186–D:2 Risk Management Association.

No fewer than 5 school districts, by resolution of their governing bodies and upon an affirmative vote of the inhabitants of each of the districts, may form an RSA 5–B special education cost recovery association under the laws of this state to develop and administer a risk management program for the purpose of recovering unanticipated costs of special education. The members of the association may agree to pool self-insurance reserves, risks, claims, losses, and the expenses of administrative services associated with them. Each district shall be represented by its superintendent, or designee. The members of the association shall elect a governing board from among the members. The RSA 5–B special education cost recovery association governing board shall consist of no fewer than 5 member superintendents, or designees, with diversity in terms of district size and geographic region represented. Each board member shall serve one 3–year term and may only serve one term in each 9 year period. The chairperson of the governing board shall be chosen by the board. Minutes of each meeting shall be kept and made available to the public. There shall be one 2–week period annually, to be decided by the governing board, when new districts shall be allowed to join the association.

**Source.** 2021, 209:2, Pt. IV, Sec. 5, eff. Oct. 9, 2021.

### 186–D:3 Duties of the Department of Education.

The department shall:

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

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

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

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

using insurance products to achieve the goals of the association.

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

**Source.** 2021, 209:2, Pt. IV, Sec. 5, eff. Oct. 9, 2021.

### 186–D:4 Requests for Proposals.

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

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

(b) The bids may also indicate recommendations for options that exist for using insurance products, including re-insurance, to achieve the same result as the self-insurance risk pool along with the advantages and disadvantages of each. The commissioner of the department of education may grant bidders access to data, including claims history, to the extent necessary to achieve accuracy of the annual cost. All data shall be protected under signed confidentiality agreements and shall be devoid of sensitive personal student information to the extent possible. The department of education shall impose a one month deadline after issuance of the request for proposals to receive bids. Any bids received by the department after the deadline shall be returned to the sender unopened and shall not be considered for acceptance. The department shall specify the minimum threshold for bid acceptance. Acceptance criteria shall include, but not be limited to, weighted factors such as insurance coverage, financial stability of the proposing insurance carrier, bond rating of the company, and insurance maintenance costs in any not included in the premiums. The bids that meet the minimum threshold shall then be ranked by the department based on the bid premium costs for each level of insurance coverage specified in the request for proposals.

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

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

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

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

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

VII. All costs associated with the administration of the risk pool after the filing fees are paid and all

costs after the initial 5 year period shall be the responsibility of the association governing board. The governing board may pay those costs from the risk pool fund and shall adjust member district yearly charges to reflect the administration costs by separate line item.

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

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

**Source.** 2021, 209:2, Pt. IV, Sec. 5, eff. Oct. 9, 2021.

# CHAPTER 187

# THE STATE COLLEGE AND UNIVERSITY

[Repealed by 1981, 331:2, eff. Aug. 16, 1981.]

# CHAPTER 187–A

# STATE COLLEGE AND UNIVERSITY SYSTEM

## University System

### 187–A:1 The University System of New Hampshire.

The university system of New Hampshire is established and made a body politic and corporate, the main purpose of which shall be to provide a well coordinated system of public higher education offering liberal undergraduate education encompassing the major branches of learning, emphasizing our cultural heritage, and cultivating the skills of reasoning and communication. The university system shall provide for professional and technical 2-year, 4-year and graduate programs which serve the needs of the state and the nation; for research which contributes to the welfare of mankind, to the development of the faculty, and to the educational experience of students; and for its faculty and staff to bring educational resources and professional experience to the benefit of the state and its people. The university system of New Hampshire is authorized to grant and confer in the name of the university system of New Hampshire all such degrees, literary titles, honors and distinctions as other universities may of right do.

**Source.** 1981, 331:1. 1983, 420:3, eff. June 24, 1983.

### 187–A:2 Components of the University System.

The university system of New Hampshire shall consist of the university of New Hampshire (including the New Hampshire college of agriculture and the mechanic arts and its other colleges, schools and divisions), the Plymouth state university, and the Keene state college.

**Source.** 1981, 331:1. 1985, 140:1. 1993, 109:1. 2003, 159:1. 2005, 13:1, eff. May 9, 2005. 2022, 35:2, eff. May 3, 2022.

### 187–A:2–a Governance.

The university system shall be governed by a single board of trustees who shall be responsible for ensuring that its components, each having a unique character and educational mission, operate as a well coordinated system of public higher education.

**Source.** 1983, 420:4, eff. June 24, 1983.

### 187–A:2–b Legislative Oversight.

I. The general court finds that because of the importance of public higher education, elected officials should be aware of the activities and needs of the university system, exercising their responsibility for legislative oversight through (1) the consideration by the appropriate legislative committees of proposed legislation pertaining to the university system; and (2) the consideration of reports filed by the university system pursuant to RSA 187–A:16 and 187–A:22.

II. The general court also recognizes the need to protect the institutions of the university system from inappropriate external influence which might threaten the academic freedom of faculty members or otherwise inhibit the pursuit of academic excellence. To this end, the general court has delegated broad authority to the board of trustees who shall be responsible for managing the university system in a manner which promotes academic excellence and serves the educational needs of the people of New Hampshire.

**Source.** 1983, 420:4. 1995, 10:5, eff. April 12, 1995.

### 187–A:2–c Identification Cards.

If a college or university of the university system issues identification cards to students, all cards issued after January 1, 2014 shall bear a date of issuance.

**Source.** 2013, 278:2, eff. July 24, 2013.

## University of New Hampshire

### 187–A:3 University of New Hampshire.

A university is established and made a body politic and corporate, by the name of the "University of New Hampshire", the object of which shall be to teach such branches of learning and to prosecute such researches as may be necessary and desirable in the education of youth and advancement and development of the arts, the sciences and the industries, including the education and training of teachers for the public school systems of the cities and towns of the state, and of such nature, scope and standard as usually prevail in the tax supported universities of the several states. Such university is authorized to grant and confer in the name of the university of New Hampshire all such degrees, literary titles, honors and distinctions as other universities may of right do including associate, baccalaureate, master's and doctor's degrees. The trustees of said university are further authorized to define and prescribe the stan-

dard, scope and nature of the instruction and attainments necessary in order to qualify for such degrees, titles, honors and distinctions and to issue such bulletins, announcements and reports as may be found necessary or desirable in publishing and defining the standard, scope, quality and nature of the educational work of the corporation.

**Source.** 1981, 331:1. 1983, 239:11, eff. June 18, 1983.

### 187–A:4 Colleges and Schools.

The university shall include a college of engineering and physical sciences, a college of liberal arts, a college of life sciences and agriculture, a school of business and economics, a school of health studies, a college at Manchester, a graduate school, Granite state college, and may include a school of social work and such other colleges, schools, departments and divisions as are consistent with such organization.

**Source.** 1981, 331:1. 1985, 140:2, eff. July 1, 1985. 2022, 35:3, eff. May 3, 2022.

### 187–A:5 College of Agriculture and Mechanic Arts.

The New Hampshire college of agriculture and the mechanic arts shall be a division of the university of New Hampshire, established pursuant to the provisions of RSA 187–A:3.

I. The leading object of the college shall be, without excluding other scientific and classical studies and including military tactics, to teach such branches of learning as are related to agriculture and the mechanic arts, in conformity to an act of congress entitled "An act donating land to the several states and territories which may provide colleges for the benefit of agriculture and the mechanic arts", approved July 2, 1862.

II. The state gives its assent to the purpose of and accepts for the benefit of the New Hampshire college of agriculture and the mechanic arts the grants of money authorized by act of congress, approved August 30, 1890, for the further endowment and support of the colleges for the benefit of agriculture and the mechanic arts and "to be applied only to instruction in agriculture, the mechanic arts, the English language, and the various branches of mathematical, physical, natural and economic science, with special reference to their application in the industries of life and the facilities for such instruction," as provided in said act of congress. The treasurer of the university of New Hampshire shall receive all grants of money made to this state under the provisions of said act of congress.

III. The work of the college shall be carried on in connection with, and as a part of the work of, the university, in such manner as to be consistent with the provisions of the aforesaid act of congress and the supplements to and amendments of said act, and with the terms of the bequest made to the state by Benjamin Thompson of Durham, and of other gifts made to the college or to the state for the benefit of the college, and with the continuance of the corporate existence of the college as a division of the university of New Hampshire.

IV. The funds derived from the sale of land scrip of the United States, and now in the possession of the state, shall be held by it as a trust fund for the benefit of the college of agriculture and the mechanic arts until otherwise ordered by the legislature; and the state shall pay to the treasurer of the university of New Hampshire, semi-annually, interest on the fund at the rate of 6 percent per annum.

V. Nothing in this chapter shall repeal any of the provisions of the laws of 1891, 361, entitled "An act providing for the removal of the New Hampshire college of agriculture and the mechanic arts from Hanover to Durham, and for other purposes".

**Source.** 1981, 331:1, eff. Aug. 16, 1981.

### 187–A:6 County Programs; University of New Hampshire Cooperative Extension Outreach Programs.

I. The purpose and intent of university of New Hampshire cooperative extension programs shall be as provided in RSA 24:10.

II. The university of New Hampshire cooperative extension shall, through its county outreach centers, take full advantage of communication technologies and distance-learning capabilities to bring university-based research and knowledge to the citizens of New Hampshire.

III. The memorandum of understanding between the division of forests and lands (DRED) and the university of New Hampshire cooperative extension, which provides cooperative extension with funds for forest education purposes, shall continue.

IV. The state recognizes and applauds the relationships between cooperative extension and other state agencies and encourages the development and continuance of the memorandum of understanding between the appropriate parties.

V. There shall be appropriated annually by the state a sum of money consistent with the purpose of conducting cooperative extension outreach programs

in the various counties of the state in cooperation with the appropriate federal agencies and the counties and in furtherance of the so-called Smith-Lever Act as accepted by the state under the provisions of the laws of 1915, 194 and 195. The sums appropriated shall be expended through the university of New Hampshire cooperative extension to support outreach programs in the counties.

**Source.** 1981, 331:1. 1985, 49:3. 1995, 134:13, eff. May 24, 1995.

### 187–A:7 The State Fund.

I. For the purpose of providing a fund to be known as the university system of New Hampshire fund, the state treasurer shall credit to such fund the appropriation made to the university system for each fiscal year.

II. All sums so credited are appropriated to said university system for the support and maintenance thereof, including payments of salaries and wages to employees, and current expenses; the construction of additional buildings; the taking of land by eminent domain; the purchase of land, library books, and periodicals; the making of necessary repairs and replacements; the building of roads and walks; the improvement of the grounds; the construction, extension and maintenance of water, sewer and heating systems; and in general for the payment of all such expenses incident to the management of the university system as the trustees thereof may from time to time determine.

III. This fund shall constitute a continuing appropriation for the benefit of the university system. Any amount remaining to the credit of the university system at the close of any fiscal year shall be carried over and credited to its account for the succeeding year. No part of the fund shall be used for the payment of salaries or expenses of extension service agents resident in the counties of the state.

**Source.** 1981, 331:1. 1986, 27:1, eff. June 30, 1986.

### 187–A:8 Payment of State Fund.

Money in the state fund shall be paid to the treasurer of the university system on manifests approved by the governor and council in the same manner as other state claims are paid; provided, that there shall be advanced to the treasurer such money as may be requested by the treasurer of the university system and approved by the governor and council; and provided, further, that manifests covering the money so advanced shall be submitted according to regular procedure at the earliest practicable time.

**Source.** 1981, 331:1, eff. Aug. 16, 1981.

### 187–A:9 Two-Year Course.

A 2-year course in practical and theoretical agriculture is established in the Thompson school of applied science of the university of New Hampshire, to which students shall be admitted who can pass such fair and reasonable examination in reading, spelling, writing, arithmetic, English grammar, and the geography and history of the United States as may be approved by the trustees. In this course students are not required to take higher mathematics or any foreign language. In addition, they may take any other exercises or studies for which they are qualified and which are provided by the Thompson school of applied sciences or the university of New Hampshire in other courses. Those who successfully complete said 2-year program of instruction in the Thompson school of applied science shall receive an appropriate associate degree as authorized by the trustees.

**Source.** 1981, 331:1, eff. Aug. 16, 1981.

### 187–A:10 Out-of-State Students.

The number of undergraduate students enrolled in the university of New Hampshire from domiciles outside the state in any year shall not exceed 25 percent of the maximum capacity for regular undergraduate students at the university as determined by the board of trustees. The limitation on out-of-state enrollment at the university may be suspended by vote of the board of trustees whenever the trustees find that such suspension benefits the state and the university without impairing the opportunity for qualified students of the state of New Hampshire to attend the university. However, any such suspension shall be made for not more than one year at a time but may be continued from year to year upon vote of said trustees. The limitation on out-of-state enrollment at the university of New Hampshire shall not apply to the following divisions of the university: Thompson school of applied science, summer school and graduate school. Nor shall the limitation apply to students attending the university under reciprocal agreements and contracts with other educational institutions.

**Source.** 1981, 331:1, eff. Aug. 16, 1981.

### 187–A:10–a Consulting Center.

The university of New Hampshire consulting center shall be an administrative unit of the university of New Hampshire research office. The consulting center shall report to the director of the research office and, through the director, to the vice president for academic affairs. The purpose of the consulting center shall be:

I. To promote interaction between the faculty and students of the university of New Hampshire and members of the private sector, nonprofit organizations, and state and local governmental units.

II. To aid New Hampshire businesses, nonprofit organizations, and state and local governmental units by providing access to the facilities and expertise offered by the university of New Hampshire.

III. To address the needs of clients, who may be either public or private organizations, by forming project teams composed of faculty and students of the university of New Hampshire. The purpose of the project teams shall be to find solutions to client problems.

IV. To promote the transfer of technology from the university to New Hampshire businesses and industries.

**Source.** 1983, 56:4, eff. May 3, 1983.

### Other Colleges Within System

**187–A:11 Keene State College and Plymouth State University.**

I. Keene state college is established and made a body corporate and politic and a division of the university system of New Hampshire.

II. Plymouth state university is established and made a body corporate and politic and a division of the university system of New Hampshire.

II–a. [Repealed.]

III. Keene state college and Plymouth state university shall be multipurpose institutions of higher education providing instruction in the liberal arts and sciences and in selected applied fields to better serve the needs of its respective area. Each institution shall continue to provide special instruction in teacher training. Procedures for integrating the various functions of these colleges shall be developed by the board of trustees as the need for integration and coordination arises.

IV. Keene state college and Plymouth state university are hereby authorized to offer 2–year programs and to award the degree of associate in arts or associate in science to those who successfully complete such programs. Keene state college and Plymouth state university are also authorized to award a baccalaureate degree or a master's degree. Plymouth state university is authorized to award a doctoral degree.

**Source.** 1981, 331:1. 1983, 239:9. 2003, 159:1. 2008, 215:1. 2011, 76:1, eff. July 1, 2011. 2022, 35:4, 5, eff. May 3, 2022; 35:10, eff. July 1, 2023.

**187–A:12 Repealed by 1985, 140:9, eff. July 1, 1985.**

### Administration

**187–A:13 Trustees of University System.**

The general government of the university system and its constituent divisions and institutions shall be vested in a single board of trustees composed as follows and in accordance with the following conditions:

I. Seven ex-officio members: the governor of the state, the chancellor of the university system, the commissioner of agriculture, markets, and food, the commissioner of education, the president of the university of New Hampshire, the president of Plymouth state university, and the president of Keene state college.

II. Ten members appointed by the governor with the advice and consent of the council.

III. (a) Two members shall be students enrolled at Keene state college, Plymouth state university, Granite state college, or the university of New Hampshire who shall serve as student trustees, for the term indicated in this paragraph, on a rotating basis in the order listed below:

(1) One student each from the university of New Hampshire and Plymouth state university.

(2) One student each from Plymouth state university and Granite state college.

(3) One student each from Granite state college and Keene state college.

(4) One student each from Keene state college and the university of New Hampshire.

(b) The student trustees shall be elected by the student body at the school responsible for providing the student trustees. The term of the student trustees shall be for one year commencing July 1 of the year for which the student was elected and ending June 30 of the next year. Student trustees shall be expected to serve the full duration of their elected term. In the event that a student trustee ceases for any reason to attend the school from which the student was elected, the chancellor of the university system shall declare a vacancy in that student trustee position, and the school causing the vacancy shall elect a replacement student trustee who shall serve for the remainder of the predecessor's term. Graduation of a student trustee shall not constitute a vacancy under this paragraph.

IV. Four members elected by the alumni of the university of New Hampshire.

V. One member elected by the alumni of Keene state college.

VI. One member elected by the alumni of Plymouth state university.

VII. One member elected by the alumni of Granite state college.

VIII. The senate president or designee from the senate leadership.

IX. The speaker of the house of representatives or designee from the house leadership.

At all times, 2 members of the board shall be farmers and both major political parties shall be represented on the board.

**Source.** 1981, 331:1. 1983, 420:5. 1995, 130:5; 134:14. 1998, 334:1. 1999, 281:1, 2. 2000, 23:1, 2. 2003, 159:1. 2005. 2011, 76:2. 2015, 276:248, 249, eff. Sept. 16, 2015. 2018, 348:1, eff. July 2, 2018. 2022, 35:6, eff. May 3, 2022.

### 187–A:14 Terms of Trustees.

I. The terms of office of the appointed and elected members, except the student member, shall be 4 years. The terms of the elected members and student member, shall end on June 30.

II. Each member, except the student member, shall hold office until a successor is appointed and qualified. The appointment of successors for the filling of vacancies for unexpired terms shall be by appointment or election in the same manner as the original appointment, except that a vacancy in an alumni trustee position shall be filled in accordance with the bylaws of the alumni association at the institution with which the position is associated.

**Source.** 1981, 331:1. 1995, 134:15. 1998, 334:2. 2002, 3:1, eff. April 8, 2002.

### 187–A:15 Operation of Board of Trustees.

I. The board shall elect its own chairperson annually.

II. The board shall choose a secretary, who shall keep a record of proceedings, and a treasurer, who shall give a bond satisfactory to the trustees for the faithful discharge of duties as treasurer. The trustees may, in their discretion, require a bond for any other persons employed by or administering the affairs of the institutions of the university system. Said trustees shall determine the amount and sufficiency of the surety of said treasurer's bond or any other bonds required under this section.

III. The board shall meet at such times and places as it may determine but shall hold at least one meeting each year at Keene state college and one at Plymouth state university. The chairperson shall call special meetings upon the written request of any 5 members or on the chairperson's own motion.

IV. Fourteen members shall constitute a quorum for the transaction of business, but not less than 14 affirmative votes shall be required to elect the chancellor of the university system or a college or university president;

V. Members shall receive no compensation for their services but shall be reimbursed for expenses reasonably incurred by them in the performance of their duties.

**Source.** 1981, 331:1. 1985, 140:3. 1994, 158:12. 1995, 134:16. 2000, 23:3. 2003, 159:1, eff. Aug. 16, 2003.

### 187–A:16 Authority of the Trustees.

The trustees shall have the management and control of all the property and affairs of the university system of New Hampshire, the university of New Hampshire (including the New Hampshire college of agriculture and the mechanic arts), and all its divisions and departments, the Keene state college, and the Plymouth state university. They shall not change the name of the Plymouth state university or the Keene state college nor shall they cease operating these colleges without legislative authority. It is the intent of the general court that the trustees, when exercising their responsibilities under this chapter, recognize and foster the unique character and educational mission of each institution of the system. To this end, the institutions are to be permitted to operate with the highest measure of autonomy and self-governance, subject to the supervision of the board of trustees. In addition to this general authority, the trustees are authorized to:

I. Appoint and fix the compensation of a president of the university of New Hampshire, a president of Keene state college and a president of Plymouth state university, who shall be the chief academic and administrative officers of their respective institutions. The chief executive officer of each institution shall have the authority for and be responsible for the general administration and supervision of all aspects of the institutional, research and service programs of that institution.

II. Appoint and fix the compensation and duties of the administrative officers of each component institution of the university system.

III. Appoint and fix the compensation of a chancellor of the university system who shall serve as the chief executive officer of the university system, as the university system's primary liaison with the general court and other elements of state government, and as

chief spokesman for the university system. The chancellor shall serve as chairperson of the administrative board of the university system, leading and coordinating the efforts of the chief officers of the component institutions of the university system, and shall have such other duties as the board of trustees may determine.

IV. Establish an administrative board, comprised of the chief executive officers of each component institution together with the chancellor of the university system, which shall be the coordinating body for the university system. The board is responsible for recommending and implementing policies and procedures which assist the campus presidents in discharging their responsibilities in such a manner as to provide for maximum institutional initiative and responsibility within a unified university organization.

V. Appoint and fix the compensation and duties of such other university system administrators as are needed to provide a well coordinated system of public higher education. These system administrators shall provide assistance needed by the component institutions in order to fulfill their individual educational missions and shall provide services which facilitate coordination in order to serve the educational needs of the people of New Hampshire.

VI. Appoint a faculty of instruction, prescribe their duties, and invest them with such powers for the immediate government and management of each institution as the trustees may deem conducive to the best interests of each institution and the university system.

VII. Accept legacies and other gifts to or for the benefit of the university or any of its divisions or departments.

VIII. Accept all moneys accruing to the institutions of the university system, all moneys appropriated by or received from the government of the United States or the state of New Hampshire, all dividends and interest accruing to these institutions, all gifts of securities and property, real and otherwise, all grants and matching funds from any source, and all monies from sales, tuition fees, admissions and guarantees and from bills receivable.

IX. Acquire water by purchase, development or otherwise and to construct reservoirs or water towers, erect pumping machinery, lay water mains and pipes, install gates, valves and hydrants.

X. Furnish and sell water in the town of Durham to manufacturers, private corporations and individuals for fire protection, manufacturing and domestic use, and collect payment or rentals for the same.

XI. Construct and maintain sewers, culverts, conduits and pipes, with all necessary inlets and appliances for surface, under surface and sewage drainage for the health, comfort and convenience of the inhabitants and the sanitary improvement of the town of Durham, and fix and regulate the price of connection therewith to corporations, firms and individuals.

XII. Enter into agreements and contract with other colleges and universities for the purpose of further education of any qualified New Hampshire student in fields of study not provided for in the curricula of the university system or any of its divisions or component institutions.

XIII. Contract with any city or town in this state for the maintenance of practice schools therein in connection with its teacher-trainees and to provide for the payment of such portion of the compensation of the supervising teachers employed in said practice schools as it may deem just and equitable.

XIV. Authorize the retention by Keene state college or Plymouth state university of the income received and due from all sources, including bequests, trusts, student fees and tuition charges, rents, sales and any other income from whatever source derived, and to authorize the use thereof in such manner as the trustees may determine or as may be provided by law or by the conditions incident to the trusts, gifts and bequests involved.

XV. Transfer funds among the institutions of the university system, and their divisions and departments, when such action shall appear necessary and in the best interests of the state and the institutions of the university system.

XVI. Employ such other persons as may be necessary to carry out the purposes for which the university system and any of its divisions or component institutions have been created and to prescribe their duties.

XVII. By and with the consent of the governor and council, borrow on the credit of the university system in anticipation of income, for the purpose of forwarding its building program, not exceeding $500,000 in any one fiscal year. All amounts so obtained in any fiscal year shall be repaid from the income of the next succeeding fiscal year.

XVIII. Establish a differential in the rate of tuition to be charged all in-state and out-of-state students based on the dual legislative policy of:

(a) Limiting the number of out-of-state students who may attend the university system; and

(b) Giving due weight to the fact that the support of the university system is substantially dependent upon legislative appropriations derived from revenue contributed by persons domiciled within the state of New Hampshire.

XIX. Establish criteria for determining whether students shall be classified as in-state students or out-of-state students for tuition purposes, and to delegate the administration of such criteria to a subcommittee or agent. Any student in the university system who is aggrieved by a final determination of the board of trustees or of any subcommittee or agent of the board denying in-state status for tuition purposes may appeal to the superior court in the county in which the particular division of the university involved is located. Such appeal shall be filed within 30 days after the final determination by the board of trustees. In the superior court, the burden of proof shall be on the appellant to show that the determination of the board of trustees is unreasonable or unlawful and all findings by the board or its properly designated subcommittee or agent shall be deemed to be prima facie lawful and reasonable. The determination of the board of trustees shall be set aside only if, on all the evidence, the court is satisfied that it is unlawful or unreasonable according to the criteria as set forth in this section, and additional criteria as may be established and published, to the student bodies of the institutions constituting the university system by the board of trustees.

XX. Enter into agreements with appropriate agencies and institutions of higher education in other states and foreign countries providing for the reciprocal exchange of students. Such agreement may include provisions for waiver or reduction of out-of-state tuition rates for designated categories of students and may include contractual payments to such out-of-state institutions within the availability of appropriations. The board shall have the power to make such agreements on a continuing basis with mutual credits and offsets which need not be balanced in any given year. One purpose to be accomplished thereby shall be to make available to in-state students of the university system educational facilities not available within the state of New Hampshire in exchange for acceptance by the university system of out-of-state students from jurisdictions where such facilities are made available for New Hampshire students.

XXI. Acquire all risk insurance to cover donated property, real and personal, and to cover the equipment of New Hampshire public television as may be essential to remain eligible for federal funding of public television, notwithstanding the provisions of RSA 9:27 to the contrary; provided, however, that the costs of such insurance shall be borne by New Hampshire public television from private moneys and that no state funds shall be used for this purpose.

XXII. Maintain and operate all housing facilities, dining halls or other food service facilities, student unions, and bookstores for students and faculty on all campuses of the university system, and to collect rents from such facilities.

XXIII. Require every student admitted after December 31, 2012 and receiving the in-state rate of tuition to execute an affidavit attesting he or she is a legal resident of the United States.

XXIV. Apply for medical and surgical benefits in accordance with RSA 187–A:43.

**Source.** 1981, 331:1. 1983, 145:1; 420:6. 1985, 140:4-6; 250:3. 1993, 109:2. 1995, 134:17, 18. 2000, 23:4. 2003, 159:1. 2005, 13:3. 2012, 247:4, 23, eff. Aug. 17, 2012; 260:1, eff. Jan. 1, 2013. 2018, 6:4, eff. May 20, 2018. 2019, 64:1, eff. Aug. 4, 2019. 2022, 35:7, eff. May 3, 2022.

### 187–A:16–a Prohibition on Preferential Treatment and Discrimination.

I. (a) Within the state college and university system, there shall be no preferential treatment or discrimination in recruiting, hiring, promotion, or admission based on race, sex, national origin, religion, or sexual orientation.

(b) Within the state college and university system, there shall be no discrimination based on an applicant's or employee's law enforcement, military, or veteran status.

II. Notwithstanding paragraph I:

(a) Nothing in this section shall be interpreted as prohibiting bona fide qualifications based on sex which are reasonably necessary to the normal operation of public employment, public education, or public contracting.

(b) Nothing in this section shall be interpreted as invalidating any court order or consent decree which is in force as of the effective date of this section.

**Source.** 2011, 227:2, eff. Jan. 1, 2012. 2020, 34:22, eff. Sept. 26, 2020.

### 187–A:16–b Freedom of Association.

No institution within the university system of New Hampshire which accepts state funds shall prohibit, as a condition of admission or continued enrollment, any student from becoming a member of any group

or organization, nor shall an institution take disciplinary action against a student based solely on the student's membership in a group or organization.

**Source.** 2012, 69:1, eff. July 14, 2012.

### 187–A:16–c Transfer Pathways.

*[RSA 187–A:16–c effective July 1, 2024.]*

I. It is the intent of the general court that community college students who wish to earn baccalaureate degrees in the state's public higher education system be provided with clear and effective information and directions that specify curricular paths to a degree.

II. (a) The trustees of the university system of New Hampshire shall work collaboratively with the trustees of the community college system of New Hampshire to create and maintain transfer pathways that optimize the utility and affordability of the community college system for at least the 30 undergraduate majors for which the demand from students in the community college system is the highest, and for which pathways can reasonably be created through partnership between the systems.

(b) The pathways shall consist of general education and lower division major requirements at participating community college system institutions that are fully transferable as a block upon completion of an associate of science or associate of arts degree to any university system institution offering the chosen degree.

(c) An associate of science or associate of arts degree graduate enrolled in a pathway shall be deemed to have met all general education and lower division requirements for transfer to a university system institution as a junior.

III. Notwithstanding paragraph II, admission into a particular program, school, or college within a college or university in the university system of New Hampshire shall remain competitive in accordance with generally applicable policies and nothing in this section shall guarantee a time to degree completion.

**Source.** 2022, 80:1, eff. July 1, 2024.

## Finances

### 187–A:17 Investments.

The governor, the treasurer of the university system, and 3 members of the board of trustees, to be selected by the board of trustees, shall constitute a finance committee who may, except as provided in RSA 187–A:8, make such changes from time to time in the investment of the funds of the institutions of the university system as their interests, in the committee's judgment, may require.

**Source.** 1981, 331:1, eff. Aug. 16, 1981.

### 187–A:18 Special Funds for Self-amortizing Projects.

The trustees of the university system shall keep the income from each of the following specified facilities in a separate fund for each division or campus of the university system: housing facilities, dining halls and other food service facilities, student unions, and bookstores. From each such fund shall be paid the proportionate part of the annual interest on the state borrowing for the purpose of constructing any of the 4 specified facilities at the particular division or campus, and a like proportionate payment of installments of principal as the same become due until such time as all obligations incurred by the state for any of said 4 facilities at any division or campus have been met. All operating and maintenance expenses of the 4 specified facilities shall be paid from the applicable separate fund.

**Source.** 1981, 331:1, eff. Aug. 16, 1981.

### 187–A:19 Free Tuition.

The trustees of the university system shall furnish free tuition to indigent students, so far as practicable.

**Source.** 1981, 331:1, eff. Aug. 16, 1981.

### 187–A:20 Tuition Waived.

I. If a person is domiciled in this state while serving in or with the armed forces of the United States and is, after February 28, 1961, reported or listed as missing, or missing in action, or interned in a neutral country, or beleaguered, besieged, or captured by the enemy during the South East Asian conflict, any child of such person, enrolled after August 16, 1981, in the university of New Hampshire, Plymouth state university, or Keene state college shall, so long as said person is so reported, listed, interned, beleaguered, besieged, or captured, not be required to pay tuition for attendance at such institutions. Any person entitled to free tuition under this paragraph shall apply to the board of trustees of the university system, and said board may require such proof as they may deem necessary in order for a person to qualify for free tuition under this paragraph.

II. (a) If a person, while serving in or with the armed forces of the United States, has received a discharge other than dishonorable from service, and is totally and permanently disabled from such service-connected disability, and was domiciled in the

state of New Hampshire at the time they entered military service or when he or she was determined by the U.S. Department of Veterans Affairs to be so disabled, whether on original decision or appeal, and is currently a resident of New Hampshire or was a resident of New Hampshire at the time of their death, any child of such person enrolled in an institution that is part of the university system of New Hampshire shall not be required to pay tuition for attendance at such institution. For the purpose of this paragraph, "child" shall mean a biological, adopted, or stepchild from marriage who meets the university system's residency requirements, provided in the case of a stepchild that the parents are still married at the time of application and remain so during the entire time of matriculation under this paragraph.

(b) Any person entitled to free tuition under this paragraph shall apply to the board of trustees of the university system. The board shall, for proof of disability, only require a determination of disability letter from the U.S. Department of Veterans Affairs indicating that the disability of the sponsoring parent is 100 percent total, permanent, service connected and that the character of discharge was other than dishonorable, in order for a person to qualify for free tuition under this paragraph. The board may also require such evidence as it deems necessary to establish residence at the time of service entry or the time of disability determination and proof of relation to sponsoring veteran. The child of a veteran shall remain eligible for free tuition under this paragraph through the end of the semester in which he or she attains the age of 27, provided that the child shall be financially liable for the cost of any studies continuing in the semester following his or her 27th birthday.

(c) All applicants shall complete the Free Application for Federal Student Aid (FAFSA) and shall cooperate with the institution in filling out such applications for grants and other financial assistance as the institution may request in order to offset the tuition waiver cost to the institution. This shall not include any benefits provided directly to the student by the U.S. Department of Veterans Affairs under 38 U.S.C. sections 3500–3566, et seq. Failure to cooperate shall be considered grounds to deny a tuition waiver under this paragraph, provided that the applicant shall not be required to apply for loans or other funding that will cause the applicant to incur future debt. Non-eligibility for grants or other funding shall not be grounds to deny a tuition waiver under this paragraph.

**Source.** 1981, 331:1. 1985, 140:7. 2003, 159:1, eff. Aug. 16, 2003. 2020, 34:1, eff. July 1, 2021. 2022, 28:1, eff. June 17, 2022.

### 187–A:20–a Tuition Waived for Children of Certain Firefighters and Police Officers; Room and Board Scholarships.

I. A person who is a New Hampshire resident, who is under 25 years of age, and who enrolls in a program leading to a certificate, associate, or bachelor degree at any public postsecondary institution within the state shall not be required to pay tuition for attendance at such institution if he or she is the child of a firefighter or police officer who died while in performance of his or her duties, and whose death was found to be compensable pursuant to RSA 281–A.

II. (a) Any person entitled to a waiver of tuition under this section may apply for a room and board scholarship while attending the institution, to the extent of available funds. The board of trustees of the university system of New Hampshire and the board of trustees of the community college system of New Hampshire shall have the authority to develop policies for their respective institutions relative to the development of criteria for awarding scholarships, development of scholarship application forms, application deadlines, scholarship amounts, provisions for continuing eligibility, and other procedures necessary to administer the room and board scholarships.

*[Paragraph II(b) repealed by 2023, 127:4, II effective January 1, 2024.]*

(b) There is hereby established in the office of the state treasurer a nonlapsing fund to be known as the room and board scholarship fund. The state treasurer shall invest the fund pursuant to RSA 6:8 and earnings shall be added to the fund. The fund shall be continually appropriated to the university system of New Hampshire for the purpose of providing room and board scholarships as provided in this section, and shall not be diverted or used for any other purpose. The board of trustees of the university system of New Hampshire and the board of trustees of the community college system of New Hampshire may apply for and accept gifts, grants, and donations from any source to be used for the purpose of providing room and board scholarships as provided in this section.

**Source.** 2004, 249:4. 2009, 76:1. 2011, 224:130. 2013, 164:4, eff. June 28, 2013.

### 187–A:20–b Tuition Waiver for Children in State Foster Care or Guardianship or Guardianship After Being in State Foster Care.

I. An eligible individual who enrolls full-time or part-time, with the approval of the division for chil-

dren, youth and families, in a program leading to a certificate, associate, or bachelor degree at any public postsecondary institution within the state shall not be required to pay tuition or mandatory fees for attendance at such institution.

II. In this section, an eligible individual is a person who is less than 26 years of age and who is or was:

(a) In state foster care for the immediate 6–month period prior to his or her 18th birthday;

(b) In state guardianship or custody at the time of his or her 18th birthday;

(c) In guardianship, after being in state foster care or guardianship, at the time of their 18th birthday;

(d) In placement out-of-state, through the interstate compact for the placement of children, at the time of their 18th birthday;

(e) Adopted while in state guardianship or adopted from the care, custody, and control of the department following a surrender or termination of parental rights; or

(f) In an out-of-home placement under the supervision of the division for juvenile justice services at the time of his or her 18th birthday.

III. (a) Eligible individuals interested in a tuition waiver shall annually apply on forms provided and within the deadlines established by the university system of New Hampshire and the community college system of New Hampshire for their respective institutions. In any year, no more than 70 tuition waivers shall be granted by the university and community college systems of New Hampshire. Of these 70 tuition waivers, 35 shall be allocated to the university system and 35 shall be allocated to the community college system. The university system of New Hampshire and the community college system of New Hampshire shall have the authority to develop eligibility criteria for their respective institutions designed to give the children with the greatest financial need first priority in the tuition waiver program. Such eligibility criteria shall also include provisions for continuing eligibility based on continued full-time or part-time, with the approval of the division for children, youth and families, enrollment and satisfactory academic progress as defined by the institution.

(b) Beginning November 1, 2008, and no later than November 1 each year thereafter, the division of children, youth, and families shall submit a report to the health and human services oversight committee, established in RSA 126–A:13, and the house children and family law committee, or their successor committees, detailing the status of the tuition waiver program.

IV. An eligible individual may also apply for a room and board scholarship under the provisions of RSA 187–A:20–a, II without having to comply with the provisions of RSA 187–A:20–a, I.

**Source.** 2011, 224:131. 2013, 164:4, eff. June 28, 2013. 2019, 326:6, 7, eff. Aug. 16, 2019. 2020, 34:20, 21, eff. July 1, 2021. 2023, 79:588, eff. July 1, 2023.

### 187–A:20–c Waiver of Residency Requirement for In-State Tuition For Veterans.

A veteran of the armed forces who establishes a residence in New Hampshire shall immediately after establishing such residence be eligible for in-state tuition rates when attending any institution in the university system of New Hampshire.

**Source.** 2014, 121:1, eff. June 16, 2014.

### 187–A:20–d Academic Credit and Course Registration for Veterans.

I. A veteran who enrolls as a student at an institution within the university system shall be granted maximum credits allowed by the institution's required accreditation standards or state licensure requirements towards his or her degree for the completion of courses that were part of such veteran's military training or service if the such courses meet the standards of the American Council on Education, or its equivalent, for the awarding of academic credits. No fee, tuition, or other charge shall be assessed against a veteran who qualifies for such credit pursuant to this section. For the purposes of this section, "veteran" means veteran as defined in 38 U.S.C. section 101(2).

II. (a) Institutions within the state university system that offer an early course registration period shall also offer early course registration to students who are veterans or national guard members.

(b) A student who is called to active duty in the armed forces of the United States, after having attended regularly for 85 percent of the length of the course as determined by the academic calendar of class or having completed 85 percent of the term's work, shall be given an opportunity to complete necessary course work within 12 months utilizing the Internet or United States Postal Service correspondence or other available communication methods for each course in which such student is earning a grade of C or better in the term the student is called to active duty service.

(c) Students called to active duty in the armed forces of the United States shall have their tuition

refunded or credited, whichever is deemed appropriate by the institution based on how the term was paid for, without credits awarded.

(d) A veteran with no previous college experience shall be permitted to file an admission application and enroll in the current open registration period pending completion of their application and provision of supporting documents.

(e) Within 12 months of return from active duty, a veteran may register for courses after normal registration period ends without late fees or other penalties until the latest allowable registration date.

III. The board of trustees shall establish policies necessary to implement this section.

**Source.** 2020, 34:10, eff. Sept. 26, 2020.

### 187–A:20–e In-State Tuition for Military-Connected Students.

A spouse or child of an active member of the armed forces who is assigned to duty elsewhere immediately following assignment to duty in New Hampshire shall be deemed an in-state resident for purposes of determining tuition and fees at an institution within the university system as long as the spouse or child resides continuously in New Hampshire while enrolled in such postsecondary institution.

**Source.** 2022, 310:3, eff. Aug. 30, 2022.

### 187–A:21 Other Income.

The income received and due to the institutions of the university system from all other sources, including bequests, trusts, income from bequests and trusts, student fees and tuition charges, rents, sales, and any other income, from whatever source derived for the institutions of the university system, shall be retained by the treasurer of the university system and be used in such manner as the trustees may determine or as is provided by law or by the conditions incident to trusts, gifts, or bequests.

**Source.** 1981, 331:1, eff. Aug. 16, 1981.

### 187–A:22 Reports.

I. The trustees shall file with the governor and council, by November 1 of each year, a report of the operations, progress and financial condition of the university system and its constituent institutions. They shall include in the report an account of improvements made. One copy thereof shall be transmitted to each college endowed under the act of Congress cited in RSA 187–A:5, I; one copy to the Secretary of the Interior; one copy to the legislative fiscal committee; one copy to the house education committee and one copy to the senate education committee.

II. [Repealed.]

**Source.** 1981, 331:1. 1983, 420:7. 2012, 247:40, IV, eff. Aug. 17, 2012.

### 187–A:23 Motor Vehicle Regulations.

Other provisions of law notwithstanding, the university system of New Hampshire is hereby directed to adopt the provisions of the state manual of procedure relative to stateowned motor vehicles as promulgated by governor and council as may be amended. The annual report of motor vehicle operations shall also be filed in the same manner and in the same detail as that prescribed for all other state agencies. The university shall purchase compact cars consistent with the policy established for all state agencies.

**Source.** 1981, 331:1, eff. Aug. 16, 1981.

### 187–A:24 John G. Winant Memorial Foundation.

There is hereby established a charitable and educational foundation to be known as the John G. Winant memorial foundation. The purpose of said foundation shall be to administer a fund in memory of the late John G. Winant for aid to needy students at the university of New Hampshire, with special emphasis upon assistance to students majoring in economics and social welfare.

I. The trustees of the university system of New Hampshire and their successors are hereby constituted the trustees of the foundation. The trustees shall receive no compensation for their services to the foundation, except expenses reasonably incurred by them shall be paid from its funds.

II. The trustees may receive by gift, grant, devise or otherwise and may hold, possess and enjoy for the purposes of the foundation real and personal estate and shall likewise have the power to invest and reinvest its holdings of real or personal property according to the best judgment of the board of trustees. The income from any property real or personal held by said trustees under the provisions of this section shall be expended for charitable and educational purposes as set forth in this section.

**Source.** 1981, 331:1, eff. Aug. 16, 1981.

### 187–A:25 Tax Exemption.

The property of the university system of New Hampshire and each of its constituent institutions and divisions is exempt from taxation, as provided in RSA 72:23.

**Source.** 1981, 331:1. 2006, 205:3, eff. May 31, 2006.

### 187–A:25–a Audit.

The governor shall be a member ex officio of each audit committee appointed by the board of trustees. The governor may designate another member of the board of trustees to serve in the governor's place as a member of the audit committee. The board of trustees shall submit to the governor, for concurrence, the board's recommendation with respect to the selection of external auditors. The external auditors selected by the board of trustees shall render their report and findings to the board of trustees, to the governor, and to the legislative fiscal committee. Such auditors shall provide to the governor and to the legislative fiscal committee any information normally provided to the audit committee and shall respond to any request from the governor or from the legislative fiscal committee relative to the financial conditions, operations, and systems of the university that the board reviewed during its audit.

**Source.** 1983, 420:12. 1995, 134:19, eff. May 24, 1995.

## Public Higher Education Study Committee

### 187–A:26 to 187–A:28 Repealed by 1995, 10:16, V, eff. April 12, 1995.

### 187–A:28–a Public Higher Education Study Committee.

Educational opportunity in New Hampshire must involve all the components of education. The general court acknowledges that education does not start or end at any particular point. There is hereby established a permanent public higher education study committee for the state of New Hampshire. The study committee shall be composed of 8 members and shall examine the goals, purposes, organization, and financing of public higher education in New Hampshire, and shall evaluate and make recommendations on the university of New Hampshire, Plymouth state university, Keene state college, and the community college system of New Hampshire.

**Source.** 1995, 292:2. 1998, 260:2. 2003, 159:1. 2005, 13:4. 2007, 361:11, eff. July 17, 2007. 2022, 35:8, eff. May 3, 2022.

### 187–A:28–b Membership.

The committee shall be appointed as follows: 3 senators, including the chairperson of the senate education committee and a member of the senate finance committee, by the president of the senate; 5 representatives, including the chairperson and at least 2 other members of the house education committee and a member of the house finance committee, by the speaker of the house of representatives. The chair of the study committee shall rotate biennially between the chairperson of the house education committee and the chairperson of the senate education committee. A member shall only serve while a member of the general court. The members shall not be entitled to any salary but are entitled to reimbursement for mileage and other expenses incurred in carrying out their duties. The committee may hire necessary consultants and professional or clerical personnel.

**Source.** 1995, 292:2, eff. June 21, 1995.

### 187–A:28–c Duties.

I. The committee shall study, among other things, the following:

(a) The operation of public higher education.

(b) The goals and purposes of public higher education.

(c) The organization of public higher education.

(d) The size of public higher education.

(e) The financing of public higher education.

(f) Any other areas which will act as a guide to the legislature and trustees in formulating policies for the future.

(g) The economic effects of student activities on higher education campuses as reported in studies by the university system of New Hampshire and municipalities. The committee shall study possible solutions and recommend legislation. Possible solutions for the committee to study include payments to the municipalities by institutions of higher education in lieu of taxes; additional fees or assessments; and any other remedy suggested by the municipalities affected by higher education campuses.

I–a. In addition to the duties set forth in paragraph I, the committee shall study the feasibility of granting state franchise rights to the providers of online education courses which may include but is not limited to, the institutions of the university system of New Hampshire and the regional community-technical college system. The committee may consult with any individual or organization with information or expertise relevant to this aspect of the committee's duties.

I–b. In addition to the duties set forth in paragraph I, the committee shall monitor the transition of the regional community-technical college system to a self-governing community college system.

II. The committee shall act as liaison between the university system, the community college system of

New Hampshire, the general court, and the public to promote better understanding and communications between public higher education, the general court, and the public.

III. The committee shall hold at least 4 meetings per year to be called by the chairperson.

**Source.** 1995, 292:2. 1998, 260:3. 2001, 221:1. 2003, 49:1. 2007, 361:12, 13, eff. July 17, 2007.

### 187–A:28–d Report and Recommendations.

The committee shall submit a report to the general court by January 15 of each year. Copies of the report shall be submitted to the governor and council, the senate finance and education committees, the house of representatives finance and education committees, the board of trustees of the university system, the chancellor of the community college system of New Hampshire, and to any other individual or organization as the committee deems advisable.

**Source.** 1995, 292:2. 1999, 99:1. 2007, 361:14, eff. July 17, 2007.

### 187–A:29 Repealed by 1995, 10:16, V, eff. April 12, 1995.

## Innovation Research Center

### 187–A:30 Purpose.

To promote the economic well-being of its citizens, the general court finds it desirable to establish an innovation research center at the University of New Hampshire for the purpose of providing a mechanism to promote applied and basic scientific, engineering, and associated marketing research and technological transfer to support the New Hampshire industrial and business community. This center shall foster cooperative industry and university research partnerships to increase the pace of innovation technology developments that expand the New Hampshire economy, increase the number and quality of jobs in New Hampshire, and cause New Hampshire to be more competitive in the world economy. The center shall become the foremost advocate in the state for applied science and technology, bridging the gap between industry and academia by the judicious application of "innovation investment" competitive contract awards and other developmental support to the New Hampshire business community. The center shall seek to expand the available "innovation investment" funds by leveraging center talent and the available grant money provided by the legislature to pursue and capture federal and other appropriate funds to increase the pace of innovation and job creation in New Hampshire.

**Source.** 1991, 211:1. 1994, 293:3. 2007, 251:2, eff. Aug. 27, 2007.

### 187–A:31 Grant Program.

To carry out the purposes of this subdivision the department of business and economic affairs shall enter into a grant program with the university of New Hampshire to establish a center for innovation research at the Durham campus. Through the grant program, the center shall provide applied and basic scientific, engineering, and associated marketing research capability and technology transfer in support of New Hampshire's industrial and business community. The center may pool its funds with those of other entities, either public or private, for the purpose of delivering services to New Hampshire businesses and industries. To be eligible to receive grant-funded services, businesses and industries must have an ongoing business within the state or an announced intention to locate a business in the state. The center may provide services other than grants including but not limited to: training regarding the capture and protection of intellectual property, strategic thinking and strategy development, and writing proposals. Assistance may be provided by the NHIRC director, by small subsidies to assist in the identification and funding of consultants to help the company, or by other creative means.

**Source.** 1991, 211:1. 1994, 293:4. 2007, 251:3. 2017, 156:14, II, eff. July 1, 2017. 2020, 37:10, eff. July 29, 2020.

### 187–A:32 Repealed by 2020, 37:4, XIII, eff. July 29, 2020.

### 187–A:33 Funding.

Any center project utilizing state appropriations except for certain short-term, fee-based activities, shall match state funds at least dollar for dollar with funds generated by the center from the net income of any of the following operations of the center: the center's research clients, profit and nonprofit organizations, the federal government, or local political subdivisions. In kind and equipment contributions may be accepted as matching funds.

**Source.** 1991, 211:1. 1994, 293:5, eff. July 1, 1994. 2020, 37:11, eff. July 29, 2020.

### 187–A:33–a Company Default on Matching Funds.

In the event that a company defaults on all or a portion of its matching obligations, the state's obligated pro rata portion of the project costs incurred will still be paid to the university to minimize its losses for the work that has already been completed. The university shall notify the state within 45 days of the time a company's matching portion payment has not been received when due.

**Source.** 1996, 183:1, eff. June 3, 1996.

### 187–A:33–b Fees.

The innovation research center may assess fees on the business or industry involved with a project of up to 5 percent of the total cost of the project under RSA 187–A:31. The center shall reimburse the university of New Hampshire or Dartmouth College for its administrative expenses incurred out of these fees.

**Source.** 1996, 183:1. 2007, 251:5, eff. Aug. 27, 2007.

### 187–A:33–c Equipment Purchases.

Any center project which includes the purchase of equipment shall contain a provision that allows either the company, the university of New Hampshire, or Dartmouth College to retain possession of such equipment when the project is completed and the company has paid its matching share in full. Final disposition of equipment shall be agreed to by the company and the center in advance of a project starting date. A company which purchases equipment deemed necessary to the conduct of the project may count the purchase price as part of its matching fund requirement.

**Source.** 1996, 183:1, eff. June 3, 1996. 2020, 37:12, eff. July 29, 2020.

## Inventors Assistance Act

### 187–A:34 Statement of Purpose.

The general court recognizes the numerous benefits to the state's economic base from the establishment of businesses by inventors and the numerous benefits provided by inventors which include industrial diversification, broadening of the economic base, a great proliferation of jobs, providing financial benefits to our citizens through a greatly expanded tax base, and new products and processes for the nation's consumers. A great number of inventions are never authoritatively considered primarily because inventors are unfamiliar with the business environment or financial structure necessary for implementing their proposals. The general court, therefore, recognizes a need to encourage and assist inventors and, at the same time, to position this state as a leader in advanced and high technology and to foster a climate for those leaders of this state, the nation and the world.

**Source.** 1993, 327:2, eff. July 1, 1993.

### 187–A:35 Program Established.

I. A program to provide assistance to inventors shall be established at the innovation research center at the University of New Hampshire at Durham. The center shall develop, implement, publicize, and operate the program within the limits of available resources and in a manner which will give greatest effect to the purposes of the program. In so doing the center may charge a reasonable fee for proposals submitted. The administrative head of the program shall be the executive director of the innovation research center.

II. With the prior approval of the committee, which approval shall include the affirmative votes of both senate and house representatives on that committee, the administrative head may elect to provide services to specific inventors or persons with intellectual property for the purposes of assisting such inventors or persons in the development of the invention or intellectual property. The assistance may include limited patent searches, patent applications, copyright registration, market analysis, product or process research and development, assistance in obtaining financing, including financing from private sources, and business counseling. The administrative head shall establish guidelines relative to the provision of services and governing the choice of services offered to individual persons, which guidelines will be approved by the committee.

III. No offer of assistance made by the center under this section to any person shall be taken to create a contractual obligation, either express or implied, on the part of the center to do any act or thing on behalf of the person.

**Source.** 1993, 327:2. 2003, 174:5. 2007, 251:7, eff. Aug. 27, 2007. 2020, 37:13, eff. July 29, 2020.

### 187–A:36 Annual Report.

The center shall submit an annual report on or before December 31 of each year to the governor and the governor's executive council. The report shall include statistics for the following:

I. Proposals submitted for review and evaluation.

II. Proposals accepted for development and the number rejected.

III. Products receiving patents.

IV. Products developed to the commercial stage.

V. Jobs created and preserved as a result of the manufacturing, marketing, packaging, warehousing, and distribution of products.

**Source.** 1993, 327:2, eff. July 1, 1993. 2020, 37:14, eff. July 29, 2020.

**187–A:37 Repealed by 2002, 254:5, VI, eff. July 1, 2002.**

### Selective Service Registration Awareness and Compliance Act

**187–A:38 Title.**

This subdivision shall be known as the Selective Service Registration Awareness and Compliance Act.

**Source.** 1998, 273:1, eff. Aug. 25, 1998.

**187–A:39 Application.**

I. No person who is not in compliance with the Military Selective Service Act as provided in 50 U.S.C. app. section 451 et seq. shall:

(a) Be permitted to enroll in a state-supported institution of postsecondary or higher education.

(b) Be eligible to receive a loan, grant, scholarship, or other financial assistance for postsecondary higher education supported by state revenue, including federal funds, gifts, or grants accepted by the state, or to receive a student loan guaranteed by the state.

(c) Having attained the age of 18 years, be eligible for employment by or service to the state or any political subdivision of the state, including all state boards, commissions, departments, agencies, and institutions.

II. A person who has authorized the department of safety to submit information to the Selective Service System pursuant to RSA 263:5–c shall be considered to be in compliance with the Selective Service Act for purposes of this section.

**Source.** 1998, 273:1. 2002, 129:1, eff. July 7, 2002.

**187–A:40 Responsibility for Compliance.**

It shall be the duty of any official having charge of or authority over the hiring of employees by the state or its political subdivisions, and over state supported institutions of postsecondary higher education, and over decisions relating to the granting of state-supported financial assistance for postsecondary higher education as described in this subdivision, to assure themselves that applicants are in compliance with the provisions of RSA 187–A:39.

**Source.** 1998, 273:1, eff. Aug. 25, 1998.

**187–A:41 Exceptions.**

The provisions of this subdivision shall not apply if:

I. The requirement for the person to register under the Military Selective Service Act has terminated, or otherwise become inapplicable to such person; or

II. The person is serving or already has served in the military, or has a condition that would, under military rules and regulations, preclude military service.

**Source.** 1998, 273:1, eff. Aug. 25, 1998.

### New Hampshire Estuaries Project

**187–A:42 New Hampshire Estuaries Project.**

The university of New Hampshire shall administer the New Hampshire estuaries project.

**Source.** 2005, 20:2, eff. May 10, 2005.

### Medical and Surgical Benefits; University System of New Hampshire

**187–A:43 Medical and Surgical Benefits; University System of New Hampshire.**

The university system of New Hampshire may participate in the state group health insurance plan if the board of trustees applies for such benefits to the commissioner of the department of administrative services in writing. Upon receipt of the application, the commissioner shall conduct a cost analysis pursuant to paragraph VI and shall seek legislation authorizing application of such benefits and provided further that:

I. The university system of New Hampshire agrees to accept the terms of the state group health insurance plan that is collectively bargained every 2 years by the department of administrative services.

II. The board of trustees, when applying in writing, shall agree that these benefits shall apply to all employees and no other group health insurance plans shall be offered by the system while employees are part of the state group health insurance plan.

III. The university system shall pay all associated administrative costs of managing university system employee and dependent participation, including any periodic cost increases, additional department of administrative services staff requirements, reserve adjustments and reserve requirements.

IV. The university system agrees to maintain current employee records including eligibility and enrollment data as required by the department of administrative services.

V. The university system agrees to remain in the state group health insurance plan for a minimum of 5 years from the date of entry.

VI. Cost analysis, including costs associated with the division of risk and benefits staff, shall be paid for by the university system. The university system shall pay all associated costs of transferring data into

the state group health insurance plan and all costs associated with data collection, data manipulation associated with transferring from one plan to another, and costs of university system changes, including staff costs.

VII. The university system shall provide to the division of risk and benefits a file of medical and pharmaceutical claims for the previous 2 years which shall not contain any personally identifiable information.

**Source.** 2018, 6:3, eff. May 20, 2018. 2019, 346:22, eff. July 1, 2019.

### Commission to Study Career Pathways From Full-time Service Year Programs to Postsecondary Education and Employment Opportunities in Support of New Hampshire's Future Workforce Needs

**187–A:44 Repealed by 2019, 135:2, eff. Nov. 1, 2020.**

### Commission to Study Hospitality and Tourism Education in New Hampshire

**187–A:45 Commission to Study Hospitality and Tourism Education in New Hampshire.**

*[RSA 187–A:45 repealed by 2023, 79:469, effective November 1, 2023.]*

I. There is established a commission to study hospitality and tourism education in New Hampshire. The members of the commission shall be as follows:

(a) Two members of the senate, appointed by the president of the senate.

(b) Five members of the house of representatives, appointed by the speaker of the house of representatives.

(c) The president of the New Hampshire Restaurants and Lodging Association, appointed by that association.

(d) One owner or operator of a restaurant in New Hampshire, appointed by the governor.

(e) One owner or operator of a hotel or inn in New Hampshire, appointed by the governor.

(f) One representative from the New Hampshire community college system, appointed by the chancellor.

(g) One representative from the New Hampshire university system, appointed by the chancellor.

(h) A representative from a career and technical education center (CTE), appointed by the commissioner of the department of education.

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

III. The commission shall:

(a) Examine existing hospitality and tourism programs and community colleges and universities statewide, including curriculum and enrollment trends.

(b) Work with appropriate state agencies including the department of natural and cultural affairs, division of travel and tourism, to determine state needs and how those needs are being met by the tourism and hospitality programs in the university system and the community college system.

(c) Work with other state agencies, as needed.

IV. The members of the study commission shall elect a chairperson from among the members. The first meeting of the commission shall be called by the first-named senate member. The first meeting of the commission shall be held within 45 days of the effective date of this section. Seven members of the commission shall constitute a quorum.

V. The commission shall report its findings and any recommendations for proposed legislation to the president of the senate, the speaker of the house of representatives, the senate clerk, the house clerk, the governor, and the state library on or before November 1, 2023.

VI. The commission shall be administratively attached to the department of business and economic affairs, division of travel and tourism development.

**Source.** 2023, 79:468, eff. June 20, 2023.

## CHAPTER 187–B

## ENVIRONMENTAL RESEARCH ADVISORY COMMITTEE

[Repealed by 2010, 368:1(18), eff. Dec. 31, 2010.]

## CHAPTER 188

## TECHNICAL INSTITUTES AND AREA VOCATIONAL SCHOOLS

[Repealed by 1961, 267:2, eff. July 1, 1961.]

## CHAPTER 188–A

## TECHNICAL INSTITUTES AND VOCATIONAL-TECHNICAL COLLEGES

[Repealed by 1983, 379:1, eff. July 1, 1983.]

## CHAPTER 188–B

## ALLIED HEALTH PROFESSIONS



### 188–B:1 Declaration of Purpose.

The purpose of this chapter is to provide facilities and curriculum for special training of technicians in the fields of allied health professions and occupations. The special training for said fields shall be such as to meet accreditation requirements from said professions or occupations and also to meet requirements for federal aid.

**Source.** 1967, 410:1, eff. July 1, 1967.

### 188–B:2 Administration.

The chancellor of the community college system of New Hampshire is charged with the administration of this chapter and is authorized, within the funds appropriated therefor, to employ teachers, administrative staff and such other employees as may be necessary to carry out the provisions hereof. The chancellor is authorized and directed to locate the facilities for any training program hereunder at the community college system of New Hampshire, and to establish and implement curricula for as many of said professions as soon as possible, and to make application for and receive any and all federal grants or assistance available. The chancellor shall study the feasibility for the expansion and greater implementation of the general purposes of this chapter including the establishment of new facilities for the purposes hereunder and shall make recommendations to the next session of the legislature relative to the matter.

**Source.** 1967, 410:1. 1981, 318:4. 1986, 41:25. 1989, 303:1. 1995, 182:22, 29. 2007, 361:15, eff. July 17, 2007.

### 188–B:3 Acceptance of Federal Funds, Gifts, and Grants.

The governor and council, upon recommendation of the state board of education is authorized to apply for financial or any other aid which the United States has authorized or may authorize to be given to the several states for training for health services, including but not limited to the Allied Health Professions Personnel Training Act of 1966 and the Nurse Training Act of 1964. Federal funds made available to the state for purposes hereof shall be expended by the state department of education in accordance with the terms of the federal grant.

**Source.** 1967, 410:1, eff. July 1, 1967.

### 188–B:4 to 188–B:7 Repealed by 1981, 47:1, eff. March 30, 1981.

### 188–B:8 Specialized Advisory Boards.

The state board of education may appoint special advisory boards relative to any of the allied health professions to assist and advise it in all matters pertaining thereto.

**Source.** 1967, 410:1, eff. July 1, 1967.

## CHAPTER 188–C

## REGULATION OF PRIVATE TRADE, COMMERCIAL CORRESPONDENCE, AND OTHER SCHOOLS AND CORRESPONDENCE SCHOOL REPRESENTATIVES

[Repealed by 1983, 239:6, eff. June 18, 1983.]

## CHAPTER 188–D

## POSTSECONDARY EDUCATION COMMISSION

[Repealed by 2011, 224:125, IX, eff. July 1, 2011.]

## CHAPTER 188–E

## REGIONAL CAREER AND TECHNICAL EDUCATION (CTE)

## 188–E:1 Designation of Regional Centers and Programs.

The commissioner, department of education, is hereby authorized and directed to designate high schools, and public academies as defined in RSA 194:23, II, offering career and technical education programs as career and technical education centers. In instances where it is educationally and economically feasible to do so, the commissioner may designate individual career and technical education programs in other than the career and technical education centers as regional programs. An out-of-state school or program may be designated, when it is in the best interest of the state, as a part of the New Hampshire regional career and technical education plan.

**Source.** 1973, 567:1. 1990, 28:4. 2008, 328:1. 2015, 252:3, eff. July 1, 2015.

## 188–E:1–a Regional Career and Technical Education Agreements (RCTEA).

I. Each regional career and technical education receiving and sending school entity within a New Hampshire career and technical education (CTE) region shall be governed by a regional career and technical education agreement (RCTEA) which will be renewed every 4 years and submitted to the commissioner for review and approval.

II. The department of education shall adopt rules under RSA 541–A concerning the form and procedures for RCTEA.

III. Each RCTEA shall include a calendar conformity agreement to comply with RSA 188–E:5, VII(a) and (b) by aligning the school calendars of sending schools with the school calendars of CTE programs at the receiving school. Agreements shall minimize schedule conflicts to better support CTE students with as many hours as possible to fulfill their program requirements. Agreements should address schedule alignment needs such as: disruptions due to differing start/stop times, unscheduled school closures or events, and daily class start/stop times. RCTEA schools are encouraged to align teacher in-service days to allow joint ventures in teacher professional development and other educational initiatives. There may not be more than 10 instructional days following Labor Day through the last student day of the school calendar year on which one or more of the school calendars of the districts within the agreement are not aligned. When CTE regions overlap, or students attend programs in more than one CTE, the provisions of this section shall apply to both regional centers. The commissioner shall not approve a RCTEA that does not comply with this paragraph, however a RCTEA may contain provisions for waiver by the commissioner of dissimilar days for extenuating or emergency purposes. If the commissioner determines that all schools within the RCTEA have plans and are reasonably working towards the implementation of an aligned calendar to ensure compliance with this paragraph, an annual waiver may be approved, but a waiver for this purpose shall not be extended beyond July 1, 2026.

IV. Each RCTEA shall include the provisions to fulfill the recognition of credits in RSA 188–E:5, XIII.

V. Each RCTEA shall include a plan for sending and regional schools to provide tuition and transportation for any student from a sending school who wishes to attend a CTE program, subject to attainment of prerequisites, space availability within the program, and appropriate qualifications under RSA

188–E:2, VIII(b) and RSA 188–E:8, and report to the commissioner any constraints in funding for tuition and transportation that need to be addressed to provide this opportunity. Sending districts shall be responsible for ensuring students schedules allow for full access to CTE programs offered at the regional CTE center, including travel time on buses.

**Source.** 2022, 272:2, eff. July 1, 2022.

### 188–E:2 Definitions.

In this chapter:

I. "Alternative education program" means a program providing at-risk students with a variety of options with a goal of graduation or completion by focusing on the student's individual social needs and the academic requirements for a high school diploma, including:

(a) A program offered at a regional career technical education center or other comprehensive high school.

(b) An adult high school diploma program administered pursuant to rules of the department.

(c) An adult basic education program administered pursuant to rules of the department.

II. "At-risk student" means a high school student who has been evaluated by the local school district staff and deemed to be an individual in jeopardy of dropping out of school prior to graduation.

III. "Career and technical education" or "CTE" means organized educational activities that:

(a) Offer a sequence of courses that:

(1) Provides individuals with coherent and rigorous content aligned with challenging academic standards and relevant technical knowledge and skills needed to prepare for further education and careers in current or emerging professions;

(2) Provides technical skill proficiency, an industry-recognized credential, a certificate, or an associate degree; and

(3) Might include prerequisite courses, other than a remedial course; and

(b) Include competency-based applied learning that contributes to the academic knowledge, higher-order reasoning and problem-solving skills, work attitudes, general employability skills, technical skills, and occupation specific skills, and knowledge of all aspects of an industry, including entrepreneurship, of an individual.

III–a. "Career pathway system" means a high quality education system that spans secondary education and postsecondary education, blending rigorous core academic and career instruction, offering focused career guidance and advisement systems including high-quality work-based learning experiences, to significantly expand access to, participation in, and successful completion of those pathways, culminating in postsecondary or industry credentials, licensure, and career-related technical skills.

III–b. "Career readiness credential" includes completion of CTE courses or sequences of courses; enrollment in concurrent and/or dual enrollment courses; internships; apprenticeships; extended learning opportunities; work-based learning; bureau of career development, department of education career-pathway high schools; and the CCSNH running start program. "Career readiness credential" may also be a statewide established recognition signifying that a high school graduate has met or exceeded specific statewide or nationally normed metrics related to career readiness.

III–c. "Career readiness pathways" mean pathways available to New Hampshire students that, on successful completion, lead to a career readiness credential.

IV. "Construction" means the actual construction of facilities and provision of initial equipment.

V. "Receiving district" means a school district operating a comprehensive high school or public academy pursuant to RSA 194:23 which is designated as a regional center or offers a designated regional program.

V–a. "Regional career and technical education center agreement" or "RCTEA" means the governing agreement between receiving and sending schools.

VI. "Regional career and technical education student" means a student attending a regional center or a regional program, for career and technical education purposes, which is in a high school other than one the student would normally attend for his or her regular education program.

VII. "Renovation" means an upgrade and/or addition of career and technical education space, facility, and/or equipment at designated regional career and technical education centers.

VIII. "Sending district" means:

(a) A school district where students reside who attend a regional center, regional program, or alternative education program other than within the district itself; or

(b) If a student attends a chartered public school, private school, or is home schooled, the

sending district shall be the school district in which the student resides.

IX. "Work-based learning" means an educational strategy that offers students an opportunity to reinforce and deepen their classroom learning, explore future career fields, and demonstrate their skills in an authentic setting supported by educators and trained workplace mentors.

**Source.** 1973, 567:1. 2007, 232:1, 2. 2012, 199:1. 2015, 252:4, eff. July 1, 2015. 2019, 322:3, 4, eff. Oct. 11, 2019. 2021, 210:2, Pt. II, Sec. 1, eff. Oct. 9, 2021. 2022, 272:1, eff. July 1, 2022.

### 188–E:3 Construction or Renovation of Regional Career and Technical Education Centers.

I. The commissioner, department of education, shall make grants available to designated regional centers for construction of career and technical education facilities or renovation, expansion, or replacement of existing regional career and technical education centers. The state board shall adopt rules, pursuant to RSA 541–A and RSA 21–N:9, II, which the commissioner shall carry out, relative to requirements for approval of regional career and technical education centers to receive funds for construction, renovation, expansion, or replacement of such facilities. The rules shall include criteria which guarantee potential sending districts an opportunity to enroll students in the regional career and technical education program, and basic criteria for planning such facilities through cooperative development of plans by the career and technical education staff of the state department of education and the local school district's staff. When such plans appear to be both educationally and financially acceptable, the department's career and technical education staff shall recommend to the commissioner that they be approved for funding.

II. Upon completion, the constructed or renovated facility shall become the property of the school district or public academy, for use by the career and technical education center exclusively. Provision of the site, parking, and other related areas shall be the responsibility of the local community. Site work, including but not limited to cut and fill work, compaction, demolition, relocation of utilities, relocation of roadways and sidewalks, and similar work within an area extending to one foot beyond the outside edge of the exterior walls of the building, shall be eligible for grants under paragraph I. Nothing shall prohibit the inclusion of the site and related facilities which are not funded as part of construction cost by the state under this chapter from being included in a regular building aid grant application of the district as provided in RSA 198:15–b. However, no school district which receives any funding under this chapter shall be eligible to receive school building aid grants under RSA 198:15–b for the same project. Maintenance, repair, and upkeep of the constructed or renovated facility, including all classroom and laboratory spaces, shall be the responsibility of the school district or public academy, as the case may be.

**Source.** 1973, 567:1. 1986, 41:18. 1990, 28:5. 1997, 265:1. 2008, 296:1; 296:33. 2012, 275:8. 2015, 252:5, eff. July 1, 2015. 2021, 210:2, Pt. II, Sec. 2, eff. Oct. 9, 2021.

### 188–E:4 Repealed by 2010, 368:1(45), eff. Dec. 31, 2010.

### 188–E:4–a Advisory Committees.

I. Each designated region shall have a regional advisory committee consisting of representatives from each sending district and the receiving district. Appointees from each district shall represent a reasonable balance of the career cluster areas in the region's approved career and technical education programs. Each regional advisory committee shall have at least 7 members representative of the districts and career and technical education areas and at least one member shall be a certified high school counselor.

II. The regional advisory committee shall advise the receiving district school board on matters related to career and technical education but shall have no legal authority with respect to such board's responsibility.

III. Each regional career and technical education center shall have active program advisory committees representing each approved career and technical education program established at the center. Said program advisory committees shall advise the regional advisory committee on matters relating to their particular approved career and technical education program but shall have no legal authority with respect to the regional advisory committee's responsibility.

**Source.** 2012, 223:4. 2017, 110:1, eff. Aug. 7, 2017.

### 188–E:5 Program.

I. The program in the regional career and technical education centers shall be broad enough to serve the reasonable business and industry needs of the area, and provide for a substantial career and technical offering in the region.

II. Career and technical education of consistent quality shall be equally available to students and across the state. Each career and technical education program pathway shall include embedded rigorous academic skills and technical core competencies aligned with national business and industry standards delivered through a relevant sequence of courses.

III. Each center shall make maximum utilization of cooperative arrangements with special education and vocational rehabilitation in providing career and technical education for disadvantaged and disabled persons. Opportunities for out-of-school youths, including "drop outs" and others, and adult education will be provided whenever possible.

IV. The regional career and technical education centers, as an integral part of each career and technical offering, may provide opportunities in leadership development through participation by students in appropriate corresponding and nationally recognized career and technical student organizations.

V. Regional career and technical education centers shall, on a space available basis, enroll any student requesting enrollment who has attended one year of high school regardless of the number of academic credits earned, except that the Manchester school district shall, on a space available basis, enroll and bear the associated costs for any Manchester school district student in grades 9–12 who resides in the city of Manchester and who requests enrollment in a regional career and technical education center within the district, provided that in either case:

(a) The student has successfully completed any courses required as a prerequisite for the career and technical education program selected; or

(b) The prerequisites have been waived by the regional career and technical education center director. Such a waiver shall not be unreasonably withheld.

VI. The receiving district shall be responsible for determining the student's qualifications for admission and space availability.

VII. (a) All career and technical education students shall be given access to career and technical education programs for the instructional time for those programs.

(b) Upon a joint application by a student's career and technical education center and his or her sending district, the commissioner may grant a waiver from the requirement of subparagraph (a) on a case-by-case basis. A student waiver may be granted on a case-by-case basis from the requirement of subparagraph (a) in accordance with approved procedure in the RCTEA.

VIII. Programs shall demonstrate alignment of curriculum to national technical core competencies to assess and demonstrate achievement through evidence documented by course and learning experiences using multiple measures, such as, but not limited to, examinations, quizzes, portfolios, performances, exhibitions, industry certifications, projects, and community service.

IX. An approved career and technical education program shall be designed to enable a student to meet industry standards applicable to the respective career field.

X. To the greatest extent possible, a career and technical education program offered at a center or region shall provide students the opportunity to take advantage of any applicable career pathways, including career pathways set forth in an articulation agreement with a postsecondary institution or in a collaborative agreement with publicly supported secondary and postsecondary educational institutions that form a dual enrollment career and technical education program.

XI. Beginning in September 2020, and each year thereafter, school districts shall, for entering high school freshman: assess student career interests; document school pathways to career readiness credentials; advise all entering high school students how to achieve a career ready credential upon graduation; and record on a student's transcript progress towards the credential. School districts shall report the following annually: the number of students who complete CTE; the number of dual enrollments, concurrent enrollments, extended learning opportunities, and work based learning enrollments; and the number of career ready credentials awarded.

XII. The director of career and technical education shall report to the advisory council on career and technical education by June 1, 2022 on the availability of programs in outdoor recreation and the potential for new programs to provide workforce training and appropriate credentialing in careers related to the outdoor recreation industry.

XIII. A student shall be awarded required subject credit toward district graduation by demonstrating proficiency in a regional career and technical education course or program that is embedded with content area competencies that meet or exceed the district subject and required course competencies. Sending school graduation competencies embedded in a career and technical education course or program used to earn the equivalent or to earn partial credit to satisfy the required graduation competencies shall align with the skills, knowledge, and work study practices as determined by the local school district and in accordance with the terms of the RCTEA. A student who demonstrates proficiency in the embedded CTE course or program competencies and who is

determined to have met the content area academic standards required by the high school shall have such credits counted toward the required program area for a high school diploma.

**Source.** 1973, 567:1. 1990, 140:2, X. 1998, 333:1. 2007, 333:4. 2012, 221:3. 2015, 252:6. 2017, 156:107, eff. July 1, 2017; 210:1, eff. Sept. 8, 2017. 2019, 322:5, eff. Oct. 11, 2019. 2021, 210:2, Pt. V, Sec. 3, eff. Oct. 9, 2021. 2022, 272:3, 4, eff. July 1, 2022.

### 188–E:6 Costs for Students Attending Career and Technical Education Programs.

I. The state shall pay a portion of the cost of tuition and reimburse transportation costs, as provided in this section, for a sending district student attending an approved career and technical education (CTE) program.

II. A student's sending district shall be financially responsible for 25 percent of the career and technical education portion of the receiving district's cost per pupil for the prior school year, as calculated by the department of education.

III. Any sending district student who attends an approved CTE program that provides instruction in subject areas approved by the state board of education shall be eligible for payment of tuition and reimbursement of transportation costs. Students enrolled in introductory CTE courses, pre-CTE courses, or other CTE programs offering instruction in subject areas not approved by the state board of education shall not be eligible for payment of tuition and transportation reimbursement.

IV. In consultation with the house and senate committees responsible for education policy and financial matters, the state board of education shall, in rules adopted pursuant to RSA 541–A, develop a formula for determining the tuition and transportation costs for approved career technical education programs and procedures for disbursement of funds.

**Source.** 1973, 567:1. 2004, 151:1. 2007, 232:3; 333:2. 2012, 199:2. 2015, 252:7, eff. July 1, 2015.

### 188–E:7 Tuition.

I. The department of education is authorized to pay from its regular budget tuition for full or part-time sending district students, attending programs at designated career and technical education centers or designated career and technical education programs at other comprehensive high schools, whose residence is in a district where the high school of normal attendance does not offer a similar career and technical education program.

II. The department of education shall pay only those districts designated as regional career and technical education centers for sending district tuition at a per student rate calculated by dividing the total number of students into the balance of appropriation available.

III. The department is authorized to pay from its budget for at-risk students who reside in a school district in which the high school does not offer an alternative education program, to attend an alternative education program at a comprehensive high school within New Hampshire.

IV. The liability of the state and local school districts for tuition shall be determined by the state board under rules adopted pursuant to RSA 541–A, provided that a receiving district may charge a student from a sending district a differential fee for career and technical education not to exceed 3 percent of the receiving district's cost per pupil for the prior school year, as calculated by the department of education, and provided that the receiving district shall deposit the differential fee into its capital reserve account to be used for career and technical education program development, improvement, and equipment.

V. The state's tuition liability for a student enrolled in an alternative education program shall not exceed the per student cost of a student enrolled in a career and technical education program, as calculated by the department of education.

**Source.** 1973, 567:1. 1990, 28:6. 2000, 282:3. 2007, 232:4. 2012, 199:3. 2015, 252:8, eff. July 1, 2015.

### 188–E:8 Transportation.

*[RSA 188–E:8 effective until July 1, 2025; see also RSA 188–E:8 set out below.]*

The department of education is authorized to reimburse from its regular budget the full cost of transportation for (a) regional career and technical education students who attend regional career and technical education centers and for (b) at-risk students who attend alternative education programs located at a regional career and technical education center or other comprehensive high school. Transportation costs shall not exceed the rate adopted pursuant to RSA 541–A by the state board. The sending district shall be responsible for providing transportation and paying the transportation costs and shall then be reimbursed from state funds.

**Source.** 1973, 567:1. 1981, 94:2. 1990, 28:7. 2007, 232:5. 2015, 252:9, eff. July 1, 2015. 2021, 210:2, Pt. II, Sec. 3, eff. Oct. 9, 2021.

### 188–E:8 Transportation.

*[RSA 188–E:8 effective July 1, 2025; see also RSA 188–E:8 set out above.]*

The department of education is authorized to reimburse from its regular budget the full cost of transportation in an amount based upon a formula using type of vehicle, mileage, and number of trips made for (a) regional career and technical education students who attend regional career and technical centers; and for (b) at-risk students who attend alternative education programs located at a regional career and technical education center or other comprehensive high school. The transportation reimbursement formula shall be established in rules adopted by the state board of education pursuant to RSA 541–A. The CTE transportation reimbursement formula shall not be dependent upon the number of students riding on a particular bus or other type of vehicle. The sending district shall be responsible for providing transportation and paying the transportation costs and shall then be reimbursed from state funds.

**Source.** 1973, 567:1. 1981, 94:2. 1990, 28:7. 2007, 232:5. 2015, 252:9, eff. July 1, 2015. 2021, 210:2, Pt. II, Sec. 3, eff. Oct. 9, 2021. 2023, 130:1, eff. July 1, 2025.

### 188–E:9 Payment of Tuition and Transportation Funds.

I. The state shall pay the receiving district for its portion of the tuition charge upon receipt by the department of education of forms showing the charges as requested by them. Payment of transportation shall be made to the sending district by the department of education upon certification of payment or liability of payment of transportation charges on forms prescribed by the department. School districts shall report actual tuition and transportation costs for reimbursement by the state to the department by September 30 of each year. Failure to file such information on the forms required under this paragraph shall result in withholding of funds.

II. Reimbursement of tuition and transportation costs under this section shall be made annually and shall be calculated based upon the previous year's actual tuition and transportation costs for each school district. Funds shall be distributed to school districts on or before December 1.

III. Funds appropriated to pay the costs of tuition and transportation shall be distributed in accordance with rules adopted pursuant to RSA 541–A.

IV. All appropriations made for the purposes of tuition and transportation shall be nonlapsing.

**Source.** 1973, 567:1. 1990, 28:8, 9. 1993, 218:1. 2012, 199:4, eff. Aug. 12, 2012.

### 188–E:9–a Donations to Regional Career and Technical Education Center Programs.

*[RSA 188–E:9–a repealed by 2019, 247:1, effective June 30, 2026.]*

I. For purposes of this section "state fiscal year" shall mean the year beginning July 1 and ending June 30.

II. A school district may accept a charitable donation of:

(a) Up to 50 percent of the cost of apprenticeship and training programs offered by the regional CTE center, including the compensation of employees in direct supervision and training of students in a CTE center program.

(b) Up to 50 percent of the salary paid to interns, apprentices, and trainees enrolled in a CTE center program.

(c) Tangible personal property for a related use by an educational program offered by the regional CTE center.

III. The school district shall report within 30 days the donor name and the value of each charitable donation under paragraph II to the department of education.

IV. A donor who makes a qualifying charitable contribution under paragraph II shall be allowed a credit against the business profits tax imposed under RSA 77–A as computed by the department of education in paragraph V.

V. On or before August 1 of each year, the department of education shall compute the amount of tax credits available from the donations made during the prior state fiscal year. The aggregate of tax credits issued by the department of education to all donors claiming the credit under this section shall not exceed $500,000 for any state fiscal year. Credits claimed which exceed the total allowed shall be granted in the donor's proportional share of the maximum aggregate credit amount. On or before October 1 of each year, the department of education shall report all credits issued to the department of revenue administration.

VI. On or before September 1 of each year, the department of education shall provide a donor with a written statement of the amount of tax credit available which may be used by a donor for purposes of the tax credit against business profits taxes provided

in RSA 77–A:5, XVI, computed according to paragraph V.

VII. No later than January 1, 2020, the commissioner of the department of education shall adopt rules pursuant to RSA 541–A, relative to:

(a) The administration of the issuance of tax credits for qualifying charitable donations under this section.

(b) The design and content of the reports, forms, and statements required to be filed with, or issued by, the department of education under this section.

VIII. On or before October 1 of each year, the department of education shall report to the speaker of the house of representatives, the senate president, and the chairpersons of the house and senate ways and means committees on the total value of charitable donations received by school districts under this section, the tax credits issued to all donors, and the department's determination of the effect the tax credit program has on educational programs offered by CTE centers and their apprenticeship and training programs.

**Source.** 2019, 247:1, eff. July 1, 2019.

**188–E:10 Funding for Renovation and Expansion.**

I. The department of education is responsible for maintaining a statewide system of regional career and technical education centers to provide and allow for a variety of career and technical education programs funded within state budget appropriations. The treasurer of the state of New Hampshire is hereby authorized to make funds available to the department of education for the construction, renovation, expansion, or replacement of qualified regional career and technical education centers or regional career and technical education programs authorized in the budget, provided that:

(a) The commissioner of the department of education shall ensure that all requests submitted are both educationally and financially appropriate within the state authorization process;

(b) The commissioner of the department of education submits on a biennial basis in a budget request a priority list of facilities and programs eligible for construction, renovation, expansion, or replacement provided that priority shall be given to programs that have been certified by an approved standard or that need additional funds to become certified by an approved standard;

(c) Each request for funding follows the budget procedure, provided that no qualified project funded in a state capital budget as required in this section shall have additional funds for the same project included in a subsequent proposal for appropriation unless directed by the priority list of the department of education;

(d) Each school district requesting funds from the department of education establishes and funds a construction, renovation, expansion, and replacement reserve fund, which shall be used by the school district to pay construction, renovation, expansion, and replacement costs not funded by the state, and which may include funding for the replacement of equipment; and

(e) The state shall fund not less than 50 percent nor more than 75 percent of the cost of a qualified project approved pursuant to this section.

(f) In this section, "qualified" means the project:

(1) Demonstrates need connected to the labor market.

(2) Demonstrates adequate numbers of students through enrollment figures based on 3–year averages.

(3) Demonstrates alignment with program competencies and academic competencies required by the department of education.

(4) Allows for matriculation into a postsecondary venue.

(5) Meets all industry and building standards.

(6) Meets the procedural requirements for requests under this section and any other requirements in rules of the department of education.

(7) Is a regional career and technical education center within a public school, or a public academy as defined in RSA 194:23, II, in the state of New Hampshire.

(8) Has the capacity to provide academic courses for students from the sending districts who are approved for full-time attendance at the center.

II. The renovation and expansion reserve funding required by subparagraph I(d) may be funded through local community funds, career and technical education tuition payments, gifts, contributions, and bequests of unrestricted funds from individuals, foundations, corporations, organizations, or institutions. School districts shall consider priority funding for programs certified or needing additional funds to become certified as set forth in subparagraph I(b).

III. Public academies receiving funds through the budget process shall comply with all contracts or agreements required by department of education rules adopted pursuant to RSA 541–A.

**Source.** 1973, 567:1. 1975, 345:1. 1977, 513:1. 1979, 271:1. 1982, 38:1. 1983, 11:1. 1986, 186:2. 1988, 182:2. 1989, 322:2. 1990, 28:10; 158:2. 1992, 47:1. 1993, 265:1. 1997, 265:2. 2000, 282:2. 2003, 214:1, 2. 2005, 99:1. 2007, 333:3. 2008, 328:3, 4. 2017, 110:2–4, eff. Aug. 7, 2017. 2021, 210:2, Pt. II, Sec. 4, eff. Oct. 9, 2021. 2023, 79:146, eff. July 1, 2023.

**188–E:10–a Repealed by 2014, 140:2, eff. Jan. 15, 2015.**

**188–E:10–b Advisory Council on Career and Technical Education.**

I. There is established an advisory council on career and technical education (CTE). The members of the council shall be as follows:

(a) One member of the senate, appointed by the president of the senate.

(b) Two members of the house of representatives, appointed by the speaker of the house of representatives.

(c) The state director of career and technical education.

(d) The commissioner of the department of business and economic affairs, or designee.

(e) The chancellor of the community college system, or designee.

(f) Three CTE directors, one member of a school board, and one SAU administrator, appointed by the commissioner of education.

(g) A representative of the Business and Industry Association of New Hampshire, appointed by the association.

(h) Three representatives of skilled trades or businesses related to CTE programs, appointed by the commissioner of education.

(i) A high school counselor from a sending school district, appointed by the president of the New Hampshire School Counselor Association.

II. Legislative members of the council shall receive mileage at the legislative rate when attending to the duties of the council.

III. Members of the advisory council appointed under subparagraphs I(f)–(i) shall serve for terms of 3 years and may be reappointed, except that terms of initial appointments by the commissioner under subparagraphs (f) and (h) shall be staggered.

IV. The council shall study career and technical education, and make recommendations concerning:

(a) The delivery system of career and technical education in New Hampshire;

(b) Increasing access to career and technical education programs;

(c) Increasing partnerships between businesses, skilled trades, advanced manufacturing, and CTE programs;

(d) The establishment and implementation of individual learning plans beginning in grade 6; and

(e) Other barriers as may be identified that restrict the delivery of career and technical education to all interested students.

V. The members of the advisory council shall elect a chairperson from among the members. Meetings of the advisory council shall be called by the chairperson as necessary. Seven members of the council shall constitute a quorum.

VI. (a) The advisory council shall file an annual report of its findings and any recommendations for proposed legislation with the speaker of the house of representatives, the president of the senate, the chairperson of the senate education and workforce development committee, the chairperson of the house education committee, the house clerk, the senate clerk, the governor, and the state library on or before November 1.

(b) The annual report shall include the progress of the department of education and the career and technical education centers toward:

(1) Establishing a systematic transcript structure for work-based learning credentials.

(2) Establishing requirements for a New Hampshire career readiness certificate.

(3) Establishing annual reporting metrics for school district dual and concurrent course enrollment by class level and extended learning enrollment as defined in rules of the department of education.

(4) Establishing annual reporting metrics for completion of career readiness credentials.

(5) Determining whether a funding request is needed to support costs associated with career assessment, transcript development, or other facets necessary to implement career readiness credentials and if so, recommending such a request.

VII. By June 30, 2021, upon recommendation of the council, the department shall adopt rules, pursuant to RSA 541–A, establishing requirements for a career readiness credential.

**Source.** 2015, 252:10. 2017, 156:14, II, eff. July 1, 2017. 2019, 322:6, eff. Oct. 11, 2019. 2021, 210:2, Pt. II, Secs. 5–7, eff. Oct. 9, 2021.

**188–E:11 Equipment and Instruction Program; Revolving Fund.**

I. There is established an equipment and instruction program in which any regional career and technical education center may establish a revolving fund to be used for capital improvement costs for the replacement or upgrading of equipment, or for aiding instruction in the various career and technical education programs offered by the center. The fund shall be used to pay necessary costs of equipment and related instructional materials which are required to provide up-to-date adult, business and industry training, re-training or customized programs.

II. If a revolving fund is established, the revenues from non-school district sources generated by career and technical educational programs in excess of legitimate and customary school district expenses shall be placed in the fund. Such revenues shall include, but are not limited to, profits from program operations consisting of capitalization costs calculated as part of rental services, cash gifts to career and technical education programs, and moneys from the sale of donated equipment. The revolving fund shall be established as a separate school district account and shall be used only for the purposes specified in paragraph I.

**Source.** 1991, 187:1. 2017, 110:5, eff. Aug. 7, 2017.

## Secondary Career and Technical Education Programs

**188–E:12 Secondary Career and Technical Education Programs; Federal Authorization.**

In accordance with 20 U.S.C. section 9271, the state shall include in its unified plan, all secondary career and technical education programs authorized under 20 U.S.C. 2301 et seq., known as the Carl D. Perkins Career and Technical Education Act of 2006 as amended by the Strengthening Career and Technical Education for the 21st Century Act of 2018, Public Law 115–224.

**Source.** 2000, 317:1. 2017, 110:7, eff. Aug. 7, 2017. 2021, 210:2, Pt. II, Sec. 8, eff. Oct. 9, 2021.

**188–E:13 Legislative Membership on Youth Council.**

The following legislative members shall be appointed to the youth council which has been established as a subgroup within the State Workforce Innovation Board formed by the governor pursuant to the Workforce Investment Act of 1998:

I. Two members of the house of representatives, one of whom shall serve as an alternate, appointed by the governor.

II. Two members of the senate, one of whom shall serve as an alternate, appointed by the governor.

**Source.** 2000, 317:1, eff. June 21, 2000. 2020, 37:35, eff. July 29, 2020.

## Pre-Engineering and Technology Curriculum and Pre-Engineering and Technology Advisory Council

**188–E:14 Pre-Engineering and Technology Curriculum**

I. The department of education shall facilitate the development and implementation of a pre-engineering and technology curriculum in the public schools for students in kindergarten through grade 12 who are interested in careers in engineering or allied engineering fields, and shall encourage school districts to implement age-appropriate instruction and projects involving science, technology, engineering, and mathematics.

II. The state board of education shall adopt rules, pursuant to RSA 541–A, relative to course content, curricular requirements, and general procedures for implementing the pre-engineering and technology curriculum. At a minimum, the curriculum shall include the following concepts:

(a) Introduction to engineering design.

(b) Principles of engineering.

(c) Engineering design and development.

III. In developing and implementing a pre-engineering and technology curriculum, the efforts of the department of education shall complement existing public and private actions, and shall include the pursuit of innovative public-private partnerships with businesses, nongovernmental organizations, academic institutions, and other appropriate groups. Such partnerships shall at a minimum consist of a 50/50 match of public and private funds. Teachers teaching in the pre-engineering and technology curriculum, shall be certified to teach the course work as required in this curriculum.

IV. The department of education, in coordination with the regional career and technical education centers, shall include in its biennial capital budget request, funding for the planning, construction, and renovation of equipment necessary for the operation of pre-engineering and technology curriculum in the public schools for students in kindergarten through grade 12.

V. Public schools which implement the pre-engineering and technology curriculum shall be responsible for maintaining the program with funding requests made through the budgetary cycle.

VI. The department of education shall develop a procedure for evaluating existing pre-engineering programs funded under this section and shall submit a report on the status of such programs to the speaker of the house of representatives and the president of the senate annually on December 1.

**Source.** 2002, 271:1. 2008, 244:1–3. 2012, 223:2. 2017, 46:2, eff. July 11, 2017; 110:10, eff. Aug. 7, 2017.

### 188–E:15 Pre-Engineering and Technology Advisory Council.

There is established a pre-engineering and technology advisory council to advise the department of education in the implementation, evaluation, and expansion of the pre-engineering and technology curriculum, to assist the department of education in pursuing public and private funds in order to ensure statewide access to pre-engineering and technology curriculum coursework for public school students in kindergarten through grade 12.

**Source.** 2002, 271:1. 2008, 244:4. 2012, 223:3. 2017, 46:2, eff. July 11, 2017.

### 188–E:16 Membership and Terms.

I. The members of the advisory council shall be as follows:

(a) One member of the house of representatives, appointed by the speaker of the house.

(b) One member of the senate, appointed by the president of the senate.

(c) The commissioner of the department of education, or designee.

(d) The chancellor of the community college system of New Hampshire, or designee.

(e) The dean of the university of New Hampshire college of engineering and physical sciences, or designee.

(f) Three superintendents from school administrative units in which at least one school offers a pre-engineering and technology curriculum to its students, appointed by the governor and council.

(g) Six members of the public representing businesses or other organizations, firms, or institutions which hire engineers or engineering technologists, appointed by the governor and council.

II. (a) The term of office for each member appointed under subparagraphs I(f) and I(g) shall be 3 years, or until a successor is appointed and qualified in the case of a vacancy. The term of office for all other members shall be coterminous with the term of office for the position that qualifies that member to serve on the advisory council. A vacancy shall be filled in the same manner, but only for the unexpired term.

(b) The advisory council shall meet at least quarterly, and may meet more often at the call of the chair, or at the request of a majority of the members directed to the chair. The council may, by majority vote of the voting members, adopt additional bylaws as deemed necessary by the council.

(c) The council shall, at its annual meeting, elect one voting member to serve as chair for a one-year term, or until a successor is elected and qualified.

(d) No member shall receive any compensation for serving on the council, provided that the legislative members shall receive legislative mileage when in performance of their duties and the public members may receive compensation dependent upon the availability of funds, other than from the general fund.

**Source.** 2002, 271:1. 2017, 46:3, eff. July 11, 2017. 2021, 210:2, Pt. II, Sec. 9, eff. Oct. 9, 2021.

### 188–E:17 Duties.

The advisory council shall advise the department of education in the following areas relative to the implementation of the pre-engineering and technology curriculum:

I. Curriculum expansion and revision.

II. Curriculum eligibility requirements.

III. Curriculum quality.

IV. Fund raising from private and other sources.

V. Allocation of funds necessary for the curriculum.

VI. Evaluation of performance of pre-engineering and technology program sites.

**Source.** 2002, 271:1. 2008, 244:5. 2017, 46:4, eff. July 11, 2017.

## Automotive Technology Curriculum and Advisory Council

### 188–E:18 Automotive Technology Curriculum; Funding.

I. The department of education shall develop and implement an automotive technology curriculum in the regional career and technology education centers to provide statewide opportunities for high school students interested in careers in the automotive in-

dustry to enroll in a high quality automotive technology curriculum.

II. The state board of education shall adopt rules, pursuant to RSA 541–A, relative to course content, curricular requirements, and general procedures for implementing the automotive technology curriculum. At a minimum, the curriculum shall include standards established by the National Automotive Technicians Education Foundation (NATEF).

III. In developing and implementing an automotive technology curriculum, the efforts of the department of education shall complement existing public and private actions, and shall include the pursuit of innovative public-private partnerships with businesses, nongovernmental organizations, the community college system of New Hampshire, and other appropriate groups. Such partnerships shall at a minimum consist of a 50/50 match of public and private funds, or like kind compensation.

(a) Funding shall not exceed $5,000 per automotive technology program or $90,000 in total nonlapsing appropriations in a fiscal year. Such funding shall be used exclusively to assist an automotive technology program in obtaining or maintaining NATEF certification and may include instructor professional development, including ASE certification, automotive laboratory equipment, hand tools, maintenance of equipment or tools, learning resources, multimedia periodicals, and any other items deemed necessary to assist an automotive technology program in obtaining or maintaining NATEF certification.

(b) Automotive technology programs that will meet certification requirements within 2 years shall be given priority for funding. All other programs not eligible to be certified within the first 2 years shall be eligible for any remaining funding.

IV. When appropriate, the department of education shall include in its biennial capital budget request funding for the planning, construction, and renovation of equipment necessary for the operation of automotive technology curriculum in the regional career and technical education centers.

V. Regional career and technology education centers which implement the automotive technology curriculum shall be responsible for maintaining the program with funding requests made through the budgetary cycle.

VI. Existing or new technical education centers that provide automotive technology education shall obtain program certification pursuant to paragraph II of this section prior to becoming eligible to receive state renovation and construction funds.

**Source.** 2003, 214:3. 2007, 361:18. 2010, 368:23. 2017, 110:9, eff. Aug. 7, 2017.

**188–E:19 Repealed by 2010, 368:1(46), eff. Dec. 31, 2010.**

**188–E:20 Membership and Terms.**

I. The members of the advisory council shall be as follows:

(a) One member of the house of representatives, appointed by the speaker of the house.

(b) One member of the senate, appointed by the president of the senate.

(c) The commissioner of the department of education, or designee.

(d) The chancellor of the community college system of New Hampshire, or designee.

(e) One automotive instructor teaching in the community college system of New Hampshire, appointed by the governor and council.

(f) One secondary education career technical education administrator, appointed by the governor and council.

(g) Four members of the New Hampshire Automobile Dealers Association, appointed by the governor and council.

II. (a) The term of office for each member appointed under subparagraphs I(e), I(f), and I(g) shall be 3 years, or until a successor is appointed and qualified in the case of a vacancy. The term of office for all other members shall be coterminous with the term of office for the position that qualifies that member to serve on the advisory council. A vacancy shall be filled in the same manner, but only for the unexpired term.

(b) The advisory council shall meet at least quarterly, and may meet more often at the call of the chair, or at the request of a majority of the members directed to the chair. The council may, by majority vote of the voting members, adopt additional bylaws as deemed necessary by the council.

(c) The council shall, at its annual meeting, elect one voting member to serve as chair for a one-year term, or until a successor is elected and qualified.

(d) No member shall receive any compensation for serving on the council, provided that the legislative members shall receive legislative mileage when in performance of their duties and the public members may receive compensation dependent upon the

availability of funds, other than from the general fund.

**Source.** 2003, 214:3. 2007, 361:19, eff. July 17, 2007.

### Advanced Manufacturing Education Advisory Council

**188–E:21 Repealed by 2023, 79:45, I, eff. July 1, 2023.**

**188–E:22 Repealed by 2023, 79:45, II, eff. July 1, 2023.**

**188–E:23 Repealed by 2023, 79:45, III, eff. July 1, 2023.**

**188–E:23–a Repealed by 2023, 79:45, IV, eff. July 1, 2023.**

### Robotics Education Development Program and Robotics Education Fund

**188–E:24 Robotics Education Fund Established.**

There is established in the office of the state treasurer a nonlapsing fund to be known as the robotics education fund which shall be kept distinct and separate from all other funds. The fund shall be administered by the commissioner of the department of education. The commissioner may accept and expend funds from any public or private source, including private gifts, grants, and donations.

**Source.** 2014, 306:1. 2017, 156:155, eff. July 1, 2017.

**188–E:24–a Robotics Education Development Program.**

I. There is established a robotics education development program in the department of education. The purpose of the program is to motivate public school students to pursue educational and career opportunities in science, technology, engineering, and mathematics, while building critical life and work-related skills. Grants from the robotics education fund established in RSA 188–E:24 shall be available to any eligible public school or chartered public school for the purpose of financing the establishment of a robotics team and its participation in competitive events. Grant funds shall be limited to the purchase of robotics kits, stipends for coaches, and the payment of associated costs from participation in competitions.

II. To be eligible to participate, a school shall:

(a) Develop a budget for a robotics team;

(b) Partner with at least one sponsor, business entity, institution of higher education, or technical school for support in a robotics program; and

(c) Identify at least one competitive event in which the school will participate.

III. The commissioner shall disburse a grant as a single payment at the beginning of each school year.

IV. Subject to the provisions of paragraph V, no school shall receive more than one grant every 2 years, however, a school district may receive multiple grant awards.

V. (a) If the amount of grant funds requested exceeds the balance in the robotics education fund available in any year, the commissioner shall not prorate the grant awards, but shall assign preference to those schools with a higher percentage of students in the school's average daily membership in attendance who are eligible for a free or reduced-price meal as defined in RSA 198:38. Secondary preference shall be given to schools which did not receive a grant in the previous year due to lack of funds.

(b) In the event that additional funds exist in the fund after all initial grant application requests have been met, the commissioner shall award schools additional grants for additional requested teams in accordance with subparagraph (a). If a school receives a grant for any additional teams, such grant shall be made at the same time as the grant for the initial team. In the event that a school received a grant or grants in the prior year and qualifies for an additional team or teams, such grant shall be made in the usual manner.

VI. The commissioner shall adopt rules pursuant to RSA 541–A, relative to developing grant application forms and procedures, establishing deadlines for the submission of applications and the awarding of grants, and establishing criteria for awarding and disbursing grants.

VII. No later than July 15, 2018, and annually thereafter, the department shall issue a report to the governor, senate president, speaker of the house of representatives, the chairpersons of the house and senate education committees, and the state library, detailing the number of grants awarded, the schools receiving grants and the grant amount, the schools that applied for grants but did not receive a grant due to insufficient funds, the number of students participating, the unencumbered balance of the robotics education fund, and any other information the department deems appropriate.

**Source.** 2017, 156:156, eff. July 1, 2017. 2018, 315:14, eff. Aug. 24, 2018; 362:1, eff. Aug. 31, 2018.

## Dual and Concurrent Enrollment Program

### 188–E:25 Definitions.

In this subdivision:

I. "CCSNH" means the community college system of New Hampshire.

II. "Concurrent enrollment" means courses taught at the high school by high school teachers approved by CCSNH in which high school students earn both high school and college or university credit while students are still attending high school or a career technical education center.

III. "Dual enrollment" means college courses taught by instructors from CCSNH in which high school students earn college credit while students are still enrolled in high school or a career technical education center.

**Source.** 2017, 156:110, eff. July 1, 2017; 210:2, eff. July 1, 2017. 2021, 91:311, eff. July 1, 2021.

### 188–E:26 Program Established.

There is established a dual and concurrent enrollment program in CCSNH. Participation in the program shall be offered to high school and career technical education center students in grades 10 through 12. The program shall provide opportunities for qualified New Hampshire high school students to gain access and support for dual and concurrent enrollment in courses that are fundamental and necessary for success in postsecondary education, career path opportunities, and to meet New Hampshire's emerging workforce needs.

**Source.** 2017, 156:110, eff. July 1, 2017; 210:2, eff. July 1, 2017. 2019, 322:7, eff. Oct. 11, 2019. 2021, 91:311, eff. July 1, 2021; 210:2, Pt. II, Sec. 17, eff. Oct. 9, 2021. 2023, 79:3, eff. July 1, 2023.

### 188–E:27 Enrollment Requirements.

I. An interested high school student in grades 10 through 12 may enroll in a course that is designated by CCSNH as part of the dual and concurrent enrollment program.

II. A student in the program shall be provided funding for enrollment in no more than 4 dual or concurrent enrollment courses taken in grade 10, no more than 4 dual or concurrent enrollment courses taken in grade 11, and no more than 4 dual or concurrent enrollment courses taken in grade 12. A student may take more than 4 dual or concurrent enrollment courses per year at his or her own expense.

III. (a) The state shall pay the current rate of concurrent enrollment tuition, which is established at $150 per course, to the CCSNH institution where a high school, career and technical education, or non-residential nonpublic high school student enrolls in the concurrent enrollment course.

(b) The state shall pay the current rate of dual enrollment tuition, which is established at ½ the regular cost of the course, to the CCSNH institution where a high school, career and technical education, or non-residential nonpublic high school student enrolls in a dual enrollment course and CCSNH shall accept such amount as full payment for course tuition.

IV. Each high school should provide a designated individual to serve as the point of contact on matters related to the program, including but not limited to, student counseling, support services, course scheduling, managing course forms and student registration, program evaluation, course transferability, and assisting with online courses. Each high school shall annually notify all high school students and their parents of dual and concurrent enrollment opportunities.

V. CCSNH shall report annually to the department of education on student enrollment, successful completion, and grades of students in dual and concurrent enrollment courses. Such data shall not contain personally identifiable information.

**Source.** 2017, 156:110, eff. July 1, 2017; 210:2, eff. July 1, 2017. 2019, 322:8, eff. Oct. 11, 2019. 2021, 91:311, eff. July 1, 2021. 2022, 240:1, 3, eff. Aug. 16, 2022. 2023, 79:4, eff. July 1, 2023.

### 188–E:28 School Board Policy.

I. The school board of each school district, and the governing body of each institution in the case of non-residential, nonpublic schools which opt to participate, shall develop and adopt a policy permitting students residing in the district or in attendance at the nonpublic school who are in grade 10, 11 or 12 to participate in the dual and concurrent enrollment program. The policy shall, at a minimum, include compliance with measurable educational standards and criteria approved by CCSNH and that meet the same standard of quality and rigor as courses offered on campus by CCSNH. The policy shall also comply with the standards for accreditation and program development established by the National Alliance for Concurrent Enrollment Partnerships. The policy shall include, but not be limited to, student eligibility criteria, standards for course content, standards for faculty approval, program coordination and communication requirements, tuition and fees, textbooks and materials, course grading policy, data collection, maintenance, and security, revenue and expenditure reporting, and process for renewal of the agreement.

II. The department of education and CCSNH shall develop and approve a model dual and concurrent enrollment agreement that shall be used by the CCSNH and the school board of a school district participating in the dual and concurrent enrollment agreement program. The model agreement shall include standards established by CCSNH, shall include elements, standards, and criteria that have been approved by the department of education and CCSNH, and shall serve as the framework for the development, implementation, and administration of the dual and concurrent enrollment program in each school district by clearly defining the procedures related to concurrent and dual enrollment of high school students in college classes. CCSNH shall further develop guidelines for the program relating to reporting, accountability, and payment of available funds to CCSNH.

**Source.** 2017, 156:110, eff. July 1, 2017; 210:2, eff. July 1, 2017. 2021, 91:311, eff. July 1, 2021; 210:2, Pt. II, Sec. 18, eff. Oct. 9, 2021. 2022, 240:2, eff. Aug. 16, 2022.

### 188–E:29 Budget Requests.

I. The chancellor of CCSNH, or his or her designee, shall submit expenditure requests in accordance with RSA 9:4–e to fund the dual and concurrent enrollment program established in this subdivision.

II. In the event expenditures by CCSNH for the dual and concurrent enrollment program exceed amounts appropriated by the state, the chancellor, or his or her designee, may request the fiscal committee of the general court authorize additional funding. Amounts requested under this paragraph shall be limited to direct program costs and shall not include costs relative to program administration. For funds requested and approved, the governor is authorized to draw a warrant from any money in the treasury not otherwise appropriated.

**Source.** 2017, 156:110, eff. July 1, 2017; 210:2, eff. July 1, 2017. 2021, 91:311, eff. July 1, 2021.

### Workforce Development and Innovation Fund

### 188–E:30 Workforce Development and Innovation Fund Established.

I. There is established a nonlapsing fund in the department of education to be known as the career and technical education workforce development and innovation fund.

II. The fund may include the commissioner of education's project fund reserve under the New Hampshire state plan, and shall include state appropriations designated for the purposes of the fund, federal and other grants designated for the purposes of the fund, including proceeds designated for workforce development by the federal government from Gulf of Maine offshore wind lease auctions, as allocated to the state of New Hampshire, contributions from businesses and industries, designated for the purposes of the fund, and any other sources. The commissioner of education is authorized to establish procedures for the use of funds and to disburse funds as recommended by the offshore wind industry workforce training center committee in RSA 12–O:51–a.

III. The commissioner shall consult with the Business and Industry Association, the labor department, CTE directors, the community college system of New Hampshire, CTE sector partners, and others, on workforce needs that can be met through innovative programming and program expansion at the career and technical education centers, and through partnerships with business and industry, the community college system of New Hampshire, union training and apprenticeship programs, and other entities offering workforce training partnerships. Program expansion may include emerging industries, such as the offshore wind industry and other renewable energy industries.

IV. The commissioner shall report annually by November 1 to the speaker of the house of representatives, the president of the senate, and the chairs of the house and senate education committees, and the chair of the career and technical education advisory council on the fund's income and expenditures.

**Source.** 2023, 99:2, eff. July 1, 2023.

## CHAPTER 188–F

## COMMUNITY COLLEGE SYSTEM OF NEW HAMPSHIRE

### 188–F:1 Community College System of New Hampshire Established.

The community college system of New Hampshire is hereby established and made a body politic and corporate, the main purpose of which shall be to provide a well-coordinated system of public community college education offering, as a primary mission, technical programs to prepare students for technical careers as well as general, professional, and transfer programs, and certificate and short term training programs which serve the needs of the state and the nation. The colleges of the community college system of New Hampshire are authorized to grant and confer in the name of the colleges all such degrees, literary titles, honors, and distinctions as other community colleges may of right do. The community college system of New Hampshire shall include, but is not limited to, colleges in Berlin, Claremont, Concord, Laconia, Manchester, Nashua, and Portsmouth. The community college system may also include regional academic centers that make quality educational opportunities accessible to New Hampshire residents.

**Source.** 2007, 361:2. 2010, 199:1. 2011, 35:1, eff. July 8, 2011.

### 188–F:1–a Transfer Authorized.

All functions, powers, duties, books, papers, records, and property of every kind, tangible and intangible, real and personal, possessed, controlled, or used by the former department of regional community-technical colleges as of the effective date of this section are hereby transferred to and vested in the board of trustees of the community college system of New Hampshire established in RSA 188–F:4. Nothing in this section shall transfer real property commonly associated with the McAuliffe-Shepard discovery center or the police standards and training council.

**Source.** 2011, 199:1, eff. Aug. 19, 2011; 224:362, eff. July 1, 2011.

### 188–F:2 Governance.

The community college system of New Hampshire shall be governed by a single board of trustees which shall be its policy-making and operational authority. The board of trustees shall be responsible for ensuring that the colleges operate as a well coordinated system of public community college education.

**Source.** 2007, 361:2, eff. July 17, 2007.

### 188–F:3 Legislative Oversight.

I. The general court finds that because of the importance of public community college education, elected officials should be aware of the activities and needs of the community college system, exercising

their responsibility for legislative oversight through (1) the consideration by the appropriate legislative committees of proposed legislation pertaining to the community college system; and (2) the consideration of reports filed by the community college system of New Hampshire pursuant to this chapter.

II. The general court also recognizes the need to protect the institutions of the community college system of New Hampshire from inappropriate external influence which might threaten the academic freedom of faculty members or otherwise inhibit the pursuit of academic excellence. To this end, the general court has delegated broad authority to the board of trustees who shall be responsible for managing the community college system of New Hampshire in a manner which promotes academic excellence and serves the educational needs of the people of New Hampshire.

**Source.** 2007, 361:2, eff. July 17, 2007.

### 188–F:3–a Prohibition on Preferential Treatment and Discrimination.

I. (a) Within the state's community college system, there shall be no preferential treatment or discrimination in recruiting, hiring, promotion, or admission based on race, sex, national origin, religion, or sexual orientation.

(b) Within the state's community college system, there shall be no discrimination based on an applicant's or employee's law enforcement, military, or veteran status.

II. Notwithstanding paragraph I:

(a) Nothing in this section shall be interpreted as prohibiting bona fide qualifications based on sex which are reasonably necessary to the normal operation of public employment, public education, or public contracting.

(b) Nothing in this section shall be interpreted as invalidating any court order or consent decree which is in force as of the effective date of this section.

**Source.** 2011, 227:3, eff. Jan. 1, 2012. 2020, 34:23, eff. Sept. 26, 2020.

### 188–F:3–b Identification Cards.

If a college of the community college system issues identification cards to students, all cards issued after January 1, 2014 shall bear a date of issuance.

**Source.** 2013, 278:3, eff. July 24, 2013.

### 188–F:4 Board of Trustees; Community College System of New Hampshire.

The governance of the community college system of New Hampshire shall be vested in a single board of trustees composed as follows:

I. The governor, the chancellor and the vice-chancellor of the community college system, the president of each college within the community college system, and the commissioners of the departments of business and economic affairs, employment security, and education, all of whom shall be nonvoting members.

II. The following voting members who shall be appointed by the governor with the advice and consent of the council:

(a) Four members from the fields of business and industry.

(b) One member who shall be a high school vocational/technical education director.

(c) One member who shall be an alumnus of one of the colleges within the community college system.

(d) One member from the field of education.

(e) One member from the health care profession.

(f) Two members from the building or mechanical trades who represent labor.

(g) One member from the community service sector.

(h) One member from the law enforcement community.

(i) Eight members from the general public.

(j) Two members who shall be New Hampshire residents and who are students enrolled in a credit program at one of the colleges within the community college system. The student trustees shall be voted from the colleges within the community college system of New Hampshire locations proceeding in alphabetical order and shall be elected by the student body of the campus responsible for providing the student trustee. The student trustees shall serve a one-year term commencing June 1 of the year for which the student was elected and ending May 31 of the next year. In the event that a student trustee ceases for any reason to attend the school from which the student was elected, the chancellor of the community college system of New Hampshire shall declare a vacancy in that student trustee position, and the next school in order shall elect the student trustee who shall serve for the remainder of the predecessor's term and an additional one-year term immediately.

(k) One member from the technology sector.

(l)(1) One member who shall be an employee of the community college system of New Hampshire. Such trustee position shall rotate among the institutions within the community college system of New Hampshire, proceeding in alphabetical order beginning with the college that is first alphabetically. The institutions within the community college system of New Hampshire, through an election at an all-college/institutional forum, shall nominate a slate of 3 employees, that shall not include members of the community college system leadership team (SLT), whose names shall be forwarded to the governor who shall choose one for the nomination. The employee-trustee shall serve a 2-year term. In the event the employee-trustee is unable for any reason to serve the entire term, the chairman of the board of trustees shall declare a vacancy in that employee-trustee position. Upon expiration or vacancy of such term, the next institution in order shall nominate a slate of 3 employees, not to include a member of the SLT, whose names shall be forwarded to the governor for consideration.

(2) For purposes of this paragraph, "community college system leadership team (SLT)" means and is comprised of the chancellor, vice chancellor, president of each community college, and the chancellor's senior staff associated with statewide policy and operational coordination as identified in the handbook for administrative, managerial, professional and operating support staff exempt from the collective bargaining process, as approved by the community college system of New Hampshire board of trustees.

III. (a) The terms of office for appointed and elected members, except for the student and employee members, shall be 4 years unless otherwise specified in this section, and shall end on June 30, except for the student and employee members.

(b) In cases where the terms of office of the members of the board of trustees do not expire in successive years, the governor, with the advice and consent of the council may, in making any appointment or filling any vacancy to such office, appoint any person for a period less than the full term or up to one year greater than the full term in order to adjust the terms of each member so that terms of office of no more than 5 members per year will expire.

IV. At least one voting member shall be from each executive council district.

V. Each member, except the student member, shall hold office until a successor is appointed and qualified. Vacancies shall be filled for the unexpired term only, except as provided in RSA 188–F:4, II(j) and subparagraph III(b). The appointment of successors for the filling of vacancies for unexpired terms shall be by appointment or election in the same manner as the original appointment.

VI. All board members shall be New Hampshire residents.

VII. Except for the governor and locally elected municipal officials, no person who holds elected public office shall serve on the board.

VIII. Board members shall not be eligible to participate in a vote when the board member has recused himself or herself from participation because he or she has a pecuniary or personal interest or other conflict of interest.

**Source.** 2007, 361:2. 2008, 133:1, 3. 2016, 299:1–3. 2017, 156:14, II, eff. July 1, 2017. 2019, 346:387, eff. July 1, 2019.

### 188–F:5 Operation of Board of Trustees.

I. The board shall elect its own chairperson and vice-chairperson annually.

II. The board shall choose a secretary, who shall keep a record of proceedings, and a treasurer, who shall give a bond satisfactory to the trustees for the faithful discharge of duties as treasurer. The trustees may, in their discretion, require a bond for any other persons employed by or administering the affairs of the community college system. Said trustees shall determine the amount and sufficiency of the surety of said treasurer's bond or any other bonds required under this section.

III. Twelve voting members shall constitute a quorum for the transaction of business, but not less than 12 affirmative votes shall be required to elect the chancellor of the community college system.

IV. The board shall meet at such times and places as it may determine, but shall hold regular meetings no less than once every 3 months. The chairperson shall call special meetings upon the written request of any 5 board members or upon the chairperson's own motion.

V. Members shall receive no compensation for their services but shall be reimbursed for expenses reasonably incurred by them in the performance of their duties.

**Source.** 2007, 361:2. 2008, 133:2, eff. June 3, 2008.

### 188–F:6 Authority of the Board of Trustees.

The trustees shall have the management and control of all the property and affairs of the community college system, all of its colleges, divisions, and de-

partments. In addition to this authority, the trustees are authorized to:

I. Develop and adopt bylaws for the regulation of its affairs and the conduct of business and to adopt an official seal and alter it as necessary or convenient.

II. Oversee the administration of the community college system of New Hampshire and its colleges, divisions, departments, and regional academic centers, to determine the organizational structure and operational policies and procedures for the community college system, and to render the final decision on the closure of any college or regional academic center.

III. (a) Appoint and fix the compensation of a chancellor of the community college system of New Hampshire who shall serve as the chief executive officer of the community college system, as the community college system's primary liaison with the general court and other elements of state government, and as chief spokesperson for the community college system. The chancellor shall be qualified by education and experience and shall serve at the pleasure of the board.

(b) Approve the nomination by the chancellor, and fix the compensation of a vice-chancellor who shall be qualified by education and experience and who shall serve at the pleasure of the chancellor.

(c) Approve the nomination by the chancellor, and fix the compensation of a president of each community college system of New Hampshire college, who shall be the chief academic and administrative officer of his or her institution. The president, who shall report to the chancellor, shall be the chief executive officer of his or her college, and shall have the authority for and be responsible for the general administration and supervision of all operations of that college, and shall have such other duties as the board of trustees may determine. The president shall be qualified by education and experience and shall serve at the pleasure of the board.

(d) Appoint and fix the compensation and duties of such other community college system of New Hampshire administrators as are needed to provide a well-coordinated system of public higher education.

(e) Employ and prescribe the duties of personnel as may be necessary to carry out the purposes for which the community college system of New Hampshire has been created.

IV. Accept legacies and other gifts to or for the benefit of the community college system.

V. Accept any moneys accruing to the community college system and its colleges, or moneys appropriated by or received from the United States government or the state of New Hampshire, including federal financial aid, and any grant moneys from state or federal governmental agencies, public or private corporations, foundations or organizations for the benefit and support of the community college system.

VI. Prepare and adopt a biennial operating budget for presentation to the governor and the general court. Each college within the community college system of New Hampshire and the chancellor's office shall be considered a separate division and budgetary unit. The community college system of New Hampshire shall submit its budget in accordance with RSA 9:4–e and at the same time as state agencies. All claims to be presented for the issuance of warrants submitted by the colleges and the system office of the community college system of New Hampshire shall be pre-audited by the community college system of New Hampshire, and such certification shall be sufficient evidence for the director of the division of accounting services to fulfill such responsibilities relative to the debt incurred by the community college system of New Hampshire.

VII. Prepare and adopt a biennial capital improvements budget for presentation to the governor and the general court.

VIII. Receive, expend, allocate, and transfer funds within the community college system of New Hampshire as necessary to fulfill the purposes of the community college system. The trustees shall have no authority over any funds appropriated to the police standards and training council or to the McAuliffe-Shepard discovery center, which shall not be commingled with any funds of the community college system of New Hampshire.

IX. Invest any funds not needed for immediate use, including any funds held in reserve, in property and securities in which fiduciaries in the state may legally invest funds.

X. Establish and collect tuition, room and board, and fees, and to set policies related to these and other charges, including fees for the reasonable use of community college system of New Hampshire facilities.

XI. Enter into any contracts, leases, and any other instruments or arrangements that are necessary, incidental, or convenient to the performance of its duties and responsibilities.

XII. Acquire consumable supplies, materials, and services through cash purchases, sole-source purchase orders, bids, or contracts as necessary to fulfill the purposes of this chapter.

XIII. Acquire by purchase, gift, lease, or rent any property, lands, buildings, structures, facilities, or equipment necessary to fulfill the purposes of this chapter.

XIII–a. Enter into a contract for the sale of real property with the prior approval of the long range capital planning and utilization committee and governor and council, provided that the state shall retain the right of first refusal in any proposed sale of real property. This paragraph shall not apply to real property acquired by the community college system of New Hampshire after the effective date of this paragraph.

XIV. Grant or otherwise transfer utility easements.

XV. Authorize and enter any contracts, leases, and any other instruments or arrangements that are necessary, incidental, or related to the construction, maintenance, renovation, reconstruction, or other necessary improvements of community college system of New Hampshire buildings, structures, and facilities.

XVI. Develop and adopt personnel policies and procedures for the community colleges. The board of trustees shall determine the qualifications, duties, and compensation of its employees and shall allocate and transfer personnel within the community college system of New Hampshire as necessary to fulfill the purposes of this chapter.

XVII. Appoint or identify college or program advisory committees to advise the community colleges with respect to strategic directions, general, professional, career, and training policies and programs and their modification to meet the needs of the state's economy and the changing job market.

XVIII. Adopt principles of effective self-governance and to assess board processes, policies, and operations in light of such principles.

XIX. Delegate duties and responsibilities as necessary for the efficient operation of the community college system of New Hampshire and to do other acts or things necessary or convenient to carry out the powers and duties set forth in this chapter.

XX. By and with the consent of the governor and council, borrow on the credit of the community college system of New Hampshire in anticipation of income for the purpose of forwarding its building program, not exceeding $500,000 in any one fiscal year. All amounts so obtained in any fiscal year shall be repaid from the income of the next succeeding year.

XXI. Enter into program and service relationships with state departments, divisions, and other state entities through memoranda of understanding.

XXII. Apply for medical and surgical benefits in accordance with RSA 188–F:68.

**Source.** 2007, 361:2. 2009, 13:6. 2010, 199:2, 4, 7. 2011, 35:2; 199:3. 2016, 319:6, eff. July 1, 2016. 2018, 6:6, eff. May 20, 2018.

### 188–F:6–a Transfer Pathways.

*[RSA 188–F:6–a effective July 1, 2024.]*

I. It is the intent of the general court that community college students who wish to earn baccalaureate degrees in the state's public higher education system be provided with clear and effective information and directions that specify curricular paths to a degree.

II. (a) The trustees of the community college system shall work collaboratively with the trustees of the university system of New Hampshire to create and maintain transfer pathways that optimize the utility and affordability of the community college system for at least the 30 undergraduate majors for which the demand from students in the community college system is the highest, and for which pathways can reasonably be created through partnership between the systems.

(b) The pathways shall consist of general education and lower division major requirements at participating community college system institution that are fully transferable as a block upon completion of an associate of science or associate of arts degree to any university system institution offering the chosen degree.

(c) Each community college system institution shall clearly identify those programs that meet the requirements of this section. Students interested in pursuing a pathway program should notify the appropriate administrators as early as possible. Upon notification, students shall be provided with appropriate resources designed to assist with successful completion of the chosen degree pathway.

**Source.** 2022, 80:2, eff. July 1, 2024.

### 188–F:7 Employment; Benefits; Retirement System Status.

I. Any changes to the conditions of employment, compensation, and benefits of community college sys-

tem of New Hampshire employees covered by collective bargaining agreements shall be negotiated through the collective bargaining process, except that community college system employees covered by collective bargaining agreements hired on or after July 1, 2023 shall have the option of membership in the retirement system pursuant to RSA 100–A or a defined contribution plan as designated by the board of trustees.

II. The community college system of New Hampshire shall be considered an employer for the purposes of RSA 100–A:1, IV. Full-time employees of the community college system of New Hampshire who are active retirement system members or who elect membership in the retirement system shall be considered employees for the purposes of RSA 100–A:1, V.

III. Service as an employee of the community college system of New Hampshire shall be creditable service for purposes of RSA 100–A, RSA 21–I:29, RSA 21–I:30, RSA 21–I:30–a, RSA 21–I:30–b, and RSA 21–I:30–c. Any community college system of New Hampshire employee who transfers, without a break in service, to a state classified, unclassified, or nonclassified service position shall retain and transfer all leave accruals and seniority and be entitled to all the rights and benefits of a permanent employee in the classified or unclassified service of the state based on the years of creditable state service. At the time of such a transfer, the employee shall immediately begin to accrue annual and sick leave as granted at the time of the transfer by the receiving agency according to the employee's continuous years worked. Any state employee in a classified, unclassified, or nonclassified service position who transfers, without a break in service, to the community college system of New Hampshire shall retain and transfer all leave accruals and seniority and be entitled to all the rights and benefits of a permanent employee in the classified or unclassified service of the state based on the years of creditable state service. At the time of such a transfer, the employee shall immediately begin to accrue annual and sick leave as granted at the time of the transfer by the receiving agency according to the employee's continuous years worked.

IV. Membership in the retirement system shall be optional for positions within the community college system of New Hampshire for which participation was optional as of June 30, 2007, and for such other positions within the community college system of New Hampshire as may be designated by the board of trustees.

V. The community college system of New Hampshire shall remit to the state on a monthly basis the cost of retiree health care benefits for employees who have retired on or after July 1, 2011. The amount due shall be based on current enrollment for that month and the working rate for the calendar year. Invoices from the department of administrative services shall contain retiree enrollment detail in regards to the amount due. The department shall provide the community college system an anticipated budget each biennium as part of the retiree health budget process.

**Source.** 2007, 361:2. 2010, 199:5. 2015, 276:24, eff. July 1, 2015. 2023, 79:6, eff. July 1, 2023.

**188–F:8 Repealed by 2007, 361:35, II, eff. July 1, 2011.**

**188–F:9 Repealed by 2017, 195:3, I, eff. Sept. 3, 2017.**

**188–F:10 Repealed by 2017, 195:3, II, eff. Sept. 3, 2017.**

**188–F:11 Report.**

I. The commissioner of the department of education and the chancellor of the community college system of New Hampshire shall annually issue a joint report on the proposed use and distribution of federal vocational funds. Such report shall be completed by October 15 of each year and a copy shall be delivered to the chairpersons of the house and senate education committees, the speaker of the house of representatives, the president of the senate, the governor, the house clerk, the senate clerk, and the state library.

II. The chancellor and the chairperson of the board of trustees of the community college system of New Hampshire shall issue a report annually which shall include updates on ongoing upgrades to the information technology systems used by the community college system of New Hampshire and an assessment of the overall operation of the community college system of New Hampshire including financial status, enrollment data, and program administration. Such report shall be completed by October 15 of each year. A copy of this report shall be delivered to the chairmen of the house education committee and senate education committee, the speaker of the house of representatives, president of the senate, the governor, the senate clerk, the house clerk, and the state library.

III. Each year the chancellor of the community college system of New Hampshire, as well as one representative from the board of trustees and the

president of each institution shall appear before the house finance committee and the senate finance committee to review the system's programs, cost analysis, revenue projections, and any other information detailed in the written report.

**Source.** 2007, 361:2. 2009, 148:2, eff. June 30, 2009.

### 188–F:12 Tax Exemption.

The property of the community college system of New Hampshire is exempt from taxation as provided in RSA 72:23.

**Source.** 2007, 361:2, eff. July 17, 2007.

### 188–F:13 Names of the Colleges.

The names of the respective colleges of the community college system of New Hampshire shall be established, and may be changed, upon approval by the board of trustees and approval by the governor and council.

**Source.** 2007, 361:2, eff. July 17, 2007.

### 188–F:14 Accreditation.

The community college system of New Hampshire colleges are authorized to seek accreditation and maintain membership in the regional accrediting association to satisfy the requirements necessary to achieve and maintain regional accreditation and to meet the requirements necessary for federal aid. Each individual program of study offered shall meet all of the requirements for professional accreditation or licensing, or both, of the particular specialty as appropriate.

**Source.** 2007, 361:2, eff. July 17, 2007.

### 188–F:15 Tuition Waived.

I. If a person is domiciled in this state while serving in or with the armed forces of the United States and is, after February 28, 1961, reported or listed as missing, or missing in action, or interned in a neutral country, or beleaguered, besieged, or captured by the enemy during the Southeast Asian conflict, any child of such person, enrolled after March 23, 1972, in a community college system of New Hampshire institution shall, so long as said person is so reported, listed, interned, beleaguered, besieged, or captured, not be required to pay tuition for attendance at such school. Any person entitled to free tuition under this section shall apply to the community college system of New Hampshire institution he or she wishes to attend which may require such proof as deemed necessary in order for a person to qualify for free tuition under this section.

I–a. (a) If a person, while serving in or with the armed forces of the United States, has received a discharge other than dishonorable from service, and is totally and permanently disabled from such service-connected disability, and was domiciled in the state of New Hampshire at the time they entered military service or when he or she is determined by the U.S. Department of Veterans Affairs to be so disabled, whether on original decision or appeal, and is currently a resident of New Hampshire or was a resident of New Hampshire at the time of their death, any child of such person enrolled in an institution that is part of the community college system of New Hampshire shall not be required to pay tuition for attendance at such institution. For the purpose of this paragraph, "child" shall mean a biological, adopted, or stepchild from marriage who meets the community college system's residency requirements, provided in the case of a stepchild that the parents are still married at the time of application and remain so during the entire time of matriculation under this paragraph.

(b) Any person entitled to free tuition under this paragraph shall apply to the board of trustees of the community college system. The board shall, for proof of disability, only require a determination of disability letter from the U.S. Department of Veterans Affairs indicating that the disability of the sponsoring parent is 100 percent total, permanent, service connected and that the character of discharge was other than dishonorable, in order for a person to qualify for free tuition under this paragraph. The board may also require such evidence as it deems necessary to establish residence at the time of service entry or the time of disability determination and proof of relation to sponsoring veteran. The child of a veteran shall remain eligible for free tuition under this paragraph through the end of the semester in which he or she attains the age of 27, provided that the child shall be financially liable for the cost of any studies continuing in the semester following his or her 27th birthday.

(c) All applicants shall complete the Free Application for Federal Student Aid (FAFSA) and shall cooperate with the institution in filling out such applications for grants and other financial assistance as the institution may request in order to offset the tuition waiver cost to the institution. This shall not include any benefits provided directly to the student by the U.S. Department of Veterans Affairs under 38 U.S.C. sections 3500–3566, et seq. Failure to cooperate shall be considered

grounds to deny a tuition waiver under this paragraph, provided that the applicant shall not be required to apply for loans or other funding that will cause the applicant to incur future debt. Non-eligibility for grants or other funding shall not be grounds to deny a tuition waiver under this paragraph.

II. The board of trustees shall have the authority to allow full-time employees who have one year of previous service at the community college system, free tuition, and to the dependents of such employees a 50 percent discount of tuition, at the community college system of New Hampshire colleges.

III. The board of trustees shall have the authority to allow a tuition discount for less than full-time employees. The board of trustees may establish criteria with respect to length of service, hours worked, percent of discount, and eligible courses.

**Source.** 2007, 361:2, eff. July 17, 2007. 2018, 135:1, eff. July 29, 2018. 2020, 34:2, eff. July 1, 2021. 2022, 28:2, eff. June 17, 2022.

### 188–F:16 Tuition Waived for Children of Certain Firefighters and Police Officers.

I. A person who is a New Hampshire resident, who is under 25 years of age, and who enrolls in a community college system of New Hampshire institution shall not be required to pay tuition for attendance at such school if he or she is the child of a firefighter or police officer who died while in performance of his or her duties and whose death was found to be compensable under RSA 281–A.

II. Any person entitled to free tuition under this section shall apply to the community college system of New Hampshire institution he or she wishes to attend, which may require such proof as deemed necessary in order for a person to qualify for free tuition under this section.

**Source.** 2007, 361:2, eff. July 17, 2007.

### 188–F:16–a Waiver of Residency Requirement for In-State Tuition For Veterans.

A veteran of the armed forces who establishes a residence in New Hampshire shall immediately after establishing such residence be eligible for in-state tuition rates when attending any institution in the community college system of New Hampshire.

**Source.** 2014, 121:2, eff. June 16, 2014.

### 188–F:16–b Academic Credit and Course Registration for Veterans and Active Duty Services Members.

I. A veteran who enrolls as a student at an institution within the community college system shall be granted academic credit for the completion of courses that were part of such veteran's military training or service if the such courses meet the standards of the American Council on Education, or its equivalent, for the awarding of academic credits and are applicable to the veteran's program of study. No fee, tuition, or other charge shall be assessed against a veteran who qualifies for such credit pursuant to this section. Nothing in this paragraph shall be construed to alter established curriculum, program, or degree requirements. For the purposes of this section, "veteran" means veteran as defined in 38 U.S.C. section 101(2).

II. (a) Institutions within the community college system that offer an early course registration period shall also offer early course registration to students who are veterans or national guard members.

(b) A student who is called to active duty in the armed forces of the United States, after having completed 85 percent of the term's work, shall be given a reasonable opportunity to attain full credit for each course in which he or she has attained a grade of C or better prior to being called to active duty. A reasonable opportunity may include the opportunity to accelerate completion of course work prior to reporting for active duty or complete coursework within a reasonable time after return from active duty.

(c) Students called to active duty in the armed forces of the United States shall have their tuition refunded or credited, whichever is deemed appropriate by the institution based on how the term was paid for, without credits awarded.

(d) A veteran shall be permitted to file an admission application up to the end of the regular course registration period, and shall be permitted to begin classes pending completion of their application and provision of supporting documents. Nothing in this subparagraph shall be construed to alter established admissions, course prerequisites, curriculum, programs or degree requirements.

(e) Within 12 months of return from active duty, a veteran may register for courses after normal registration period ends without late fees or other penalties. This subparagraph shall not be construed to require extension of registration period beyond the normal add/drop deadline.

III. The board of trustees shall establish policies necessary to implement this section.

**Source.** 2020, 34:11, eff. Sept. 26, 2020.

### 188–F:16–c In-State Tuition for Military-Connected Students.

A spouse or child of an active member of the armed forces who is assigned to duty elsewhere immediately

following assignment to duty in New Hampshire shall be deemed an in-state resident for purposes of determining tuition and fees at an institution within the community college system as long as the spouse or child resides continuously in New Hampshire while enrolled in such postsecondary institution.

**Source.** 2022, 310:4, eff. Aug. 30, 2022.

### 188–F:17 Federal Funds.

The state board of education, acting as the state board for technical education, shall be the primary recipient of federal funds provided under the Carl D. Perkins Vocational Education Act of 1984. The state board shall, each year, provide the community college system of New Hampshire with funds available under the Titles I–IV of the act and subsequent amendments to the act. The board of trustees of the community college system of New Hampshire shall jointly plan with the department of education for the expenditure of funds in the New Hampshire state plan for vocational education. The chancellor of the community college system of New Hampshire and the commissioner of education shall cooperate in the development of applications for such funds.

**Source.** 2007, 361:2, eff. July 17, 2007.

### 188–F:18 Repealed by 2017, 195:3, III, eff. Sept. 3, 2017.

### 188–F:19 Liability Limited.

Any person who, or any firm or corporation which donates the use of its premises, personnel or equipment to the community college system of New Hampshire to assist it in its training courses shall be immune from civil liability in any action brought on the basis of any act or omission resulting in damage or injury arising out of the use by the community college system of New Hampshire of the equipment, facilities, or services to any person if:

I. The person, firm or corporation was acting pursuant to a prior written request or acceptance by the chancellor of the community college system of New Hampshire; and

II. The damage or injury was not caused by willful, wanton or grossly negligent misconduct by the person, firm, or corporation.

**Source.** 2007, 361:2, eff. July 17, 2007.

### 188–F:20 Repealed by 2008, 133:4, eff. June 3, 2008.

### 188–F:21 Repealed by 2007, 361:35, III, eff. July 1, 2011.

### 188–F:21–a Freedom of Association.

No institution within the community college system of New Hampshire which accepts state funds shall prohibit, as a condition of admission or continued enrollment, any student from becoming a member of any group or organization, nor shall an institution take disciplinary action against a student based solely on the student's membership in a group or organization.

**Source.** 2012, 69:2, eff. July 14, 2012.

## Police Standards and Training Council

### 188–F:22 to 188–F:29 Repealed by 2017, 206:26, I, eff. Sept. 8, 2017.

### 188–F:30 Repealed by 2016, 319:5, I, eff. July 1, 2016.

### 188–F:31 to 188–F:32–a Repealed by 2017, 206:26, I, eff. Sept. 8, 2017.

### 188–F:32–b Repealed by 2013, 144:68, eff. June 30, 2013.

### 188–F:32–c, 188–F:32–d Repealed by 2017, 206:26, I, eff. Sept. 8, 2017.

## New Hampshire Regional Community-Technical Institute

### 188–F:33 to 188–F:36 Repealed by 2017, 206:26, II, eff. Sept. 8, 2017.

## Postsecondary Technical Education Study Committee

### 188–F:37 to 188–F:41 Repealed by 1995, 10:16, VI, April 12, 1995.

## Equipment Challenge Grant Program

### 188–F:42 to 188–F:48 Repealed by 2000, 99:1, eff. June 26, 2000.

## Job Training Program for Economic Growth

### 188–F:49 to 188–F:56 Repealed by 2007, 204:4, eff. July 1, 2007.

## Christa McAuliffe Planetarium Commission

### 188–F:57 to 188–F:67 Repealed by 2001, 136:4, eff. July 1, 2001.

## Community College System of New Hampshire; Medical and Surgical Benefits

### 188–F:68 Medical and Surgical Benefits; Community College System of New Hampshire.

The community college system of New Hampshire may participate in the state group health insurance

plan if the board of trustees applies for such benefits to the commissioner of the department of administrative services in writing. Upon receipt of the application, the commissioner shall conduct a cost analysis pursuant to paragraph VI and shall seek legislation authorizing application of such benefits and provided further that:

I. The community college system agrees to accept the terms of the state group health insurance plan that is collectively bargained every 2 years by the department of administrative services.

II. The board of trustees, when applying in writing, shall agree that these benefits shall apply to all employees and no other group health insurance plans shall be offered by the community college system while employees are part of the state group health insurance plan.

III. The community college system shall pay all associated administrative costs of managing the system employee and dependent participation, including any periodic cost increases, additional department of administrative services staff requirements, reserve adjustments and reserve requirements.

IV. The community college system agrees to maintain current employee records including eligibility and enrollment data as required by the department of administrative services.

V. The community college system agrees to remain in the state group health insurance plan for a minimum of 5 years from the date of entry.

VI. Cost analysis, including costs associated with the division of risk and benefits staff, shall be paid for by the community college system. The community college system shall pay all associated costs of transferring data into the state group health insurance plan and all costs associated with data collection, data manipulation associated with transferring from one plan to another, and costs of system changes, including staff costs.

VII. The community college system shall provide to the division of risk and benefits a file of medical and pharmaceutical claims for the previous 2 years which shall not contain any personally identifiable information.

**Source.** 2018, 6:5, eff. May 20, 2018. 2019, 346:23, eff. July 1, 2019.

### Finish Line New Hampshire Program

#### 188–F:69 Finish Line New Hampshire Program.

I. The community college system of New Hampshire may establish and administer the finish line New Hampshire program. The program shall be designed to support eligible students to complete a postsecondary credential.

II. The program shall be open to any student attending an institution within the community college system who is over 25 years of age and is enrolled in a field which the community college system has identified as being in high demand based on New Hampshire labor market and employment information.

III. The community college system shall establish procedures for the administration of the program, identification of high demand fields of employment, and the criteria by which a student shall qualify, provided that such procedures and criteria shall be consistent with this section.

**Source.** 2019, 346:146, eff. July 1, 2019.

### Law Enforcement Officers, Professional Firefighters, and Emergency Medical Technicians Career Development, Recruitment, and Retention Program

#### 188–F:70 Program Established.

I. There is hereby established in the community college system of New Hampshire the New Hampshire law enforcement officers, professional firefighters, and emergency medical technicians career development, recruitment, and retention program. To the extent of available funds, New Hampshire law enforcement officers, professional firefighters, and emergency medical technicians may receive reimbursement, upon successful completion, for the cost of one course per semester, including required fees, in a degree program at an institution in the community college system as approved for that individual upon recommendation of the person's supervisor and the committee. Such courses may be in any field leading to a degree in an area of study approved by the commission.

II. Upon employment by a New Hampshire fire service, a graduate of the New Hampshire fire academy, or the entity that paid for the cost, with the recommendation of the employee's supervisor and the approval of the committee, shall receive full reimbursement for the cost of the academy not covered by other funding sources.

**Source.** 2023, 79:589, eff. July 1, 2023.

#### 188–F:71 Law Enforcement Officers, Professional Firefighters, and Emergency Medical Technicians Career Development, Recruitment, and Retention Program Committee Established.

I. There is hereby established the law enforcement officers, professional firefighters, and emer-

gency medical technicians career development, recruitment, and retention program committee. The members of the committee shall be as follows:

(a) The commissioner of the New Hampshire department of safety, or designee. The commissioner, or designee, shall serve as chairperson of the committee.

(b) The chancellor of the community college system of New Hampshire, or designee.

(c) The director of the New Hampshire police standards and training council, or designee.

(d) The director of the New Hampshire Fire Academy, or designee.

(e) The president of the New Hampshire Association of Chiefs of Police, or designee.

(f) The president of the New Hampshire Police Association, or designee.

(g) The president of the New Hampshire state police union, or designee.

(h) The president of the Professional Firefighters of New Hampshire, or designee.

(i) The president of the New Hampshire Association of Emergency Medical Technicians, or designee.

(j) The president of the New Hampshire Association of Fire Chiefs, or designee.

(k) Three educators from the community college system of New Hampshire, appointed by the chancellor of the community college system of New Hampshire.

II. The committee shall establish criteria and procedures for approval of requests for course reimbursement, allocation of available funds, and student debt payment.

III. The community college system shall determine the number of credits and the course equivalents granted for graduation from the New Hampshire police standards and training council and the New Hampshire fire academy.

IV. The committee shall report annually to the governor, president of the senate, and speaker of the house of representatives. The report shall include information regarding participation in the program, completion of courses, student debt relief, fire academy tuition reimbursement, and data and other information relative to recruitment and retention, and shall make recommendations for legislation relative to the program, and resources needed to achieve its goals.

**Source.** 2023, 79:589, eff. July 1, 2023.

**188–F:72 Law Enforcement Officers, Professional Firefighters, and Emergency Medical Technicians Career Development, Recruitment, and Retention Fund Established.**

There is hereby established in the state treasury a fund to be known as the law enforcement officers, professional firefighters, and emergency medical technicians career development, recruitment, and retention fund. The fund shall be administered by the community college system of New Hampshire. The fund shall be nonlapsing and continually appropriated to the community college system to support the program established in this subdivision. The community college system shall establish procedures for receiving and disbursing funds, and it shall report to the committee established in RSA 188–F:71 on the operation of the fund. The fund may accept state or federal appropriations or grants, or gifts, grants, or donations from any other source.

**Source.** 2023, 79:589, eff. July 1, 2023.

## CHAPTER 188–G

## PRIVATE POSTSECONDARY CAREER SCHOOLS



**188–G:1 Definitions; Exclusions.**

I. In this chapter:

(a) "Alternative delivery" means a mode of instruction which does not involve face-to-face instruction between instructor and student in the same geographic location. This mode of instruction shall include Internet, televised, video, telephonic, and correspondence media.

(b) "Conference" or "seminar" means a scheduled meeting of 2 or more persons for discussing matters of common concern and where, if training or education is offered, it shall be incidental to the purpose of the conference.

(c) "Commission" means the higher education commission established in RSA 21–N:8–a, II.

(d) "Commissioner" means the commissioner of the department of education.

(e) "Director" means the director of the division of higher education in the department of education.

(f) "Division" means the department of education, division of educator support and higher education.

(g) "Entity" means any individual, firm, partnership, association, company, corporation, organization, trust, school, or other legal entity or combination of these entities.

(h) "Physical presence" means a physical location for instructional purposes, maintaining an administrative office, including a mailing address or phone number, or face-to-face advising, mentoring, supervision, testing, or instruction taking place in New Hampshire.

(i) "Private postsecondary career school" means any for-profit or nonprofit postsecondary career entity maintaining a physical presence in this state providing education or training for tuition or a fee that enhances a person's occupational skills, or provides continuing education or certification, or fulfills a training or education requirement in one's employment, career, trade, profession, or occupation. Schools that offer resident or nonresident programs, including programs using modes of alternative delivery, beyond the secondary school level to an entity shall be included in this definition regardless of the fact that the school's tuition and fees from education and training programs constitute only a part of the school's revenue.

(j) "Workshop" means a brief, intensive education or training program that focuses on developing techniques and skills in a particular area.

II. In this chapter, "private postsecondary career school" shall not include:

(a) Schools authorized to grant degrees pursuant to RSA 292.

(b) Schools specifically licensed as an education or training school by a state agency other than the commission.

(c) Schools operated by a business organization exclusively for the training of that business' own employees and at no charge to its employees.

(d) Schools offering noncredit courses exclusively for avocational purposes.

(e) Schools established, operated, and governed by the state of New Hampshire or any of its political subdivisions, or any other state or its political subdivisions.

(f) Noncredit courses or programs sponsored by recognized trade, business, or professional organizations solely for the instruction of their members that do not prepare or qualify individuals for employment in any occupation or trade.

(g) Schools that offer programs and courses exclusively on federal military installations.

(h) Entities that offer training at seminars, workshops, or conferences, if:

(1) Any training or education offered is incidental to the purpose of the seminar, workshop, or conference; and

(2) The attendee receiving the training is not awarded any form of a certificate, diploma, or credit including continuing education units for having received the training.

(i) An entity training students under 14 C.F.R. part 91 or 14 C.F.R. part 141, or receiving flight or ground instruction required by the Federal Aviation Administration.

(j) Entities that license software, the content of which is focused on training or education, if the entity:

(1) Is primarily engaged in the business of licensing software;

(2) Licenses its software primarily to other legal entities, and not directly to an end user or individual student;

(3) Does not confer degrees, diplomas, continuing education units, or any other form of credit in connection with the software it licenses;

(4) Is not accredited and does not seek accreditation in connection with the software it licenses or the content it offers; and

(5) Does not offer an admissions process, financial aid, career advice, or job placement in connection with the software it licenses.

(k) Entities offering only training courses at a total cost, including tuition and all other fees and charges, of not more than $800 per course for which no payment, including a deposit, is required or collected prior to the first day of the course. This subparagraph shall not apply to entities that use alternative delivery methods.

(l) Government entities offering training in public safety related occupations including but not limited to the division of fire standards and training and emergency medical services, the division of fire safety, and the police standards and training council.

(m) Entities that have annual gross tuition of $100,000 or less.

(n) Entities giving instruction, with or without compensation, for the licensing of commercial driv-

ers, who meet or exceed any rules promulgated under 49 U.S.C. section 31136 by the Federal Motor Carrier Safety Administration of the United States Department of Transportation.

**Source.** 2011, 224:150. 2014, 132:3. 2016, 149:6, eff. Jan. 1, 2017. 2018, 315:16, eff. Aug. 24, 2018. 2021, 210:2, Pt. IV, Sec. 1, eff. Oct. 9, 2021. 2022, 8:5, eff. Mar. 18, 2022.

### 188–G:2 Licenses and Fees.

I. Prior to registering or renewing a business or trade name, or soliciting students for enrollment, an entity maintaining a physical presence in this state shall be reviewed by the commission to determine if the entity requires a license. The commission shall establish procedures to accomplish this review.

II. A private postsecondary career school maintaining a physical presence in this state shall register to obtain a license or license renewal from the commission. The license shall be issued or renewed pursuant to rules, adopted under RSA 541–A, by the commission. The rules shall establish minimum criteria, including but not limited to, financial stability, educational program, administrative and staff qualifications, business procedures, facilities, equipment, and ethical practices to be met by licensees, and criteria for rejecting a licensing applicant and for suspending or revoking a license.

III. A school that is not required to obtain a license may apply for a license and, upon issuance of the license, shall be subject to the provisions of this chapter. Such school may voluntarily surrender its license and revert to its original status.

IV. The commission shall adopt rules pursuant to RSA 541–A to establish reasonable fees, fines, reimbursement rates for consultants, and procedures for complaint investigations and enforcement actions, which are necessary for the administration of this chapter.

V. A private postsecondary career school which the commission has determined requires a license shall, prior to the issuance of a license, comply with this section and RSA 188–G:3.

**Source.** 2011, 224:150. 2013, 187:2. 2014, 132:4, eff. June 16, 2014.

### 188–G:3 Surety Indemnification.

Before a license is issued or renewed, a school shall furnish surety indemnification as required in this section.

I. A surety bond shall be provided by the school in an amount prescribed in this section. The obligation of the bond is that the school, its officers, agents, and employees shall faithfully perform the terms and conditions of contracts for tuition and other instructional fees entered into between the school and entity enrolling as students. The bond shall be issued by a company authorized to do business in the state of New Hampshire. The bond shall be issued in the name of the commission, and is to be used only for payment of a refund of tuition and instructional fees due to a student or potential student, and the expense of investigating and processing the claims.

II. A private postsecondary career school shall secure a bond in an amount sufficient to reimburse the tuition of any student contract which cannot be fulfilled, and taking into account the number of students or potential students to be reimbursed and the expenses for investigating and processing claims. The bond shall not be less than $10,000. If a school licensed under RSA 188–G:2 should fail to provide the services required in a contract with any entity, as determined by a court of competent jurisdiction, the bond shall be forfeited, and the proceeds distributed by the director in such manner as justice and the circumstances require.

III. The bond company may not be relieved of liability on the bond unless it gives the school and the commission 90 days written notice of the company's intent to cancel the bond. If at any time the company that issued the bond cancels or discontinues the coverage, the school's license is revoked as a matter of law on the effective date of the cancellation or discontinuance of bond coverage, unless a replacement bond is obtained and provided to the commission.

IV. For the purposes of this section the forms of indemnification other than a surety bond which may be furnished to the commission for licensure are the following:

(a) An irrevocable letter of credit, maintained for the licensing period as a minimum, issued by a financial institution authorized to do business in New Hampshire in an amount to be determined by the commission with the commission designated as the beneficiary; or

(b) A term deposit account held in the state treasury, payable to the commission, shall be held in trust for the benefit of students entitled thereto under this section. Said account shall be maintained for the licensing period as a minimum, in an amount determined by the commission. Any interest shall be paid annually to the appropriate school, unless the term deposit account is activated due to

a school closing. Should the licensee for any reason, while not in default, discontinue operation, all moneys on deposit, including any interest, shall be released to the appropriate school subject to the approval of the commission.

**Source.** 2011, 224:150. 2013, 187:3, eff. June 30, 2013. 2018, 136:1, eff. July 29, 2018.

### 188–G:4 Repealed by 2013, 187:1, I, eff. June 30, 2013.

### 188–G:5 Inspections.

The commission may at any time inspect the premises, curriculum, teaching materials, faculty performance, sales literature, financial data, or other matters which are relevant to the educational and business activities of a licensed school in order to determine compliance with applicable laws and rules.

**Source.** 2011, 224:150, eff. July 1, 2011.

### 188–G:5–a Suspension; Hearing.

The commissioner of the department of education may, after due notice and failure by a career school to remediate noncompliance with rules adopted pursuant to this chapter, suspend the license of any school licensed pursuant to RSA 188–G:2 for a period of not more than 90 days, until such time as a hearing before the commission can be held. The commissioner may impose interim conditions of operation which shall apply during the period of suspension. The commission may, after due notice and hearing, suspend the license of any school licensed pursuant to RSA 188–G:2 for a period of time to be determined by the commission.

**Source.** 2018, 136:2, eff. July 29, 2018.

### 188–G:6 Revocation; Hearing.

The commission may, after due notice and hearing, revoke the license of any school licensed pursuant to RSA 188–G:2 for violating the provisions of this chapter or rules adopted hereunder. A revocation pursuant to this section shall be permanent. The provisions of RSA 541 shall apply to actions taken pursuant to this section.

**Source.** 2011, 224:150, eff. July 1, 2011. 2018, 136:3, eff. July 29, 2018.

### 188–G:7 Waiting Period.

Every contract that purports to bind any entity to pay money to a private postsecondary career school in return for training shall be construed to be a home solicitation sales contract under RSA 361–B and shall be subject to the provisions of RSA 361–B.

**Source.** 2011, 224:150, eff. July 1, 2011.

### 188–G:8 Veterans, Education and Services Approval.

The division may approve for veterans' education and services any institution licensed under this chapter. The department of education may adopt rules, under RSA 541–A, relative to the procedures for approval of institutions for veterans' education and benefits.

**Source.** 2011, 224:150, eff. July 1, 2011.

### 188–G:9 Use of Fees.

Notwithstanding any provision of law to the contrary, all license fees collected under the provisions of this chapter shall be retained by the commission for use in meeting the expenses of administering this chapter.

**Source.** 2011, 224:150, eff. July 1, 2011.

### 188–G:10 Penalty.

I. Whoever violates any provision of this chapter shall be guilty of a misdemeanor if a natural person, or guilty of a felony if any other person.

II. Whenever the commission determines that a person is violating any provision of this chapter or the rules adopted hereunder, the commission shall request the attorney general, or other appropriate official having jurisdiction, to provide appropriate relief.

III. The commission, upon verifying that a school is operating without a license, shall issue a cease and desist order to such school.

IV. The commission shall be notified whenever a cease and desist order is issued to a school, or if a school fails to provide the services required under a contract with any entity causing the bond to be forfeited, or if a school is required to have a license but is operating without a license.

**Source.** 2011, 224:150, eff. July 1, 2011.

## CHAPTER 188–H

## SEXUAL MISCONDUCT AT INSTITUTIONS OF HIGHER EDUCATION

**Adoption of Policies**



**Sexual Misconduct Climate Surveys and Task Force**



**Collaboration with Law Enforcement**

## Adoption of Policies

### 188–H:1 Definitions.

In this subdivision:

I. "Commission" means the higher education commission established in RSA 21–N:8–a.

II. "Director" means the director of the department of education, division of educator support and higher education.

III. "Division" means the department of education, division of educator support and higher education.

IV. "Institution of higher education" means a public, private, non-profit, or for-profit school chartered, incorporated, or otherwise organized in this state legally authorized to award a degree at an associate level or above with an established physical presence in this state.

V. "Reporting party" means a student or employee who reports having experienced an incident of sexual misconduct to the institution.

VI. "Responding party" means a student or employee who has been accused of an alleged incident of sexual misconduct.

VII. "Student" means an individual who is enrolled at least half-time in a credit-bearing program through a public or private degree-granting postsecondary institution of higher education whether part-time, full-time, or as an extension student, or who has taken a leave of absence or who has withdrawn due to being a victim of sexual misconduct.

VIII. "Sexual misconduct" means an incident of sexual violence, dating violence, domestic violence, gender-based violence, violence based on sexual orientation or gender identity or expression, sexual assault or harassment, or stalking, as defined by each institution in its code of conduct, in a manner consistent with applicable federal definitions.

**Source.** 2020, 24:18, eff. Jan. 16, 2021.

### 188–H:2 Adoption of Policies Required.

I. Each institution of higher education shall adopt a policy on sexual misconduct, consistent with applicable state and federal law, which shall be publicly available on campus in locations where students regularly congregate including, but not limited to, dining and recreational facilities, libraries, bookstores, student unions and student centers, and the common areas of dormitories and other student housing locations, and shall be made available, upon request, to an applicant, student, or employee of the institution and shall be publicly available on the institution's website in an accessible format not later than the first week of classes in each academic year. The institution shall update the website annually. The policy shall be trauma-informed, and shall be developed in coordination with the institution's Title IX coordinator, and the local rape crisis center or domestic violence center. In addition, the institution may consider input from various internal and external entities including, but not limited to institutional administrators, personnel affiliated with on-campus and off-campus health care centers, personnel affiliated with on-campus, when available, and local, confidential resources advisors, residence life staff, students, the division of state police, and the police department and the county attorney having jurisdiction in the city or town where the institution's primary campus is located. The policy shall be developed in a culturally competent manner in order to reflect the diverse needs of all students. The policy shall include, but not be limited to:

(a) Procedures by which students and employees at the institution may report or disclose alleged incidents of sexual misconduct regardless of where the offense occurred.

(b) Information on where to receive immediate emergency assistance following an alleged incident of sexual misconduct which shall include, but shall not be limited to:

(1) The name and location of the nearest medical facility where an individual may request that a medical forensic exam be administered by a trained sexual violence forensic health care provider, including information on transportation

options and information on reimbursement for travel costs, if any.

(2) The contact information for a rape crisis center and a domestic violence center and a description of the services provided by such centers.

(3) The telephone number and website for a national 24-hour hotline, as well as any state or local resources, that provides information on sexual misconduct.

(4) Information on any programs that may financially assist a student with the cost of emergency medical assistance.

(c) Descriptions of and contact information for the types of counseling and health, safety, academic, and other support services available within the local community or region or through a rape crisis center or domestic violence center, or the name and contact information for organizations that support students accused of sexual misconduct, which shall include but not be limited to the name and contact information for a confidential resources advisor and a description of the role of and services provided by the confidential resources advisor and the name and contact information for the institution's Title IX coordinator.

(d) The rights and obligations of students and employees to:

(1) Notify or decline to notify law enforcement, including campus, local and state police, of an alleged incident of sexual misconduct.

(2) Receive assistance from campus authorities in making any such notification.

(3) Obtain a court- or institution-issued protective order against a responding party of the incident of sexual misconduct.

(e) The process for requesting supportive measures reasonably available from the institution which shall include, but not be limited to, options for changing academic, living, campus transportation, or working arrangements or taking a leave of absence in response to an alleged incident of sexual misconduct, how to request those changes, and the process to have any such measures reviewed.

(f) The contact information for the closest local, state, and federal law enforcement agencies with jurisdiction over matters involving sexual misconduct and procedures for students to notify the institution that a protective order has been issued under state or federal law and the institution's responsibilities upon receipt of such notice.

(g) A summary of the institution's procedures for investigating, adjudicating, and resolving sexual misconduct complaints, including an explanation of all procedures which shall be followed to obtain investigatory reports and gather evidence, and potential sanctions which may be imposed, as well as clear statements advising students that:

(1) The process shall be uniformly applied for all disciplinary proceedings relating to any claims of sexual misconduct.

(2) Timely and detailed notice shall be given, upon such time as the institution decides to proceed with an institutional disciplinary process, to the reporting party and the responding party describing the date, time, and location, if known, and a summary of the factual allegations concerning the violation.

(3) An investigation, including any hearings and resulting disciplinary proceedings, shall be conducted by an individual who receives not less than annual training on issues relating to sexual misconduct, investigatory procedures and hearing procedures to protect the safety and rights of students and promote accountability, objectivity, impartiality, and a trauma-informed response.

(4) The reporting party of an alleged incident of sexual misconduct and the responding party may be accompanied by an advisor or support person of their choice, which may include an advocate or counsel, to meet with the institution's investigator or other fact finder and may consult with an advisor or support person, which may include an advocate or counsel, during any meetings and disciplinary proceedings; provided, however, that the institution may establish rules regarding how the proceedings will be conducted which may include guidelines on the extent to which the advisor or support person for each party may participate in a meeting or disciplinary proceeding and any limitations on participation which shall apply equally to both parties; and provided further, that the institution shall adopt reasonable measures to provide for the involvement of the advisor or support person for each party but the availability of the advisor or support person shall not significantly delay a meeting or disciplinary proceeding.

(5) The reporting party and the responding party shall be provided with a copy of the institution's policies regarding the submission and consideration of evidence that may be used during a disciplinary proceeding and shall have equal opportunity to present evidence and witnesses on

their behalf during a disciplinary proceeding; provided, however, that each party shall be provided with timely and equal access to all relevant evidence that shall be used in the determination of a discipline.

(6) There shall be restrictions on evidence considered by the fact finder including, but not limited to, the use of evidence of prior sexual activity or character witnesses.

(7) The reporting party and the responding party shall be informed in writing of the results of a disciplinary proceeding not later than 7 business days after a final determination of a complaint, not including any time for appeal, unless good cause for additional time is shown, and they shall be informed of any process for appealing the decision.

(8) If an institution offers an appeal as a result of procedural errors, previously unavailable relevant evidence that could significantly impact the outcome of a case or where the sanction is disproportionate to the findings, the reporting party and the responding party shall be provided with an equal opportunity to appeal decisions regarding responsibility or sanctions.

(9) The institution shall not publicly disclose the identity of the reporting party and the responding party, except as necessary to carry out a disciplinary process or as permitted under state or federal law.

(10) The institution's disciplinary proceedings shall not serve as a substitute for the criminal justice process.

(h) A summary of the institution's employee disciplinary process as it pertains to sexual misconduct.

(i) The range of sanctions or penalties the institution may impose on students and employees found responsible for a violation of the applicable institutional policy prohibiting acts of sexual misconduct.

II. Each institution of higher education shall provide draft policies and substantive changes by electronic or regular mail to internal and external entities, with instructions on how to comment and a reasonable length of time in which comments will be accepted. However, once an institution has adopted such policies as required by this section, the opportunity for review and comment by internal and external entities shall only apply to substantive changes in those policies.

**Source.** 2020, 24:18, eff. Jan. 16, 2021.

### 188–H:3 Notice of Rights.

Each institution of higher education shall provide both the accuser and the responding party with written notice of the institution's decision to proceed with an institutional disciplinary process regarding an allegation of sexual misconduct sufficiently in advance of a disciplinary hearing to provide both the reporting and responding parties with the opportunity to meaningfully exercise their rights to a proceeding that is prompt, fair, and impartial; which shall include the opportunity to both parties to present witnesses and other evidence, and any other due process rights afforded to them under institutional policy. The written notice shall include the information required to be posted on the institution's website pursuant to this chapter.

**Source.** 2020, 24:18, eff. Jan. 16, 2021.

## Sexual Misconduct Climate Surveys and Task Force

### 188–H:4 Sexual Misconduct Climate Surveys.

Each institution of higher education shall biennially conduct a sexual misconduct climate survey of all students at said institution. Each institution's sexual misconduct climate survey shall include a base set of common questions recommended by the task force on sexual misconduct and approved by the director, hereinafter described as the "base survey." The director shall provide a copy of the base sexual misconduct climate survey to all institutions biennially. Each institution shall also be permitted to append their own campus-specific questions to the base survey, provided that these questions do not require the disclosure of any personally-identifying information and are not unnecessarily traumatizing for victims of sexual violence. Within 120 days after completion of a sexual misconduct climate survey, each institution shall submit a summary of the results to the director and shall also post a summary of the results on the institution's website in an easily accessible manner.

**Source.** 2020, 24:18, eff. Jan. 16, 2021.

### 188–H:5 Task Force on Sexual Misconduct.

I. There shall be a task force on sexual misconduct at institutions of higher education. The task force shall consist of the following members:

(a) The chancellor of the university system of New Hampshire, or designee.

(b) The chancellor of the community college system of New Hampshire, or designee.

(c) The director of higher education, division of educator support and higher education, department of education, or designee.

(d) Two representatives of the private 4–year colleges in New Hampshire, with not more than one representative from any such college, appointed by the governor and council on recommendation by the New Hampshire College and University Council.

(e) The president of the New Hampshire Association of Campus Law Enforcement Administrators, or designee.

(f) The commissioner of the department of health and human services, or designee.

(g) The attorney general, or designee.

(h) The following members, who shall be appointed by the governor, one of whom shall be a student attending a public institution of higher education in this state; one of whom shall be a student attending a private institution of higher education in this state; one of whom shall be a student attending an institution in the community college system of New Hampshire; one of whom shall be a representative of the university of New Hampshire recommended by the president of the university; 3 of whom shall be representatives recommended by the New Hampshire Coalition Against Domestic and Sexual Violence; one of whom shall be a representative recommended by the New Hampshire Campus Consortium Against Sexual and Interpersonal Violence; one of whom shall be a researcher with experience in the development and design of sexual misconduct climate surveys; one of whom shall be a researcher of statistics, data analytics, or econometrics with experience in higher education survey analysis; one of whom shall be a representative of the Prevention Innovations Research Center at the University of New Hampshire; and one of whom shall represent Every Voice New Hampshire.

II. The task force shall develop a base sexual misconduct climate survey for distribution to institutions of higher education and provide such institutions with any related recommendations respecting the content, timing, and application of the survey. The task force shall deliver its base survey and related recommendations, including but not limited to, recommendations on achieving statistically valid response rates, to each institution of higher education no less often than biennially and for the first time by March 31, 2021.

III. In developing the base sexual misconduct climate survey, the task force shall:

(a) Utilize best practices from peer-reviewed research and consult with individuals with expertise in the development and use of sexual misconduct climate surveys by institutions of higher education.

(b) Review sexual misconduct climate surveys which have been developed and previously utilized by institutions.

(c) Provide opportunities for written comment from organizations that work directly with victims and survivors of sexual misconduct to ensure the adequacy and appropriateness of the proposed content.

(d) Consult with institutions on strategies for optimizing the effectiveness of the survey.

(e) Account for the diverse needs and differences of the state's institutions of higher education.

IV. The base sexual misconduct climate surveys shall gather information on topics that may include, but shall not be limited to:

(a) The number of incidents, both reported and unreported, of sexual misconduct at the institution of higher education.

(b) When and where incidents of sexual misconduct occurred.

(c) Student awareness of institutional policies and procedures related to campus sexual misconduct.

(d) Whether a student reported the sexual misconduct, and if so, to which campus resource or law enforcement agency such report was made, and, if not, the reason for the student's decision not to report.

(e) Whether a student was informed of or referred to local, state, campus or other resources, or victim support services, including appropriate medical care and legal services.

(f) Whether a student was provided the option of protection from retaliation, access to school-based accommodations, and criminal justice remedies.

(g) Contextual factors, such as the involvement of force, incapacitation, or coercion.

(h) Demographic information that could be used to identify at-risk groups including but not limited to gender.

(i) Perceptions of campus safety among members of the campus community and confidence in the institution's ability to protect against and respond to incidents of sexual misconduct.

(j) Whether the student has chosen to withdraw or taken a leave of absence from the institution or transferred to another institution due to either being the reporting party or responding party in an allegation of sexual misconduct.

(k) Whether the student has withdrawn from any classes or been placed on academic probation as a result of the incident.

(l) Other questions as determined by the task force.

V. The base sexual misconduct climate survey shall collect anonymous responses and shall not provide the disclosure of any identifying information.

VI. There shall be established within the division a data repository for all summaries of sexual misconduct climate surveys submitted by institutions of higher education to the division in accordance with this section. An institution of higher education shall submit its sexual misconduct climate survey, accompanied by the anonymized raw data supporting such survey, to the director. The director shall ensure that the sexual misconduct climate survey data submitted by all institutions will be available to the public in an easily accessible manner on the division's website.

VII. Each institution of higher education shall publish on the institution's website in an easily accessible manner:

(a) The results of the survey.

(b) The annual security report required under 20 U.S.C. section 1092, otherwise known as the Clery Act.

(c) A link to the division's statewide data on sexual misconduct climate survey data as set forth in paragraph VIII.

VIII. The director shall adopt rules, pursuant to RSA 541–A, including deadlines for dissemination and collection of survey information, consistent with the purposes of this statute, and shall promote the effective solicitation to achieve the highest practical response rate, collection, and publication of statistical information gathered from the state's institutions of higher education.

**Source.** 2020, 24:18, eff. Jan. 16, 2021.

### Collaboration with Law Enforcement

### 188–H:6 Collaboration With Law Enforcement.

I. Each institution of higher education shall adopt policies and procedures with the local law enforcement agency having primary jurisdiction over the city or town wherein the institution's primary campus is located to establish the respective roles and responsibilities of each party related to the prevention of and response to on-campus and off-campus sexual misconduct. Institutions of higher education and local law enforcement agencies shall develop policies and procedures that comply with all applicable state and federal confidentiality and privacy laws and:

(a) Delineate sharing protocols for investigative responsibilities.

(b) Provide protocols for investigations, including standards for notification and communication and measures to promote evidence preservation.

(c) Coordinate training, programing, and requirements on issues related to sexual misconduct.

(d) Ensure that reporting parties are able to move safely and comfortably between classes, extracurriculars, sports, and campus jobs.

(e) Develop a protocol for sharing information about specific crimes, which may include a mechanism for sharing information anonymously, that:

(1) Requires that the reporting party authorized or requested that such information be shared and is fully and accurately informed about what procedures shall occur if the information is shared; and

(2) Is carried out in a manner that is consistent with the General Education Provisions Act, 20 U.S.C. section 1221, and any other applicable provisions under state law.

(f) Establish the methods for sharing the Clery Act [1] reporting requirements and for facilitating the issuance of timely warnings and emergency notifications required by the Clery Act relative to crimes that may pose a serious threat to the campus or near campus communities.

(g) Develop methods for notifying the appropriate county attorney's office.

(h) Update such policies and procedures biennially.

II. The commission may waive the requirements of this section in the case of an institution that demonstrates that it acted in good faith but was unable to adopt joint policies and procedures with the local law enforcement agency having primary jurisdiction over the city or town wherein the institution's primary campus is located.

III. Notwithstanding any general or special law to the contrary, a member of the department of state police or a local police department who acts as a first responder to a report of sexual misconduct at an institution of higher education shall receive training

in the awareness of dating violence, domestic violence, sexual assault, and stalking and in trauma-informed response, subject to appropriation.

**Source.** 2020, 24:18, eff. Jan. 16, 2021.

[1] 20 U.S.C.A. § 1092(f).

### Confidential Resource Advisors

### 188–H:7 Confidential Resource Advisors.

I. Each institution of higher education shall establish a campus security policy that includes the designation of at least one confidential resource advisor. The confidential resource advisor:

(a) May have another role at the institution;

(b) Shall not be a student or a Title IX coordinator; and

(c) Shall be appointed based on experience and a demonstrated ability of the individual to effectively provide victim services related to sexual misconduct.

II. The institution shall designate existing categories of employees that may serve as confidential resource advisors. The designation of an existing category of employees shall not preclude the institution from designating a new or existing employee as a confidential resource advisor or in another confidential role. An institution may partner with a local, state, or national victim advocacy organization to provide a confidential resource advisor under this section. An institution that enrolls fewer than 1,000 residential students may partner with another institution or rape crisis center within the state to provide the services under this section. An institution shall ensure that any partnership entered into under this paragraph shall result in a confidential resource advisor being available to students within a reasonable distance to the student's institution.

III. The confidential resource advisor shall receive training in the awareness and prevention of sexual misconduct and in trauma-informed response and coordinate with on-campus and off-campus rape crisis centers and domestic violence centers within a reasonable time after being designated as a confidential resource advisor.

IV. The confidential resource advisor shall inform the student or employee, or provide resources about how to obtain, including in written format:

(a) Reporting options and the effects of each option.

(b) Counseling services available on campus and through a local rape crisis center or domestic violence center.

(c) Medical and health services available on campus and off campus.

(d) Campus escort services for security.

(e) Available academic and residence life accommodations.

(f) Student loan counseling for students considering temporary permanent withdrawal or half time enrollment regarding loan deferment, forbearance, or other student loan programs.

(g) The investigative and disciplinary process of the institution.

(h) The legal process carried out through local, state, and federal law enforcement agencies.

(i) That the institution's disciplinary process is not to be considered a substitute for the criminal justice process.

(j) Any limits on the ability of the confidential resource advisor to provide privacy or confidentiality to the student.

V. The confidential resource advisor:

(a) May, if appropriate and if directed by the reporting party, assist the reporting party in contacting or reporting to campus or local law enforcement agencies.

(b) Shall notify the student of their rights and the institution's responsibilities regarding a protection order, no contact order, and any other lawful orders issued by the institution or by a criminal, civil, or tribal court.

(c) Shall not be required to report an incident to the institution or a law enforcement agency unless otherwise required to do so by state or federal law and shall provide confidential services to students and employees.

(d) May attend an administrative or institution-based adjudication proceeding as the advisor or support person of the student's or employee's choice.

(e) Shall not disclose confidential information without the prior written consent of the student or employee who shared the information.

(f) Shall not provide services to more than one party in an incident and shall ensure confidentiality is maintained.

VI. Nothing in this section shall be construed to limit either party's right of cross examination of the advisor in a civil or criminal proceeding if the advisor testifies after written consent has been given. A confidential resource advisor shall not act as a counselor or therapist unless the confidential resource advisor is licensed as a counselor in this state and the

reporting party engages the confidential resource advisor in that capacity.

VII. Notice to a confidential resource advisor of an alleged act of sexual misconduct or a confidential resource advisor's performance of a service under this section shall not be considered actual or constructive notice of such an alleged act to the institution of higher education at which the confidential resource advisor is employed or provides contracted services.

VIII. If a conflict of interest arises for an institution in which a confidential resource advisor is advocating for a reporting party's need for sexual assault crisis services or campus or law enforcement services, the institution shall not discipline, penalize, or otherwise retaliate against the confidential resource advisor for representing the interest of the reporting party.

**Source.** 2020, 24:18, eff. Jan. 16, 2021.

**188–H:8 Privilege for Confidential Resource Advisors.**

I. In this section:

(a) "Confidential communication" means information transmitted between a victim, as defined in paragraph (b), of an alleged sexual assault, alleged domestic abuse, alleged sexual harassment, or alleged stalking, and a confidential resource advisor in the course of that relationship and in confidence by means which, so far as the victim is aware, does not disclose the information to a third person. The presence of an interpreter for the hearing impaired, a foreign language interpreter, or any other interpreter necessary for that communication to take place shall not affect the confidentiality of the communication nor shall it be deemed a waiver of the privilege. The term includes all information received by the confidential resource advisor in the course of that relationship.

(b) "Victim" means any person alleging sexual misconduct, as defined by the institutions' policies and procedures, who consults a confidential resource advisor for the purpose of securing support, counseling or assistance concerning a mental, physical, emotional, legal, housing, medical, or financial problem caused by an alleged act of sexual misconduct, or an alleged attempted sexual misconduct.

II. (a) A victim has the privilege to refuse to disclose and to prevent any other person from disclosing a confidential communication made by the victim to a confidential resource advisor, including any record made in the course of support, counseling, or assistance of the victim. Any confidential communication or record may be disclosed only with the prior written consent of the victim. This privilege terminates upon the death of the victim. The privilege and confidentiality under this subparagraph shall extend to:

(1) A third person present to assist communication with the victim.

(2) A third person present to assist a victim who is physically challenged.

(3) Co-participants in support group counseling of the victim.

(b) Persons prevented from disclosing a confidential communication or record pursuant to subparagraph (a) shall be exempt from the provisions of RSA 631:6.

III. The privilege may be claimed or waived in all civil, administrative, and criminal legal proceedings, including discovery proceedings, by the following persons:

(a) The victim or an attorney on the victim's behalf.

(b) The guardian of the victim, if the victim has been found incompetent by a court of competent jurisdiction.

(c) A minor victim who is emancipated, married, or over the age of 15, unless, in the opinion of the court, the minor is incapable of knowingly waiving the privilege. A guardian ad litem shall be appointed in all cases in which there is a potential conflict of interest between a victim under the age of 18 and their parent or guardian.

IV. Waiver as to a specific portion of communication between the victim and the confidential resource advisor shall not constitute a waiver of the privilege as to other portions of the confidential communication between victim and confidential resource advisor, relating to the alleged crime.

V. In criminal proceedings when a defendant seeks information privileged under this chapter in discovery or at trial, the procedure below shall be followed:

(a) A written pretrial motion shall be made by the defendant to the court stating that the defendant seeks discovery of records of a confidential resource advisor or testimony of a confidential resource advisor. The written motion shall be accompanied by an affidavit setting forth specific grounds as to why discovery is requested and showing that there is a substantial likelihood that favorable and admissible information would be ob-

tained through discovery or testimony. No discovery or hearing shall occur pursuant to the information sought to be disclosed for at least 3 business days after the filing of a motion for disclosure.

(b) The only information subject to discovery from the records of a confidential resource advisor or which may be elicited during the testimony of a confidential resource advisor are those statements of the victim which relate to the alleged crime being prosecuted in the instant trial.

(c) Prior to admission of information at deposition, trial, or other legal proceeding, when a claim of privilege has been asserted and whether or not the information was obtained through discovery, the burden of proof shall be upon the defendant to establish by a preponderance of the evidence that:

(1) The probative value of the information, in the context of the particular case, outweighs its prejudicial effect on the victim's emotional or physical recovery, privacy, or relationship with the confidential resource advisor.

(2) That the information sought is unavailable from any other source.

(3) That there is a substantial probability that the failure to disclose that information will interfere with the defendant's right to confront the witnesses against him or her and the defendant's right to a fair trial.

(d) The trial court shall review each motion for disclosure of information on a case by case basis and determine on the totality of the circumstances that the information sought is or is not subject to the privilege established in paragraph II. In finding that the privilege shall not apply in a particular case, the trial court shall make written findings as to its reasons therefor.

(e) The records and testimony of a confidential resource advisor shall be disclosed solely to the trial judge to determine, as a matter of law, whether the information contained in the records or testimony is admissible under this chapter.

(f) That portion of any record and testimony of a confidential resource advisor which is not disclosed to the defendant shall be preserved by the court under seal for appeal. For the purpose of preservation, a copy of the record shall be retained with the original released to the confidential resource advisor. Costs of duplication shall be borne by the defendant.

(g) If, after disclosure of privileged information, the court upholds the privilege claim, the court shall impose a protective order against revealing any of the information without the consent of the person authorized to permit disclosure.

VI. The privilege established by this chapter shall not apply when the confidential resource advisor has knowledge that the victim has given perjured testimony and when the defendant has made an offer of proof that there is probable cause to believe that perjury has been committed.

VII. Failure of any person to testify as a witness pursuant to the provisions of this chapter shall not give rise to an inference unfavorable to the prosecution or the defense.

VIII. The victim shall have a right to interlocutory appeal to the supreme court from any decision by a court to require the disclosure of records or testimony of a confidential resource advisor.

IX. The confidential resource advisor shall have the same reporting duties under RSA 169–C:29 as other professionals, providing that this duty shall not apply where a minor is seeking relief pursuant to RSA 173–B:3 for abuse by a spouse or former spouse of the minor, or by an intimate partner who is not related to the minor by consanguinity or affinity. As used in this section, "abuse" and "intimate partners" shall be as defined in RSA 173–B:1.

**Source.** 2020, 24:18, eff. Jan. 16, 2021.

### Awareness Programming

**188–H:9 Awareness Programming.**

An institution of higher education, with guidance from its Title IX coordinator, local law enforcement, and the rape crisis center or the domestic violence center, shall provide mandatory annual sexual misconduct primary prevention and awareness programming for all students and all employees of the institution that shall include:

I. An explanation of consent as it applies to sexual activity and sexual relationships.

II. The role drugs and alcohol play in an individual's ability to consent.

III. Information on options relating to the reporting of an incident of sexual misconduct, the effects of each option, and the methods to report an incident of sexual misconduct, including confidential and anonymous disclosure.

IV. Information on the institution's procedures for resolving sexual misconduct complaints and the range of sanctions or penalties the institution may impose on students and employees found responsible for a violation.

V. The name, contact information, and role of the confidential resource advisor.

VI. Strategies for bystander intervention and risk reduction.

VII. Opportunities for ongoing sexual misconduct prevention and awareness campaigns and programming.

**Source.** 2020, 24:18, eff. Jan. 16, 2021.

### Training for Individuals and Institutions Involved in the Disciplinary Process

#### 188–H:10 Training for Individuals Involved in the Disciplinary Process.

An individual who participates in the implementation of an institution of higher education's disciplinary process, including an individual responsible for resolving complaints of reported incidents, shall have training or experience in handling sexual misconduct complaints and the operations of the institution's disciplinary process. The training shall include, but not be limited to:

I. Information on working with and interviewing persons subjected to sexual misconduct.

II. Information on particular types of conduct that constitute sexual misconduct, including same-sex dating violence, domestic violence, sexual assault, and stalking.

III. Information on consent and the role drugs and alcohol may play in an individual's ability to consent.

IV. The effects of trauma, including any neurobiological impact on a person.

V. Cultural competence training regarding how sexual misconduct may impact students differently depending on factors that contribute to a student's cultural background, including but not limited to national origin, sex, ethnicity, religion, gender identity, gender expression, and sexual orientation.

VI. Ways to communicate sensitively and compassionately with a reporting party of sexual misconduct including, but not limited to, an awareness of responding to a reporting party with consideration of that party's cultural background and providing services to or assisting in locating services for the reporting party. Ways to communicate sensitively with a responding party, including an awareness of the emotional impact of being wrongly accused.

VII. Training and information regarding how dating violence, domestic violence, sexual assault, and stalking may impact students with developmental or intellectual disabilities.

**Source.** 2020, 24:18, eff. Jan. 16, 2021.

#### 188–H:11 Institutional Training.

Each institution of higher education shall ensure that its Title IX coordinator and members of its special or campus police force or the campus safety personnel employed by the institution are educated in the awareness of sexual misconduct and in trauma-informed response.

**Source.** 2020, 24:18, eff. Jan. 16, 2021.

### Reporting Requirements

#### 188–H:12 Data Reporting Requirements.

Annually, not later than October 1, an institution of higher education shall prepare and submit to the director, the commissioner of the department of health and human services, the clerks of the senate and house of representatives, and the chairpersons of the senate and house committees with jurisdiction over education a report that includes:

I. The total number of allegations of dating violence, domestic violence, sexual assault, and stalking reported to the institution's Title IX coordinator by a student or employee of the institution against another student or employee of the institution.

II. The number of law enforcement investigations initiated in response to complaints of sexual misconduct brought forward by students or employees of the institution against another student or employee of the institution, if known.

III. The number of students found responsible for violating an institution's policies prohibiting sexual misconduct.

IV. The number of students found not responsible for violating an institution's policies prohibiting sexual misconduct.

V. The number of disciplinary actions imposed by the institution as a result of a finding of responsibility for violating an institution's policies prohibiting sexual misconduct. The report shall provide information in an anonymous manner that complies with state and federal privacy laws.

**Source.** 2020, 24:18, eff. Jan. 16, 2021.

#### 188–H:13 Amnesty.

A reporting party or a witness that causes an investigation of sexual misconduct, or drug or alcohol use, shall not be subject to a disciplinary proceeding or sanction for a violation of the institution of higher

education's student conduct policy related to the incident unless the institution determine that the report was not made in good faith or that the violation was egregious. An egregious violation shall include, but not be limited to, taking an action that places the health and safety of another person at risk.

**Source.** 2020, 24:18, eff. Jan. 16, 2021.

### Enforcement and Penalty

#### 188–H:14 Enforcement and Penalty.

Upon determination, after reasonable notice and opportunity for a hearing, that an institution of higher education has violated or failed to carry out any provision of this chapter or any rule adopted under this chapter, the director may impose a civil penalty upon such institution for each violation not to exceed $150,000, which shall be adjusted for inflation annually, or one percent of an institution's annual operating budget, whichever is lower. The director shall use any such civil penalty funds to provide oversight of this chapter.

**Source.** 2020, 24:18, eff. Jan. 16, 2021.

#### 188–H:15 Memoranda of Understanding With Rape Crisis Centers or Domestic Violence Centers.

I. An institution of higher education shall enter into and maintain a memorandum of understanding with a rape crisis center or domestic violence center to:

(a) Assist in developing the institution's policies, programing, and training regarding sexual misconduct involving students or employees.

(b) Provide an off-campus alternative for students and employees of the institution to receive free and confidential sexual assault crisis services, including access to a sexual assault nurse examiner if available, or free and confidential domestic violence crisis services in response to sexual misconduct.

(c) Ensure that a student or employee of the institution may access free and confidential counseling and advocacy services either on campus or off campus.

(d) Ensure cooperation and training between the institution and the crisis center or agency to ensure an understanding of the roles that the institution, crisis center, and agency should play in responding to reports and disclosures of sexual misconduct against students and employees of the institution and the institution's protocols for providing support and services to such students and employees.

II. A memorandum of understanding may include an agreement, including a fee structure, between the rape crisis center or domestic violence center and the institution of higher education to provide confidential victim services. Confidential victim services may include case consultation and training fees for confidential resource advisors, consultation fees for the development and implementation of student education and prevention programs, the development of staff training and prevention curriculum, and confidential onsite office space for an advocate from a rape crisis center or domestic violence center to meet with students.

III. The commission may waive the requirements of this section in the case of an institution that demonstrates that it acted in good faith but was unable to obtain a signed memorandum.

**Source.** 2020, 24:18, eff. Jan. 16, 2021.

## CHAPTER 188–I

## SUICIDE PREVENTION IN HIGHER EDUCATION



#### 188–I:1 Student Identification Cards.

I. Each institution of higher education shall adopt a policy implementing the requirement that student identification cards shall include on either side of the cards the telephone number for the National Suicide Prevention Lifeline.

II. The requirement in paragraph I shall apply to any student identification card issued for the first time or for replacement cards issued for damaged or lost student identification cards after the effective date of this section.

III. Public and private institutions of higher learning that issue student identification cards, including the institutions of the university system of New Hampshire, the community college system, and private higher education institutions regulated by the higher education commission under RSA 21–N:8–a, II, shall comply with the requirement in paragraph I by including on either side of the student identification cards the telephone number for the National Suicide Prevention Lifeline.

**Source.** 2022, 344:3, eff. July 31, 2022.

## CHAPTER 189

## SCHOOL BOARDS, SUPERINTENDENTS, TEACHERS, AND TRUANT OFFICERS; SCHOOL CENSUS

## School Boards, Transportation and Instruction of Pupils

### 189:1 Days of School.

The school board of every district shall provide standard schools for at least 180 days in each year, or the equivalent number of hours as required in the rules of the department of education, at such places in the district as will best serve the interests of education and give to all the pupils within the district as nearly equal advantages as are practicable.

**Source.** 1883, 43:6. PS 92:1. 1919, 106:20. 1921, 85, II:1. PL 117:1. RL 135:1. RSA 189:1. 1959, 133:1. 2007, 71:1. 2011, 42:1, eff. July 8, 2011.

### 189:1–a Duty to Provide Education.

I. It shall be the duty of the school board to provide, at district expense, elementary and secondary education to all pupils who reside in the district until such time as the pupil has acquired a high school diploma or has reached age 21, whichever occurs first; or if the pupil is a "child with a disability" under RSA 186–C:2, I, until such time as the pupil has acquired a high school diploma or reached age 21 inclusive; provided, that the board may exclude specific pupils for gross misconduct or for neglect or refusal to conform to the reasonable rules of the school, and further provided that this section shall not apply to pupils who have been exempted from school attendance in accordance with RSA 193:5.

II. Elected school boards shall be responsible for establishing the structure, accountability, advocacy, and delivery of instruction in each school operated and governed in its district. To accomplish this end, and to support flexibility in implementing diverse educational approaches, school boards shall establish, in each school operated and governed in its district, instructional policies that establish instructional goals based upon available information about the knowledge and skills pupils will need in the future.

III. School boards shall adopt a teacher performance evaluation system, with the involvement of teachers and principals, for use in the school district. A school board may consider any resources it deems reasonable and appropriate, including any resources that may be provided by the state department of education. In this paragraph, "teacher" shall have the same meaning as in RSA 189:14–a, V.

IV. Pursuant to RSA 193:3, VI, a school board may execute a contract with any approved nonsectarian private school approved by the school board as a school tuition program as defined in RSA 193:3, VII to provide for the education of a child who resides in the school district, and may raise and appropriate money for the purposes of the contract, if the school district does not have a public school at the pupil's grade level and the school board decides it is in the best interest of the pupil.

**Source.** 1969, 356:10. 1973, 72:28. 1975, 22:1. 1983, 84:1. 2011, 108:1. 2013, 243:1. 2017, 182:1, eff. Aug. 28, 2017. 2023, 7:4, eff. June 25, 2023.

### 189:1–b Freedom of Assembly; Freedom of Religion.

I. On each school day, before classes of instruction officially convene in the public schools of this sovereign state, a period of not more than 5 minutes shall be available to those who may wish to exercise their right to freedom of assembly and participate voluntarily in the free exercise of religion.

II. There shall be no teacher supervision of this free exercise of religion, nor shall there be any prescribed or proscribed form or content of prayer.

**Source.** 1977, 182:1, eff. Aug. 13, 1977.

### 189:1–c Student Member.

In addition to the school board members authorized in RSA 671:4, the school board shall have at least one nonvoting student member from each public high school maintained by the local school board within its district. The powers and duties of a student member shall be as described in RSA 194:23–f.

**Source.** 1983, 111:2. 2009, 5:1, eff. June 16, 2009. 2022, 195:1, eff. Jan. 1, 2023.

### 189:1–d Definitions.

In this chapter:

I. "Attendance" means full-time participation in a program of instruction under the direction of a teacher employed by the school district. Educationally disabled home educated pupils educated at school district expense under the direction of a teacher employed by the school district shall be included.

II. "Membership" means pupils of whom attendance is expected, whether a pupil is present or absent on any given day.

III. "Average daily membership in attendance" means the aggregate half-day membership of pupils attending schools operated by a school district divided by the number of half-days of instruction offered. The average daily membership in attendance for preschool and kindergarten pupils shall be divided by the number of instructional days offered to higher-level elementary grades.

IV. "Average daily membership in residence" means the average daily membership in attendance of pupils who are legal residents of the school district pursuant to RSA 193:12 or RSA 193:27, IV and attend a state-approved public or nonpublic school as assigned by the school district in which the pupil resides, or by the state, or attend an approved chartered public school.

**Source.** 1993, 322:5. 2003, 241:9. 2008, 354:1. 2009, 297:1, eff. Sept. 29, 2009.

### 189:1–e Directory Information.

A local education agency which maintains education records may provide information designated as directory information consistent with the Family Educational Rights and Privacy Act (FERPA). Each year schools shall give parents public notice of the types of information designated as directory information. By a specified time after parents are notified of their review rights, parents shall request in writing to remove all or part of the information on their child that they do not wish to be available to the public. Such approval shall be renewed on an annual basis. Items of directory information, which is information not generally considered harmful or an invasion of privacy if disclosed, may include:

I. Name and address of a student.

II. Field of study.

III. Weight and height of athletes.

IV. Most recent previous school attended.

V. Date and place of birth.

VI. Participation in officially recognized activities and sports.

VII. Date of attendance, degrees, and awards.

**Source.** 1997, 255:1, eff. Aug. 18, 1997.

### 189:2 Reduction of Time.

If the school board of any district shall decide that, by reason of special conditions or circumstances, the maintenance of standard schools for 180 days, or the equivalent number of hours if approved by the commissioner of the department of education, in said district is undesirable, said school board may so represent in writing to the state board. If, upon hearing, the state board, or the commissioner when authorized by the state board, shall be of the opinion that the representation is true, it may reduce the time of maintaining such schools in said district to such limits as it may deem wise. Provided, however, that the state board, or the commissioner if authorized, shall not reduce the days during which schools shall be in session, as provided in RSA 189:1, on account of workshops, conventions or teachers' institutes.

**Source.** 1919, 106:20. 1921, 85, II:1. PL 117:2. RL 135:2. RSA 189:2. 1959, 133:2. 1981, 318:5. 2007, 71:1, eff. Aug. 10, 2007.

### 189:3 Other Modifications.

If any other provisions in the laws which relate to education shall be found by the state board to impose upon any district obligations which, by reason of unusual circumstances or of exceptional conditions in that district, result in an unnecessary expenditure of school money, or in a procedure which is inimical to the best interests of education therein, the state board, upon like proceedings, may suspend or modify such obligations as in its judgment may be reasonable.

**Source.** 1919, 106:20. 1921, 85, II:1. PL 117:3. RL 135:3.

### 189:4 Decisions of State Board.

All such decisions of the state board shall be made in writing, recorded by it and a copy sent for record to the clerk of the district affected thereby.

**Source.** 1919, 106:20. 1921, 85, II:1. PL 117:4. RL 135:4.

### 189:5 Repealed by 1969, 104:1, eff. June 24, 1969.

### 189:6 Transportation of Pupils.

The local school district shall furnish transportation to pupils in kindergarten through grade 8 who live more than 2 miles from the school to which they are

assigned. The local school district may furnish transportation to pupils in kindergarten through grade 8 who live 2 miles or less from the school to which they are assigned, and to pupils in grades 9 through 12, when it finds that this is appropriate, and shall furnish it when so directed by the commissioner of education.

**Source.** 1885, 43:6. PS 92:1. 1919, 106:20. 1921, 125:6. PL 117:6. RL 135:6. RSA 189:6. 1992, 159:1, eff. July 5, 1992. 2019, 181:1, eff. July 1, 2020.

### 189:6–a School Bus Safety.

The district shall instruct all pupils, who are transported by the district as provided in RSA 189:6, in the following:

I. School bus safety.

II. The evacuation procedure for buses in emergency situations.

III. Any other matters regarding the safety of pupils being transported to school.

**Source.** 1996, 19:1, eff. July 1, 1996.

### 189:6–b Transportation Between Schools and Before-and-After-School Programs.

To achieve maximum utilization of available before-and-after-school programs for school-age children, school districts shall be permitted to transport pupils between schools and legally-operating before-and-after-school programs upon the approval of the school district in the same manner as the school budget is adopted by that district. Such approval shall continue until revoked in the same manner.

**Source.** 1997, 308:2, eff. Aug. 19, 1997.

### 189:6–c Pupils Transported in a Mixed Use School Bus.

I. Pupils may be transported to or from 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. An operator of a mixed use school bus that qualifies as a commercial motor vehicle as defined in RSA 259:12–e shall hold a valid commercial driver license pursuant to RSA 263:86 appropriate for the type and class of mixed use school bus being driven.

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.

**Source.** 2011, 44:1. 2015, 100:1. 2016, 138:1, eff. July 26, 2016.

### 189:6–d Repealed by 2018, 333:2, eff. Nov. 1, 2018.

### 189:6–e Pupils Transported in a Contract Carrier.

I. A school district may contract with a contract carrier of passengers, as defined by RSA 376:2, VII, that is designed to transport 16 or more passengers including the operator, to transport pupils to or from school activities. The motor vehicle used by the contract carrier of passengers shall bear a valid state inspection sticker, comply with applicable provisions of RSA 376, and be operated by a driver who holds a valid commercial driver's license.

II. 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 that are approved by the school district. "School activities" shall not include transportation between home and school.

**Source.** 2021, 209:2, Pt. III, Sec. 1, eff. Aug. 10, 2021. 2022, 66:1, eff. July 19, 2022.

### 189:7 Repealed by 1992, 159:3, eff. July 5, 1992.

### 189:8 Limitations and Additions.

Pupils entitled to transportation in accordance with RSA 189:6 may be required to walk a distance not to exceed one mile to a school bus stop established by the local school board. Pupils residing in areas which are inaccessible by a local school district's established mode of transportation may be required to walk a distance not to exceed 1½ miles to a school bus stop, provided that the vehicle, route and schedule have been approved by the commissioner of education. School districts shall assure that pupils shall not be subject to unsafe conditions while walking the required distance to a school bus stop and that the school bus stop is established in a safe location.

**Source.** 1919, 106:20. 1921, 125:6. PL 117:7. 1933, 76:1. RL 135:8. RSA 189:8. 1992, 159:2, eff. July 5, 1992.

**189:9 Pupils in Private Schools.**

Pupils attending approved private schools, up to and including the twelfth grade, shall be entitled to the same transportation privileges within any town or district as are provided for pupils in public schools.

**Source.** 1937, 199:1. RL 135:9. RSA 189:9. 1973, 501:3, eff. June 30, 1973.

**189:9–a Pupils Prohibited for Disciplinary Reasons.**

Notwithstanding the provisions of RSA 189:6-8, the superintendent, or a representative as designated in writing, is authorized to suspend the right of pupils from riding in a school bus when said pupils fail to conform to the reasonable rules and regulations as may be promulgated by the school board. Any suspension to continue beyond 20 school days must be approved by the school board. Said suspension shall not begin until the next school day following the day notification of suspension is sent to the pupil's parent or legal guardian.

I. If a pupil has been denied the right to ride a school bus for disciplinary reasons, the parent or guardian of that pupil has a right of appeal within 10 days of suspension to the authority that suspended this pupil's right.

II. Until the appeal is heard, or if the suspension of pupil's right to ride the school bus is upheld, it shall be the parents' or guardians' responsibility to provide transportation to and from school for that pupil for the period of the suspension.

**Source.** 1973, 462:1. 1995, 174:1, eff. Jan. 1, 1996.

**189:10 Studies.**

I. The department of education shall survey school districts biennially to receive reports on compliance with this section, and shall provide the report to the president of the senate, speaker of the house of representatives, and the chairpersons of the senate and house committees with jurisdiction over education, health and human services, and children.

II. The school board shall ensure that health education, physical education to include the importance of exercise, and wellness are taught to pupils as part of the curriculum, specifically to include physiology, hygiene, health and interpersonal relationships, physical education, and wellness, as they relate to the effects of alcohol and other drugs, prevention of sexual violence, child abuse as established in the definition of "abused child" under RSA 169–C:3, II, human immunodeficiency virus (HIV)/acquired immunodeficiency syndrome (AIDS), and sexually transmitted diseases on the human system.

III. The school board shall ensure that personal finance literacy instruction designed to prepare students for success in making financial decisions is taught as part of the curriculum. Personal finance literacy skills may be embedded in an existing course or grade level program of studies.

**Source.** 1858, 208:2. GS 81:5. GL 89:5. 1883, 37:2. 1887, 52:1. PS 92:6. 1895, 40:1; 50:2. 1899, 12:1. 1903, 31:1. 1909, 49:1. 1911, 136:1. 1921, 85, II:2. PL 117:8. RL 135:10. RSA 189:10. 1959, 130:1. 1973, 242:2; 529:37. 1975, 183:1. 2008, 251:3. 2016, 56:1, eff. July 4, 2016. 2020, 38:18, eff. Sept. 27, 2020. 2022, 112:1, eff. July 26, 2022.

**189:11 Instruction in National and State History and Government, and Civics.**

I. In all public and non-public schools in the state there shall be given regular courses of instruction in the history, government and constitutions of the United States and New Hampshire, including the organization and operation of New Hampshire municipal, county and state government and of the federal government.

I–a. In all public, chartered public, non-public, and privately incorporated schools that serve as public schools in the state, there shall be given:

(a) Dedicated class time for civics in each elementary grade, which can be integrated with other subjects;

(b) A half-year course, or the equivalent of a half-year civics course in middle school (grades 6, 7, or 8);

(c) A half-year course of instruction in civics in high school required for high school graduation; and

(d) A one-year course of instruction in history, government, and constitutions of the United States and New Hampshire in high school required for high school graduation.

I–b. In this section, "civics" means a nonpartisan educational program that addresses the following:

(a) Civic knowledge, the acquisition of knowledge of the history, heritage, civic life, and civic institutions of the United States of America and the state of New Hampshire.

(b) The acquisition of skills, such as the ability to analyze text and determine the reliability and biases of sources.

(c) An understanding of the ways in which civic institutions operate and how individuals may be involved in civic life.

(d) An appreciation for free speech and civil discourse, using historical references, such as the federalist-antifederalist papers, the major debates at the Constitutional Convention of 1787, congressional and public debates leading to the Civil War, and Civil Rights debates of the 1950s and 1960s.

I–c. A school district shall develop and offer the United States and New Hampshire history, government, and constitutions course and civics courses under paragraph I–a. At a minimum, the courses shall include instruction in the following areas:

(a) Opportunities and responsibilities for civic involvement.

(b) Skills to effectively participate in civic affairs.

(c) The Declaration of Independence, U.S. Constitution, and the principles stated in the Articles and Amendments of the U.S. Constitution that provide the foundation for the democratic government of the United States.

(d) The New Hampshire constitution and the principles stated in the articles of the New Hampshire constitution that provide the foundation for the democratic government of New Hampshire.

(e) The structure and functions of the 3 branches comprising federal and state governments: legislative, judicial, and executive.

(f) The role, opportunities, and responsibilities of a citizen to engage in civic activity.

(g) The role and interactions of the state of New Hampshire and local governments within the framework of the U.S. Constitution and of extended powers and functions provided to local governments.

(h) How federal, state, and local governments address problems and issues by making decisions, creating laws, enforcing regulations, and taking action.

(i) The role and actions of government in the flow of economic activity and the regulation of monetary policy.

(j) How intolerance, bigotry, antisemitism, and national, ethnic, racial, or religious hatred and discrimination have evolved in the past, and can evolve, into genocide and mass violence, such as the Holocaust, and how to prevent the evolution of such practices.

II. As a component of instruction under this section, a locally developed competency assessment of United States government and civics that includes, but is not limited to, the nature, purpose, structure, function, and history of the United States government, the rights and responsibilities of citizens, and noteworthy government and civic leaders, shall be administered to students as part of the required high school course in history and government of the United States and New Hampshire. To be eligible for a graduation certificate, a student in a public, chartered public, non-public school, or a privately incorporated school that serves as a public school in the state, shall attain a locally sanctioned passing grade on the competency assessment, and a grade of 70 percent or better on the 128 question civics (history and government) naturalization examination developed by the 2020 United States Citizen and Immigration Services. Schools are required to provide accommodations and may modify the naturalization examination for a child with a disability in accordance with the child's individualized education program. By June 30 of each year, each school district, chartered public or non-public school, or a privately incorporated school that serves as a public school in the state, shall submit the results of the United States Citizenship and Immigration Services (USCIS) test to the department of education.

**Source.** 1923, 47:2. PL 117:9. RL 135:11. RSA 189:11. 1975, 183:2. 2016, 7:1. 2017, 107:1, eff. Aug. 7, 2017. 2018, 352:4, eff. Aug. 31, 2018. 2020, 29:14, eff. Sept. 21, 2020. 2021, 157:1, eff. July 1, 2023. 2022, 116:1, eff. July 1, 2023 at 12:01 a.m. 2023, 226:1, eff. July 1, 2023.

### 189:11–a Food and Nutrition Programs.

I. Each school board shall make at least one meal available during school hours to every pupil under its jurisdiction. Such meals shall be served without cost or at a reduced cost to any child who meets federal income eligibility guidelines. The state board of education shall ensure compliance with this section and shall establish minimum nutritional standards for such meals as well as income guidelines set for the family size used in determining eligibility for free and reduced price meals. Nothing in this section shall prohibit the operation of both a breakfast and lunch program in the same school.

II. Notwithstanding the provisions of paragraph I, the requirements thereof may be waived as hereinafter provided:

(a) The school board of any school may make application for a waiver to the state board.

(b) Requests for such waiver may be granted by the commissioner of education upon the receipt of such application and shall remain in force until the state board determines otherwise as hereinafter provided.

(c) The state board is authorized and directed to study the schools which have been granted a waiv-

er and to formulate a plan to implement the requirements of this section in such schools.

(d) The state board shall, after formulating such a plan, notify the school board granted such a waiver of the date when said waiver will terminate.

(e) After the termination of a waiver, a school board shall comply with the requirements of RSA 189:11–a, I.

(f) The state board may also grant a waiver to any school which is being phased out of use; however, such waiver may not exceed the period of one school year.

III. The state board shall prepare and distribute a curriculum for nutrition education and such curriculum shall be integrated into the regular courses of instruction for kindergarten and grades one through 12 during the school year.

IV. [Repealed.]

V. The school board of each school district shall develop and adopt a policy recommending that all pupils participate in developmentally appropriate daily physical activity, exercise, or physical education as a way to minimize the health risks created by chronic inactivity, childhood obesity, and other related health problems.

VI. The state board of education shall adopt rules, pursuant to RSA 541–A, relative to a model physical activity policy and distribute such policy to each public school in the state.

VII. (a) Each school district which participates in the National School Breakfast Program shall maintain annual statistics on the number of breakfast meals served to pupils.

(b) Such school which demonstrates to the department of education that an approved school wellness policy, as required under the Healthy, Hunger-Free Kids Act of 2010, Public Law 111–296, and the Richard B. Russell National School Lunch Act, 42 U.S.C. section 1758b is in effect, and that such school is providing breakfast meals to pupils that meet or exceed the United States Department of Agriculture's child nutrition criteria may apply for and receive a 3 cent reimbursement for each breakfast meal served to a pupil and an additional 27 cent reimbursement for each meal served to students eligible for a reduced price meal. The department of education shall request biennial appropriations in an amount sufficient to meet projected school breakfast reimbursements to ensure students eligible for reduced price meals are offered breakfast at no cost. The department of education shall prescribe forms as necessary under this paragraph.

VIII. A school lunch meal payment policy which is implemented by a school board either before or after the effective date of this section shall ensure that all students have access to a healthy school lunch, that the school district will make every reasonable effort to inform parents of the policy, and that no student will be subject to different treatment from the standard school lunch meal or school cafeteria procedures. The department of education or the state board of education, upon request of the local school board, may provide communication assistance to school districts and parents of school children regarding the school lunch meal payment policy.

**Source.** 1973, 170:1. 1977, 183:1. 1979, 82:1. 1981, 318:6. 2001, 83:2, I. 2004, 33:2. 2006, 127:2. 2016, 48:1, eff. July 2, 2016. 2019, 301:1, 2, eff. July 1, 2019; 346:321, 322, eff. July 1, 2019.

### 189:11–b Learning Disability Teacher.

The school board of each school district may provide the services of a learning disability teacher under such conditions and with such exceptions, as the state board of education may prescribe.

**Source.** 1973, 209:1, eff. Sept. 1, 1974.

### 189:11–c Cursive Handwriting and Memorization of Multiplication Tables.

Each public school district and chartered public school shall:

(a) Provide instruction in cursive writing by the end of fifth grade as a component of English language arts; and

(b) Provide instruction of the multiplication tables by the end of fifth grade; and

(c) Subparagraphs (a) and (b) may be accommodated, modified, or waived in accordance with a student's Individual Education Program (IEP) or 504 Plan.

**Source.** 2015, 41:1, eff. July 8, 2015. 2023, 17:1, eff. July 3, 2023.

### 189:11–d Drug and Alcohol Education.

I. Each public school in the state, as part of the school board-approved kindergarten through grade 12 health education program, shall provide age and developmentally appropriate drug and alcohol education to pupils based upon the needs of the pupils and the community. The school board may authorize the use of an evidence-based prevention program.

II. School boards shall develop policies authorizing school district personnel to provide pupils, parents, and legal guardians with information and resources relative to existing drug and alcohol

counseling and treatment for pupils. Nothing in this section shall require a school district to add additional programs or services, but only to provide information about available programs and services.

**Source.** 2016, 301:1, eff. Aug. 20, 2016.

### 189:12 Repealed by 1998, 389:10, eff. Oct. 1, 1998.

### 189:13 Dismissal of Teacher.

The school board may dismiss any teacher found by them to be immoral, or who has not satisfactorily maintained the competency standards established by the school district, or one who does not conform to regulations prescribed; provided, that no teacher shall be so dismissed before the expiration of the period for which said teacher was engaged without having previously been notified of the cause of such dismissal, nor without having previously been granted a full and fair hearing.

**Source.** GS 81:8. GL 89:8. PS 92:3. 1895, 51:1. 1905, 59:1. 1921, 85, II:5. PL 117:11. RL 135:13. 2005, 178:1, eff. Aug. 29, 2005.

### 189:13–a School Employee and Designated School Volunteer Criminal History Records Check.

I. (a) The employing school administrative unit, school district, or chartered public school shall complete a criminal history records check on every selected applicant for employment in any position in the school administrative unit, school district, or chartered public school prior to a final offer of employment. A public academy approved by the New Hampshire state board of education shall submit a criminal history records check on applicants for employment pursuant to this section to the division of state police. The superintendent of the school administrative unit or the chief executive officer of the chartered public school or public academy may extend a conditional offer of employment to a selected applicant, with a final offer of employment subject to a successfully completed criminal history records check. No selected applicant may be extended a final offer of employment unless the school administrative unit, school district, chartered public school, or public academy has completed a criminal history records check. The school administrative unit, school district, chartered public school, or public academy shall not be held liable in any lawsuit alleging that the extension of a conditional or final offer of employment to an applicant, or the acceptance of volunteer services from a designated volunteer, with a criminal history was in any way negligent or deficient, if the school administrative unit, school district, chartered public school, or public academy fulfilled the requirements of this section.

(b) A nonpublic school may elect to require a criminal history records check on selected applicants for employment or selected volunteers. A nonpublic school that elects to conduct a criminal history records check shall comply with the procedures and requirements set forth in this section.

(c) A school administrative unit, school district, chartered public school, or nonpublic school shall not hire any individual whose credential issued by the department of education is currently suspended or revoked, except:

(1) Currently suspended educators may be hired for prospective employment that would begin after the educator's credential is no longer suspended; and

(2) Educators whose credential was suspended or revoked in a particular endorsement area, but who maintains an active endorsement in another area, may be employed solely in the endorsement area which is not suspended or revoked.

II. The selected applicant for employment or designated volunteer with a school administrative unit, school district, chartered public school, or public academy shall submit to the employer a criminal history records release form, as provided by the division of state police, which authorizes the division of state police to conduct a criminal history records check through its state records and through the Federal Bureau of Investigation and to release, for the purposes of paragraph V, a report of the applicant's criminal history and record information, including confidential criminal history record information, to the superintendent or designee of the school administrative unit or the chief executive officer of the chartered public school or public academy. For the purposes of this section, a designee may be the assistant superintendent, the head of human resources, the personnel director, the business administrator, or the finance director. The applicant shall submit with the release form a complete set of fingerprints taken by a qualified law enforcement agency or an authorized employee of the school administrative unit, school district, chartered public school, or public academy. In the event that the first set of fingerprints is invalid due to insufficient pattern and a second set of fingerprints is necessary in order to complete the criminal history records check, the conditional offer of employment shall remain in effect. If, after 2 attempts, a set of fingerprints is invalid due to insufficient pattern, the school administrative

unit, school district, chartered public school, or public academy may, in lieu of the criminal history records check, accept police clearances from every city, town, or county where an applicant has lived during the past 5 years.

III. The department of education shall conduct training concerning the reading and interpretation of criminal history records. The superintendent or designee of the school administrative unit or the chief executive officer of the chartered public school or public academy shall complete such training and maintain the confidentiality of all criminal history records information received pursuant to this paragraph. The superintendent of the school administrative unit, or chief executive officer of the chartered public school or public academy shall review the criminal history records information in accordance with paragraph V. If the criminal history records information indicates that the applicant has been convicted of any crime or has been charged pending disposition for or convicted of a crime listed in paragraph V, the superintendent or designee of the school administrative unit or the chief executive officer of the chartered public school or public academy shall review the information for a hiring decision If the applicant's criminal history records information indicates that the applicant has been charged pending disposition for or has been convicted of a crime listed in paragraph V, the superintendent of the school administrative unit or the chief executive officer of the chartered public school or public academy shall notify the department of education.

III–a. The superintendent of the school administrative unit or chief executive officer of the chartered public school or public academy shall destroy any criminal history record information within 60 days of receipt. The superintendent of the school administrative unit or chief executive officer of the chartered public school or public academy shall destroy any criminal history record information that indicates a criminal record within 60 days of receiving said information.

IV. The school administrative unit, school district, chartered public school, or public academy may require the selected applicant for employment or designated volunteer to pay the actual costs of the criminal history records check.

V. Any person who has been charged pending disposition for or convicted of any violation or attempted violation of RSA 318–B:2 for possession of a controlled drug with the intent to sell, felony level, within the last 10 years; RSA 630:1; 630:1–a; 630:1–b; 630:2; 631:1; 632–A:2; 632–A:3; 632–A:4; 633:1; 633:7; 639:2; 639:3; 645:1, II or III; 645:2; 649–A:3; 649–A:3–a; 649–A:3–b; 649–B:3; or 649–B:4; or any violation or any attempted violation of RSA 650:2 where the act involves a child in material deemed obscene; in this state, or under any statute prohibiting the same conduct in another state, territory, or possession of the United States, shall not be hired by a school administrative unit, school district, chartered public school, or public academy. The superintendent of the school administrative unit or the chief executive officer of the chartered public school or public academy may deny a selected applicant a final offer of employment if such person has been convicted of any crime, misdemeanor or felony, in addition to those listed above. The governing body of a school district, chartered public school, or public academy shall adopt a policy relative to hiring practices based on the results of the criminal history records check and report of misdemeanors and felonies received under paragraph II. Such policy may include language stating that any person who has been convicted of any misdemeanor, or any of a list of misdemeanors, may not be hired. Such policy may also include language stating that any person who has been convicted of any felony, or any of a list of felonies, shall not be hired.

VI. In accordance with paragraphs I–V, this section shall apply to any employee, including substitute teachers, selected applicant for employment, designated volunteer, volunteer organization, or individual or entity which contracts with a school administrative unit, school district, chartered public school, or public academy to provide services, including but not limited to cafeteria workers, school bus drivers, transportation monitors, custodial personnel, or any other service where the contractor or employees of the contractor provide services directly to students of the district, chartered public school, or public academy. Substitute teachers who have undergone a criminal history records check under this section for a school administrative unit shall not be required to undergo an additional criminal history records check, if working for a school district within the same school administrative unit, unless required by the superintendent or by policies of the other school districts within that same school administrative unit. Criminal history records checks for substitute teachers within the same school administrative unit, shall be valid for a period of 3 years. The employing school administrative unit, school district, or chartered public school shall be responsible for completing the criminal history records check on the people identified in this

paragraph, except for school bus drivers, as provided in RSA 189:13–b. The cost for criminal history records checks for employees or selected applicants for employment with such contractors shall be borne by the contractor.

VII. The school administrative unit, school district, chartered public school, or public academy shall not be required to complete a criminal history records check on volunteers, provided that the governing body of a school administrative unit, school district, chartered public school, or public academy shall adopt a policy designating certain categories of volunteers as "designated volunteers" who shall be required to undergo a criminal history records check.

VII–a. A school administrative unit, school district, chartered public school, or nonpublic school shall not allow any individual whose credential issued by the department of education is currently suspended or revoked to serve as a volunteer except:

(a) Currently suspended or revoked educators shall maintain the rights afforded all members of the public to enter onto school grounds and attend school events in accordance with the law and school district policy; and

(b) Currently suspended or revoked educators who are parents and guardians of students shall maintain all the rights afforded all parents and guardians under law and school district policy.

VIII. A school administrative unit, school district, chartered public school, public academy, or school official acting pursuant to a policy establishing procedures for certain volunteers shall be immune from civil or criminal liability, provided the school administrative unit, school district, chartered public school, public academy, or school official has in good faith acted in accordance with said policy. Nothing in this paragraph shall be deemed to grant immunity to any person for that person's reckless or wanton conduct.

IX. (a) Upon placement of a candidate, as defined in RSA 189:13–c, as a student teacher, the receiving school administrative unit, school district, or chartered public school shall conduct a criminal history records check of the candidate and shall follow the same procedures for assessing the candidate's criminal history background as for applicants for employment.

(b) A receiving school administrative unit, school district, or chartered public school may conduct a criminal history records check upon a candidate, as defined in RSA 189:13–c.

X. Violations of this section shall be jointly investigated by the state police and the department of education. Information obtained through such investigations shall remain confidential and shall not be subject to RSA 91–A.

XI. In this section, "public academy" shall have the same meaning as in RSA 194:23, II.

XII. The employing school administrative unit, school district, or chartered public school shall provide every school employee whose position requires a criminal background check under this section with informational materials, training, or other education, either online or in person, concerning child sexual abuse prevention, sexual assault and harassment policy training, warning signs of child abuse, and reporting mandates. For the purposes of this paragraph, school employees include coaches and those enumerated in RSA 189:13–a, I(a), VI, and IX(a). Such training shall be completed within 30 days of employment and renewed every 2 years for all employees.

**Source.** 1993, 324:1. 1995, 260:5. 1997, 77:2. 1998, 256:6; 314:6. 2000, 214:1, 2. 2007, 319:1, 4. 2008, 323:8, 12; 354:1. 2010, 138:1; 318:1. 2013, 250:7. 2014, 55:1. 2016, 117:1. 2017, 245:2, eff. Sept. 16, 2017. 2018, 318:12, eff. Aug. 24, 2018. 2020, 38:17, 31, 32, eff. Jan. 1, 2021. 2021, 71:1, eff. July 1, 2021; 142:1, eff. Sept. 21, 2021; 206:2, Pt. VII, Secs. 1–3, eff. Jan. 1, 2022. 2022, 170:1, eff. Aug. 6, 2022; 259:1, eff. Jan. 1, 2023. 2023, 55:1, eff. July 31, 2023; 164:1, 2, eff. Sept. 26, 2023.

**189:13–b School Bus Driver Criminal History Records Check.**

I. The department shall complete a criminal history records check on all school bus drivers as would school administrative units, school districts, and chartered public schools pursuant to RSA 189:13–a.

II. The selected applicant for employment or designated volunteer with a school administrative unit, school district, chartered public school, or public academy in a school bus driver position shall submit to the department a criminal history records release form, as provided by the division of state police, which authorizes the division of state police to conduct a criminal history records check through its state records and through the Federal Bureau of Investigation and to release a report of the applicant's criminal history record information, including confidential criminal history record information, to the background check coordinator of the department, as described in RSA 21–N:8–a, I–a.

**Source.** 2020, 38:33, eff. Jan. 1, 2021. 2023, 55:2, eff. July 31, 2023.

**189:13–c Credentialing Applicant and Candidate Criminal History Records Check.**

I. Definitions:

(a) "Credentialing applicant" means a first-time applicant for a New Hampshire teaching credential.

(b) "Candidate" means a student at an institution of higher education in New Hampshire who has been selected to participate in a K–12 educator preparation program.

II. (a) The department shall complete a confidential criminal history records check on all first-time applicants for a teaching license, under RSA 21–N:9, II(s), as shall school administrative units, school districts, and chartered public schools pursuant to RSA 189:13–a.

(b) The department shall complete a confidential criminal history records check on all candidates as shall school administrative units, school districts, and chartered public schools pursuant to RSA 189:13–a. The department shall adopt rules pursuant to RSA 541–A relative to coordination with institutions of higher education in New Hampshire on procedures for conducting clearances for candidates for K–12 educator preparation programs.

(c) The criminal history records check on a candidate shall valid for a period of 3 years.

III. (a) The credentialing applicant or candidate shall submit to the department a criminal history records release form, as provided by the division of state police, which authorizes the division of state police to conduct a criminal history records check through its state records and through the Federal Bureau of Investigation and to release a report of the credentialing applicant's or candidate's criminal history record information, including confidential criminal history record information, to the background check coordinator of the department, as described in RSA 21–N:8–a, I–a.

(b) The credentialing applicant or candidate shall submit with the release form a complete set of fingerprints taken by a qualified law enforcement agency or an authorized employee of the department of education. In the event that the first set of fingerprints is invalid due to insufficient pattern, a second set of fingerprints shall be taken in order to complete the criminal history records check. If, after 2 attempts, a set of fingerprints is invalid due to insufficient pattern, the department may, in lieu of the criminal history records check, accept police clearance from every city, town, or county where an applicant or candidate has lived during the past 5 years.

IV. (a) The department shall maintain the confidentiality of all criminal history records information received pursuant to this paragraph. The department shall destroy all criminal history record information within 60 days of receiving said information.

(b) The department may require the credentialing applicant or candidate to pay the actual costs of the criminal history records check.

V. Any person who has been charged pending disposition for or convicted of any violation or attempted violation of RSA 318–B:2 for possession of a controlled drug with the intent to sell, felony level, within the last 10 years, RSA 630:1; 630:1–a; 630:1–b; 630:2; 631:1; 632–A:2; 632–A:3; 632–A:4; 633:1; 633:7; 639:2; 639:3; 645:1, II or III; 645:2; 649–A:3; 649–A:3–a; 649–A:3–b; 649–B:3; or 649–B:4; or any violation or any attempted violation of RSA 650:2 where the act involves a child in material deemed obscene in this state, or under any statute prohibiting the same conduct in another state, territory, or possession of the United States, shall not be granted a teaching credential by the department nor shall candidates be granted clearance.

VI. The department shall adopt rules, pursuant to RSA 541–A, governing the rights of a credentialing applicant and candidate and their ability to appeal a denial of a teaching credential or clearance pursuant to a charge pending disposition for or a conviction of any of the offenses under paragraph V.

VII. If a credentialing applicant had submitted to a criminal history records check within the prior 6 months as a candidate, that check shall be deemed valid for purposes of this section.

**Source.** 2021, 206:2, Pt. VII, Sec. 4, eff. Jan. 1, 2022. 2022, 36:1, eff. July 2, 2022; 259:2, eff. Jan. 1, 2023.

### 189:14 Liability of District.

The district shall be liable in the action of assumpsit to any teacher dismissed in violation of the provisions of RSA 189:13, to the extent of the full salary for the period for which such teacher was engaged.

**Source.** 1845, 225. CS 77:3. GS 81:9. GL 89:8. PS 92:4. 1905, 59:1. 1921, 85, II:6. PL 117:12. RL 135:14.

### 189:14–a Failure to be Renominated or Reelected.

I. (a) Any teacher who has a professional standards certificate from the state board of education and who has taught for one or more years in the same school district shall be notified in writing on or before April 15 or within 15 days of the adoption of the district budget by the legislative body, whichever is later, if that teacher is not to be renominated or reelected, provided that no notification shall occur

later than the Friday following the second Tuesday in May.

(b) School boards shall have a teacher performance evaluation policy.

(c) Any such teacher who has taught for 5 consecutive years or more in the teacher's current school district, or who taught for 3 consecutive years or more in the teacher's current school district before July 1, 2011, and who has been so notified may request in writing within 10 days of receipt of said notice a hearing before the school board and may in said request ask for reasons for failure to be renominated or reelected. For purposes of this section only, a leave of absence shall not interrupt the consecutive nature of a teacher's service, but neither shall such a leave be included in the computation of a teacher's service. Computation of a teacher's service for any other purposes shall not be affected by this section. The notice shall advise the teacher of all of the teacher's rights under this section. The school board, upon receipt of said request, shall provide for a hearing on the request to be held within 15 days. The school board shall issue its decision in writing within 15 days of the close of the hearing.

II. Any teacher who has a professional standards certificate from the state board of education shall be entitled to all of the rights for notification and hearing in paragraphs I(b), III, and IV of this section if:

(a) The teacher has taught for 5 consecutive years or more in any school district in the state and has taught for 3 consecutive years or more in the teacher's current school district; or

(b) Before July 1, 2011, the teacher taught for 3 consecutive years or more in any school district in the state and taught for 2 consecutive years or more in the teacher's current school district.

III. In cases of nonrenomination or nonreelection because of reduction in force, the reduction in force shall not be based solely on seniority.

IV. In all proceedings before the school board under this section, the burden of proof for nonrenewal of a teacher shall be on the superintendent of the local school district by a preponderance of the evidence. Except as provided in paragraph III, the grounds for nonrenomination and nonreelection shall be determined at the sole discretion of the school board.

V. "Teacher" means any professional employee of any school district whose position requires certification as a professional engaged in teaching. The term "teacher" shall also include principals, assistant principals, librarians, and guidance counselors.

**Source.** 1957, 285:1. 1981, 250:1. 1986, 39:1. 1995, 174:2. 2000, 16:8. 2003, 204:2, 3. 2011, 267:1, eff. July 1, 2011.

### 189:14–b Review by State Board.

I. A teacher aggrieved by such decision may either petition the state board of education for review thereof or request arbitration under the terms of a collective bargaining agreement pursuant to RSA 273–A:4, if applicable, but may not do both. Such petition must be in writing and filed with the state board within 10 days after the issuance of the decision to be reviewed. Upon receipt of such petition, the state board shall notify the school board of the petition for review, and shall forthwith proceed to a consideration of the matter. Such consideration shall include a hearing if either party shall request it. The state board shall issue its decision within 15 days after the petition for review is filed, and the decision of the state board shall be final and binding upon both parties. A petition for review under this section shall constitute the exclusive remedy available to a teacher on the issue of the nonrenewal of such teacher.

II. The state board of education shall uphold a decision of a local school board to nonrenew a teacher's contract unless the local school board's decision is clearly erroneous.

**Source.** 1957, 285:1. 2003, 204:4. 2008, 246:1. 2011, 267:2, eff. July 1, 2011.

### 189:14–c Revocation of Certification.

Any teacher certified in this state who has been convicted of any felony involving child sexual abuse images or of a felonious physical assault on a minor or of any sexual assault, shall have such teacher certification revoked by the New Hampshire state board of education.

**Source.** 1988, 257:3. 1995, 174:11. 2017, 91:5, eff. Aug. 6, 2017.

### 189:14–d Termination of Employment.

Employees of a school administrative unit or school district in this state who have been convicted of homicide, an offense involving child sexual abuse images, aggravated felonious sexual assault, felonious sexual assault, or kidnapping, in this state or under any statute prohibiting the same conduct in another state, territory or possession of the United States, shall have their employment terminated by the school administrative unit or school district after it receives notice of the conviction.

**Source.** 1993, 324:2. 2017, 91:5, eff. Aug. 6, 2017.

**189:14–e Repealed by 2022, 21:3, II, eff. June 17, 2022.**

**189:14–f Master Teacher.**

I. The state board of education shall establish the educational credential of master teacher and grant it to those persons who have fulfilled at least the following requirements:

(a) Academic preparation which shall include a master's-level degree and graduate coursework in curriculum development, supervision, and evaluation;

(b) Teaching experience, including at least 7 years during which a teaching certificate was held; and

(c) Demonstrated quality teaching to be satisfied by meeting professional criteria developed by the professional standards board and approved by the state board of education, which criteria shall include:

(1) Quantitative evaluations of teaching quality from students, parents, peers, and administrators;

(2) At least 3 classroom observations of the candidate by an independent observer from outside the candidate's school district; and

(3) At least 4 significant and rigorous written tasks and exercises.

II. The purposes of the credential are to allow experienced teachers an opportunity for professional growth and development, and to identify highly qualified, experienced teachers to serve as resources in their areas of expertise in curriculum development, mentoring, supervising, evaluating teachers, and in other areas as may be determined by their schools and school districts.

III. Master teachers shall have no authority to effectively recommend any personnel action. However, their activities may form the basis for an independent administrative performance review.

**Source.** 1998, 314:4, eff. Aug. 25, 1998.

**189:14–g Teacher Signature Certification.**

I. A teacher applying for certification through the bureau of credentialing, department of education, shall complete and submit either a written application or an electronic application, both of which shall include a declaration and verification statement to read substantially as follows:

"I hereby certify that I am the individual listed in this application, and that all information provided herein, including all accompanying documentation, is true, accurate, and complete to the best of my knowledge."

II. Any willful misrepresentation or omission of facts shall constitute just cause for denial of certification or revocation of existing certifications, and possible criminal prosecution.

**Source.** 2001, 87:1. 2003, 39:2, eff. July 1, 2003.

**189:14–h Notice to Education Support Personnel and Non-Certified School District Employees Required.**

No later than the last day of school each year, the superintendent shall notify, in writing, all education support personnel and non-certified school district employees who have completed their probationary employment period of the intent to continue or not to continue that employment into the next school year. The notification may contain special circumstances as may be defined by the employer. Nothing in this section shall be construed to amend, replace, or otherwise modify a school district's policy on dismissal, collective bargaining agreements, or any employee benefits package. The receipt of notification under this section shall not constitute a private right of action against a school district.

**Source.** 2010, 279:1, eff. Sept. 6, 2010.

**189:15 Regulations.**

The school board may, unless otherwise provided by statute or state board regulations, prescribe regulations for the attendance upon, and for the management, classification and discipline of, the schools; and such regulations, when recorded in the official records of the school board, shall be binding upon pupils and teachers.

**Source.** RS 73:2. GS 81:10. 1868, 9:1. GL 89:10. 1883, 37:3. 1887, 52:1. PS 92:5. 1898, 208:1. 1905, 59:1. 1921, 85, II:7. PL 117:13. RL 135:15. RSA 189:15. 1965, 110:1. 1969, 104:2, eff. June 24, 1969.

**189:15–a Purchase of School Insurance.**

The school board may purchase, at the expense of the district, accident or injury insurance covering all students while participating in any school activity or may make such insurance available at the option and expense of the parent or guardian of each student.

**Source.** 1969, 104:3, eff. June 24, 1969.

**189:16 Textbooks; Supplies.**

The school board shall purchase, at the expense of the city or town in which the district is situated, textbooks and other supplies required for use in the public schools; and shall loan the same to the pupils of such schools free of charge, subject to such regula-

tions for their care and custody as the board may prescribe; and shall sell such books at cost to pupils of the school wishing to purchase them for their own use.

**Source.** RS 73:11. CS 77:12. 1863, 27:21. GS 81:17. GL 89:11. 1883, 37:2. 1889, 13:1. PS 92:7. 1895, 90:3. 1921, 85, II:8. PL 117:14. RL 135:16.

### 189:16–a Menstrual Hygiene Products.

I. The school district shall make menstrual hygiene products available at no cost in all gender neutral bathrooms and bathrooms designated for females located in public middle and high schools.

II. Menstrual hygiene products shall include sanitary napkins and tampons.

III. The school district shall bear the cost of supplying menstrual hygiene products. A school district may seek grants or partner with a nonprofit or community-based organization to fulfill this obligation.

**Source.** 2019, 252:1, eff. July 17, 2019.

### 189:17 Flags; Penalty.

The school board shall supply a United States and a New Hampshire state flag; the flags shall be made not less than 5 feet in length, with a flagstaff and appliances for displaying the same, for every schoolhouse in the district in which a public school is taught, at the expense of the district. They shall prescribe rules and regulations for the proper custody, care and display of these flags; the regulations shall require that wherever possible, the United States flag and the New Hampshire state flag shall be displayed on separate staffs of equal height. When the flags are displayed on the same staff, the United States flag shall be displayed above the New Hampshire flag. The regulations shall further require that such flags shall be displayed prominently outside of the schoolhouse. When they are otherwise displayed, the flags shall be placed conspicuously in the principal room of assembly of the schoolhouse. The governing board of every private school shall supply a United States flag, such flag to be made not less than 5 feet in length, with a flagstaff and appliances for displaying same. They shall make provisions similar to those required in the public schools for the display of said flag. Any members of a school board or the governing board who shall refuse or neglect to comply with the provisions of this section shall be guilty of a violation.

**Source.** 1903, 39:1. 1921, 85, II:9. 1925, 128:1. PL 117:15. RL 135:17. RSA 189:17. 1969, 104:4. 1971, 291:1. 1973, 531:45. 1977, 51:1, eff. June 13, 1977.

### 189:17–a Flags Provided by Other Than School District.

I. State agencies, private groups, or individual citizens may provide and have placed in a public school classroom an American flag or a New Hampshire state flag, or both, and appliances for displaying such flag or flags, where none is already displayed.

II. Upon receipt of an American flag or a New Hampshire state flag, or both, and appliances donated pursuant to paragraph I of this section, a school shall display such flag or flags in a classroom where none is already displayed.

III. The local school board shall have the authority to accept the donation of flags and appliances, and to determine the location of the flags in the classrooms.

**Source.** 1988, 30:1, eff. March 24, 1988.

### 189:17–b Authority of Schools to Display the National and State Mottos.

Notwithstanding any other provision of law to the contrary, no power or authority of the state of New Hampshire, or any political subdivision thereof, shall in any way restrict, or be construed to restrict, the authority of any school or school district to display the national motto, "In God We Trust," or the state motto, "Live Free or Die," in any school building.

**Source.** 2021, 161:1, eff. Sept. 28, 2021.

### 189:18 Patriotic Exercises.

In all public schools of the state one session, or a portion thereof, during the weeks in which Memorial Day and Veterans Day fall, shall be devoted to exercises of a patriotic nature, which shall include a discussion of the words, meaning, and history of the Pledge of Allegiance and the Star Spangled Banner.

**Source.** 1897, 14:1. 1921, 85, II:23. PL 117:16. 1933, 3:1. RL 135:18. 2016, 67:1, eff. July 4, 2016.

### 189:18–a Memorial or Memorial Plaque on School Property.

The placement of a memorial or memorial plaque on school property in memory of an alumnus of a junior high school or high school in the district who died honorably during active duty shall require approval from the school board or approval of a warrant article acted upon at the annual school district meeting. The cost for design, manufacture, installation, or maintenance of the memorial shall not be a charge to the state, any municipality, or the school district. This section shall not apply to the addition of names

to already existing memorials or to plans for memorials initiated by the municipality or school district.

**Source.** 2016, 77:1, eff. July 18, 2016.

### 189:19 English Required.

In the instruction of children in all schools, including private schools, in reading, writing, spelling, arithmetic, grammar, geography, physiology, history, civil government, music, and drawing, the English language shall be used exclusively, both for the purposes of instruction therein and for purposes of general administration. Educational programs in the field of bilingual education shall be permitted under the provisions of this section with the approval of the state board of education and the local school district.

**Source.** 1919, 106:13. 1921, 85, II:10. PL 117:17. RL 135:19. RSA 189:19. 1969, 139:1. 1977, 110:1, eff. July 30, 1977.

### 189:20 Foreign Languages.

A foreign language may be taught in elementary schools; provided, that the course of study (or its equivalent) outlined by the state board in the branches named in RSA 189:19 be not abridged but be taught in compliance with the law of the state.

**Source.** 1919, 106:13. 1921, 85, II:10. PL 117:18. RL 135:20.

### 189:21 Language of Devotional Exercises in Private Schools.

The exclusive use of English for purposes of instruction and administration shall not prohibit the conduct of devotional exercises in private schools in a language other than English.

**Source.** 1919, 106:13. 1921, 85, II:10. PL 117:19. RL 135:21.

### 189:22 Copies of State Constitution and Election Laws to be Furnished.

The secretary of state is hereby directed to furnish to the state board of education such number of copies of the state constitution and the election laws as may be necessary.

**Source.** 1937, 31:1. RL 135:22.

### 189:23 Distribution.

The state board of education is hereby directed to distribute copies of the state constitution and election laws to all teachers of history and civics in the upper grades of elementary schools and to teachers of United States history in junior and senior high schools to be used by them in instructing their pupils relative to the laws governing election and voting.

**Source.** 1937, 31:1. RL 135:23.

### 189:24 Standard School.

A standard school is one approved by the state board of education, and maintained for at least 180 days in each year, or the equivalent number of hours as required in the rules of the department of education, in a suitable and sanitary building, equipped with approved furniture, books, maps and other necessary appliances, taught by teachers, directed and supervised by a principal and a superintendent, each of whom shall hold valid educational credentials issued by the state board of education, with suitable provision for the care of the health and physical welfare of all pupils. A standard school shall provide instruction in all subjects prescribed by statute or by the state board of education for the grade level of pupils in attendance.

**Source.** 1919, 106:24. 1921, 85, II:11. PL 117:20. RL 135:24. RSA 189:24. 1959, 133:3. 1971, 371:1. 2007, 71:2. 2011, 42:2, eff. July 8, 2011.

### 189:25 Elementary School.

An elementary school is any school approved by the state board of education in which the subjects taught are those prescribed by the state board for the grades kindergarten through 8 of the public schools. However, a separate organization consisting of grades 7 through 9, or any grouping of these grades, may be recognized as a junior high school and so approved by the board. Also a separate organization consisting of grades 4 through 8 or any grouping of these grades may be recognized as a middle school and so approved by the state board. Any elementary school may include a kindergarten program which, if it is provided, shall precede the other elementary grades. Provided, however, that for the purpose of eligibility for state or federal teacher loan forgiveness programs, teachers of grades 7 through 12 shall be considered teachers of secondary school.

**Source.** 1919, 106:25. 1921, 85, II:12. PL 117:21. RL 135:25. RSA 189:25. 1963, 288:1. 1971, 178:1. 2007, 71:2, eff. Aug. 10, 2007. 2022, 150:6, eff. June 7, 2022.

### 189:25–a Universal Service Fund; Definition of "School."

For the purpose of obtaining discounts pursuant to the universal service fund, otherwise known as "E-rate" discounts, as established by section 254 of the Telecommunications Act of 1996, "school" means any public or private elementary or secondary school, and any regional career and technical educational center designated under RSA 188–E, including educational programs offered at such career and technical edu-

cational centers for pre-kindergarten, adult education programs, and juvenile justice programs.

**Source.** 2001, 84:1. 2015, 252:12, eff. July 1, 2015.

### 189:26 Books Excluded.

No book shall be introduced into the public schools calculated to favor any particular religious sect or political party.

**Source.** RS 73:11, 12. CS 77:12, 13. GS 81:12. GL 89:12. PS 92:9. 1895, 50:5. 1921, 85, II:13. PL 117:22. RL 135:26.

### 189:27 Register.

The school board shall furnish to the responsible person a supply of blank registers provided by the state board.

**Source.** RS 73:2. CS 72:2. 1861, 25:68. GS 81:14, 16. GL 89:15, 17. PS 92:10. 1921, 85, II:14. PL 117:23. RL 135:27. RSA 189:27. 1967, 448:2. 1971, 149:2, eff. July 25, 1971.

### 189:27–a Computerization of Pupil Registers.

School boards, or the governing persons or governing bodies of public academies or non-public schools, may choose to maintain pupil registration and enrollment information through the use of a computer, instead of using a register provided by the state board of education. The software program for any such computer application shall be capable of providing in printed form at least the information required by RSA 186:11, VI.

**Source.** 1988, 103:1, eff. July 1, 1988.

### 189:27–b Retention of Pupil Registers.

Pupil registers, whether kept manually or by means of a computer, shall be retained as a permanent record of the school district, public academy, or nonpublic school.

**Source.** 1988, 103:1, eff. July 1, 1988. 2018, 223:2, eff. Aug. 7, 2018.

## Reports

### 189:28 Statistical Reports; Failure to File Report.

I. The governing body of every public, chartered public school, and nonpublic education agency, shall, on or before the deadline established by the department as deemed appropriate in each year, submit to the department of education those statistical reports necessary to compute the average daily membership of pupils attending each school district, and the average daily membership of pupils resident in each school district. Information relating to the fall enrollment, drop-outs, staffing census, and prior year annual safety reports as of October 1 of each school year, and other reports necessary to meet state and federal requirements as determined by the department, shall be submitted to the department of education on or before the deadline established by the department.

I–a. The governing body of every public and chartered public school shall submit the average teacher salary as of October 1 of each school year to the department of education on or before the deadline established by the department.

I–b. Nonpublic schools shall submit the following: general statistics of nonpublic schools, nonpublic school restraint and seclusion collection data, general fall report of nonpublic schools, school emergency operation plan, and other reports necessary to meet state and federal requirements as determined by the department of education. If the governing body of a nonpublic school fails to submit the statistical reports by the established deadlines for 2 consecutive years, the commissioner may request the state board of education to revoke the enabling charter or approval.

II. (a) The information needed to determine compliance with performance or accountability measures of public education agency under RSA 193–E:3 or federal law, shall be submitted to the department of education in a timely manner as determined by the department of education. The state board of education shall ensure the accuracy and completeness of such data and shall take enforcement or other actions when necessary, including verification checks, for the purpose of enforcing the provisions of this section.

(b) If the department of education requests verification of information relevant to reports submitted, the public education agency shall provide corrected information or verification within 10 business days of such request. The governing body of every public education agency shall maintain files of all records, data, and other information submitted pursuant to this section for not less than 5 years from the date of submission. The state board of education shall have access to such records, data, and information for the purpose of ensuring the accuracy of reported information.

III. Each statistical report submitted under this section by a public education agency may be submitted electronically and shall include a written or electronic certification, signed by the chief executive official that states: "I certify, under the pains and penalties of perjury, that all of the information contained in this document is true, accurate, and complete, and that the school board chairperson has received a copy of this document."

IV. The commissioner of the department of education may grant a public school, chartered public school, or nonpublic school up to a 30-day extension of the reporting deadline set forth in paragraph I, provided that such extension will not delay the statewide calculations. The commissioner of the department of education shall notify the governing body of the public education agency that all state aid to education and all federal aid, if the report is required by federal law, shall be withheld until such time as complete and accurate information is submitted.

V. The department of education shall determine the average daily membership in attendance of every public education agency, and private institution that operates an elementary or secondary school, and the average daily membership in residence of each school district, municipality within a cooperative school district, and unincorporated place.

VI. In this section, "public education agency" means a school district, city, joint maintenance agreement, chartered public school, or approved public academy.

**Source.** 1874, 43:3. GL 92:3. 1887, 50:9, 10. PS 92:13. 1895, 50:7. 1903, 5:1. 1917, 122:1. 1921, 85, II:15. PL 117:24. RL 135:28. RSA 189:28. 1991, 169:1. 1998, 389:2. 2003, 314:2. 2005, 189:1. 2006, 60:1. 2008, 354:1. 2016, 8:8, eff. Mar. 16, 2016. 2018, 223:1, eff. Aug. 7, 2018. 2021, 44:2, 3, eff. May 17, 2021.

### 189:28–a Report to the Public.

I. School boards shall publish in the next annual report, or post at the annual meeting, the general fund balance sheet from the most recently completed audited financial statements or from the most recently completed financial report filed pursuant to RSA 21–J:34, V.

II. In the case of an accumulated general fund deficit, the school board shall insert an article in the warrant recommending such action as they deem appropriate, which may include, but is not limited to, raising a sum of money for the purpose of reducing that deficit.

**Source.** 1994, 147:5, eff. July 22, 1994.

### 189:29 Repealed by 1998, 389:11, eff. Oct. 1, 1998.

### 189:29–a Records Retention and Disposition.

Members of the school board shall establish a records retention and disposition schedule for all official records of the school district. If records are microfilmed, 2 films shall be made, properly labeled and stored in 2 different locations. At least one copy shall be stored in a fireproof container. Records which have been microfilmed may be retained or destroyed in accordance with the schedule determined by the members of the board. A complete record of all records destroyed or discarded shall be maintained along with notations of the methods and dates of disposal.

**Source.** 1983, 94:1, eff. July 23, 1983.

### 189:29–b Identification and Accommodation of Gifted and Talented Students.

I. In this section, "gifted and talented student" means a student identified as having unique academic, artistic, or athletic potential according to assessments selected and administered locally.

II. Beginning in the 2022–2023 school year, every New Hampshire public school shall submit to the department of education, no later than August 1, an annual narrative report detailing the policies, programs, and procedures that are in place to identify and accommodate the unique needs of gifted and talented students. If no such policies, programs, or procedures exist, the report shall so state.

III. The department shall develop a standardized format for the submission of such information and shall reassess the format each year to ensure the required information is useful. The department shall make the reports available on its public Internet website.

**Source.** 2021, 139:1, eff. July 23, 2021.

## Superintendents

### 189:30 Repealed by 1986, 41:29, V, eff. April 3, 1988.

### 189:31 Removal of Teacher.

Superintendents shall direct and supervise the work of teachers, and for cause may remove a teacher or other employee of the district. The person so removed shall continue as an employee of the district unless discharged by the local school board but may not return to the classroom or undertake to perform the duties of such person's position unless reinstated by the superintendent.

**Source.** RS 70:10. CS 74:12. GS 79:14. GL 87:14. PS 92:2. 1919, 106:12. 1921, 85, II:4. PL 117:27. RL 135:31. RSA 189:31. 1969, 196:4. 1995, 174:3, eff. Jan. 1, 1996.

### 189:32 Appeal.

Any person so removed, unless dismissed by the school board, may appeal to the state board. The board shall prescribe the manner in which appeals shall be made, and when one is made shall investigate the matter in any way it sees fit, and make such orders as justice requires.

**Source.** 1919, 106:12. 1921, 85, II:4. PL 117:28. RL 135:32. RSA 189:32. 1969, 196:5. 1986, 41:19, eff. April 3, 1988.

### 189:33 Conferences; Reports.

It shall be the duty of superintendents to attend all conferences called by the state board. Each superintendent shall report to the proper officers any violation of the provisions of the laws of this state in reference to the public schools, school buildings, the employment of persons under 18 years of age who cannot read and speak the English language understandingly, the protection of children and violations of the rules and regulations prescribed by the state board for the efficient administration of the public schools.

**Source.** 1919, 106:12. 1921, 85, I:4. 1925, 138:2. PL 117:29. RL 135:33. RSA 189:33. 1973, 72:13, eff. June 3, 1973.

## Truant Officers

### 189:34 Appointment.

I. School boards shall appoint truant officers for their districts.

II. School board policies on truancy shall include but not be limited to:

(a) A definition of "excused absence" and a process for considering exceptions to absences not otherwise excused.

(b) A process for intervention designed to address individual cases of truancy as quickly as possible and to reduce the number of habitual truants in the school district. The process shall consider whether school record keeping practices and notification provided to parents or guardians of the child's absences have an effect on the child's attendance. The board shall provide for the participation of parents in the development of the policy. The policy shall include early parental involvement in the intervention process. The policy shall also designate an employee in each school as the person responsible for truancy issues.

**Source.** 1852, 1278. CS 78:2. GS 83:7. GL 91:7. 1881, 42:1. PS 92:15. 1899, 70:1. 1921, 85, II:17. PL 117:30. RL 135:34. 2010, 9:1. 2013, 249:14, eff. Sept. 1, 2013.

### 189:35 Term; Removal.

Truant officers shall hold office for one year and until their successors are appointed, but they may be removed by the school board at any time for cause.

**Source.** 1881, 42:2. PS 92:16. 1921, 85, II:18. PL 117:31. RL 135:35.

### 189:35–a Truancy Defined.

I. For the purposes of this subdivision, "truancy" means an unexcused absence from school or class and "unexcused absence" is an absence which has not been excused in accordance with RSA 189:34, II(a).

II. Ten half days of unexcused absence during a school year shall constitute habitual truancy.

III. A school district shall define the term "half day of absence."

IV. Nothing in this section shall affect or limit a school district's power to adopt bylaws concerning truancy pursuant to RSA 193:16.

V. Nothing in this section shall affect or limit the duties of a parent pursuant to RSA 193:1.

VI. School district attendance records shall be presumed to be true and accurate unless evidence to the contrary is presented.

**Source.** 2005, 7:1. 2010, 9:2, eff. July 6, 2010.

### 189:36 Duties.

I. Truant officers shall, when directed by the school board, enforce the laws and regulations relating to truants and children between the ages of 6 and 18 years not attending school or who are not participating in an alternative learning plan under RSA 193:1, I(h); and the laws relating to the attendance at school of children between the ages of 6 and 18 years; and shall have authority without a warrant to take and place in school any children found employed contrary to the laws relating to the employment of children, or violating the laws relating to the compulsory attendance at school of children under the age of 18 years, and the laws relating to child labor. No home school pupil nor any person between the ages of 6 and 18 who meets any of the requirements of RSA 193:1, I(c)–(h) shall be deemed a truant.

II. A truant officer or school official shall not file a petition alleging that the child is in need of services pursuant to RSA 169–D:2, II until all steps in the school district's intervention process under RSA 189:34, II have been followed.

**Source.** 1852, 1278. CS 78:2. GS 83:7. GL 91:7. 1881, 42:3. PS 92:17. 1899, 70:2. 1911, 162:16. 1921, 85, II:19. PL 117:32. RL 135:36. RSA 189:36. 1973, 72:29. 2007, 350:4. 2010, 9:3. 2011, 224:281, eff. Sept. 30, 2011.

### 189:37 Additional Officers.

The state board may require school boards to appoint additional truant officers if in its judgment such additional officers are necessary; and may require the school board of any school district to remove any truant officer found by it to be incompetent, and to appoint a competent successor; and upon the failure or neglect of the school board to do so, it

may appoint such truant officer and fix compensation, which shall be paid by the district.

**Source.** 1911, 162:18. 1921, 85, III:33. PL 117:34. 1927, 29:1. RL 135:38. 1995, 174:4, eff. Jan. 1, 1996.

### School Census

**189:38 Repealed by 1992, 29:1, eff. June 2, 1992.**

### Teachers

**189:39 How Chosen.**

Superintendents shall nominate and school boards elect all teachers employed in the schools in their school administrative unit, providing such teachers hold a valid educational credential issued by the state board of education.

**Source.** RS 70:10. CS 74:12. GS 79:14. GL 87:14. PS 92:2. 1919, 106:12. 1921, 85, II:4. PL 117:35. RL 135:39. RSA 189:39. 1971, 371:2, eff. Aug. 27, 1971.

**189:39–a Critical Staffing Shortages.**

Notwithstanding a determination of critical staffing shortage made by the department of education, a superintendent, with the approval of the local school board, may determine that a critical staffing shortage exists in one or more specific teaching areas within the school district. The department of education shall be notified of any critical staffing shortages which have been determined in a school district within 30 days of such determination.

**Source.** 2002, 117:1, eff. July 2, 2002.

**189:39–b One-Year Certificate of Eligibility.**

I. The local school board, in consultation with the superintendent, may offer a one-time certificate of eligibility, for a one-year period which may be extended by the local school board for a second consecutive year, to any person interested in employment as an educator on a full-time or part-time basis, without requiring a person to possess an educator credential provided that such person:

(a) Possesses at least a bachelor's degree from an accredited postsecondary institution.

(b) Is subject to a criminal history records check pursuant to RSA 189:13–a.

(c) Is qualified for the position by relevant experience and education.

I–a. The provision of subparagraph I(a) shall not apply to an individual applying to teach a course in a CTE specialty area.

II. The school board, with input from the superintendent, shall formulate the terms of the certificate of eligibility which shall contain no tenure provisions.

III. The department of education shall be notified of the issuance of all certificates of eligibility within 30 days of the date of issuance.

III–a. The professional code of ethics and the professional code of conduct shall apply to all individuals possessing a certificate of eligibility under this section.

IV. Any person who has had an educator credential, educator license, or other educator certification revoked under RSA 189:14–c or RSA 189:14–d, or who has been rendered ineligible to be employed as an educator under another provision of law, shall not be eligible under this section.

V. No person shall be offered more than one certificate of eligibility under this section.

**Source.** 2002, 117:1. 2010, 318:2, eff. Sept. 18, 2010. 2021, 28:1, eff. July 5, 2021. 2023, 64:1, eff. July 31, 2023.

**189:40 School Sessions.**

In the absence of express contract, a session of 3 hours in the forenoon and 3 hours in the afternoon shall constitute a school day, 5 such days a school week, and 4 such weeks a school month, in the public schools.

**Source.** 1883, 33:1. PS 92:20. 1921, 85, II:21. PL 117:36. RL 135:40.

**189:41 Repealed by 1969, 104:5, eff. June 24, 1969.**

**189:42 Registers.**

The person responsible shall make the entries in the register required by the state board of education, and at the close of the term return the register to the school board.

**Source.** 1861, 250:81. GS 81:14, 15. GL 89:15, 16. PS 92:11. 1921, 85, II:24. PL 117:38. RL 135:42. RSA 189:42. 1967, 448:3. 2003, 41:1, eff. July 5, 2003.

### School Administrative Units

**189:43 to 189:47–a Repealed by 1996, 298:5, II, eff. Aug. 9, 1996.**

**189:48 Repealed by 1986, 41:29, V, eff. April 3, 1988.**

### Child Benefit Services

**189:49 Optional Services.**

The school board of any school district may provide the following child benefit services for pupils in each public and nonpublic school in the district or in another school district in this state:

I. School physician services under the provisions of RSA 200:26-41.

II. School nurse services.

III. School health services.

IV. School guidance and psychologist services.

V. Educational testing services.

VI. Transportation under the provisions of RSA 189:9.

VII. Textbooks and instructional materials.

VIII. Health and welfare services equivalent to those provided by public schools including speech correction and remedial and diagnostic services.

IX. Driver education.

X. Educational television services.

XI. Programs for the deaf, blind, emotionally disturbed, children with disabilities; audio-visual aids; and programs for the improvement of the educational studies of pupils with disabilities.

XII. Physical education.

XIII. Hot lunch program.

In the event that a court rules invalid one or more of the above services the other services shall not be deemed void but shall continue in effect.

**Source.** 1970, 51:1. 1971, 499:4; 566:1. 1973, 501:1. 1990, 140:4, eff. June 18, 1990.

### 189:49–a Fingerprinting Program.

I. The state board of education in conjunction with the department of safety shall adopt a model fingerprinting program which shall be made available to the board of education of each school district in the state. The state board of education shall encourage each school district to adopt this program in the interest of uniformity throughout the state.

II. If the school district adopts the fingerprinting program it shall be for the sole purpose of providing a means by which a missing child might be located or identified and shall be operated on the following basis:

(a) No student shall be required to participate in the program.

(b) In order for a student to participate in the program, the parents, custodial parent, guardian, legal custodian, or other person responsible for the student shall authorize the student's participation by signing a form that shall be developed by the board of education or by the principal or chief administrative officer of the nonpublic school for the program.

(c) All fingerprint cards shall be given to the parents, custodial parent, guardian, legal custodian, or other person responsible for a student after the fingerprinting of the student. A copy of a fingerprint card may be retained by a school or school district, if written permission is given by the student's parent, guardian, or legal custodian. The student, upon reaching the age of 18, or the parent at any time, shall have the right to have the card returned and no copy shall be retained by the school or school district.

(d) The name, sex, hair and eye color, height, weight, and date and place of birth of the student and other information may be indicated on the fingerprint sheet or card.

III. Fingerprints obtained pursuant to this section, or any medical, psychological, guidance, counseling, or other information that is derived from the use of the fingerprints, shall not be admissible as evidence against the minor who is the subject of the fingerprints in any proceeding in any court, and shall not be used against the minor after the minor reaches the age of majority.

IV. A principal or chief administrative officer of a public school, or any employee of a public school who is authorized to handle school records, shall provide access to the relevant records of a student to a law enforcement officer who indicates that an investigation is being conducted by such officer and that the student is or may be a missing child. Copies of information in the relevant records of a student shall be provided, upon request, to the law enforcement officer, if prior approval is given by the student's parent, guardian, or legal custodian. Information obtained by the officer shall be used solely in the investigation of the case. The information may be used by law enforcement agency personnel in any manner that is appropriate to solving the case, including, but not limited to, providing the information to other law enforcement officers and agencies and to the office of the attorney general, division of public protection, bureau of criminal justice, for purposes of computer integration pursuant to RSA 7:10–a.

**Source.** 1985, 318:5. 1995, 174:9, 10, eff. Jan. 1, 1996.

### 189:50 Appropriations.

A town may raise and appropriate money to carry the provisions of this subdivision into effect.

**Source.** 1970, 51:1, eff. May 4, 1970.

**189:51 Limitation.**

Nothing in this subdivision shall be construed to allow either a deletion or diminution of a program or purchase adopted through normal budgetary procedure.

**Source.** 1971, 566:2, eff. Sept. 29, 1971.

**Literacy Instruction and Dropout Prevention**

**189:52 Repealed by 1995, 288:3, I, eff. July 1, 1995.**

**189:53 Literacy Skill Development in Elementary Grades.**

All school districts which provide elementary education shall have instruction in literacy for all students through grade 3, including instruction in reading, writing, speaking, listening, reasoning, and mathematics. All instruction shall be designed to assist students to achieve literacy and to provide the opportunity for each child to learn according to such child's needs and abilities as set forth by the state board of education in the minimum standards for New Hampshire public elementary schools.

**Source.** 1988, 274:3. 1995, 174:12, eff. Jan. 1, 1996.

**189:54 Repealed by 1997, 13:1, eff. June 21, 1997.**

**189:55 Repealed by 2003, 288:2, eff. Sept. 16, 2003.**

**189:56 Repealed by 1995, 288:3, II, eff. July 1, 1995.**

**189:57 Coordination With Special Population Programs.**

Educational and youth employment programs serving special population students shall be coordinated with the requirements of this subdivision. All such coordinating efforts shall not exempt participating school districts or public or private employers from meeting all requirements of state or federal laws.

**Source.** 1988, 274:3, eff. July 1, 1989.

**189:58 Rulemaking.**

The state board of education shall adopt rules, pursuant to RSA 541–A, relative to the procedures and guidelines necessary to effect the purposes of this subdivision.

**Source.** 1988, 274:3, eff. June 29, 1988.

**Dropout Prevention and Dropout Recovery Program**

**189:59 Dropout Prevention and Dropout Recovery Program Established.**

I. There is hereby established a dropout prevention and dropout recovery program in the department of education. The department is authorized to provide the services described in this subdivision to the state and to public, quasi-public, and private entities to assist pupils in successfully completing high school. The program shall:

(a) Provide and coordinate services designed to assist pupils in the successful completion of high school.

(b) Encourage individual, corporate, and state support and involvement to promote employment opportunities for New Hampshire's students.

(c) Render assistance in ensuring student placement in quality jobs with ample career opportunities.

(d) Encourage students to pursue postsecondary education by assisting in securing appropriate part-time work to accompany that education.

(e) Encourage lifelong learning by introducing students to the importance of skills training and demonstrating how learning is relevant to skills necessary in the workplace.

(f) Provide tutoring, study skills training, and instruction leading to successful completion of secondary school, including dropout prevention strategies through a school-site mentor.

(g) Provide alternative secondary school services with high academic standards.

(h) Deliver pre-employment and work maturity skill training, paid and unpaid work, work-based learning experiences that teach all aspects of industry-specific and general workplace competencies, including internships, job shadowing, and school sponsored workplace mentoring.

(i) Provide opportunities which may include community service and peer- centered activities encouraging responsibility and other positive social behaviors during non-school hours, including linking youth and adult mentoring, as appropriate.

(j) Provide support services and transitional links that assist students in the elimination of barriers.

(k) Establish an 85 percent graduation rate, and a 90 percent return to school rate as performance goals for program participants most likely to drop out. "Graduation rate" means the number of sen-

iors who receive a diploma from a high school divided by the number enrolled in this program at such high school. "Return to school rate" means the percentage of students in grades 9–11 enrolled in the program who return to school for the next school year.

II. The commissioner of the department of education shall adopt rules pursuant to RSA 541–A, relevant to the implementation of this subdivision. Such rules shall include:

(a) Procedures for securing funds for participating entities.

(b) Methods for tracking compliance with program goals and reporting performance outcomes.

**Source.** 2003, 288:1, eff. Sept. 16, 2003.

**189:60 Repealed by 2020, 37:4, XIV, eff. July 29, 2020.**

**189:61 Local Matching Funds Required.**

A school district may receive dropout prevention and dropout recovery services by a favorable vote of its legislative body authorizing the expenditure of not less than 10 percent of estimated program costs for such school district.

**Source.** 2003, 288:1, eff. Sept. 16, 2003.

**189:62 Eligible Program Participants.**

I. All programs shall be eligible to apply for dropout prevention and dropout recovery programs and funds under this subdivision, provided that such programs and funds shall be targeted, to the extent available, to those high schools with the highest dropout rate, as determined by the department of education.

II. Program participants shall be certified by the department of education according to the following criteria:

(a) Programs which focus on youth development strategies.

(b) A minimum of 3 years and preferably 10 or more years of experience at the state and national levels in providing dropout prevention and dropout recovery programming to at-risk youth.

(c) Experience in program delivery in both rural and city high schools in New Hampshire.

(d) Programs shall be existing operations with boards of directors.

(e) Documentable accountability and performance measures with supporting data.

(f) State or national recognition for dropout prevention or dropout recovery.

(g) Ability to provide multiple sources of funds for the purposes of expansion and efficiency of service delivery.

(h) Programs which are members of the National Career Association.

(i) Provide nationally normed outcomes in the following areas:

(1) Basic academic competencies.

(2) Career development.

(3) Job attainment.

(4) Leadership and self development.

(5) Personal skills.

(6) Job survival competencies.

(j) Connection with an established tracking and reporting system.

**Source.** 2003, 288:1, eff. Sept. 16, 2003.

**189:63 Repealed by 2020, 37:4, XIV, eff. July 29, 2020.**

**Emergency Operations Plans**

**189:64 Emergency Operations Plans.**

I. Every public, chartered public, and nonpublic school shall develop a site-specific school emergency operations plan which is based on and conforms to the Incident Command System and the National Incident Management System and submit such plan to the director of homeland security and emergency management, department of safety by October 15 of each year. Access to all plans shall be provided to the department of education.

II. (a) The plan shall address hazards including but not limited to acts of violence, biological incidents, civil unrest, cyber incidents, drought, earthquakes, extreme temperatures, floods, hurricane/severe storm, internal and external hazardous materials releases, medical emergencies, structural fire, threats, tornadoes, wildfire, winter storm, or any other hazard deemed necessary by school officials and local emergency authorities.

(b) Schools that are located within the emergency planning zone shall address radiological emergencies within the emergency operations plan, as required by the Federal Emergency Management Agency (FEMA) in NUREG 0654.

III. The plan shall provide that at least 4 of the currently required number of fire evacuation drills shall be emergency, all-hazard response drills of which at least one shall test emergency response to

an armed assailant. The armed assailant drill may be discussion based. The types of all-hazard drills and exercises and the manner and time in which these activities take place shall be determined by the school in collaboration with local public safety, emergency management, and public health officials. The school may include students and first responders in all-hazard response drills or activities, as appropriate. The first emergency operations plan drill shall be conducted within one year of the completion of the plan.

IV. If the school has a building schematic floor plan diagram, the school may, with the approval of the local school board, submit the diagram to the division of homeland security and emergency management, department of safety, in a commonly used digital format. Submission of the diagram will enable the state to better prepare, respond, and mitigate potentially dangerous conditions should the need arise.

V. Each school shall provide the plan to, and coordinate the plan with, local emergency authorities and with the emergency operations plan in the municipality in which the school is located. Each school shall review its plan at least annually and update the plan, as necessary, and shall submit the updated plan to the director of homeland security and emergency management, department of safety by October 15. If after review, the plan is unchanged, the school shall notify the department of safety by October 15 that the plan is unchanged.

VI. (a) The director of homeland security and emergency management, department of safety shall assist schools in conducting training for and providing support to schools districts in the development, implementation, and review of an emergency operations plan, upon request.

(b) For just cause, the director of homeland security and emergency management, department of safety may grant a school district, city, chartered public school, public academy, or nonpublic school up to a 30–day extension to the reporting deadline. The director may further extend the deadline when unusual or unforeseen circumstances prevent a school district, city, chartered public school, public academy, or nonpublic school from submitting the required reports under paragraph V before the expiration of such extension.

(c) If a school district, city, chartered public school, public academy, or nonpublic school fails to submit its emergency operations plan by the established deadline for 2 consecutive years the director of homeland security and emergency management, department of safety shall notify the department of education.

**Source.** 2007, 92:1. 2014, 87:1. 2017, 14:1, eff. June 16, 2017. 2018, 35:1, eff. July 14, 2018. 2019, 20:1, eff. July 14, 2019. 2022, 187:2, eff. June 17, 2022.

## Student and Teacher Information Protection and Privacy

### 189:65 Definitions.

In this subdivision:

I. "Biometric" means a record of one or more measurable biological or behavioral characteristics that can be used for automated recognition of an individual. Examples include fingerprints, retina and iris patterns, voiceprints, DNA sequence, facial characteristics, and handwriting.

II. "Board" means the state board of education.

III. "Department" means the department of education.

IV. "District", "school", or "school district" means a school district, including the school administrative unit to which it may belong, and the high school educational program at the state prison or county jail in which an inmate under the age of 21 inclusive or in which an inmate under the age of 21 inclusive who is a "child with a disability" under RSA 186–C:2, I, is participating.

V. "Disclosure" means permitting access to, revealing, releasing, transferring, or otherwise communicating, personally identifiable information contained in education records to any party, by any means, including oral, written, or electronic.

VI. "Statewide longitudinal data system" (SLDS) means the department's statewide longitudinal data system containing student information collected pursuant to RSA 193–E:5 and the state longitudinal database created to house data pursuant to RSA 193–E:5.

VII. "Student personally-identifiable data" means:

(a) The student's name.

(b) The name of the student's parents or other family members.

(c) The address of the student or student's family.

(d) Indirect identifiers, including the student's date of birth, place of birth, social security number, email, social media address, or other electronic address, telephone number, credit card account

number, insurance account number, and financial services account number.

(e) Other information that, alone or in combination, is linked or linkable to a specific student that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty.

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.

VIII. "Testing entity" means a third party, within or outside of New Hampshire, contracted to administer the state assessment as defined in RSA 193–C:6.

IX. "Workforce information" means information related to unemployment insurance, wage records, unemployment benefit claims, or employment and earnings data from workforce data sources, such as state wage records, wage record interchange system (WRIS) data or the federal employment data exchange system (FEDES).

**Source.** 2014, 68:1. 2015, 71:2, eff. Aug. 1, 2015. 2023, 7:5, eff. June 25, 2023.

### 189:66 Data Inventory and Policies Publication.

I. The department shall create, maintain, and make publicly available an annually-updated index of data elements containing definitions of individual student personally-identifiable data fields or fields identified in RSA 189:68 currently in the SLDS or any other database maintained by the department, or added or proposed to be added thereto, including:

(a) Any individual student personally-identifiable data required to be reported by state or federal law.

(b) Any individual student personally-identifiable data which has been proposed for inclusion in the SLDS with a statement explaining the purpose or reason for the proposed collection.

(c) Any individual student personally-identifiable data that the department collects or maintains.

(d) Any data identified in RSA 189:68.

II. The department shall develop a detailed data security plan to present to the state board and the commissioner of the department of information technology. The plan shall include:

(a) Privacy compliance standards.

(b) Privacy and security audits.

(c) Breach planning, notification, and procedures.

(d) Data retention and disposition policies.

III. The security plan shall:

(a) Require notification as soon as practicable to:

(1) Any teacher or student whose personally identifiable information could reasonably be assumed to have been part of any data security breach, consistent with the legitimate needs of law enforcement or any measures necessary to determine the scope of the breach and restore the integrity of the data system; and

(2) The governor, state board, senate president, speaker of the house of representatives, chairperson of the senate committee with primary jurisdiction over education, chairperson of the house committee with primary jurisdiction over education, and commissioner of the department of information technology.

(b) Require the department to issue an annual data security breach report to the governor, state board, senate president, speaker of the house of representatives, chairperson of the senate committee with primary jurisdiction over education, chairperson of the house committee with primary jurisdiction over education, and commissioner of the department of information technology. The breach report shall also be posted to the department's public Internet website and shall not include any information that itself would pose a security threat to a database or data system. The report shall include:

(1) The name of the organization reporting the breach.

(2) Any types of personal information that were or are reasonably believed to have been the subject of a breach.

(3) The date, estimated date, or date range of the breach.

(4) A general description of the breach incident.

(5) The estimated number of students and teachers affected by the breach, if any.

(6) Information about what the reporting organization has done to protect individuals whose information has been breached.

IV. The department and each local education agency 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 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.

V. The department shall establish minimum standards for privacy and security of student and employee data, based on best practices, for local education agencies. Each local education agency shall develop a data and privacy governance plan which shall be presented to the school board for review and approval by June 30, 2019. The plan shall be updated annually and presented to the school board. The plan shall include:

(a) An inventory of all software applications, digital tools, and extensions. The inventory shall include users of the applications, the provider, purpose, publisher, privacy statement, and terms of use.

(b) A review of all software applications, digital tools, and extensions and an assurance that they meet or exceed standards set by the department.

(c) Policies and procedures for access to data and protection of privacy for students and staff including acceptable use policy for applications, digital tools, and extensions.

(d) A response plan for any breach of information.

(e) A requirement for a service provider to meet or exceed standards for data protection and privacy.

(f) A provision that students participating in career exploration or career technical education may, with written parental consent, register for technology platforms and services to be used as part of the student's approved program of study, which require the provision of personally identifiable information. Copies of written parental consent shall be retained as part of a student's educational record.

**Source.** 2014, 68:1. 2015, 136:1, eff. Aug. 11, 2015. 2018, 252:1, 2, eff. Aug. 11, 2018. 2020, 37:15, 16, eff. July 29, 2020. 2023, 225:2, eff. Oct. 3, 2023.

### 189:67 Limits on Disclosure of Information.

I. A school shall, on request, disclose student personally-identifiable data about a student to the parent, foster parent, or legal guardian of the student under the age of 18 or to the eligible student.

II. A school or the department may disclose to a testing entity the student's name, unique pupil identifier, and birth date for the sole purpose of identifying the test taker. Except when collected in conjunction with the SAT or ACT:

(a) When such tests are used for the purpose of the state assessment as defined in RSA 193–C:6, the data shall be maintained by the testing entity in accordance with RSA 193–C:12.

(b) The data shall not be disclosed by the testing entity to any other person, organization, entity, or government or any component thereof, other than the parent or guardian, the department, school or school district, and shall not be used by the testing entity for any other purpose except as provided in RSA 193–C:12.

II–a. Students taking the SAT or ACT, when such tests are used for the purpose of the state assessment as defined in RSA 193–C:6, may opt to have all personal information destroyed by the testing entity, following the completion and verification of the test.

III. Except as provided in RSA 193–C:12 or when collected in conjunction with the SAT or ACT, when such tests are used for the purpose of the state

assessment as defined in RSA 193–C:6, neither a school nor the department shall disclose or permit the disclosure of student or teacher personally-identifiable data, the unique pupil identifier, or any other data listed in RSA 189:68, I to any testing entity performing test-data analysis. The testing entity may perform the test analysis but shall not connect such data to other student data.

IV. Except as provided in RSA 193–E:5, or pursuant to a court order signed by a judge, the department shall not disclose student personally-identifiable data in the SLDS or teacher personally-identifiable data in other department data systems to any individual, person, organization, entity, government or component thereof, but may disclose such data to the school district in which the student resides or the teacher is employed.

V. Student personally-identifiable data shall be considered confidential and privileged and shall not be disclosed, directly or indirectly, as a result of administrative or judicial proceedings.

VI. The department shall report quarterly on its website the number of times it disclosed student personally-identifiable data to any person, organization entity or government or a component thereof, other than the student, his or her parents, foster parents or legal guardian and the school district, early childhood program or post-secondary institution in which the student was enrolled at the time of disclosure; the name of the recipient or entity of the disclosure; and the legal basis for the disclosure.

**Source.** 2014, 68:1. 2015, 71:3. 2016, 69:1, eff. July 4, 2016. 2019, 323:2, 3, eff. Oct. 12, 2019.

### 189:68 Student Privacy.

I. Except as provided in RSA 193–C:12, the department shall not collect or maintain the following data in the SLDS:

(a) Name of the student's parents or other family members.

(b) Address of the student or student's family.

(c) Student email or other electronic address.

(d) Student or family telephone number.

(e) Student or parent credit card account number, insurance account number, or financial services account number.

(f) Juvenile delinquency records.

(g) Criminal records.

(h) Medical and dental insurance information.

(i) Student birth information, other than birth date and town of birth.

(j) Student social security number.

(k) Student biometric information.

(l) Student postsecondary workforce information including the employer's name, and the name of a college attended outside of New Hampshire.

(m) Height and weight.

(n) Body mass index (BMI).

(o) Political affiliations or beliefs of student or parents.

(p) Family income, excluding free and reduced lunch program eligibility as determined by Food Nutrition Services of the United States Department of Agriculture.

(q) Mother's maiden name.

(r) Parent's social security number.

(s) Mental and psychological problems of the student or the student's family.

(t) Sex behavior or attitudes.

(u) Indication of a student pregnancy.

(v) Religious or ethical practices, affiliations, or beliefs of the student or the student's parents.

II. No school shall require a student to use an identification device that uses radio frequency identification, or similar technology, to identify the student, transmit information regarding the student, or monitor or track the student without approval of the school board, after a public hearing, and without the written consent of a parent of legal guardian of an affected student which may be withheld without consequence.

III. No school shall install remote surveillance software on a school supplied computing device provided to a student without the approval of the school board, after a public hearing and without the written consent of a parent, foster parent, or legal guardian of the affected student which may be withheld without consequence. In this paragraph, "surveillance" means observing, capturing images, listening, or recording and shall not include locating equipment when there is reason to believe the equipment is about to be or has been stolen or damaged.

IV. No school shall record in any way a school classroom for the purpose of teacher evaluations 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.

V. (a) Nothing in this section shall preclude the use of audio or video recordings for use with or by a child with a disability, or by such child's teacher or service provider when the child's individualized edu-

cation program or accommodation plan includes audio or video recording as part of the child's special education, related services, assistive technology service, or methodology, so long as such audio or video recordings are made, used, and maintained in accordance with the Family Education Rights and Privacy Act, 20 U.S.C. section 1232g, and applicable state law.

(b) Nothing in this section shall preclude the use of audio or video recordings for student instructional purposes.

(c) Nothing in this section shall preclude the use of audio or video recordings for use in the instruction of teacher interns or student teachers after written notification to the parent or legal guardian of each affected student as to the purpose of, and privacy policy for, the recordings.

**Source.** 2014, 68:1. 2015, 71:4. 2016, 87:1, eff. May 19, 2016. 2019, 323:4, eff. Oct. 12, 2019.

### 189:68–a Student Online Personal Information.

I. For the purposes of this section:

(a) "Operator" means the operator of an Internet website, online service, online application, or mobile application with actual knowledge that the site, service, or application is used primarily for K–12 school purposes and was designed and marketed for K–12 school purposes.

(b) "Covered information" means personally identifiable information or materials, in any media or format that meets any of the following:

(1) Is created or provided by a student, or the student's parent or legal guardian, to an operator in the course of the student's, parent's, or legal guardian's use of the operator's site, service, or application for K–12 school purposes.

(2) Is created or provided by an employee or agent of the K–12 school, school district, local education agency, or county office of education, to an operator.

(3) Is gathered by an operator through the operation of a site, service, or application described in subparagraph (a) and is descriptive of a student or otherwise identifies a student, including, but not limited to, information in the student's educational record or email, first and last name, home address, date of birth, telephone number, unique pupil identifier, social security number, financial or insurance account numbers, email address, other information that allows physical or online contact, discipline records, test results, special education data, juvenile dependency records, grades, evaluations, criminal records, medical records, health records, biometric information, disabilities, socioeconomic information, food purchases, political affiliations, religious information, text messages, documents, other student identifiers, search activity, photos, voice recordings, or geo-location information.

(c) "K–12 school purposes" means purposes that customarily take place at the direction of the K–12 school, teacher, or school district or aid in the administration of school activities, including, but not limited to, instruction in the classroom or at home, administrative activities, and collaboration between students, school personnel, or parents, or are for the use and benefit of the school.

(d) "Online service" includes cloud computing services, which shall comply with this section if they otherwise meet the definition of an operator.

II. (a) No operator shall knowingly engage in any of the following activities with respect to their site, service, or application:

(1) Targeted advertising on the operator's site, service, or application, or targeted advertising on any other site, service, or application when the targeting of the advertising is based upon any information, including covered information and persistent unique identifiers, that the operator has acquired because of the use of that operator's site, service, or application.

(2) Use of information, including persistent unique identifiers, created or gathered by the operator's site, service, or application, to amass a profile about a K–12 student.

(3) Sale, lease, rent, trade, or otherwise make available a student's information, including covered information. This prohibition does not apply to the purchase, merger, or other type of acquisition of an operator by another entity, provided that the operator or successor entity continues to be subject to the provisions of this section with respect to previously acquired student information.

(4) Disclosing protected information unless the disclosure is made to respond to or participate in judicial process.

(b) An operator shall:

(1) Implement and maintain reasonable security procedures and practices appropriate to the nature of the covered information, and protect that information from unauthorized access, destruction, use, modification, or disclosure.

(2) Delete a student's covered information if the school or district requests deletion of data under the control of the school or district.

(c) Nothing in this section shall prohibit an operator from using de-identified student covered information as follows:

(1) Within the operator's site, service, or application or other sites, services, or applications owned by the operator to improve educational products.

(2) To demonstrate the effectiveness of the operator's products or services, including in its marketing.

(d) Nothing in this section shall prohibit an operator from sharing aggregated de-identified student covered information for the development and improvement of educational sites, services, or applications.

III. This section shall not apply to general audience Internet websites, general audience online services, general audience online applications, or general audience mobile applications, even if login credentials created for an operator's site, service, or application may be used to access those general audience sites, services, or applications.

IV. This section shall not limit Internet service providers from providing Internet connectivity to schools or students and their families.

V. This section shall not be construed to prohibit an operator of an Internet website, online service, online application, or mobile application from marketing educational products directly to parents so long as the marketing did not result from the use of covered information obtained by the operator through the provision of services covered under this section.

VI. This section shall not be construed to impose a duty upon a provider of an electronic store, gateway, marketplace, or other means of purchasing or downloading software or applications to review or enforce compliance with this section on those applications or software.

VII. This section shall not be construed to impose a duty upon a provider of an interactive computer service, as defined in 47 U.S.C. section 230, to review or enforce compliance with this section by third-party content providers.

VIII. This section shall not impede the ability of students to download, export, or otherwise save or maintain their own student created data or documents.

IX. The provisions of this section are severable. If any provision of this section or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

**Source.** 2015, 128:1, eff. Jan. 1, 2016.

## Commission to Study Sexual Abuse Prevention Education in Elementary and Secondary Schools

**189:69 Repealed by 2014, 143:2, eff. July 1, 2015.**

## Educational Institution Policies on Social Media

**189:70 Educational Institution Policies on Social Media.**

I. An educational institution shall not:

(a) Require or request a student or prospective student to disclose or to provide access to a personal social media account through the student's or prospective student's user name, password, or other means of authentication that provides access.

(b) Require or request a student or prospective student to access a personal social media account in the presence of any employee of the educational institution in a manner that enables the employee to observe the contents of the personal social media account.

(c) Compel a student or prospective student to add anyone to his or her list of contacts associated with a personal social media account or require, request, suggest, or cause a student or prospective student to change the privacy settings associated with a personal social media account.

(d) Take or threaten to take any action against a student or prospective student to discipline or prohibit such student or prospective student from participation in curricular or co-curricular activities for refusal to disclose information or to take actions specified in subparagraphs (a)–(c).

(e) Fail or refuse to admit a prospective student as a result of the refusal by the prospective student to disclose information or to take actions specified in subparagraphs (a)–(c).

II. Nothing in this subdivision shall prohibit an educational institution from adopting a policy which permits:

(a) Conducting an investigation, without requiring or requesting access to a personal social media account through username, password, or other means of authentication, for the purpose of ensuring compliance with applicable law or educational institution's policies against student misconduct

based on the receipt of specific information about activity associated with a student's social media account. In the case of a minor, the educational institution may request the student's parent or guardian to provide specific data from the student's social media account.

(b) Revoking a student's access, in whole or in part, to equipment or computer networks owned or operated by the educational institution.

(c) Monitoring the usage of the educational institution's computer network.

(d) Requesting a student voluntarily share a printed copy of a specific communication from the student's social media account that is relevant to an ongoing investigation.

III. This subdivision shall not apply to personal social media accounts that are created or provided by the educational institution if the student has been provided advance notice that the account may be monitored at any time by employees of the educational institution.

IV. In this section:

(a) "Educational institution" means a public or private school, college, university, or other institution that offers students, participants, or trainees an organized course of study or training that is academic, technical, vocational, trade-oriented, or designed to prepare a person for employment. "Educational institution" shall not include a military school.

(b) "Social media account" means an account, service, or profile on a social networking website that is used by a current or prospective student primarily for personal communications. This definition shall not apply to an account opened or provided by an educational institution and intended to be used solely on behalf of the educational institution. This definition shall not apply to platforms used for demonstrating evidence in student career development.

**Source.** 2015, 270:1, eff. Sept. 19, 2015. 2023, 225:1, eff. Oct. 3, 2023.

## Military Uniforms

### 189:71 Military Uniform.

A student shall have the right to wear a dress uniform issued to the student by a branch of the United States armed forces while participating in the graduation ceremony for the student's high school if that student meets the following requirements:

I. The student has fulfilled all of the requirements for receiving a high school diploma in the state of New Hampshire and the school district and is otherwise eligible to participate in the graduation ceremony.

II. The student has completed basic training for and is an active member of a branch of the United States armed forces.

**Source.** 2016, 32:2, eff. July 1, 2016.

## Child Abuse or Neglect Information

### 189:72 Child Abuse or Neglect Information.

The school board of each public school and chartered public school shall post in a clearly visible location in a public area of the school that is readily accessible to students a sign that is provided in an electronic or printed form by the division for children, youth, and families, and that contains the telephone number operated by the New Hampshire division for children, youth, and families of the department of health and human services, to receive reports of child abuse or neglect and instructions on how to access the division for children, youth, and families website.

**Source.** 2017, 245:1, eff. Sept. 16, 2017.

## Family and Medical Leave Coverage

### 189:73 Family and Medical Leave Coverage.

A school district employee who has been employed by the school district for at least 12 months and who has worked at least 900 hours in the previous 12-month period shall be eligible for family and medical leave under the same terms and conditions as leave provided to eligible employees under the federal Family and Medical Leave Act of 1993 (Pub. L. 103–3), 29 U.S.C. section 2611, et seq., as amended.

**Source.** 2019, 346:324, eff. June 30, 2019.

## School Board Public Comment Period

### 189:74 School Board Public Comment Period.

I. School boards shall provide the opportunity for the public to comment on school district matters at a meeting of the school board held under RSA 91–A:2. The public comment period shall be for no less than 30 minutes. School boards may request that persons register in advance of the meeting, but may not require pre-registration as a condition of participating in the public comment period. School boards may impose reasonable time limits for each speaker, provided such time limits are equal for all speakers. Nothing in this section shall restrict school boards from establishing other reasonable standards for the public comment period, provided such standards are imposed equally for all speakers. School boards may reasonably restrict public comments that disclose stu-

dent personally-identifiable information, teacher personally-identifiable information, or other confidential or privileged information.

II. The requirement that a school board shall provide the opportunity for the public to comment on school district matters at a meeting of the school board shall not apply to emergency meetings under RSA 91–A:2, II.

III. The requirement that a school board shall provide the opportunity for the public to comment on school district matters at a meeting of the school board shall not apply when the sole purpose of the school board meeting is to enter non-public session under RSA 91–A:3.

**Source.** 2022, 333:1, eff. Sept. 6, 2022.

## CHAPTER 189–A

## DEATH BENEFIT FOR SCHOOL EMPLOYEE KILLED IN LINE OF DUTY



### 189–A:1 Death Benefit for School Employee Killed in Line of Duty.

I. In this section:

(a) "Family" means the surviving spouse of the school employee; or, if there is no surviving spouse, the surviving dependent child or dependent children, of such school employee or, if there is no surviving dependent child, a surviving person qualifying as a common-law spouse pursuant to RSA 457:39, or if there is no surviving common-law spouse, the surviving adult child or adult children, or if there is no surviving adult child or adult children, the surviving parent or parents of such school employee. A surviving dependent child shall include a dependent stepchild whose expenses of daily living were substantially paid for by the decedent at the time of the death.

(b) "School employee" means any person, full or part time, who is employed by a public school in the state of New Hampshire.

(c) "Public school" means any public school or public academy approved by the state of New Hampshire pursuant to state laws and regulations, including the university system of New Hampshire and the community college system of New Hampshire.

(d) "Killed in the line of duty" means the death of a school employee while in the performance of his or her duties as a result of violence by another, who purposely causes that death or purposely causes serious bodily injury which is the direct or proximate cause of the death of the school employee.

II. In addition to any other benefit for which the school employee or family is eligible, the state treasurer shall pay a $100,000 death benefit to the family of a school employee killed in the line of duty; provided that under no circumstance shall a family member responsible for the school employee's death be eligible for such benefit. Payment to a dependent child shall be made to the child's trustee for the benefit of the child. The governor, with the consent of the executive council, is authorized to draw a warrant for said sum out of any money in the treasury not otherwise appropriated.

III. The attorney general or a designee from the department of justice shall review the records that relate to the circumstances of the employee's death and shall render a determination whether the incident qualifies as a line-of-duty death as defined in subparagraph I(d).

(a) Such determination shall be rendered within 45 days of documented notice of the incident.

(b) If the death of the school employee is determined to qualify as a line-of-duty death as defined in subparagraph I(d), the attorney general or a designee from the department of justice shall notify the commissioner of the department of education, who shall adopt the attorney general's recommendation and submit a request to the governor for payment of the benefit.

(c) Any records received in order to make the determination if the school employee's death qualifies as a line-of-duty death as defined in subparagraph I(d) shall be exempt from RSA 91–A. Upon the request of the decedent's family, any medical records or other records which otherwise are nonpublic shall be destroyed following the vote by the governor and executive council on this matter.

IV. Neither the state nor its agencies or employees shall be civilly liable for any improper payment of the line-of-duty death benefit as provided in this section.

**Source.** 2018, 349:1, eff. Jan. 1, 2019.

## CHAPTER 190

## COUNCIL FOR TEACHER EDUCATION

### 190:1 Establishment.

An advisory and coordinating council for teacher education, hereinafter called the council for teacher education, is hereby established.

**Source.** 1951, 143:1, eff. June 6, 1951.

### 190:2 Members.

The council for teacher education shall consist of: the commissioner of education, or designee, and the chairman of the department of education of the university of New Hampshire, or designee; 3 members appointed by them for terms not exceeding 3 years, one from a private educational institution, one from the professional personnel of the public schools and one layman; and the presidents of Keene state college and Plymouth state university, or staff members designated by them; provided that additional members may be appointed by these 7 for such terms as they may determine. Members of the council shall be entitled to reimbursement by the state board of education for mileage and expenses incurred in the performance of their required duties. The state board of education shall furnish the council with suitable meeting facilities, administrative assistance, and necessary supplies.

**Source.** 1951, 143:2. 2003, 159:2. 2007, 21:1, eff. July 1, 2007. 2019, 132:3, eff. Aug. 24, 2019.

### 190:3 Duties.

The council for teacher education shall coordinate teacher education in the state in an advisory capacity through a continuing study and discussion of its problems and shall issue advisory reports to agencies and institutions, public and private, concerned with teacher education or its financing in this state.

**Source.** 1951, 143:3, eff. June 6, 1951.

### 190:4 Meetings.

The council shall meet at least twice each year.

**Source.** 1951, 143:4, eff. June 6, 1951.

### 190:5 Officers.

The council members shall elect a chairman and secretary annually to serve for the ensuing year.

**Source.** 1951, 143:5, eff. June 6, 1951.

### 190:6 Meeting Room; Clerical Assistance.

The state board of education shall provide a meeting room, filing space and clerical assistance to the council.

**Source.** 1951, 143:6, eff. June 6, 1951.

### 190:7 Employment of Consultant.

The council is empowered to employ consultant services subject to the approval of the state board of education. The said board shall pay the expenses of such employment.

**Source.** 1951, 143:7, eff. June 6, 1951.

### 190:8 Repealed by 2019, 257:2, eff. Nov. 1, 2020.

## CHAPTER 191

## TEACHERS' LOYALTY



### 191:1 Advocacy of Subversive Doctrines Prohibited.

No teacher shall advocate communism as a political doctrine or any other doctrine which includes the overthrow by force of the government of the United States or of this state in any public or state approved school or in any state institution.

**Source.** 1949, 312:1, eff. July 28, 1949.

### 191:2 Repealed by 1992, 137:1, eff. July 3, 1992.

### 191:3 to 191:5 Repealed by 1993, 145:1, eff. July 16, 1993.

## CHAPTER 192

## TEACHERS' RETIREMENT SYSTEM

[Repealed by 1989, 400:4, VI, eff. July 1, 1989.]

## CHAPTER 193

## PUPILS

**School Attendance**

## School Attendance

### 193:1 Duty of Parent; Compulsory Attendance by Pupil.

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

(a) The child is attending a New Hampshire public school outside the district to which the child is assigned or an approved New Hampshire private school for the same time;

(b) The child is receiving home education pursuant to RSA 193–A and is therefore exempt from this requirement;

(c) The relevant school district superintendent has excused a child from attendance because the child is physically or mentally unable to attend school, or has been temporarily excused upon the request of the parent for purposes agreed upon by the school authorities and the parent. Such excused absences shall not be permitted if they cause a serious adverse effect upon the student's educational progress. Students excused for such temporary absences may be claimed as full-time pupils for purposes of calculating state aid under RSA 186–C:18 and adequate education grants under RSA 198:41;

(d) The child is attending a public or private school located in another state which has been approved by the state education agency of the state in which the school is located, or is attending a private school located in New Hampshire that is approved as a school tuition program by the school board pursuant to RSA 193:3, VII;

(e) The pupil has been exempted from attendance pursuant to RSA 193:5;

(f) The pupil has successfully completed all requirements for graduation and the school district is prepared to issue a diploma or the pupil has successfully achieved the equivalent of a high school diploma by either:

(1) Obtaining a high school equivalency certificate; or

(2) Documenting the completion of a home school program at the high school level by submitting a certificate or letter to the department of education;

(g) The pupil has been accepted into an accredited postsecondary education program;

(h) The pupil obtains a waiver from the superintendent, which shall only be granted upon proof that the pupil is 16 years of age or older and has an alternative learning plan for obtaining either a high school diploma or its equivalent.

(1) Alternative learning plans shall include age-appropriate academic rigor and the flexibility to incorporate the pupil's interests and manner of learning. These plans may include, but are not limited to, such components or combination of components of extended learning opportunities as independent study, private instruction, performing groups, internships, community service, apprenticeships, and on-line courses.

(2) Alternative learning plans shall be developed, and amended if necessary, in consultation with the pupil, a school guidance counselor, the school principal and at least one parent or guardian of the pupil, and submitted to the school district superintendent for approval.

(3) If the superintendent does not approve the alternative learning plan, the parent or guardian of the pupil may appeal such decision to the local school board. A parent or guardian may appeal the decision of the local school board to the state board of education consistent with the provisions of RSA 21–N:11, III; or

(i) The pupil is enrolled in the education freedom account program pursuant to RSA 194–F and is therefore exempt from this requirement.

II. A child who reaches the sixth birthday after September 30 shall not be required to attend school under the provisions of this section until the following school year.

III. In this section, "parent" means a parent, guardian, or person having legal custody of a child.

IV. [Repealed].

**Source.** 1903, 13:1. 1911, 139:1. 1917, 52:1. 1919, 84:1. 1921, 85, III:1. PL 118:1. RL 137:1. 1949, 92:1. 1953, 223:1. RSA 193:1. 1985, 47:1. 1990, 279:1. 1994, 121:1. 1996, 157:1. 1997, 183:1. 1999, 17:42; 39:1. 2005, 257:15. 2007, 242:5; 270:3; 350:1; 350:2. 2008, 173:11. 2013, 215:1. 2017, 182:2, eff. Aug. 28, 2017. 2021, 91:432, eff. Aug. 24, 2021; 106:1, eff. Aug. 5, 2021.

### 193:1–a Dual Enrollment.

I. Notwithstanding any other provision of the law, the full-time attendance requirement may be met by attendance at more than one school provided the total time spent in the schools is equivalent to full-time attendance and further that the attendance at more than one school may include attendance at a nonpublic school provided that the school district and the state board of education have given prior approval to the detailed dual enrollment agreement, which is to be effectuated for this purpose.

II. [Repealed.]

**Source.** 1969, 356:1. 1994, 130:1. 2002, 202:2, eff. July 14, 2002.

### 193:1–b Rulemaking Authority; Dual Enrollment Programs.

I. In order to accomplish the secular educational purposes of RSA 193:1–a, the state board of education shall adopt rules, pursuant to RSA 541–A and RSA 21–N:9, II(h), relative to:

(a) Providing for shared or released time programs.

(b) Leasing of space.

(c) Requirements for optional services permitted under RSA 189:49.

II. In the event that a court rules invalid a particular lease or rule, that action shall not be deemed to have invalidated other leases or rules adopted under this section.

**Source.** 1973, 501:5. 1986, 41:21, eff. April 3, 1988.

### 193:1–c Access to Public School Programs by Nonpublic, Public Chartered Schools or Home Educated Pupils.

I. Nonpublic, public chartered school, or home educated pupils shall have access to curricular courses and cocurricular programs offered by the school district in which the pupil resides. The local school board shall adopt a policy regulating participation in curricular courses and cocurricular programs, provided that such policy shall not be more restrictive for non-public, public chartered school, or home educated pupils than the policy governing the school district's resident pupils. In this section, "cocurricular" shall include those activities which are designed to supplement and enrich regular academic programs of study, provide opportunities for social development, and encourage participation in clubs, athletics, performing groups, and service to school and community. For purposes of allowing access as described in this section, a "home educated pupil" includes any pupil who is a "child with a disability" under RSA 186–C:2, I, until such time as such pupil has acquired a high school diploma or reached age 21 inclusive; but shall not include any other pupil who has graduated from a high school level program of home education, or its equivalent, or has attained the age of 21.

II. Nothing in this section shall be construed to require a parent to establish a home education program which exceeds the requirements of RSA 193:1.

**Source.** 2002, 202:1. 2016, 4:1, eff. Mar. 26, 2016. 2022, 131:1, eff. Aug. 31, 2022. 2023, 7:8, eff. June 25, 2023.

**193:2 Repealed by 1990, 279:5, eff. July 1, 1991.**

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

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

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

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

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

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

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

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

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

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

(g) If a student is reassigned as a result of a best interest determination to a public school or public academy, the superintendents or administrators involved in the reassignment shall jointly establish a tuition rate for such student. Some or all of the tuition may be waived by the superintendent of the receiving district for good cause shown or pursuant to school board policy of the receiving district. The school board of the student's district of residence shall approve the payment of tuition upon the superintendent's finding that is in the best interest of the student to be reassigned. Transportation shall be the responsibility of the parent or legal guardian.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

VI. If there is no public school for the child's grade in the resident district, the school board may contract with another public school in another school district or with any private school that has been approved as a school tuition program by the school board, and may raise and appropriate money for the purposes of the contract, if the school district decides it is in the best interest of the pupil. The district may either assign all children to schools that have been approved as a school tuition program, or allow each child's parent to choose a school from among schools that have been approved as a school tuition program. To enroll a child in a tuition school approved by the local school board whose tuition cost is above the district's established tuition cost per pupil as determined and approved by the board, the local board may require the parent to pay the tuition cost difference as long as at least one option is a public school or public academy that does not require additional tuition payment from the parent.

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

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

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

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

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

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

**Source.** 1871, 2:1. GL 91:14. PS 93:14. 1901, 61:14. 1903, 13:1. 1911, 139:9. 1913, 22:1. 1919, 84:1. 1921, 85, III:3. PL 118:3. RL 137:3. 1949, 139:3. RSA 193:3. 1969, 356:2. 1973, 240:1. 1985, 48:1. 1990, 140:2, X. 1995, 98:1. 1997, 183:2. 2001, 292:1, 2. 2002, 138:6. 2008, 274:30, 31. 2010, 316:1, 2. 2015, 125:1. 2016, 44:1. 2017, 182:3, eff. Aug. 28, 2017. 2020, 38:24, eff. Sept. 27, 2020. 2021, 84:1, eff. Aug. 17, 2021; 106:2, eff. Aug. 5, 2021. 2023, 59:1, eff. July 31, 2023; 185:1, eff. Oct. 3, 2023.

### 193:3–a Classroom Placement of Twins or Other Multiples.

I. No school board shall adopt a policy of automatically separating or placing together twins or other multiples. In this section, "multiples" means triplets or more.

II. A parent or guardian of twins or other multiples in elementary school may, no later than 60 days

before the first day of each school year or upon registration in the case of children enrolling in a new school, request that the twins or multiples be placed in the same classroom or in separate classrooms. This request shall be granted unless the principal, after meeting with the parents or guardians and after careful consideration of the reasons for their recommendation and of the best interests of their children and other children in the school affected by this decision, decides that a different placement is necessary.

III. This section is not intended to limit a parent's or guardian's right to appeal.

**Source.** 2007, 309:1, eff. Sept. 11, 2007.

### 193:4 District Liability for Elementary or Junior High School Tuition.

Any district shall pay for the tuition of any pupil who, as a resident of the district, has been assigned to attend a public elementary or junior high school or school of corresponding grade in another district or a private school approved as a school tuition program by the school board pursuant to RSA 193:3, VII, and any district not maintaining an elementary or junior high school or school of corresponding grade shall pay for the tuition of any pupil who, as a resident of the district, is determined to be entitled to have such tuition paid by the district where the pupil resides, and who attends an approved public elementary or junior high school or public school of corresponding grade in another district, or a private school approved as a school tuition program by the school board pursuant to RSA 193:3, VII. Except under contract, the liability of any school district under this section for the tuition of any pupil shall be the current expenses of operation of the receiving district for its elementary or junior high school or public school of corresponding grade, as estimated by the state board of education for the preceding school year. This current expense of operation shall include all costs except costs of transportation of pupils.

**Source.** 1949, 139:4. RSA 193:4. 1957, 52:1. 1959, 117:1. 1963, 288:2. 1975, 45:1. 1997, 183:3. 1998, 271:1. 2017, 182:4, eff. Aug. 28, 2017. 2021, 106:3, eff. Aug. 5, 2021.

### 193:4–a Tuition Liability; Dual Enrollment.

Any district shall be liable for the tuition of any child who as a resident of the district has been assigned to attend public school in another district in accordance with an approved dual enrollment plan; such payment shall be made as provided in RSA 193:4.

**Source.** 1971, 273:1. 1973, 501:4, eff. June 30, 1973.

### 193:5 Exemption From Attendance.

Whenever it shall appear to the superintendent of schools that the welfare of any child will be best served by the withdrawal of such child from school, the superintendent or a majority of the members of the school board shall make recommendation to the commissioner of education, who shall, if the facts warrant it, make an order exempting such child from attendance for such period of time as seems best for the interest of such child.

**Source.** 1911, 139:1. 1913, 22:1. 1919, 84:1. 1921, 85, III:3. PL 118:4. RL 137:4. RSA 193:5. 1969, 356:3. 1997, 183:4, eff. Jan. 1, 1998.

### 193:6 Repealed by 1961, 98:1, eff. June 19, 1961.

### 193:7 Penalty.

Any person who does not comply with the requirements of this subdivision shall be guilty of a violation and any fines collected hereunder shall be for the use of the district.

**Source.** 1871, 2:1. GL 91:14. PS 93:14. 1921, 85, III:4. PL 118:6. RL 137:6. RSA 193:7. 1973, 531:47, eff. Oct. 31, 1973 at 11:59 p.m.

### 193:8 Notice of Requirements.

The school board of every district shall cause a copy of RSA 193:1-7 to be sent to every person who they have reason to believe does not comply with the requirements thereof.

**Source.** 1871, 2:3. 1874, 58:1. GL 91:16. PS 93:16. 1921, 85, III:5. PL 118:7. RL 137:7. RSA 193:8. 1969, 356:4, eff. July 1, 1969.

### 193:9 Repealed by 2013, 215:3, eff. Sept. 8, 2013.

### 193:10 Exception.

The provisions relating to illiterates and non-English-speaking persons over 16 years of age shall not apply to persons employed in cutting, harvesting or driving pulp-wood and timber, nor to persons temporarily employed in any sort of construction or agricultural work.

**Source.** 1921, 85, III:7. PL 118:9. RL 137:9.

### 193:11 Disturbance.

Any person not a pupil who shall wilfully interrupt or disturb any school shall be guilty of a misdemeanor.

**Source.** GL 91:17. 1887, 15:1. PS 93:17. 1921, 85, III:8. PL 118:10. RL 137:10. RSA 193:11. 1973, 528:106, eff. Oct. 31, 1973 at 11:59 p.m.

**193:12 Legal Residence Required.**

I. Notwithstanding any other provision of law, no person shall attend school, or send a pupil to the school, in any district of which the pupil is not a legal resident, without the consent of the district or of the school board except as otherwise provided in this section or in RSA 193:28.

II. For purposes of this section, the legal residence of a pupil shall be as follows:

(a) In the case of a minor, legal residence is where his or her parents reside, except that:

(1) If the parents live apart and are not divorced, legal residence is the residence of the parent with whom the child resides.

(2)(A) In a divorce decree where parents are awarded joint decision making responsibility or joint legal custody, the legal residence of a minor child is the residence of the parent with whom the child resides. In a divorce decree, or parenting plan developed pursuant to RSA 461–A, a child's legal residence for school attendance purposes may be the school district in which either parent resides, provided the parents agree in writing to the district the child will attend and each parent furnishes a copy of the agreement to the school district in which the parent resides. The parents shall update their parenting plan to reflect this agreement. If a parent is awarded sole or primary residential responsibility or physical custody by a court of competent jurisdiction in this or any other state, legal residence of a minor child is the residence of the parent who has sole or primary residential responsibility or physical custody. If the parent with sole or primary physical custody lives outside the state of New Hampshire, the pupil does not have residence in New Hampshire. If the court order is for equal or approximately equal periods of residential responsibility, the child's legal residence for school attendance purposes shall be as stated in the order. If a child is in a court-ordered residential placement, foster home, or group home pursuant to RSA 169–B, RSA 169–C, RSA 169–D, RSA 170–C, or RSA 463, residence shall be determined in accordance with RSA 193:28.

(B) Nothing in this subparagraph shall require a school district to provide transportation for a child to another school in the school district in which the child resides, or beyond the designated attendance area for the school to which the child is assigned, or beyond the geographical limits of the school district in which the child resides.

(3) If the minor is in the custody of a legal guardian appointed by a New Hampshire court of competent jurisdiction or a court of competent jurisdiction in another state, territory, or country, legal residence is where the guardian resides. If the department of health and human services has been appointed legal guardian, the residence of the minor is where the child is placed by the department or the court. Legal guardianship shall not be appointed solely for the purpose of allowing a pupil to attend school in a district other than the district of residence of the minor's parent or parents. Whenever a petition for guardianship or legal custody is filed in a court of competent jurisdiction on behalf of a relative of a child, other than a parent, the child shall be permitted to attend school in the district in which the relative of the child resides pending a court determination relative to custody or guardianship.

(b) No minor placed in a home for children or health care facility, as defined in RSA 193:27, by another state which charges the state of New Hampshire, a political subdivision of the state of New Hampshire, or a New Hampshire school district, for the regular or special education costs for New Hampshire children placed in that state, shall be deemed a legal resident for purposes of school assignment, unless the sending state agrees to reimburse the receiving district, as defined in RSA 193:27, for regular education and special education costs.

(c)(1) If a parent with legal custody of a child moves from New Hampshire to another state while the child is in a court-ordered residential placement in this state or another state pursuant to RSA 169–B, RSA 169–C, RSA 169–D, RSA 170–C, or RSA 463, the departments of education and health and human services shall make a written request of the receiving state to assume the programmatic and financial liability of the child's placement in this state or another state until physical custody of the child is returned to a parent or legal guardian. In this subparagraph, "receiving state" shall mean the state to which the child's parents move.

(2) If the receiving state refuses to accept financial liability, the departments of education and health and human services shall enter into an agreement to provide the child with general and special education and residential services

until legal custody of the child is returned to a parent or legal guardian.

III. For the purposes of this title, "legal resident" of a school district means a natural person who is domiciled in the school district and who, if temporarily absent, demonstrates an intent to maintain a principal dwelling place in the school district indefinitely and to return there, coupled with an act or acts consistent with that intent. A married person may have a domicile independent of the domicile of his or her spouse. If a person removes to another town with the intention of remaining there indefinitely, that person shall be considered to have lost residence in the town in which the person originally resided even though the person intends to return at some future time. A person may have only one legal residence at a given time.

III–a. (a) A student shall comply with the residency requirements for school attendance and shall be considered a resident of a school district if he or she is a military-connected student as defined in RSA 110–E:1 whose parent is transferred or is pending transfer to a military installation within the state while on active military duty pursuant to an official military order. A school district shall accept applications by electronic means for enrollment, including enrollment in a specific school or program within the school unit, and course registration for military-connected students.

(b) The parent shall provide proof of residence in the school district within 10 days after the published arrival date provided on official documentation. A parent may use any of the following addresses as related to his or her military move:

(1) A temporary on-base billeting facility.

(2) A purchased or leased home or apartment.

(3) Federal government or public-private venture off-base military housing.

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

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

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

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

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

V. Except as provided in subparagraph II(b), nothing in this section shall limit or abridge the right of any child placed and cared for in any home for children, as defined in RSA 193:27, or of any child placed in the home of a relative of that child by the department of health and human services, or placed in the home of a relative or friend by a court pursuant to RSA 169–B, RSA 169–C, RSA 169–D, RSA 170–C, or RSA 463, to attend the public schools of the school district in which the home for children or home of the relative or friend in which a child is placed by the department of health and human services or by a court of competent jurisdiction is located, as provided in RSA 193:28.

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

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

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

V–b. Whenever a dispute arises among one or more school districts, the department of health and human services, or one or more of the previously mentioned parties, as to the residency of a child who is in the legal custody or guardianship of the department of health and human services, or who has been placed pursuant to a court order in a proceeding under RSA 169–B, RSA 169–C, RSA 169–D, or RSA 463, the department of health and human services shall request in writing that the superintendents

involved resolve the dispute. If the residency dispute remains unresolved 10 days after such request, the department of health and human services shall request that the commissioner of the department of education determine the residence of the child. The child shall be permitted to attend school in the district in which the child has been placed by the court or the department of health and human services pending the resolution of the residency dispute. Liability as to the cost of school attendance provided under this paragraph shall be determined by the commissioner of education.

VI. (a) The commissioner of the department of education, or designee, shall decide residency issues for all pupils, excluding homeless children and youths, in accordance with this section. If more than one school district is involved in a residency dispute, or the parents who live apart cannot agree on the residence of a minor child, the respective superintendents shall jointly make such decision. In those instances when an agreement cannot be reached, the commissioner of the department of education, or designee, shall make a determination within 30 days of notice of the residency dispute and such determination shall be final. If the unresolved residency dispute has resulted in an interruption of educational or related services, or such an interruption is likely to occur if the determination cannot be made before the expiration of 30 days, the determination shall be made within 14 days. With the agreement of the school districts involved and of the minor child's parent or legal representative, the time for determination of the residency dispute may be extended. Residency disputes may be submitted to the commissioner for determination by a school district involved in a dispute. In cases where the failure to resolve a residency dispute has resulted in or is likely to result in the interruption of educational or related services, a minor child's parent or legal representative may submit a residency dispute for determination to the commissioner. In all cases, all parties with an interest in the dispute shall be notified of the pendency of the proceedings, shall have an opportunity to review all information provided to the commissioner, and shall have an opportunity to present facts and legal arguments to the commissioner. The commissioner's decision, including a written explanation for that decision, shall be provided to the parties of record and a copy of such explanation shall be kept on file by the department of education. No school district shall deny a pupil attendance or implementation of an existing individualized education program.

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

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

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

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

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

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

**Source.** RS 73:7. CS 77:7. GS 83:1. GL 91:1. PS 93:1. 1921, 85, III:9. PL 118:11. 1927, 58:1. RL 137:11. RSA 193:12. 1955, 227:2. 1997, 183:6. 1998, 206:1-3, 7, 8. 2001, 294:1. 2002, 138:7. 2003, 222:1, 2. 2005, 273:19. 2006, 236:1, 2. 2008, 274:16 to 19, 32. 2011, 178:1, 2. 2012, 257:1. 2013, 165:1, eff. Aug. 28, 2013. 2022, 310:5, eff. Aug. 30, 2022.

### 193:13 Suspension and Expulsion of Pupils.

I. (a) A superintendent or chartered public school director, or a representative designated in writing by the superintendent or chartered public school director, may suspend pupils from school for a period not to exceed 10 consecutive school days for:

(1) Behavior that is detrimental to the health, safety, or welfare of pupils or school personnel; or

(2) Repeated and willful disregard of the reasonable rules of the school that is not remediated through imposition of the district's graduated sanctions under paragraph X.

(b) The school board or chartered public school board of trustees, or a representative designated in

writing may, following a hearing, extend the suspension of a pupil up to 10 additional consecutive school days for an act that constitutes an act of theft, destruction, or violence as defined in RSA 193–D; bullying pursuant to school district policy when the pupil has not responded to targeted interventions and poses an ongoing threat to the safety or welfare of another student; or possession of a firearm, BB gun, or paintball gun. The school board's or board of trustee's designee may be the superintendent or any other individual, but may not be the individual who suspended the pupil for the first 10 days under subparagraph (a). Any suspension shall be valid throughout the school districts of the state, subject to modification by the superintendent of the school district or chartered public school in which the pupil seeks to enroll.

(c) Any suspension in excess of 10 school days imposed under subparagraph (b) by any person other than the school board or board of trustees is appealable to the school board or board of trustees, provided that the superintendent, school board, or board of trustees received such appeal in writing within 10 days after the issuance of the decision being appealed. The school board or board of trustees shall hold a hearing on the appeal, but shall have discretion to hear evidence or to rely upon the record of a hearing conducted under subparagraph (b). The suspension under subparagraph (b) shall be enforced while that appeal is pending, unless the school board or board of trustees stays the suspension while the appeal is pending.

II. Any pupil may be expelled from school by the local school board or board of trustees for an act that poses an ongoing threat to the safety of students or school personnel and that constitutes:

(a) A repeated act under subparagraph I(b);

(b) Any act of physical or sexual assault that would be a felony if committed by an adult;

(c) Any act of violence pursuant to RSA 651:5, XIII; or

(d) Criminal threatening pursuant to RSA 631:4, II(a).

III. A pupil who has been expelled shall not attend school until reinstated by the local board or chartered public school board of trustees.

III–a. Before expelling a pupil under this section the local school board or chartered public school board of trustees shall consider each of the following factors:

(a) The pupil's age.

(b) The pupil's disciplinary history.

(c) Whether the pupil is a student with a disability.

(d) The seriousness of the violation or behavior committed by the pupil.

(e) Whether the school district or chartered public school has implemented positive behavioral interventions under paragraph V.

(f) Whether a lesser intervention would properly address the violation or behavior committed by the pupil.

III–b. Any expulsion shall be subject to review by the pupil's school board of attendance or the board of trustees of the chartered public school's board that issued the expulsion if requested prior to the start of each school year and further, any parent or guardian has the right to appeal any such expulsion by the local board or board of trustees to the state board of education at any time while the expulsion remains in effect. All appeals of final action by the state board of education shall be in accordance with RSA 541.

III–c. Any expulsion shall be valid throughout the school districts of the state. However, upon application by the pupil, any school district or chartered public school may choose to admit an expelled pupil at the school district or chartered public school's sole discretion. The decision by a chartered public school or superintendent to accept a pupil under this paragraph shall not be binding upon any other school district or chartered public school until the pupil is reinstated by the pupil's local school board or chartered public school board of trustees.

IV. Any pupil who brings or possesses a firearm as defined in section 921 of Title 18 of the United States Code in a safe school zone as defined in RSA 193–D:1 without written authorization from the superintendent or designee shall be expelled from school by the local school board for a period of not less than 12 months. Nothing in this section shall be construed to prevent the local school district or chartered public school that expelled the student from providing educational services to such student in an alternative setting.

V. School districts and chartered public schools shall make educational assignments available to the suspended pupil during periods of suspension. Except as provided in paragraphs II and IV, a school district or chartered public school shall provide alternative educational services to a suspended pupil whenever the pupil is suspended in excess of 20 cumulative days within any school year. The alternative educational services shall be designed to enable a

pupil to advance from grade to grade. Any time a pupil is suspended more than 10 school days in any school year, upon the pupil's return to school the school district shall develop an intervention plan designed to proactively address the pupil's problematic behaviors. No pupil shall be penalized academically solely by virtue of missing class due to suspension.

VI. A pupil expelled from school in another state under the provisions of the Gun-Free Schools Act of 1994 shall not be eligible to enroll in a school district in New Hampshire for the period of such expulsion. If the out-of-state expulsion is for an indefinite period of time, such pupil or the pupil's parent or guardian shall have the right to petition the pupil's local school board for enrollment upon establishing residency. If the pupil is denied enrollment, the pupil's expulsion shall be subject to review pursuant to paragraph III–b.

VII. The local school board or chartered public school shall adopt a policy which allows the superintendent or charter public school director to modify the expulsion and enrollment requirements under paragraphs IV and VI on a case by case basis.

VIII. For purposes of paragraphs I, II, III, and IV school board may be either the school board or a subcommittee of the board duly authorized by the school board.

IX. Nothing in this section shall prevent the superintendent of the pupil's local school district or chartered public school director from reinstating a suspended or expelled pupil.

X. The provisions of this section shall be construed in a manner consistent with RSA 186–C.

XI. School boards and chartered public schools shall establish policies on school discipline that contain a system of supports and consequences designed to correct student misconduct and promote behavior within acceptable norms. Such policies shall:

(a) Include a graduated set of age appropriate responses to misconduct that may include, but are not limited to, parent conferences, counseling, peer mediation, instruction in conflict resolution and anger management, parent counseling and training, community service, rearranging class schedules, restriction from extra curricular activities, detention, in-school supports and consequences, out-of-school suspension, and expulsion.

(b) Set forth standards for short term suspensions up to 5 days, short term suspensions up to 10 days, long term suspensions up to 20 days, and expulsion. Such standards shall make reference to the nature and degree of disruption caused to the school environment, the threat to the health and safety of pupils and school personnel, and the isolated or repeated nature of incidents forming the basis of disciplinary action.

XII. Each school district and chartered public school shall make its policy on school discipline:

(a) Available to parents at the beginning of each school year;

(b) Publicly available on the district, school administrative unit, or chartered public school website and in the student handbook; and

(c) Available to parents via a manner designed to ensure parental notification if the school district, school administrative unit, or chartered public school does not maintain a website and/or student handbook.

**Source.** RS 73:4. CS 77:4. GS 83:3. GL 91:3. PS 93:3. 1921, 85, III:10. PL 118:12. RL 137:12. RSA 193:13. 1969, 356:5. 1971, 371:6. 1994, 355:2. 1995, 231:1. 1996, 168:1, 2. 1999, 44:2. 2017, 12:1, eff. June 16, 2017. 2020, 38:1, eff. July 29, 2020 and July 1, 2021.

### 193:14 Repealed by 2017, 63:9, III, eff. Aug. 1, 2017.

### 193:14–a Change of School Assignment; Duties of Board of Education.

The state board of education in conjunction with the department of education shall make available to local school boards information regarding the responsibilities of the local boards when parents request a change in school assignment. Such information shall include an explanation of local board's authority and responsibilities, as well as the rights and responsibilities of parents seeking a change of assignment as set forth in RSA 193:3 and applicable rules adopted under RSA 541–A.

**Source.** 1994, 126:6. 2017, 63:7, eff. Aug. 1, 2017.

### 193:15 Penalty for Unauthorized Attendance, etc.

Any pupil who, after notice, attends or visits a school which the pupil has no right to attend, or interrupts or disturbs such school, shall for the first offense be guilty of a violation, and shall for any subsequent offense be guilty of a misdemeanor.

**Source.** 1849, 85:41. CS 78:5. GS 83:5. GL 91:5. PS 93:5. 1921, 85, III:12. PL 118:14. RL 137:14. RSA 193:15. 1973, 528:107. 1997, 183:7, eff. Jan. 1, 1998.

### 193:16 Bylaws as to Nonattendance.

Districts may make bylaws, not repugnant to law, concerning habitual truants and children between the

ages of 6 and 18 years not attending school or who are not participating in an alternative learning plan under RSA 193:1, I(h), and to compel the attendance of such children at school; failure to comply with such bylaws shall constitute a violation for each offense.

**Source.** 1852, 1278. CS 78:1. GS 83:6. GL 91:6. PS 93:6. 1921, 85, III:13. PL 118:15. RL 137:15. RSA 193:16. 1973, 531:48. 2007, 350:3, eff. July 1, 2009.

**193:17 Repealed by 1975, 502:15, eff. Aug. 28, 1975.**

**193:18 Suspension of Sentence.**

Any offender so convicted may give bond to the district in the sum of $25, with sufficient sureties, approved by the court or justice before whom such offender was convicted, conditioned to attend regularly a school assigned by the local school board for one term next ensuing, to comply with the regulations thereof, and to be obedient and respectful to the teacher, and such offender's sentence may be suspended.

**Source.** 1852, 1278. CS 75:5. GS 83:10. GL 91:10. PS 93:9. 1921, 85, III:15. PL 118:17. RL 137:17. RSA 193:18. 1969, 356:7. 1997, 183:8, eff. Jan. 1, 1998.

## Education of Children Placed in Homes for Children

**193:18–a, 193:18–b Repealed by 1981, 326:2, eff. Sept. 1, 1981.**

**193:18–c Repealed by 1961, 250:2, eff. July 1, 1961.**

## Scholarships for Orphans of Veterans

**193:19 Purpose of Appropriations.**

The sums appropriated under the provisions of this section shall be nonlapsing and continually appropriated for the sole purpose of contributing to the payment of board, room rent, books and supplies, at an institution of higher education, for veteran's natural or adopted children between the ages of 16 and 25 years, who are legal residents of the state at the time of application, whose parent served on active duty in the armed services of the United States from December 7, 1941 to December 31, 1946; or from June 27, 1950 to January 31, 1955; or from February 28, 1961 to May 7, 1975; or from August 2, 1990 through a final date of the Gulf War conflict to be prescribed by Presidential proclamation or law; or in any operation not otherwise covered by this section for which the armed forces expeditionary medal or a theater of operations service medal, as defined in RSA 72:29, has been awarded to the veteran, and the veteran, who was a New Hampshire resident at the time of his or her death, either died while on active duty during the service described above, or has since died from a service-connected disability so rated by the federal government. Not more than $2,500 shall be paid under this section to any one student in any one year, provided that no individual shall be eligible to receive such benefits for a period of more than 4 years.

**Source.** 1943, 35:1. 1945, 196:1. 1951, 220:1. RSA 193:19. 1973, 278:1. 1981, 409:2. 2003, 44:1. 2005, 97:1. 2006, 28:6. 2009, 280:3, eff. Sept. 27, 2009.

**193:20 Tuition.**

Children, as described in RSA 193:19, enrolled at a New Hampshire public institution of higher education shall receive free tuition.

**Source.** 1943, 35:2. RSA 193:20. 1981, 409:3. 1987, 171:3. 2005, 97:2, eff. Aug. 7, 2005.

**193:21 Payment.**

The amounts payable to recipients shall be determined by the department of education, division of educator support and higher education. The higher education commission established in RSA 21–N:8–a shall determine the eligibility in accordance with rules adopted under RSA 541–A of the children who make application for the benefits provided for in this subdivision.

**Source.** 1943, 35:3. RSA 193:21. 1981, 409:4. 1987, 171:4. 2005, 97:3. 2011, 224:132. 2013, 164:2, eff. June 28, 2013. 2018, 315:20, eff. Aug. 24, 2018.

**193:22 Repealed by by 2005, 97:4, eff. Aug. 7, 2005.**

## Payment to Outside Schools Furnishing Instruction Not Available in New Hampshire

**193:23 to 193:25 Repealed by 1959, 214:2, eff. July 1, 1959.**

## Loans to Students

**193:26 Powers of Minors to Borrow for Educational Expense.**

Notwithstanding any statutory provisions or rule of law to the contrary, any minor who contracts to borrow money to defray the expenses of attending any institution of higher education shall have full legal capacity to act in the minor's own behalf and shall have all the rights, powers, and privileges and be subject to the obligations of persons of full age with respect to any such contracts.

**Source.** 1959, 241:1. 1961, 189:1. 1997, 183:9, eff. Jan. 1, 1998.

**193:26–a Graduation Requirements; Free Application for Federal Student Aid.**

I. Beginning with the 2023–2024 school year, each student who is at least 18 years of age or legally emancipated, who is otherwise eligible to graduate from high school, or the parent of such a student who is under the age of 18 years, as a prerequisite to receiving a high school diploma from a public high school, shall either:

(a) File a Free Application for Federal Student Aid with the United States Department of Education; or

(b) File a waiver on a form created by the state board of education with the student's school district indicating that the parent or guardian or, if applicable, the student, understands what the Free Application for Federal Student Aid is and has chosen not to file an application

II. Each school district with a high school shall provide to each high school student and, if applicable, his or her parent or guardian, any support or assistance necessary to comply with paragraph I. A school district shall award a high school diploma to a student who is unable to meet the requirements of paragraph I if the student has met all other graduation requirements and the principal attests that the school district has made a good faith effort to assist the student or, if applicable, his or her parent or guardian in filing an application or a waiver.

**Source.** 2021, 209:2, Pt. I, Sec. 1, eff. July 1, 2023.

## Education of Children Placed in Homes for Children, Health Care Facilities, or State Institutions

**193:27 Definitions.**

As used in this subdivision:

I. "Home for children" means any orphanage; institution for the care, treatment, or custody of children; child care agency as defined by RSA 170–E:25, II and III; or any residential school approved under RSA 186:11, XXIX.

II. "Health care facility" means any hospital, nursing home, sheltered home, or other institution licensed under RSA 151.

III. "State institution" means the New Hampshire hospital, Laconia developmental services, and the youth development center.

IV. "Sending district" means the school district in which a child most recently resided other than in a home for children, the home of a relative or friend in which a child is placed by the department of health and human services or a court of competent jurisdiction pursuant to RSA 169–B, RSA 169–C, RSA 169–D, RSA 170–C, or RSA 463, health care facility, or state institution, if such child is not in the legal custody of a parent or if the parent resides outside the state; if the child is retained in the legal custody of a parent residing within the state, "sending district" means the school district in which the parent resides. For the purposes of this paragraph 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 in any other state, shall determine legal custody under this paragraph.

V. "Receiving district" means the school district in which a home for children or health care facility is located if a child who is placed therein attends a public school in that district or receives educational services from that district.

VI. "School district" means a school district in the state.

VII. "Episode of treatment" means when a child needs to be placed by the department of health and human services (DHHS) in a DHHS-contracted and/or certified program to receive more intensive treatment and supports and has the objective of helping children in crisis avoid or reduce the use of psychiatric hospitals or emergency rooms.

**Source.** 1981, 326:1. 1982, 39:6. 1985, 241:1, 2; 355:3, 4. 1988, 107:5. 1990, 257:9. 1998, 206:4. 2006, 139:1. 2008, 274:20, eff. July 1, 2008. 2023, 79:139, eff. July 1, 2023.

**193:28 Right of Attendance.**

Whenever any child is placed and cared for in any home for children, or is placed by the department of health and human services in the home of a relative or friend of such child pursuant to RSA 169–B, RSA 169–C, RSA 169–D, RSA 170–C, or RSA 463, such child, if of school age, shall be entitled to attend:

I. The public schools of the school district that the child attended prior to placement, if continuing in the same school district is in the best interest of the child as determined by the court, if the home is within a reasonable distance of the school to be attended, and if suitable transportation can be arranged without imposing additional transportation costs on a school district or the department of health and human services; or

II. The public schools of the school district in which said home is located, unless such placement was solely for the purpose of enabling a child residing

outside said district to attend such schools, provided that the school district for a child placed in a group home, as defined in RSA 170–E:25, II(b), within a cooperative school district, shall be the cooperative school district, not the pre-existing district within the cooperative.

**Source.** 1981, 326:1. 1993, 322:7. 1998, 206:5. 2001, 294:2. 2008, 274:21, eff. July 1, 2008.

### 193:29 Liability for Education of Children in Homes for Children or Health Care Facilities.

I. For any child placed and cared for in any home for children or health care facility, the sending district shall make payments to the receiving district as follows:

(a) For a child attending a public school in the receiving district who receives special education as required by RSA 186–C, the sending district is liable for the actual prorated cost of the special education and any related services, as defined in RSA 186–C:2, provided by the receiving district.

(b) For a child attending a public school to which the receiving district as defined in RSA 193:27 shall pay tuition under an AREA or other contractual agreement, the sending district as defined in RSA 193:27 is liable for all costs which said receiving district must pay under that agreement.

(c) If a child is assigned to an out-of-district special education program, the sending district is liable for all costs under RSA 186–C.

II. Actual fiscal liability under paragraph I commences upon enactment of this statute. However, the determination of liability as applied in paragraph I refers to children placed in a home for children or health care facility prior to as well as subsequent to enactment.

III. If the receiving district receives any state or federal aid for educating a child in any home for children or health care facility, including but not limited to aid for foster children under RSA 198:23, that amount shall be deducted from the liability of the sending district for that child.

IV. The agency responsible for placing the child shall inform the sending and receiving districts of where the child presently resides and where the child last resided before placement in a home for children, health care facility, or state institution or where the parent of the child resides if the child is in the legal custody of a parent who resides within the state.

V. The cooperative school district, not the pre-existing district, shall be liable for the cost associated with the education of children placed in a group home, as defined in RSA 170–E:25, II(b), within such cooperative school district provided, however, that the provisions of RSA 193:29, I(a) shall apply to children receiving special education.

**Source.** 1981, 326:1. 1982, 39:7. 1983, 286:1. 1993, 322:8. 2008, 274:33, eff. July 1, 2008. 2018, 90:1, eff. July 24, 2018.

### 193:30 Rulemaking Authority.

The state board of education shall adopt rules, pursuant to RSA 541–A and RSA 21–N:9, II(l), relative to education of children placed in homes for children, health care facilities or state institutions. Such rules may include provisions for administrative hearings to resolve disputes between school districts relative to reimbursement under RSA 193:29.

**Source.** 1981, 326:1. 1986, 41:22, eff. April 3, 1988.

## Missing Child Education Program

### 193:31 Program Established; Rules.

The department of education, in cooperation with the department of health and human services, shall establish the "missing child educational program" that shall perform the functions specified in this subdivision. The program shall operate under the supervision and control of the commissioner of education in accordance with procedures that the commissioner shall adopt by rule, pursuant to RSA 541–A, to implement this subdivision.

**Source.** 1985, 318:6. 1994, 212:2. 1995, 310:181, eff. Nov. 1, 1995.

### 193:32 Educational Materials.

I. The program shall acquire or prepare educational materials relating to missing children issues and matters. These issues and matters include, but are not limited to, the following:

(a) The types of missing children.

(b) The reasons why and how minors become missing children, the potential adverse consequences of a minor becoming a missing child, and, in the case of minors who are considering running away from home or from the care, custody, and control of their parents, custodial parent, guardian, legal custodian, or another person responsible for them, alternatives that may be available to address their concerns and problems.

(c) How to avoid becoming a missing child and what to do if one becomes a missing child.

(d) Efforts that schools, parents, and members of a community can undertake to reduce the risk that a minor will become a missing child and to quickly locate or identify a minor who becomes a

missing child, including, but not limited to, fingerprinting programs.

II. The program shall provide, upon request, a reasonable number of copies of the educational materials acquired or prepared pursuant to paragraph I to boards of education in this state and to nonpublic schools in this state. The program shall provide assistance, upon request, to a board of education or nonpublic school that is developing an educational program concerning missing children issues and matters.

III. The program shall provide, upon request, a copy of any educational material to another person or entity.

**Source.** 1985, 318:6. 1997, 183:10, eff. Jan. 1, 1998.

### 193:33 Report.

Each year the program shall issue a report describing its performance of the functions specified in this subdivision and shall provide a copy of the report to the speaker of the house of representatives, the president of the senate, the governor, the attorney general, and the commissioner of the department of health and human services.

**Source.** 1985, 318:6. 1994, 212:2. 1995, 310:182, eff. Nov. 1, 1995.

## Parents as Teachers Program

### 193:34 Policy and Purposes.

I. This act recognizes the importance of the early childhood years upon children's brain development. Given appropriate stimulation, babies develop critical cognitive and social skills from birth to age 3. These early years provide a window of opportunity to enrich a child's cognitive and social development. The least intrusive and most successful way to impact early childhood experiences is to educate parents as to how they can best teach their children. Studies have shown that parents who are trained as to how to interact with their children can help their children enter school ready to learn and are more likely to stay involved with their child's educational process throughout the school years.

II. The Parents as Teachers Program was established in 1981 and has a presence in 49 states, including New Hampshire. The New Hampshire program is operated at 8 sites in New Hampshire by the Parent Information Center with funds from Goals 2000. The Parents as Teachers Program creates a partnership between parents and early childhood development professionals. Early childhood development professionals conduct monthly home visits and group meetings to help parents understand what to expect from their children in each stage of development and to teach parents how to encourage learning, manage challenging behavior and strengthen parent-child relationships.

III. The purpose of this subdivision is to expand the Parents as Teachers Program in New Hampshire by developing 2 school district based programs, one of which shall be in a rural community and one in an urban community.

**Source.** 2000, 140:1, eff. May 15, 2000.

### 193:35 Parents as Teachers Program Established.

I. The department of education shall establish the school district based Parents as Teachers Program for a rural community in Sullivan county in cooperation with School Administrative Unit 6 and the Parent Information Center. Sullivan county will be the rural site for the program because of its unique demographic profile, including the high number of risk factors affecting its children, the demonstrated interest of its public officials in the program, and the capacity to link the program to existing programs within the county including Good Beginnings, the Parent Information Center, and department of education programs in Sullivan county. The department shall use the following criteria to measure the effectiveness of the program:

(a) Whether the pilot program was implemented according to the criteria established by the Parents as Teachers National Center.

(b) The number of families served, the number of contacts with each family, and family profile information for the families served, including the percentages of families served by town.

(c) The total cost and the cost per family for the program.

(d) The number of children identified with Parents as Teachers participants that were identified as having developmental delays who have received services during the pilot program to address these delays.

(e) The number of children identified with Parents as Teachers participants who were, during the pilot program, the subject of a founded report of abuse or neglect pursuant to RSA 169–C.

(f) The results of 3–year–old developmental screening for all children of appropriate age identified with Parents as Teachers participants.

(g) The level of parental participant knowledge and achievement including, but not limited to high

school equivalency completion, employment, and volunteerism.

II. The department shall, consistent with available funding and the expressed commitment of an urban community, establish a school district based Parents as Teachers Program in an urban community on or before January 1, 2002.

III. The programs established by this subdivision shall serve parents of children aged birth through 3 years of age. The programs shall utilize at least ½ of the appropriated funds to serve areas with high concentrations of low income families in order to serve parents who are educationally or economically disadvantaged.

**Source.** 2000, 140:1. 2003, 317:2. 2013, 215:2, eff. Sept. 8, 2013.

### 193:36 Rulemaking.

The commissioner of the department of education shall adopt rules, pursuant to RSA 541–A, necessary to carry out the provisions of this subdivision.

**Source.** 2000, 140:1. 2003, 317:3, eff. July 1, 2003.

### 193:37 Repealed by 2012, 264:1, VI, eff. Aug. 17, 2012.

## Discrimination in Public Schools

### 193:38 Discrimination in Public Schools.

No person shall be excluded from participation in, denied the benefits of, or be subjected to discrimination in public schools because of their age, sex, gender identity, sexual orientation, race, color, marital status, familial status, disability, religion, or national origin, all as defined in RSA 354–A. Any person claiming to be aggrieved by a discriminatory practice prohibited under this section, including the attorney general, may initiate a civil action against a school or school district in superior court for legal or equitable relief, or with the New Hampshire commission for human rights, as provided in RSA 354–A:27–28.

**Source.** 2019, 282:1, eff. Sept. 17, 2019.

### 193:39 Discrimination Prevention Policy Required.

Each school district and chartered public school shall develop a policy that guides the development and implementation of a coordinated plan to prevent, assess the presence of, intervene in, and respond to incidents of discrimination on the basis of age, sex, gender identity, sexual orientation, race, color, marital status, familial status, disability, religion, national origin, or any other classes protected under RSA 354–A.

**Source.** 2019, 282:1, eff. Sept. 17, 2019.

### 193:40 Prohibition on Teaching Discrimination.

I. No pupil in any public school in this state shall be taught, instructed, inculcated or compelled to express belief in, or support for, any one or more of the following:

(a) That one's age, sex, gender identity, sexual orientation, race, creed, color, marital status, familial status, mental or physical disability, religion or national origin is inherently superior to people of another age, sex, gender identity, sexual orientation, race, creed, color, marital status, familial status, mental or physical disability, religion, or national origin;

(b) That an individual, by virtue of his or her age, sex, gender identity, sexual orientation, race, creed, color, marital status, familial status, mental or physical disability, religion, or national origin, is inherently racist, sexist, or oppressive, whether consciously or unconsciously;

(c) That an individual should be discriminated against or receive adverse treatment solely or partly because of his or her age, sex, gender identity, sexual orientation, race, creed, color, marital status, familial status, mental or physical disability, religion, or national origin; or

(d) That people of one age, sex, gender identity, sexual orientation, race, creed, color, marital status, familial status, mental or physical disability, religion, or national origin cannot and should not attempt to treat others without regard to age, sex, gender identity, sexual orientation, race, creed, color, marital status, familial status, mental or physical disability, religion, or national origin.

II. Nothing in this section shall be construed to prohibit discussing, as part of a larger course of academic instruction, the historical existence of ideas and subjects identified in this section.

III. Any person claiming to be aggrieved by a violation of this section, including the attorney general, may initiate a civil action against a school or school district in superior court for legal or equitable relief, or with the New Hampshire commission for human rights as provided in RSA 354–A:34.

IV. Violation of this section by an educator shall be considered a violation of the educator code of conduct that justifies disciplinary sanction by the state board of education.

V. For the purposes of this section, "educator" means a professional employee of any school district

whose position requires certification by the state board pursuant to RSA 189:39. Administrators, specialists, and teachers are included within the definition of this term.

**Source.** 2021, 91:298, eff. June 25, 2021.

## CHAPTER 193–A

## HOME EDUCATION



### 193–A:1 Definitions.

In this chapter:

I. "Child" means a child or children at least 6 years of age and under 18 years of age who is a resident of New Hampshire.

II. "Nonpublic school" means a nonpublic school approved pursuant to rules adopted by the state board of education and administered by the department of education and which has agreed to administer the relevant provisions of this chapter.

III. "Parent" means a parent, guardian, or person having legal custody of a child.

IV. "Resident district" means the school district in which the child resides.

**Source.** 1990, 279:3. 2007, 242:4, eff. July 1, 2009.

### 193–A:2 Program Established.

There is established the home education program to be administered by the department of education.

**Source.** 1990, 279:3, eff. July 1, 1991.

### 193–A:3 Rulemaking.

The state board of education shall adopt rules, pursuant to RSA 541–A, relative to administering the home education program. The state board of education shall, in addition to the provisions of RSA 541–A, submit any notice of proposed rulemaking under RSA 541–A:6 and any final proposed rule under RSA 541–A:12 to the home education advisory council established in RSA 193–A:10 for review and comment.

**Source.** 1990, 279:3. 2012, 203:1, eff. Aug. 12, 2012.

### 193–A:4 Home Education; Defined.

I. Instruction shall be deemed home education if it consists of instruction in science, mathematics, language, government, history, health, reading, writing, spelling, the history of the constitutions of New Hampshire and the United States, and an exposure to and appreciation of art and music. Home education shall be provided, coordinated, or directed by a parent for his or her own child.

II. The department of education, resident district superintendent, or a nonpublic school shall work with parents upon request in meeting the requirements of this section.

**Source.** 1990, 279:3. 2006, 13:1, eff. May 12, 2006. 2022, 131:2, eff. June 2, 2022.

### 193–A:5 Notification and Other Procedural Requirements.

A parent may provide home education to a child or children at home, subject to the following requirements:

I. Any parent commencing a home education program for a child, for a child who withdraws from a public school, or for a child who moves into a school district shall notify the commissioner of the department of education, resident district superintendent, or principal of a nonpublic school of such within 5 business days of commencing the program.

II. Notification made by the parent pursuant to paragraph I shall include a list of the names, addresses, and birth dates of all children who are participating in the home education program.

III. Written notice of termination of a home education program shall be filed by the parent with the commissioner of education, the resident district superintendent, or the nonpublic school principal within 15 days of said termination

IV. The commissioner of education, resident district superintendent, or nonpublic school principal shall acknowledge receipt of notification within 14 days of such receipt.

V. Any parent who previously notified the resident district superintendent of a home education program who moves from said district shall notify the original resident district superintendent that the child has moved from the district and shall provide notification pursuant to paragraph I.

**Source.** 1990, 279:3. 1996, 222:1. 2006, 13:2, 3. 2008, 344:1. 2012, 203:2, eff. Aug. 12, 2012; 227:1, eff. June 16, 2012. 2022, 131:3, 4, eff. June 2, 2022.

**193–A:6 Records; Evaluation.**

I. The parent shall maintain a portfolio of records and materials relative to the home education program. The portfolio shall consist of a log which designates by title the reading materials used, and also samples of writings, worksheets, workbooks, or creative materials used or developed by the child. Such portfolio, which at all times remains the property of the parent, shall be preserved for 2 years from the date of the ending of the instruction.

II. The parent shall provide for an annual educational evaluation in which is documented the child's demonstration of educational progress at a level commensurate with the child's age, ability, and/or disability. The child shall be deemed to have successfully completed an annual evaluation upon meeting the requirements of any one of the following:

(a) A certified teacher or a teacher currently teaching in a nonpublic school who is selected by the parent shall evaluate the child's educational progress upon review of the portfolio and discussion with the parent or child;

(b) The child shall take any national student achievement test, administered by a person who meets the qualifications established by the provider or publisher of the test;

(c) The child shall take a state student assessment test used by the resident district; or

(d) The child shall be evaluated using any other valid measurement tool mutually agreed upon by the parent and the commissioner of education, resident district superintendent, or nonpublic school principal.

III. The parent shall maintain a copy of the evaluation. The results of the evaluation:

(a) May be used to demonstrate the child's academic proficiency in order to participate in public school programs, and co-curricular activities which are defined as school district-sponsored and directed athletics, fine arts, and academic activities. Home educated students shall be subject to the same participation policy and eligibility conditions as apply to public school students.

(b) Shall not be used as a basis for termination of a home education program.

(c) Provides a basis for a constructive relationship between the parent and the evaluator, both working together in the best interest of the child.

**Source.** 1990, 279:3. 2006, 13:4. 2012, 227:2, eff. June 16, 2012. 2022, 131:5, eff. June 2, 2022.

**193–A:7 Repealed by 2012, 227:4, I, eff. June 16, 2012.**

**193–A:8 Repealed by 2012, 227:4, II, eff. June 16, 2012.**

**193–A:9 Liability Limited.**

The resident school district, the board of such district, and any employees of the resident school district associated with a child who is or has been receiving home education are not liable in damages in a civil action for any injury, death or loss to person or property allegedly sustained by that child, the child's parent, or any other person as a result of the child's receipt of home education, including but not limited to, any liability allegedly based on the failure of the child to receive a free appropriate or adequate public education.

**Source.** 1990, 279:3. 2012, 227:3, eff. June 16, 2012.

**193–A:10 Home Education Advisory Council.**

I. There is established the home education advisory council which shall consist of the following members:

(a) Two members of the house of representatives from the house education committee, appointed by the speaker of the house of representatives, who shall be nonvoting members.

(b) One member of the senate from the senate education committee, appointed by the president of the senate, who shall be a nonvoting member.

(c) The following individuals who shall be appointed by the commissioner of the department of education from persons named as follows:

(1) Six members nominated by home educator associations organized within New Hampshire.

(2) Two members nominated by the commissioner of the department of education, or designee.

(3) One member nominated by the New Hampshire School Administrators Association.

(4) One member nominated by the New Hampshire School Boards Association.

(5) One member nominated by the New Hampshire Association of School Principals.

(6) One member nominated by the nonpublic school advisory council established by the state board of education pursuant to RSA 21–N:9, II(f).

II. The duties of the council and the terms of office of the members appointed under subparagraph I(c) shall be prescribed in accordance with rules

proposed by the commissioner of education and adopted by the state board of education pursuant to RSA 541–A. Legislative members of the council shall serve a term which is coterminous with their elected office.

III. The chair of the council shall be elected by the council members from the home educator membership on the council appointed under subparagraph I(c). All vacancies on the council shall be filled in the same manner as that of the original appointment.

IV. Legislative members of the council shall receive mileage at the legislative rate when attending to the duties of the council.

**Source.** 1990, 279:3. 2008, 344:2. 2012, 203:3, eff. Aug. 12, 2012.

### 193–A:11 Authority of School District Officials.

No superintendent, school board, school principal, or other school district official shall propose, adopt, or enforce any policy or procedure governing home educated pupils that is inconsistent with or more restrictive than the provisions of this chapter and any rules adopted pursuant to RSA 193–A:3.

**Source.** 2012, 203:4, eff. Aug. 12, 2012.

## CHAPTER 193–B

## DRUG-FREE SCHOOL ZONES



### 193–B:1 Definitions.

In this chapter:

I. "Controlled drug or its analog" means those drugs or substances included within the definitions provided in RSA 318–B:1, VI and VI–a.

II. "Drug-free school zone" means an area inclusive of any property used for school purposes by any school, whether or not owned by such school, within 1,000 feet of any such property, and within or immediately adjacent to school buses.

III. "School" means any public or private elementary, secondary, or secondary vocational-technical school or Head Start facility in New Hampshire.

IV. "School property" means all real property, physical plant and equipment used for school purposes, including but not limited to school playgrounds and buses, whether public or private.

**Source.** 1991, 364:1. 1996, 290:1, eff. Aug. 9, 1996.

### 193–B:2 Drug-Free School Zones.

Except as otherwise provided by law, it shall be unlawful for any person to manufacture, sell, prescribe, administer, dispense, or possess with intent to sell, dispense, or compound any controlled drug or its analog, within a drug-free school zone at any time of the year.

**Source.** 1991, 364:1. 1994, 28:1, eff. June 21, 1994.

### 193–B:3 Maps of Drug-Free Zones; Exemption.

I. Each school administrative unit within the state shall, in consultation with the local police authority having jurisdiction over drug enforcement where each drug-free zone is located, publish a map clearly indicating the boundaries of each permanent drug-free school zone in accordance with the provisions of RSA 193–B:1, II. Such map shall be posted in a prominent place in the district or municipal court of jurisdiction, the local police department, and in all schools existing in the drug-free school zone.

II. The mapping requirements under paragraph I shall not apply to Head Start facilities.

**Source.** 1991, 364:1. 1996, 290:2, eff. Aug. 9, 1996.

### 193–B:4 Rulemaking; Notice; Posting.

The state board of education, in consultation with the New Hampshire Police Chiefs' Association, shall adopt rules pursuant to RSA 541–A relative to:

I. Developing a procedure by which to mark drug-free zones, including the use of signs or other markings as appropriate. Such signs or other markings shall:

(a) Be posted in a prominent place:

(1) On or near each school;

(2) In each school bus; and

(3) On or near non-school-owned property serving as a temporary drug-free zone by virtue of its use for the school's instructional program, for the duration of such use;

(b) Indicate that the posted area is a drug-free zone which extends to 1,000 feet surrounding such property; and

(c) Warn that violation of this chapter shall subject the offender to severe penalties under the law.

II. Assisting each school administrative unit in providing for the posting required in this section.

**Source.** 1991, 364:1. 1994, 28:2, 3, eff. June 21, 1994.

**193–B:5 Toll-Free Hotline; Rulemaking; Local Hotlines; Notice.**

I. There is hereby established a toll-free statewide hotline for the purpose of reporting anonymous information on drug activity to local law enforcement agencies. The department of safety shall coordinate and adopt rules pursuant to RSA 541–A for the establishment and operation of the hotline.

II. The toll-free statewide telephone number established under paragraph I shall be displayed in the drug-free zone signs developed and posted pursuant to RSA 193–B:4, I. If a local police hotline telephone exists in a community, such telephone number shall be posted on relevant signs in lieu of the toll-free statewide telephone number.

**Source.** 1991, 364:1, eff. Jan. 1, 1992.

**193–B:6 Penalties.**

I. It shall be a violation for any person to cover, remove, deface, alter or destroy any sign or other marking identifying a drug-free zone as provided in RSA 193–B:4, I.

II. Lack of knowledge that the prohibited act as defined in RSA 193–B:2 occurred on or within 1,000 feet of school property shall not be a defense.

III. A violation of RSA 193–B:2 shall not include an act which occurs entirely within a private residence wherein no person 17 years of age or under is present.

**Source.** 1991, 364:1, eff. Jan. 1, 1992.

**193–B:7 Penalty Assessment.**

In addition to the penalties imposed under RSA 193–B:6, I and RSA 318–B:26, V, every court shall levy a penalty assessment of $100 for an offense in violation of RSA 193–B:2. The clerk of each court shall collect all penalty assessments and, notwithstanding RSA 6:11, shall transmit the amount collected to the general fund.

**Source.** 1994, 28:4. 2011, 224:225, eff. July 1, 2011.

## CHAPTER 193–C

## STATEWIDE EDUCATION IMPROVEMENT AND ASSESSMENT PROGRAM



**193–C:1 Statement of Purpose.**

I. Improvement and accountability in education are of primary concern to all of the citizens of New Hampshire. A well-educated populace is essential for the maintenance of democracy, the continued growth of our economy, and the encouragement of personal enrichment and development.

II. A statewide education improvement and assessment program built upon the establishment of academic standards specifying what students should know and be able to do is an important element in educational improvement. Such a program also serves as an effective measure of accountability and student performance when the assessment exercises or tasks are valid and appropriate representations of the knowledge and skills that students are expected to achieve.

III. Widespread participation in the establishment of a statewide education improvement and assessment program is essential. Consultation with educators at all levels, business people, government officials, community representatives, and parents must occur in the development of academic standards. In turn, widespread dissemination of those standards, once established, must occur. Teachers, administrators, and school board members must be fully apprised of these state-developed standards. They must, in turn, communicate these expectations to students and parents, and find and implement methods to enable students to acquire and apply the requisite knowledge and skills.

IV. In addition, the assessment results must be reported to students, parents, teachers, administrators, school board members, and to all other citizens of New Hampshire in order that informed decisions can be made concerning curriculum, in-service education, instructional improvement, teacher training, resource allocation, and staffing.

V. [Repealed.]

VI. The purpose of the statewide education improvement and assessment program is not to establish a statewide curriculum. It is, rather, to establish what New Hampshire students should know and be able to do and to develop and implement effective methods for assessing that learning and its applica-

tion so that local decisions about curriculum development and delivery can be made.

**Source.** 1993, 290:2. 2013, 263:7, I. 2016, 84:3, eff. July 18, 2016.

### 193–C:2 Definitions.

In this chapter:

I. "Commissioner" means the commissioner of the department of education.

II. "Committee" means the legislative oversight committee established to review the statewide education improvement and assessment program.

III. "Department" means the department of education.

IV. "Program" means the New Hampshire statewide education improvement and assessment program.

V. "Testing entity" means any vendor contracted to provide the statewide assessment under RSA 193–C:6.

**Source.** 1993, 290:2, eff. June 22, 1993. 2019, 323:7, eff. Oct. 12, 2019.

### 193–C:3 Program Established; Goals.

There is established within the department of education a statewide education improvement and assessment program. The commissioner shall develop and implement this program in conjunction with the state board of education and the legislative oversight committee. In carrying out this program, the commissioner shall consult widely with educators at all levels, business people, government officials, community representatives, and parents.

I. The aims of this program shall be to:

(a) Define what students should know and be able to do.

(b) Develop and implement methods for assessing that learning and its application.

(c) Report assessment results to all citizens of New Hampshire.

(d) Help to provide accountability at all levels.

(e) Use the results, at both the state and local levels, to improve instruction and advance student learning.

II. Since the program is not a minimum competency testing program, assessment instruments should be designed to reflect the range of learning exhibited by students. The assessment portion of the program shall consist of a variety of assessment tasks that measure academic standards and are objectively scored. The assessment instruments shall include, but not be limited to:

(a) Constructed response items which require students to produce answers to questions rather than to select from an array of possible answers.

(b) A writing sample.

(c) Other open-ended performance tasks.

III. The following criteria shall be used in the development of the program:

(a) Academic standards specifying what students should know and be able to do shall be clearly defined before assessment procedures and exercises are developed.

(b) The assessment exercises or tasks shall be valid and appropriate representations of the academic standards the students are expected to achieve.

(c) At each grade level assessed, the standards and expectations identifying what a student should know and be able to do shall be the same for every New Hampshire student.

(d) Teachers shall be involved in designing and using the assessment system.

(e) Assessment frameworks and reports shall be understandable and widely disseminated to parents, teachers, administrators, other school personnel, school board members, teacher preparation programs, business people, government officials, and community members.

(f) The assessment system shall be subject to continuous review and improvement.

(g) The assessment portion of the program shall be designed to be a measure of student academic achievement and growth of knowledge and skills.

IV. The assessment system shall generate data which may be used:

(a) At the student level, by students, parents, and teachers, to determine what the student knows and is able to do in relationship to the state-established academic standards.

(b) At the classroom and school building levels, to monitor student progress and to enhance learning.

(c) At the district level, to measure school and district-wide progress toward meeting goals and outcomes, to revise curriculum, to design in-service education programs, and to improve instruction.

(d) At the state level, to measure what students know and are able to do in relation to the attainment of goals and outcomes from the assessment

frameworks, and to report the results to the citizens of New Hampshire.

(e) At the state level, to target services to schools, improve existing programs, develop new initiatives, and revise standards for school improvement, teacher certification, etc.

(f) At the college level, to integrate into teacher preparation programs instruction in state-established standards, techniques for enhancing student learning in these areas, and the use of assessment results to improve instruction.

(g) At all levels, to correlate, to the extent possible, with national goals and international standards.

(h) At all levels, to provide a basis for accountability.

(i) [Repealed.]

(j) At the school, district, and state levels, to provide performance reports on specific subgroups of pupils as required by federal law.

(k) At the high school level, to serve as one indicator of a student's postsecondary education readiness.

**Source.** 1993, 290:2. 2003, 314:7. 2016, 20:1; 84:4, 5. 2017, 100:1, eff. Aug. 7, 2017. 2018, 42:1, eff. July 14, 2018. 2023, 79:158, eff. July 1, 2023.

### 193–C:4 Rulemaking.

The state board of education shall adopt rules, pursuant to RSA 541–A, relative to the exemption of certain students from participation in the program. Nothing in this section shall be construed to limit the ability of the state board of education to adopt rules pursuant to the authority granted by the general court.

**Source.** 1993, 290:2, eff. June 22, 1993.

### 193–C:5 Areas of Assessment.

The statewide academic areas to be assessed shall include reading and language arts, mathematics, and science. History, geography, civics, and economics remain required critical areas of study. Therefore, assessment of these subjects remains within the purview of the local school board. The statewide assessment program shall only measure student understanding of key content-specific concepts, skills, and knowledge applied within or across academic content domains.

**Source.** 1993, 290:2. 2007, 3:1. 2014, 321:1. 2016, 75:1, eff. July 18, 2016.

### 193–C:6 Assessment Required.

A statewide assessment shall be administered in all school districts in the state once in an elementary school grade, once in a middle school grade, and one grade in high school. For those years in grades 3 through 8 in which the school district does not administer the statewide assessment, the school district, in consultation with the department and as part of the statewide education improvement and assessment program, shall develop and administer its own assessment or shall administer a standardized assessment that identifies a pupil's range of learning and yields objective data to use in improving instruction and learning. All public school students in the designated grades shall participate in the assessment, unless such student is exempted from taking the test by his or her parent or legal guardian, 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. The department may use the College Board SAT or ACT college readiness assessment to satisfy the high school assessment requirements of this chapter. The statewide assessment results of a student or the student's school district shall not be included as part of the student's transcript unless the student, if 18 years of age or older, or the student's parent or legal guardian if the student is under 18 years of age, consents. A school district shall not penalize any exempted student nor shall the department of education or the state board of education penalize any school district for a lower participation rate. A school district shall develop a form to be signed by the parent or legal guardian of any student exempted from the assessment. The school district shall provide an appropriate alternative educational activity for the time period during which the assessment is administered. The alternative activity shall be agreed upon by the school district and the parent or legal guardian of the student. The name of the parent or legal guardian and any specific reasons disclosed to school officials for the objection to the assessment shall not be public information and shall be excluded from access under RSA 91–A.

**Source.** 1993, 290:2. 1999, 224:2. 2007, 3:2. 2015, 226:1. 2017, 16:1, eff. June 16, 2017; 88:1, eff. Aug. 4, 2017; 142:2, eff. Aug. 15, 2017. 2018, 91:1, eff. July 24, 2018.

**193–C:7, 193–C:8 Repealed by 2020, 37:4, XV, eff. July 29, 2020.**

**193–C:8–a Legislative Oversight Committee.**

I. (a) It is the duty and policy of the state of New Hampshire that public elementary and secondary education shall provide all students with the opportunity to acquire the knowledge and skills necessary to prepare them for successful participation in the social, economic, scientific, technological, and political systems of a free government, now and in the years to come, regardless of where the students live.

(b) Respecting New Hampshire's long tradition of community involvement, appropriate means are established to provide an adequate education through an integrated system of shared responsibility between state and local government. In this system, the state establishes minimum standards for public school approval and academic standards for delivery of educational services at the local level. School districts then have the responsibility and flexibility in implementing diverse educational approaches to instruction and curriculum tailored to meet student needs.

(c) New Hampshire's long history of authorizing local governments in the form of local districts, to develop and administer public schools pursuant to a set of minimum standards established by the state has successfully achieved, on average across the state, high quality educational outcomes.

II. An oversight committee shall be established consisting of:

(a) Five members of the house of representatives, appointed by the speaker of the house of representatives.

(b) One member of the senate, appointed by the senate president.

III. The first meeting of the oversight committee shall be at the call of the first named house member. The first order of business shall be for the members to elect a chair. The members of the committee shall receive mileage at the legislative rate when attending to duties of the committee.

IV. The legislative oversight committee shall:

(a) Review the development and implementation of the school performance and accountability program set forth in RSA 193–H to ensure compliance with state and federal law. Implementation of the program shall be in conjunction with the committee's review.

(b) Review the provisions of RSA 193–H and submit a report of such review annually to the speaker of the house of representatives, the president of the senate, the governor, and the chairpersons of the house and senate education committees.

(c) Propose legislation that is needed as a result of the review of the progress and results of the policies implemented under this chapter and under RSA 193–H, including any changes necessitated by federal law.

(d) Confer with the commissioner and the state board of education to identify operational principles which should guide the work of the department of education in supporting improved school performance and accountability.

(e) Analyze existing department of education programs and initiatives which support improved school performance and accountability.

(f) Receive reports from the commissioner regarding the status of public education in New Hampshire, updates on the improvement made by local school districts toward achieving satisfactory progress in statewide student performance under RSA 193–H:2 and status reports on the on-going issues and implications of school accountability at the state and federal level. Reports by the commissioner shall occur at least once annually or more frequently as needed, as determined by the committee and the commissioner.

(g) Review and approve statewide performance targets required under RSA 193–H:2 developed by the department of education and recommended to the legislative oversight committee by the state board of education.

(h) Receive reports from the state board of education including rules recommended by the department to be adopted by the state board of education under RSA 541–A relative to statewide performance targets required under RSA 193–H:2. The legislative oversight committee shall propose legislation to be submitted to establish such statewide performance targets in state statute during the legislative session following the approval of any recommendations which the state board of education is required to make.

(i) Review the unique pupil identification system established in RSA 193–E:5 and propose legislation needed as a result of the review.

(j) Review the implementation and results of the program relative to accountability for the opportunity for an adequate education established in RSA 193–E, consult and receive reports on such pro-

gram, evaluate and review existing and emergent performance-based measurement tools, and propose legislation for improvements to the accountability program, as necessary.

(k) Receive security breach reports from the department of education pursuant to RSA 189:66, consult with the commissioner of the department of information technology, and propose legislation needed as a result of the review.

(l) Review and make recommendations relating to academic standards under consideration by the state board of education pursuant to RSA 193–E:2–a, IV(c).

**Source.** 2022, 109:1, eff. July 26, 2022.

**193–C:9 Repealed by 2013, 263:7, II, eff. Sept. 22, 2013.**

**193–C:10 Accessibility of Assessment Materials.**

After the assessment results are released by the department, a pupil's parent or legal guardian shall have the right to inspect and review the pupil's assessment, including the questions asked, the pupil's answers, instructions or directions to the pupil, and other supplementary materials related or used to administer the pupil's assessment. A parent or legal guardian shall direct a request for inspection or review to the pupil's school, and the school shall comply with such request within 45 days of its receipt. The department of education shall make available released assessment items on the department's website as soon as possible after the statewide assessment results are released. The commissioner shall adopt rules, pursuant to RSA 541–A, to implement procedures for the review and inspection of assessment materials. These rules shall provide parents and legal guardians with no fewer rights accorded to them under the Family Educational and Privacy Rights Act, 20 U.S.C. 1232g.

**Source.** 1998, 290:1. 2014, 219:1, eff. Sept. 12, 2014.

**193–C:11 Anonymity of Pupil Assessment Results; Parental Authorization Required.**

Individual pupil names or codes contained in the statewide assessment results, scores, or other evaluative materials shall be deleted for the purposes of records maintenance and storage of such results or scores at the department of education, unless a parent or legal guardian provides written authorization otherwise, or as required under federal law. Individual pupil results shall be made available to a parent, a legal guardian, or the pupil's school in accordance with the Family Educational and Privacy Rights Act, 20 U.S.C. 1232g.

**Source.** 1998, 290:1, eff. Jan. 1, 1999.

**193–C:12 Pupil Assessment Information.**

I. The department shall provide the testing entity as defined in RSA 189:65, VIII, with individual pupil names and unique pupil identifiers. The testing entity shall maintain the results, scores, or other evaluative materials for the purpose of measuring and reporting individual student growth.

II. The department may provide, or may request the testing entity to provide, the assessment results and comparative data to a parent, a legal guardian, or the pupil's school as provided in RSA 193–C:11. The department may collect, and the districts shall provide, student address information from the individual school districts solely for the purpose of effectuating the distribution of assessment results and comparative data as provided in this section.

III. The report shall be provided to parents in an informative and instructional manner to help children meet challenging state academic standards and advance student learning.

IV. The testing entity shall destroy all student data after 8 years.

**Source.** 2019, 323:1, eff. Oct. 12, 2019. 2021, 20:1, eff. July 5, 2021.

## CHAPTER 193–D

## SAFE SCHOOL ZONES



**193–D:1 Definitions.**

In this chapter:

I. "Act of theft, destruction, or violence" means an act set forth in the following statutes regardless of the age of the perpetrator:

(a) Any of the offenses enumerated in RSA 189:13–a, V.

(b)(1) Any first or second degree assault under RSA 631.

(2) Any simple assault under RSA 631:2–a.

(c) Criminal mischief under RSA 634:2.

(d) Unlawful possession or sale of a firearm or other dangerous weapon under RSA 159.

(e) Arson under RSA 634:1.

(f) Burglary under RSA 635.

(g) Robbery under RSA 636.

(h) Theft under RSA 637.

(i) Illegal sale or possession of a controlled drug under RSA 318–B.

(j) Criminal threatening under RSA 631:4.

II. "Safe school zone" means an area inclusive of any school property or school buses.

III. "School" means any public or private elementary, secondary, or secondary vocational-technical school in New Hampshire. It shall not include home schools under RSA 193–A.

IV. "School employee" means any school administrator, teacher, or other employee of any public or private school, school district, school department, or school administrative unit, or any person providing or performing continuing contract services for any public or private school, school district, school department, or school administrative unit.

V. "School property" means all real property, physical plant and equipment used for school purposes, including but not limited to school playgrounds and buses, whether public or private.

VI. "School purposes" means school-sponsored programs, including but not limited to educational or extra-curricular activities.

**Source.** 1994, 355:3. 1995, 231:2. 2007, 139:1, eff. Aug. 17, 2007. 2018, 254:1, eff. Aug. 11, 2018.

### 193–D:2 State Board Rulemaking Authority; Public School District Policies.

I. The state board of education shall adopt rules relative to safe school zones, under RSA 541–A, for public school pupils and public school employees regarding:

(a) Disciplinary proceedings, including procedures assuring due process.

(b)(1) Standards and procedures for suspension and expulsion of pupils, including procedures assuring due process.

(2) Standards and procedures which shall require expulsion of a pupil for knowingly possessing a firearm in a safe school zone without written authorization from the superintendent or designee.

(c) Procedures pertaining to discipline of pupils with special needs, including procedures assuring due process.

(d) Procedures for reporting acts of theft, destruction, or violence under RSA 193–D:4.

(e) Reporting acts of violence against school employees, volunteers, and visitors.

(f) A complaint procedure for those asserting that a provision of this chapter has been violated, and possible sanctions and penalties for such violation.

II. Nothing in this chapter shall prohibit local school boards from adopting and implementing policies relative to pupil conduct and disciplinary procedures.

**Source.** 1994, 355:3, eff. June 8, 1994. 2020, 38:13, eff. Sept. 27, 2020.

### 193–D:3 Criminal Penalties.

Any person convicted of an act of theft, destruction, or violence as defined in RSA 193–D:1 committed in a safe school zone at any time of year may be subject to an extended term of imprisonment as provided in RSA 651:6.

**Source.** 1994, 355:3, eff. Sept. 1, 1994.

### 193–D:4 Written Report Required.

I. (a) Any public or private school employee who has witnessed or who has information from the victim of an act of theft, destruction, or violence in a safe school zone shall report such act in writing immediately to a supervisor. A supervisor receiving such report shall immediately forward such information to the school principal who shall file it with the local law enforcement authority. Such report shall be made by the principal to the local law enforcement authority immediately, by telephone or otherwise, and shall be followed within 48 hours by a report in writing. If the alleged victim is a student, the principal shall also immediately notify the person responsible for the victim's welfare, as defined in RSA 169–C:3, XXII, that a report was made to the local law enforcement authority.

(b) The provisions of subparagraph (a) shall not apply to any simple assault involving pupils in kindergarten through grade 12 if the local school board has adopted a discipline policy which sets forth circumstances under which parents shall be notified of simple assaults.

(c) Each school district, in conjunction with the local law enforcement authority, shall establish a

memorandum of understanding for administering the provisions of RSA 193–D:4, I(a)–(c).

(d) All assaults committed against school employees, volunteers, and visitors, shall be reported to the department of education for data collection and examination.

(e) All public schools shall provide an annual incident report to their local school boards. The report shall include all incidents of violence involving students, employees, volunteers, or visitors.

(f) When an act of violence is observed by a group of people, one member of the group may report the act and identify the additional observers, provided a second observer also signs the report.

II. The report required under paragraph I shall include:

(a) The name and home address, if known, of any person suspected of committing an act of theft, destruction, or violence in a safe school zone.

(b) The name and home address, if known, of any witness to the act of theft, destruction, or violence in a safe school zone.

(c) Identification of the act of theft, destruction, or violence as defined in RSA 193–D:1 that was allegedly committed.

**Source.** 1994, 355:3. 1995, 231:3. 2000, 194:1, eff. Jan. 1, 2001. 2020, 38:14, eff. Sept. 27, 2020.

### 193–D:5 Waiver of Written Report Requirement.

The written report required under RSA 193–D:4 shall be waived by law enforcement officials when there is a law enforcement response at the time of the incident which results in a written police report.

**Source.** 1994, 355:3, eff. Sept. 1, 1994.

### 193–D:6 Penalties for Failure to Report.

Any person who knowingly fails to comply with the reporting requirements under RSA 193–D:4 for acts of theft, destruction, or violence, unless such report is waived under RSA 193–D:5, shall be guilty of a violation.

**Source.** 1994, 355:3, eff. Sept. 1, 1994.

### 193–D:7 Confidentiality.

I. Notwithstanding any other provision of law, it shall be permissible for any law enforcement officer and any school administrator to exchange information relating only to acts of theft, destruction, or violence in a safe school zone regarding the identity of any juvenile, police records relating to a juvenile, or other relevant information when such information reasonably relates to delinquency or criminal conduct, suspected delinquency or suspected criminal conduct, or any conduct which would classify a pupil as a child in need of services under RSA 169–D or a child in need of protection under RSA 169–C.

II. Notwithstanding any other provision of law, law enforcement may disclose law enforcement records or information contained within such records related to any report of a "serious threat to school safety" pursuant to RSA 169–B:2, XIV to the reporting school officials for use in disciplinary proceedings conducted in accordance with RSA 193:13, I(b) and II. Law enforcement may also, upon issuance of a court order pursuant to RSA 169–B:35, II, disclose court records to such school officials. All records shall be maintained in accordance with the Family Education Rights and Privacy Act, 20 U.S.C. section 1232g, and applicable state law.

**Source.** 1994, 355:3, eff. Sept. 1, 1994. 2023, 68:1, eff. Aug. 6, 2023.

### 193–D:8 Transfer Records; Notice.

All elementary and secondary educational institutions, including academies, private schools, and public schools, shall upon request of the parent, pupil, or former pupil, furnish a complete school record for the pupil transferring into a new school system. Such record shall include, but not be limited to, records relating to any incidents involving suspension or expulsion, or delinquent or criminal acts, or any incident reports in which the pupil was charged with any act of theft, destruction, or violence in a safe school zone.

**Source.** 1994, 355:3, eff. Sept. 1, 1994.

### 193–D:9 Liability for Reporting.

Any public or private school employee or employee of a company under contract to a school or school district who in good faith has made a report under RSA 193–D shall not be subject to liability for making the report.

**Source.** 2010, 155:5, eff. July 1, 2010.

## CHAPTER 193–E

## ADEQUATE PUBLIC EDUCATION

### 193–E:1 Policy and Purpose.

I. It is the policy of the state of New Hampshire that public elementary and secondary education shall provide all students with the opportunity to acquire the knowledge and skills necessary to prepare them for successful participation in the social, economic, scientific, technological, and political systems of a free government, now and in the years to come; an education that is consistent with the minimum standards for public school approval, the state-established academic standards, and school district or school curriculum.

II. Respecting New Hampshire's long tradition of community involvement, it is the purpose of this chapter to ensure that appropriate means are established to provide an adequate education through an integrated system of shared responsibility between state and local government. In this system, the state establishes minimum standards for public school approval and academic standards for inclusion and delivery of educational services at the local level. School districts then have responsibility and flexibility in implementing diverse educational approaches to instruction and curriculum tailored to meet student needs.

**Source.** 1998, 389:1. 2005, 257:15. 2007, 270:3. 2016, 84:6, eff. July 18, 2016.

### 193–E:2 Criteria for an Adequate Education.

An adequate education shall provide all students with the opportunity to acquire:

I. Skill in reading, writing, and speaking English to enable them to communicate effectively and think creatively and critically.

II. Skill in mathematics and familiarity with methods of science to enable them to analyze information, solve problems, and make rational decisions.

III. Knowledge of the biological, physical, and earth sciences, including environmental sciences that investigate the complex interaction of physical, chemical, and biological processes that take place on the earth, to enable them to understand and appreciate the world and the engineering, socio-economic, and geopolitical challenges around them.

IV. Knowledge of civics and government, economics, geography, history, and Holocaust and genocide education to enable them to participate in the democratic process and to make informed choices as responsible citizens.

V. Grounding in the arts, languages, and literature to enable them to appreciate our cultural heritage and develop lifelong interests and involvement in these areas.

VI. Sound wellness and environmental practices, including outdoor recreation, to enable them to enhance their own well-being, as well as that of others.

VII. Skills for lifelong learning, including interpersonal, environmental education, and technological skills, to enable them to learn, work, communicate, and participate effectively in a changing society and environment.

**Source.** 1998, 389:1. 2005, 257:15. 2007, 270:3, eff. June 29, 2007. 2020, 29:12, eff. Sept. 21, 2020. 2021, 210:2, Pt. V, Secs. 1 and 2, eff. Oct. 9, 2021.

### 193–E:2–a Substantive Educational Content of an Adequate Education.

I. (a) Beginning in the school year 2008–2009, and for each year thereafter, the specific criteria and substantive educational program that deliver the opportunity for an adequate education shall be defined and identified as the school approval standards in the following learning areas:

(1) English/language arts and reading.

(2) Mathematics.

(3) Science.

(4) Social studies, including civics, government, economics, geography, history, and Holocaust and genocide education.

(5) Arts education, including music and visual arts.

(6) World languages.

(7) Health and wellness education, including a policy for violations of RSA 126–K:8, I(a).

(8) Physical education.

(9) Engineering and technologies including technology applications.

(10) Personal finance literacy.

(11) Computer science.

(b) Teachers shall use academic and applied instruction to teach the learning areas under subparagraph (a). The following skills shall be integrated into the learning areas:

(1) Computer use and digital literacy.

(2) Logic and rhetoric.

II. The standards shall cover kindergarten through twelfth grade and shall clearly set forth the opportunities to acquire the communication, analytical and research skills and competencies, as well as the substantive knowledge expected to be possessed by students at the various grade levels, including the credit requirement necessary to earn a high school diploma.

II–a. Instruction in support of kindergarten standards shall be engaging and shall foster children's development and learning in all domains including physical, social, cognitive, and language. Educators shall create a learning environment that facilitates high quality, child-directed experiences based upon early childhood best teaching practices and play-based learning that comprise movement, creative expression, exploration, socialization, and music. Educators shall develop literacy through guided reading and shall provide unstructured time for the discovery of each child's individual talents, abilities, and needs.

III. Public schools and public academies shall adhere to the standards identified in paragraph I.

IV. (a) The minimum standards for public school approval for the areas identified in paragraph I shall constitute the opportunity for the delivery of an adequate education. The general court shall periodically, but not less frequently than every 10 years, review, revise, and update, as necessary, the minimum standards identified in paragraph I and shall ensure that the high quality of the minimum standards for public school approval in each area of education identified in paragraph I is maintained. Changes made by the board of education to the school approval standards through rulemaking after the effective date of this section shall not be included within the standards that constitute the opportunity for the delivery of an adequate education without prior adoption by the general court. The board of education shall provide written notice to the speaker of the house of representatives, the president of the senate, and the chairs of the house and senate education committees of any changes to the school approval standards adopted pursuant to RSA 541–A.

(b) Neither the department of education nor the state board of education shall by statute or rule require that the common core standards developed jointly by the National Governors Association and the Council of Chief State School Officers be implemented in any school or school district in this state. If the local school board elects not to implement the common core standards or the common core state standards adopted by the state board pursuant to RSA 541–A, the local school board shall determine, approve, and implement alternative academic standards.

(c) The state board shall not amend any existing academic standards and shall not approve any new academic standards without the prior review and recommendation of the legislative oversight committee established in RSA 193–C:8–a.

(d) In this paragraph, "academic standards" shall have the same meaning as in RSA 193–E:2–a, VI(b).

V. (a) The general court requires the state board of education and the department of education to institute procedures for maintaining, updating, improving, and refining the minimum standards for public school approval for each area of education identified in paragraph I. Each school district shall be responsible for maintaining, updating, improving, and refining curriculum. The curriculum shall present educational goals, broad pedagogical approaches and strategies for assisting students in the development of the skills, competencies, and knowledge called for by the minimum standards for public school approval for each area of education identified in paragraph I. It is the responsibility of local teachers, administrators, and school boards to identify and implement approaches best suited for the students in their communities to acquire the skills and knowledge included in the curriculum, to determine the scope, organization, and sequence of course offerings, and to choose the methods of instruction, the activities, and the materials to be used.

(b) The state board of education shall adopt rules, pursuant to RSA 541–A, relative to the approval of alternative programs for granting credit leading to graduation.

VI. In this section:

(a) "Minimum standards for public school approval" mean the applicable criteria that public schools and public academies shall meet in order to

be an approved school, as adopted by the state board of education through administrative rules.

(b) "Academic standards" means what a student should know and be able to do in a course or at each grade level.

(c) "Curriculum" means the lessons and academic content taught in school or in a specific course or program.

(d) "Applied learning" means an educational approach whereby students have the opportunity to directly engage in learning activities using knowledge and skills.

(e) "Logic" means a reasoning skill that better enables a student to analyze problems in learning areas such as mathematics and to develop problem solutions; to better understand the principle of cause and effect; and to develop critical thinking skills to better identify fact from unverified information or data.

(f) "Rhetoric" means the skill of speaking and writing as a means of communication or persuasion.

**Source.** 2007, 270:2. 2016, 84:7. 2017, 252:1, eff. Sept. 16, 2017. 2018, 224:1, eff. Aug. 7, 2018; 269:2, eff. Aug. 17, 2018; 274:1, eff. Aug. 17, 2018; 280:1, eff. Aug. 20, 2018. 2019, 346:109, eff. Jan. 1, 2020. 2020, 37:4, XVI, eff. July 29, 2020. 2022, 109:3, eff. July 26, 2022; 273:1, 2, eff. Aug. 23, 2022.

### 193–E:2–b Cost of an Adequate Education.

I. The general court shall use the definition of the opportunity for an adequate education in RSA 193–E:2–a to determine the resources necessary to provide essential programs, considering educational needs. The general court shall make an initial determination of the necessary specific resource elements to be included in the opportunity for an adequate education.

II. The general court shall create a process for the periodic determination of the specific resource elements essential to providing the substantive educational content of an adequate education. This review should occur no less frequently than every 10 years.

III. [Repealed.]

**Source.** 2007, 270:2. 2012, 264:1, VII, eff. Aug. 17, 2012.

### 193–E:2–c Resource Elements.

The general court recognizes that schools with greater educational challenges will benefit from varying resources. Schools with varying educational challenges often exist within a single school district. The general court is committed to addressing the varying educational challenges that exist among the schools of the state.

**Source.** 2007, 270:2, eff. June 29, 2007.

### 193–E:2–d Repealed by 2009, 198:4, eff. July 14, 2009.

### 193–E:2–e Repealed by 2021, 64:1, eff. June 4, 2021.

### 193–E:2–f Commission on Holocaust and Genocide Education.

*[RSA 193–E:2–f repealed by 2020, 29:18 effective November 1, 2024.]*

I. There is established a commission to study best practices for teaching students how intolerance, bigotry, antisemitism, and national, ethnic, racial, or religious hatred and discrimination have evolved in the past, and can evolve into mass violence and genocide, such as the Holocaust.

II. The members of the commission shall be as follows:

(a) One member of the senate, appointed by the president of the senate.

(b) Two members of the house of representatives, appointed by the speaker of the house of representatives.

(c) The commissioner of education, or designee.

(d) One high school teacher, appointed by the governor.

(e) One middle school teacher, appointed by the governor.

(f) One school administrator, appointed by the New Hampshire School Administrators Association.

(g) One school curriculum coordinator, appointed by NEA-NH.

(h) The Roman Catholic bishop of Manchester, or designee.

(i) A representative of the New Hampshire Council of Churches, appointed by the council.

(j) A representative of the Keene state college Cohen Center for Holocaust and Genocide Studies, appointed by the college president.

(k) Two members appointed by the Jewish Federation of New Hampshire, one of whom shall be a religious leader.

(l) Two survivors or direct descendants of a survivor of either the Holocaust or another genocide, one appointed by the president of the senate and one appointed by the speaker of the house of representatives.

(m) A representative appointed by the Anti-Defamation League, New England region.

III. The commission shall:

(a) Recommend model school district policies for Holocaust and genocide education.

(b) Recommend to the state board of education rules for fulfilling the Holocaust and genocide education requirement.

(c) Identify best practices for teaching Holocaust and genocide education and the appropriate number of hours of instruction at multiple grade levels.

(d) Identify existing teaching materials and curriculum as well as strategies and content for providing and enhancing genocide education to students.

(e) Identify in-service education opportunities for educators.

(f) Promote, within the schools and the general population of the state, implementation of Holocaust and genocide education.

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

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 senate member. The first meeting of the commission shall be held within 45 days of the effective date of this section. Eight members of the commission shall constitute a quorum.

VI. Report. The commission shall report its findings and any recommendations for proposed legislation to the president of the senate, the speaker of the house of representatives, the chairpersons of the senate and house committees with jurisdiction over education, the senate clerk, the house clerk, the state board of education, the governor, and the state library. A preliminary report shall be submitted on or before January 1, 2021. An annual report shall be submitted on or before November 1, 2021 and each year thereafter. The commission shall monitor the implementation by grade, curriculum, and hours of instruction. A final report shall be submitted on or before November 1, 2024.

**Source.** 2020, 29:17, eff. July 23, 2020.

### 193–E:3 Delivery of an Adequate Education.

I. Annually, each school district shall report data to the department of education at the school and district levels on the indicators set forth in this paragraph. The report shall not contain personally identifiable information including but not limited to name, gender, or social security number. The department of education shall develop a reasonable schedule to collect the reporting of data required by state and federal law. The requirements for data keeping and the form of the report shall be established in accordance with rules adopted by the state board of education. Indicators shall include the following areas:

(a) Attendance rates.

(b) Annual and cumulative drop-out rates of high school students and annual drop-out rates for students in grades 7 and 8.

(c) School environment indicators, such as safe-schools data.

(d) Number and percentage of graduating high school students.

(e) Number and percentage of graduating high school students going on to postsecondary education, military service, and an advanced learning program leading to a value added skill or career certification.

(f) Number and percentage of students earning a career and technical education industry recognized credential.

(g) Number and percentage of students completing a career pathway program of study.

(h) Number and percentage of high school students who earned postsecondary credit of C or better for one or more concurrent or dual enrollment courses from a New Hampshire postsecondary college or university.

(i) Number of students that completed a New Hampshire scholars program of study.

(j) Number and percentage of students that completed and passed an advanced placement exam with a score of 3, 4 or 5; or International Baccalaureate exam with a score of 4, 5, 6, or 7.

(k) Number of students that scored at least a level III on components of the ASVAB, as defined in RSA 186:68, I, that comprise the Armed Forces Qualification Test (AFQT).

(l) The number and percentage of high school students that either met or exceeded the college and career ready benchmark established by the department for either the SAT or ACT.

(m) Expulsion and suspension rates, including in-school and out-of-school suspensions including data identifying the percentage of out-of-school suspensions of more than 10 days for each school year. This indicator shall be categorized by dis-

trict, school, and grade level with each category disaggregated and broken down by gender, race, IEP, and eligibility for free and reduced-price meal programs.

(n) Teacher and administrative turnover rates at the school and district levels.

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

II. (a) The department of education may implement and report data on any additional indicators deemed relevant to the purposes of this section.

(b) The department of education shall enter into an agreement with the board of trustees of the university system of New Hampshire or the community college system of New Hampshire, or both, if necessary, to determine additional indicators applicable to postsecondary institutions within their respective jurisdictions which are not required under paragraph VI.

III. (a) Annually, the department of education shall issue a public report on the condition of education statewide and on a district-by-district and school-by-school basis. This report shall be entitled "New Hampshire School District Profiles" and shall be made available on the department's website and online at every school administrative unit for public review. It shall include:

(1) School district and school demographic and pupil performance data reported in paragraph I and other relevant statistics as determined by the department of education.

(2) Comparisons with state averages for all data reported.

(3) Comparisons of each district and school to itself based on its own statewide improvement and assessment performance for the prior school year and its most recent 3-year averages.

(4) Statewide rankings of each district and school using an index system to communicate achievement and growth results on a 1-4 performance scale, including a statewide ranking of each school and school district based on the percentage increase of improvement as compared with the same school and school district's performance in the previous year.

(b) The report shall be organized and presented in a manner that is easily understood by the public and that assists each school district personnel, parents, and the community with the information to identify trends, strengths, and weaknesses. Each school's academic achievement and growth level score shall be visibly posted on the school, school district, and state websites. The academic achievement and growth level score shall describe how well specific school districts and schools have mastered the standards and the extent to which the district or school is preparing students to meet performance standards and be prepared for college and career. The rating scale shall include 4 reporting levels: level 4 means exceeds grade-level performance standards and advanced progress toward college and career readiness; level 3 means meets grade-level performance standards and progress toward college and career readiness; level 2 means nearly meets grade-level performance standards and may require further development to meet college and career readiness; and level 1 means does not meet grade-level performance standards and needs substantial improvement to meet college and career readiness.

(c) The department of education shall include data provided by early childhood programs, school districts, and postsecondary institutions.

IV. Data reported in paragraph I shall be disaggregated as required by federal law and shall include numbers and percentages of pupils with disabilities, limited English proficient pupils, pupils in advanced placement programs, economically disadvantaged pupils, and pupils of major ethnic, racial, and multi-racial groups.

V. In order to reduce school districts' administrative time and costs, the department of education shall develop and utilize user-friendly, computer forms and programs to collect the data set forth in paragraphs I, VI, and VII.

VI. (a) Annually, each postsecondary institution as defined in RSA 193–E:4 shall submit a report, which shall not include any personally identifiable information such as, but not limited to, name, gender, or social security number, to the department of education containing information on indicators in the following areas:

(1) Remedial education courses and the number and percentage of students requiring remedial education in English/language arts, reading, and mathematics.

(2) Entry, withdrawal, and transfers.

(3) Degrees and certificates granted.

(4) Number of high school students who received dual enrollment course credit.

(b) The department of education shall integrate all data collected into the data warehouse. The

department of education shall have access to data solely to conduct studies, track and report annual and longitudinal pupil outcomes, and improve post-secondary readiness, retention, and articulation between educational institutions.

(c) The state board of education, in consultation with the university system of New Hampshire board of trustees and the community college system of New Hampshire board of trustees shall adopt rules, pursuant to RSA 541–A, for developing a form to be used for the report and to establish requirements for data maintenance.

VII. (a) Annually, beginning with the 2011–2012 school year, each early childhood program as defined in RSA 193–E:4 shall submit a report, which shall not include any personally identifiable information such as, but not limited to, name, gender, or social security number, to the department of education containing information on indicators in the following areas:

(1) Program participation.

(2) Entry, exit, and type of program.

(3) Participant demographics as identified in RSA 193–E:3, IV.

(b) The department of education shall integrate all data collected into the data warehouse. The department of education shall have access to data solely to conduct studies, track and report annual and longitudinal pupil outcomes, and improve education programs.

(c) The state board of education, in consultation with the department of health and human services, shall adopt rules, pursuant to RSA 541–A, for developing a form to be used for the report and to establish requirements for data maintenance.

VIII. Beginning in September 2021, and each year thereafter, school districts shall, for entering high school freshman: assess student career interests; document school pathways to career readiness credentials; advise all entering high school students how to achieve a career ready credential upon graduation; and record on a student's transcript progress towards the credential. School districts shall report the following annually: the number of students who complete CTE; the number of dual enrollments, concurrent enrollments, extended learning opportunities, and work based learning enrollments; and the number of career ready credentials awarded.

**Source.** 1998, 389:1. 2003, 314:1. 2004, 147:2. 2005, 257:15. 2007, 270:3. 2010, 356:1, eff. Sept. 18, 2010. 2018, 299:1–3, eff. Aug. 24, 2018. 2020, 37:17, eff. July 29, 2020. 2021, 209:2, Pt. I, Sec. 3, eff. Aug. 10, 2021; 210:2, Pt. II, Sec. 14, eff. Oct. 9, 2021.

**193–E:3–a Definitions.**

In this section:

I. "Commissioner" means the commissioner of the department of education.

II. "Department" means the department of education.

II–a. "Genocide" means any of the following acts committed with the intent to destroy, in whole or in part, a national, ethnic, racial, or religious group: killing members of the group; causing serious bodily or mental harm to members of the group; deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; imposing measures intended to prevent births within the group; or forcibly transferring children of the group to another group.

II–b. "Holocaust" means the systematic, bureaucratic, state-sponsored persecution and murder of approximately 6,000,000 Jews by the Nazi regime and its collaborators.

II–c. "Holocaust and genocide education" means studies on the Holocaust, genocide, and other acts of mass violence.

III. "Input-based school accountability system" means the certified narrative explanation describing how a school has demonstrated compliance with the school approval standards included in the opportunity for an adequate education required under RSA 193–E:3–b.

IV. "Performance-based school accountability system" means the scoring system required under RSA 193–E:3–b and implemented by the department in rules adopted pursuant to RSA 541–A.

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

**Source.** 2009, 198:1, eff. July 14, 2009. 2020, 29:13, eff. Sept. 21, 2020.

**193–E:3–b Accountability for the Opportunity for an Adequate Education.**

Using the input-based accountability system, a school shall demonstrate that it provides the opportunity for an adequate education under RSA 193–E:2–a by meeting the requirements of paragraphs I and II of this section.

I. (a) A school shall demonstrate that it provides the opportunity for an adequate education for the school approval standards set forth in rules adopted by the department of education in the following areas:

(1) English/language arts and reading.

(2) Mathematics.

(3) Science.

(4) Social studies, to include including civics, government, economics, geography, history, and Holocaust and genocide education.

(5) Arts education, to include music and visual arts.

(6) World languages.

(7) Health and wellness education.

(8) Physical education.

(9) Engineering and technologies including technology applications.

(10) Computer science and digital literacy.

(11) Personal finance literacy.

(12) School year requirements.

(13) Minimum credits required for a high school diploma.

(b) A school shall submit a narrative explanation detailing how the school has complied with each of the standards in subparagraph (a).

(c) A school that has received full accreditation from the New England Association of Schools and Colleges (NEASC) shall be deemed to be in compliance with the provisions of subparagraphs (a) and (b). Using the input-based accountability system, NEASC accredited schools shall certify that they have on file copies of documentation necessary during the school's accreditation process including, but not limited to, the accreditation self-study report, peer review reports, reports of any follow-up activities taken by the school in response to NEASC's recommendations for accreditation, and the annual school update report as required by NEASC each fall. A school accredited by NEASC shall meet or exceed NEASC's standards and shall use those standards to measure improvement.

(d) The input-based school accountability system shall be completed by January 15 of every even numbered year. The school principal and school district superintendent shall certify in writing that the responses submitted are accurate. The commissioner, or designee, shall review the input-based school accountability system responses to each school's self-assessment required under this section and shall verify that the responses comply with the standards under subparagraph (a).

(e) The commissioner of the department of education shall require any school that is unable to demonstrate that it provides the opportunity for an adequate education through the input-based school accountability system to resubmit the narrative explanations annually until such demonstration has been made.

(f) The commissioner shall integrate the input-based school accountability system with the school approval process pursuant to RSA 21–N:6, V.

(g) The department shall conduct site visits at all schools at least once every 5 years to assess the validity of the responses in the input-based school accountability system. The commissioner may require more frequent site visits at schools which have been unable to demonstrate that they provide the opportunity for an adequate education.

II. A school shall annually demonstrate that it provides the opportunity for an adequate education through the performance-based school accountability system pursuant to RSA 193–E:3–c and RSA 193–E:3–d designed to measure educational outcomes.

**Source.** 2009, 198:1. 2011, 255:1, eff. Sept. 11, 2011. 2018, 274:2, eff. Aug. 17, 2018; 352:1, eff. Aug. 17, 2018 at 12:01 a.m. 2022, 273:3, eff. Aug. 23, 2022.

**193–E:3–c Performance-Based Accountability System.**

I. At least every 4 years the commissioner shall review the performance-based accountability system and make recommendations for future legislation to the legislative oversight committee established in RSA 193–C:8–a.

II. The department shall have the following duties:

(a) Implement the performance-based accountability system to be used by schools that will ensure that the opportunity for an adequate education is maintained.

(b) Identify performance criteria and measurements.

(c) Establish performance goals and the relative weights assigned to those goals.

(d) Establish the basis, taking into account the totality of the performance measurements, for determining whether the opportunity for an adequate education exists, which may include the assignment of a value for performance on each measurement.

(e) Ensure the integrity, accuracy, and validity of the performance methodology as a means of establishing that a school provided the opportunity for an adequate education as defined in RSA 193–E:2–a.

III. The performance-based accountability system shall be based on data and indicators aligned to the New Hampshire consolidated state plan, as required

by the Elementary and Secondary Education Act, 20 U.S.C. section 6301 et seq. as amended by the Every Student Succeeds Act.

IV. The commissioner shall submit a report of its findings with recommendations for future legislation for the performance-based accountability system to the legislative oversight committee established in RSA 193–C:8–a. After the report is approved by the legislative oversight committee, the commissioner shall submit the report to the chairpersons of the house and senate education committees, the speaker of the house of representatives, the senate president, the governor, the house clerk, and the senate clerk.

V. The department shall annually prepare a detailed report documenting the results of each school on the performance-based school accountability system to be developed pursuant to this section, and identifying all schools that can demonstrate the opportunity for an adequate education through the performance-based methodology. The report shall be submitted no later than January 15 annually to the same individuals receiving the final report under paragraph IV.

**Source.** 2009, 198:1. 2016, 84:8, 9, eff. July 18, 2016. 2018, 352:2, eff. Aug. 31, 2018. 2020, 37:18, eff. July 29, 2020. 2022, 109:2, eff. July 26, 2022.

### 193–E:3–d Performance-Based School Accountability System; Verification Process.

Prior to the submission of the final report pursuant to RSA 193–E:3–c, IV, the department shall undertake a process to verify and test the integrity, accuracy, and validity of the performance-based accountability system utilizing the best available data from one school from each of the counties in the state. The commissioner shall ensure, to the greatest extent possible, that the verification process utilizes the best available data from a balance of elementary and secondary schools representing diverse socioeconomic conditions throughout the state. The commissioner shall work with school officials and faculty from the selected schools to implement the performance-based school accountability program and to develop a data collection system which will allow schools to easily report results to the department for analysis and reporting. The commissioner shall review and make recommendations regarding the performance-based accountability system to ensure that the system adequately measures the goals and indicators associated with student academic achievement and growth.

**Source.** 2009, 198:1, eff. July 14, 2009. 2018, 352:3, eff. Aug. 31, 2018.

### 193–E:3–e Corrective and Technical Assistance.

The department shall implement corrective and technical assistance to schools that do not demonstrate that they provide the opportunity for an adequate education under RSA 193–E:3–b, I or II as follows:

I. In the first year of a school being unable to demonstrate that it provides the opportunity for an adequate education under either RSA 193–E:3–b, I or II, school officials shall submit an action plan to the commissioner. The plan shall detail the specific actions the school will take and the timeline to be followed to demonstrate that the school provides the opportunity for an adequate education. The plan shall:

(a) Identify areas where the school failed to meet the requirements under paragraph RSA 193–E:3–b, I or II.

(b) Identify and explain the strategy the school intends to implement to achieve compliance and improve performance.

(c) Detail how the school budget reflects the goals of the action plan.

II. After the second consecutive year of a school being unable to demonstrate that it provides the opportunity for an adequate education under either RSA 193–E:3–b, I or II, school officials shall submit an action plan to the commissioner. The plan shall:

(a) Describe procedures for providing mentoring or coaching to school personnel.

(b) Include ongoing technical assistance and a liaison from the department.

(c) Provide an accounting of how education funds are being expended to provide opportunities for an adequate education as defined in RSA 193–E:2–a.

(d) Establish and explain a strategy designed to promote family and community involvement.

III. After the third consecutive year of a school being unable to demonstrate that it provides the opportunity for an adequate education under either RSA 193–E:3–b, I or II, the commissioner shall:

(a) Assess how the school is expending its education funds and may order that adequacy funds be redirected to address those areas that are contributing to the failure of the school to provide the opportunity for an adequate education.

(b) Assign a coach or mentor to the school until the school demonstrates sufficient progress toward providing the opportunity for an adequate education.

(c) Require the school to provide an accounting of how education funds are being used to provide the opportunity for an adequate education under RSA 193–E:2–a.

(d) Require or provide, to the extent necessary, one or more of the following:

(1) Professional development that is aligned with school improvement goals.

(2) External support and resources based on their effectiveness and alignment with school improvement goals.

(3) Instructional models that incorporate research-based practices that have been proven to be effective in improving pupil achievement.

(4) Formal and informal opportunities to assess and monitor each pupil's progress.

(5) Evidence of decisions supported by data.

(6) Improvements to the school's curriculum, including curricular priorities and instructional materials.

(7) External support and resources based on their effectiveness and alignment with the school improvement plan.

(8) Extended learning opportunities for pupils.

(9) Structural reform strategies that may include changes in scheduling, organization, support mechanisms, and resources.

(10) Structural changes to school leadership to support school improvement.

(e) Meet quarterly with school officials in the affected school to assess the school's progress.

IV. The commissioner shall provide progress reports annually to the state board on the status and effectiveness of the corrective and technical assistance provided by the department in achieving the demonstration of adequacy by all schools.

**Source.** 2009, 198:1, eff. July 14, 2009. 2020, 37:19, eff. July 29, 2020.

### 193–E:3–f Approval of Courses and Programs.

The principal or other administrator of a high school shall grant credit toward high school graduation for similar courses and programs that have been satisfactorily completed at other approved schools or shall provide reasonable justification for denial. For purposes of this section, approved schools include all New Hampshire public schools, including chartered public schools, public academies, approved public or private tuition program schools, and all schools in Vermont and Maine that are members of an interstate school district with schools in New Hampshire.

**Source.** 2021, 82:1, eff. Aug. 17, 2021.

## Unique Pupil Identification

### 193–E:4 Definitions.

In this subdivision:

I. "Commissioner" means the commissioner of the department of education.

II. "Data warehouse" means the electronic system operated by the department of education that maintains the information about pupils as set forth in RSA 193–E:3, I, VI, and VII. The data warehouse shall not contain the name, address, telephone number, e-mail address, social security number, or any other personally identifiable information about any pupil.

III. "District" means a New Hampshire public school district or a district outside of New Hampshire educating publicly funded New Hampshire pupils.

IV. "District of origin" means the district in which the pupil resides at the point at which the pupil first enters the New Hampshire educational system, whether in an early childhood program, district, or postsecondary education level.

V. "Early childhood program" means a preschool or childcare program receiving Head Start or child care scholarship funds, whether licensed or exempt from licensing, or a preschool program operated by a district. Early childhood programs not operated by a district shall report data only for pupils for which Head Start or child care scholarship funds are received.

VI. "Postsecondary institution" means the university system of New Hampshire or the community college system of New Hampshire.

VII. "Random number generator" means the electronic system that creates unique pupil identification numbers and assigns a unique pupil identification number to a pupil when an early childhood program, a district, or a postsecondary institution enters a pupil's name, date of birth, town of birth, and gender. The system shall maintain that information and the name of the district of origin, and no other information. This system shall not retain the unique pupil identification number.

VIII. "Unique pupil identifier" means a randomly generated number assigned to an early childhood program pupil, a district pupil, or postsecondary institution pupil in order to gather pupil level data.

IX. "Unique pupil identification system" means an electronic system comprised of the data warehouse and the random number generator.

**Source.** 2004, 147:3. 2010, 356:2, eff. Sept. 18, 2010.

### 193–E:5 Unique Pupil Identification.

I. The department of education shall, implement and maintain a unique pupil identification system on a statewide basis that complies with the following requirements:

(a) Except as provided in RSA 193–C:12, no personally identifiable information about a pupil including name and social security number, shall be collected or maintained by the state in such a manner as to allow such information to be connected with the unique pupil identifier. Under no circumstances shall the department of education obtain or use a social security number as an identifier for any pupil. The department shall not use unique pupil identifiers except in connection with the data warehouse and such use shall not be accessible to the public.

(b) The random number generator shall make available to each early childhood program, district, chartered public school, scholarship organization, adult education program, or postsecondary institution a unique pupil identifier for each pupil pursuing an education in a New Hampshire early childhood program, district, chartered public school, scholarship organization, adult education program, or postsecondary institution. The unique pupil identifier itself shall not permit pupil identification within a subcategory including, but not limited to, early childhood program, district, chartered public school, scholarship organization, adult education program, postsecondary institution, sex, age, grade, or county of residence.

(c) The unique pupil identifier shall be requested and maintained by the early childhood program, district, chartered public school, scholarship organization, adult education program, or postsecondary institution. The unique pupil identifier shall remain in the pupil's file throughout his or her academic career in New Hampshire.

(d)(1) Access to the random number generator shall be limited to an early childhood program director or designee, a district superintendent or designee, chartered public school director or designee, scholarship organization director or designee, adult education program director or designee, or a postsecondary institution registrar or designee, and only for pupils pursuing an education in that early childhood program, district, chartered public school, scholarship program, adult education program, or postsecondary institution.

(2) A parent or legal guardian shall, upon request made in person to the early child program director, school district superintendent for the district which the child last attended, chartered public school director, scholarship organization director, an adult education program director, or postsecondary institution registrar, have access to their child's unique pupil identifier and their child's data maintained in the data warehouse. A person who is 18 years of age or older shall, upon request made in person to the early child program director, school district superintendent for the district which the person last attended, chartered public school director, scholarship organization director, adult education program director, or postsecondary institution registrar, have access to their unique pupil identifier and their data maintained in the data warehouse.

(3) Any person who knowingly violates the provisions of this subparagraph is guilty of a class B felony and may be subject to involuntary termination of employment.

(e) The random number generator shall create and maintain a comprehensive audit trail for all users accessing the random number generator.

(f) The data warehouse shall create and maintain an audit trail for all users accessing secure information.

(g) No person, including an individual, business, government, or governmental entity, shall require an individual to provide a unique pupil identifier as a condition of doing business, providing a service, or receiving a benefit of any kind, except as provided in RSA 193–E:5, I(c). Any person or entity who knowingly violates the provisions of this subparagraph shall be liable for actual damages or $25,000, whichever is greater, for each violation. Each denial of services or benefits shall constitute a separate offense under this subparagraph.

(h) If a pupil's records become part of an administrative action outside of the pupil's early childhood program, district, chartered public school, scholarship program, adult education program, or postsecondary institution, or a part of any judicial or quasi-judicial proceeding, the part of the record containing the pupil's unique pupil identifier shall be redacted by the early childhood program, district, chartered public school, scholarship organization, adult education program, or postsecondary institution prior to release.

(i) The information maintained in the data warehouse shall be available to the department of edu-

cation and to the public using the data maintained by the department of education. No personally identifiable information shall be required as a condition of access or usage under this subparagraph, nor shall such access or usage be tracked. Under no circumstances shall the unique pupil identifier be made available to the public.

(j) Information maintained in the random number generator shall be exempt from the provisions of RSA 91–A.

(k) Authorized personnel at the department of education shall administer and maintain the unique pupil identification system.

(l) Except as provided in RSA 193–C:12, the department of education shall provide no personally identifiable information collected pursuant to this chapter, including but not limited to name, date of birth, or social security number to any person or entity, other than an early childhood program, district, chartered public school, scholarship organization, adult education program, or postsecondary institution authorized to access this data, absent a court order. Under no circumstances shall personally identifiable information or the unique pupil identifier be provided to any person or entity outside of New Hampshire. Any person who knowingly violates this provision is guilty of a class B felony and may be subject to involuntary termination of employment.

(m) Early childhood programs not receiving Head Start or child care scholarship funds, private schools comprised of kindergarten through grade 12, and all private postsecondary institutions may participate in the data warehouse and random number generator. Participating early childhood programs may volunteer to include data for pupils for which Head Start or child care scholarship funds are not received. Permission of a parent or legal guardian of a pupil enrolled in an early childhood program shall be obtained before a pupil may participate in the data warehouse and random number generator. For the purposes of this section, such voluntary participating early childhood programs shall be included in the definition set forth in RSA 193–E:4.

(n) Notwithstanding subparagraphs (a)–(m), to enable the department of education to ensure the accuracy of the data, the commissioner of the department of education may, in writing, grant individuals access to the data warehouse, including but not limited to, access to the unique pupil identifier for the purpose of connecting information in the warehouse with the random number generator.

(o) At the request of an early childhood program, school district, chartered public school, scholarship organization, adult education program, or postsecondary institution, the department of education shall provide pupil-level data from the unique pupil identification system to an early childhood program, school district, chartered public school, scholarship organization, adult education program, or postsecondary institution for pupils pursing an education in that entity. Except as otherwise specifically provided in statute, the department shall not provide for any purpose any student personally-identifiable data to any public or private individual or entity, including the local, state, or federal government, or department or agency thereof, regardless of whether such individual or entity is for profit or not-for-profit, and regardless of whether the public or private individual or entity is involved in any way with the pupil's education.

(p) New Hampshire home educated pupils pursing an education in a postsecondary institution who have not been assigned a unique pupil identifier may, without penalty, opt out of being included in the unique pupil identification system for postsecondary pupils.

(q) Nothing in this chapter shall prohibit institutions in the university system of New Hampshire and the community college system of New Hampshire from exchanging data between themselves without the consent or involvement of the department of education.

II. [Repealed.]

III. Any contracts or agreements necessary to implement the provisions of this section shall be approved by the governor with the consent of the executive council.

**Source.** 2004, 147:3. 2010, 356:3. 2012, 224:1, 2; 247:24. 2014, 68:3, eff. July 1, 2014. 2019, 323:5, 6, eff. Oct. 12, 2019. 2020, 37:4, XVII, eff. July 29, 2020. 2022, 271:1, eff. June 24, 2022.

### Commission on Mental Health Education Programs and Behavioral Health and Wellness Programs

**193–E:6 Repealed by 2019, 255:2, eff. Nov. 20, 2020.**

## CHAPTER 193–F

## PUPIL SAFETY AND VIOLENCE PREVENTION

### 193–F:1 Title.

This chapter shall be known, and may be cited as the "Pupil Safety and Violence Prevention Act of 2000."

**Source.** 2000, 190:1, eff. Jan. 1, 2001.

### 193–F:2 Purpose and Intent.

I. All pupils have the right to attend public schools, including chartered public schools, that are safe, secure, and peaceful environments. One of the legislature's highest priorities is to protect our children from physical, emotional, and psychological violence by addressing the harm caused by bullying and cyberbullying in our public schools.

II. Bullying in schools has historically included actions shown to be motivated by a pupil's actual or perceived race, color, religion, national origin, ancestry or ethnicity, sexual orientation, socioeconomic status, age, physical, mental, emotional, or learning disability, gender, gender identity and expression, obesity, or other distinguishing personal characteristics, or based on association with any person identified in any of the above categories.

III. It is the intent of the legislature to protect our children from physical, emotional, and psychological violence by addressing bullying and cyberbullying of any kind in our public schools, for all of the historical reasons set forth in this section, and to prevent the creation of a hostile educational environment.

IV. The sole purpose of this chapter is to protect all children from bullying and cyberbullying, and no other legislative purpose is intended, nor should any other intent be construed from the enactment of this chapter.

**Source.** 2000, 190:1. 2010, 155:1, eff. July 1, 2010.

### 193–F:3 Definitions.

In this chapter:

I. (a) "Bullying" means a single significant incident or a pattern of incidents involving a written, verbal, or electronic communication, or a physical act or gesture, or any combination thereof, directed at another pupil which:

(1) Physically harms a pupil or damages the pupil's property;

(2) Causes emotional distress to a pupil;

(3) Interferes with a pupil's educational opportunities;

(4) Creates a hostile educational environment; or

(5) Substantially disrupts the orderly operation of the school.

(b) "Bullying" shall include actions motivated by an imbalance of power based on a pupil's actual or perceived personal characteristics, behaviors, or beliefs, or motivated by the pupil's association with another person and based on the other person's characteristics, behaviors, or beliefs.

II. "Cyberbullying" means conduct defined in paragraph I of this section undertaken through the use of electronic devices.

III. "Electronic devices" include, but are not limited to, telephones, cellular phones, computers, pagers, electronic mail, instant messaging, text messaging, and websites.

IV. "Perpetrator" means a pupil who engages in bullying or cyberbullying.

V. "School property" means all real property and all physical plant and equipment used for school purposes, including public or private school buses or vans.

VI. "Victim" means a pupil against whom bullying or cyberbullying has been perpetrated.

**Source.** 2000, 190:1. 2004, 205:1. 2010, 155:2, eff. July 1, 2010.

### 193–F:4 Pupil Safety and Violence Prevention.

I. Bullying or cyberbullying shall occur when an action or communication as defined in RSA 193–F:3:

(a) Occurs on, or is delivered to, school property or a school-sponsored activity or event on or off school property; or

(b) Occurs off of school property or outside of a school-sponsored activity or event, if the conduct interferes with a pupil's educational opportunities or substantially disrupts the orderly operations of the school or school-sponsored activity or event.

II. The school board of each school district and the board of trustees of a chartered public school shall, no later than 6 months after the effective date of this section, adopt a written policy prohibiting bullying and cyberbullying. Such policy shall include the definitions set forth in RSA 193–F:3. The policy shall contain, at a minimum, the following components:

(a) A statement prohibiting bullying or cyberbullying of a pupil.

(b) A statement prohibiting retaliation or false accusations against a victim, witness, or anyone else who in good faith provides information about an act of bullying or cyberbullying and, at the time a report is made, a process for developing, as needed, a plan to protect pupils from retaliation.

(c) A requirement that all pupils are protected regardless of their status under the law.

(d) A statement that there shall be disciplinary consequences or interventions, or both, for a pupil who commits an act of bullying or cyberbullying, or falsely accuses another of the same as a means of retaliation or reprisal.

(e) A statement indicating how the policy shall be made known to school employees, regular school volunteers, pupils, parents, legal guardians, or employees of a company under contract to a school, school district, or chartered public school. Recommended methods of communication include, but are not limited to, handbooks, websites, newsletters, and workshops.

(f) A procedure for reporting bullying or cyberbullying that identifies all persons to whom a pupil or another person may report bullying or cyberbullying.

(g) A procedure outlining the internal reporting requirements within the school or school district or chartered public school.

(h) A procedure for notification, within 48 hours of the incident report, to the parent or parents or guardian of a victim of bullying or cyberbullying and the parent or parents or guardian of the perpetrator of the bullying or cyberbullying. The content of the notification shall comply with the Family Educational Rights and Privacy Act, 20 U.S.C. 1232g.

(i) A provision that the superintendent or designee may, within the 48-hour period, grant the school principal or designee a waiver from the notification requirement if the superintendent or designee deems such waiver to be in the best interest of the victim or perpetrator. Any such waiver granted shall be in writing. Granting of a waiver shall not negate the school's responsibility to adhere to the remainder of its approved written policy.

(j) A written procedure for investigation of reports, to be initiated within 5 school days of the reported incident, identifying either the principal or the principal's designee as the person responsible for the investigation and the manner and time period in which the results of the investigation shall be documented. The superintendent or designee may grant in writing an extension of the time period for the investigation and documentation of reports for up to an additional 7 school days, if necessary. The superintendent or superintendent's designee shall notify in writing all parties involved of the granting of an extension.

(k) A requirement that the principal or designee develop a response to remediate any substantiated incident of bullying or cyberbullying, including imposing discipline if appropriate, to reduce the risk of future incidents and, where deemed appropriate, to offer assistance to the victim or perpetrator. When indicated, the principal or designee shall recommend a strategy for protecting all pupils from retaliation of any kind.

(l) A requirement that the principal or designee report all substantiated incidents of bullying or cyberbullying to the superintendent or designee.

(m) A written procedure for communication with the parent or parents or guardian of victims and perpetrators regarding the school's remedies and assistance, within the boundaries of applicable state and federal law. This communication shall occur within 10 school days of completion of the investigation.

(n) Identification, by job title, of school officials responsible for ensuring that the policy is implemented.

III. The department of education may develop a model policy in accordance with the requirements set forth in this chapter which may be used by schools, school districts, and chartered public schools as a basis for adopting a local policy.

IV. A school board or board of trustees of a chartered public school shall, to the greatest extent practicable, involve pupils, parents, administrators, school staff, school volunteers, community representatives, and local law enforcement agencies in the process of developing the policy. The policy shall be adopted by all public schools within the school district and, to the extent possible, the policy should be integrated with the school's curriculum, discipline policies, behavior programs, and other violence prevention efforts.

**Source.** 2000, 190:1. 2010, 155:2, eff. July 1, 2010.

### 193–F:5 Training and Assessment.

I. Each school district and chartered public school shall provide:

(a) Training on policies adopted pursuant to this chapter, within 9 months of the effective date of this section and annually thereafter, for school employees, regular school volunteers, or employees of a company under contract to a school, school district, or chartered public school who have significant contact with pupils for the purpose of preventing, identifying, responding to, and reporting incidents of bullying or cyberbullying; and

(b) Educational programs for pupils and parents in preventing, identifying, responding to, and reporting incidents of bullying or cyberbullying. Any such program for pupils shall be written and presented in age appropriate language.

II. The department of education shall provide evidence-based educational programs to support training as required under paragraph I.

III. Nothing in this chapter shall require the inclusion of any specific curriculum, textbook, or other material designed to prevent bullying or cyberbullying in any program or activity conducted by an educational institution. The omission of such subject matter from any curriculum, textbook, or other material in any program or activity conducted by an educational institution shall not constitute a violation of this chapter.

**Source.** 2002, 149:2. 2010, 155:2, eff. July 1, 2010.

### 193–F:6 Reporting.

I. Each school district and chartered public school shall annually report substantiated incidents of bullying or cyberbullying to the department of education. Pursuant to the Family Educational Rights and Privacy Act, 20 U.S.C. 1232g, such reports shall not contain any personally identifiable information pertaining to any pupil. The department shall develop a form to facilitate the reporting by school districts and chartered public schools. The department shall maintain records of such reports.

II. The department of education shall prepare an annual report of substantiated incidents of bullying or cyberbullying in the schools. The report shall include the number and types of such incidents in the schools and shall be submitted to the president of the senate, the speaker of the house of representatives, and the chairpersons of the house and senate education committees. The department of education shall assist school districts with recommendations for appropriate actions to address identified problems with pupil safety and violence prevention.

**Source.** 2010, 155:3, eff. July 1, 2010.

### 193–F:7 Immunity.

A school administrative unit employee, school employee, chartered public school employee, regular school volunteer, pupil, parent, legal guardian, or employee of a company under contract to a school, school district, school administrative unit, or chartered public school, shall be immune from civil liability for good faith conduct arising from or pertaining to the reporting, investigation, findings, recommended response, or implementation of a recommended response under this chapter. The department of education shall be immune from civil liability for its good faith conduct in making recommendations under this chapter.

**Source.** 2010, 155:3, eff. July 1, 2010.

### 193–F:8 School District Discrimination or Harassment Policies.

A school district or chartered public school may establish separate discrimination or harassment policies that include categories of pupils, and nothing in this chapter shall prevent a school district or chartered public school from remediating any discrimination or harassment based on a person's membership in a legally protected category under local, state, or federal law.

**Source.** 2010, 155:3, eff. July 1, 2010.

### 193–F:9 Private Right of Action Permitted.

Any person aggrieved as a result of gross negligence or willful misconduct in violation of any provision of RSA 193–F:4 may initiate an action against a school district or chartered public school and may recover court costs and reasonable attorney's fees as the prevailing party. For the purposes of this chapter, "gross negligence" means deliberate indifference. Nothing in this section shall supercede or replace existing rights or remedies under any other law.

**Source.** 2010, 155:3, eff. July 1, 2010. 2021, 164:1, eff. July 30, 2021.

### 193–F:10 Public Academies.

The provisions of this chapter shall apply to public academies as defined in RSA 194:23.

**Source.** 2010, 155:3, eff. July 1, 2010.

## CHAPTER 193–G

## PERSISTENTLY DANGEROUS SCHOOLS

193–G:6 School Safety.

### 193–G:1 Persistently Dangerous Schools.

I. A persistently dangerous school is a school in which 3 of the following acts have occurred as separate incidents during the period of one school year for 3 consecutive years:

(a) Homicide under RSA 630.

(b) First or second degree assault under RSA 631:1 and RSA 631:2.

(c) Aggravated felonious sexual assault under RSA 632–A:2.

(d) Arson under RSA 634:1.

(e) Robbery as a class A felony under RSA 636:1, III; or

(f) Unlawful possession or sale of a firearm or other dangerous weapon under RSA 159.

II. Any act set forth in paragraph I must occur within the school or on school grounds, during regular school hours or during a school-sponsored event, or during transportation of pupils to or from school, if such transportation is provided by the school district.

III. No later than July 1 of each year, the commissioner of the department of education shall report any persistently dangerous schools to the state board of education and to the school board of such schools.

**Source.** 2003, 186:1, eff. Aug. 25, 2003.

### 193–G:2 Citizen's Advisory Committee.

If a school is classified as a persistently dangerous school, the local school board shall establish a citizen's advisory committee to examine the conditions which led to the designation and offer input to the school board and administrators on steps which might be taken to remedy the designation and prevent further incidents. The committee shall be appointed by the local school board chairman with the advice of the local school board members. It shall include but not be limited to the principal of the designated school, the superintendent of the designated school, one member of the school board, one teacher employed at the designated school, one law enforcement official from the police department having jurisdiction in the district in which the designated school is located, and representatives of parents whose children are assigned to the designated school. The committee shall serve until the designation of a persistently dangerous school is removed.

**Source.** 2003, 186:1, eff. Aug. 25, 2003.

### 193–G:3 Removal of Designation.

Any school which is designated a persistently dangerous school, which for 2 consecutive years has operated as a safe school, shall be decertified as a persistently dangerous school. For the purposes of this section, a safe school is a school which has not had the number or frequency of qualifying events set forth in this section.

**Source.** 2003, 186:1, eff. Aug. 25, 2003.

### 193–G:4 School Choice.

I. Any school which is designated a persistently dangerous school shall, within 5 days of being notified of such designation, notify the parents or guardian of the pupil attending such school of the option to transfer the pupil from the school to a school within the same school district, consistent with local school board policy.

II. If a pupil is the victim of any offense set forth in RSA 193–G:1, I, the school district shall, within 5 days of being notified of the incident, notify the parents or guardian of the pupil of the option to transfer the pupil to another school within the same school district, consistent with local school board policy.

**Source.** 2003, 186:1, eff. Aug. 25, 2003.

### 193–G:5 Department of Education Authority.

The commissioner of the department of education shall be the certifying authority under this chapter.

**Source.** 2003, 186:1, eff. Aug. 25, 2003.

### 193–G:6 School Safety.

Schools shall be authorized to implement policies promoting school safety.

**Source.** 2003, 186:1, eff. Aug. 25, 2003.

## CHAPTER 193–H

## SCHOOL PERFORMANCE AND ACCOUNTABILITY



### 193–H:1 Definitions.

In this chapter:

I. "Commissioner" means the commissioner of the department of education.

II. "Competencies" means student learning targets that represent a level of mastery of key content-specific concepts, skills, and knowledge applied within or across content domains. Specific and required types of competencies include district competencies at grade level and course or program competencies required for graduation and graduation competencies.

III. (a) "Comprehensive support and improvement school" means:

(1) Any school that accepts federal funds from Title I, Part A of ESSA and is among the 5 percent lowest performing Title I schools in the state as defined by the New Hampshire consolidated state plan required for ESSA dated January 19, 2018.

(2) Any school that is among the lowest performing 5 percent of all schools in the state based on the same methodology used in subparagraph (1).

(3) Any high school with a graduation rate of less than 69 percent over 2 consecutive years.

(b) The department shall produce initial determinations of comprehensive support and improvement schools in the fall of 2018, using data from the 2017-2018 school year. Subsequent determinations shall be made every 3 years following the initial identification period.

(c) Those schools identified as comprehensive support and improvement schools, that also receive Title I, Part A funds through ESSA, may also receive federal Title I school improvement funds, if available, to assist in improvement activities.

IV. "Department" means the department of education.

V. "ESSA" means the Elementary and Secondary Education Act, as amended by the Every Student Succeeds Act.

VI. "Statewide assessment" means the New Hampshire education improvement and assessment program as established under RSA 193–C.

VII. "Targeted support and improvement schools" means:

(a)(1) Any school with at least one consistently low performing subgroup as defined by the state's methodology documented in the New Hampshire consolidated state plan required for ESSA dated January 19, 2018. Additional targeted support and improvement schools are those schools with subgroups of students that, on their own, would fall below the thresholds used to identify all schools for comprehensive support and improvement. The department shall produce initial determinations of targeted support and improvement schools using data from the 2017-2018 school year. Subsequent determinations shall be made annually following the initial identification period.

(2) Any school that demonstrates and meets criteria established as a targeted support and improvement school pursuant to subparagraph (a) shall be identified as a school in need of corrective and technical assistance and subject to RSA 193–E:3–e.

(b) Those schools identified for targeted support and improvement schools, that also receive Title I, Part A funds through ESSA, may also receive federal Title I school improvement funds, if available, to assist in improvement activities.

VIII. "Work-study practices" means those behaviors that enhance learning achievement and promote a positive work ethic such as, but not limited to, listening and following directions, accepting responsibility, staying on task, completing work accurately, managing time wisely, showing initiative, and being cooperative, and work-study skills that contribute to success in college, career, and life that include communication, creativity, collaboration, and self-direction.

**Source.** 2003, 314:6. 2013, 263:2, eff. Sept. 22, 2013. 2018, 185:1, eff. Aug. 7, 2018.

### 193–H:1–a Purpose.

I. The purpose of this chapter is to create an accountability model that will best support schools and educators as they work to enable all students to progress toward college and career readiness with clearly defined learning outcomes.

II. New Hampshire's student assessment system should promote and measure knowledge and skills that lead students to graduate from high schools ready for college and career.

III. Students best learn at their own pace as they master content and skills, allowing them to advance when they demonstrate the desired level of mastery rather than progressing based on a predetermined amount of seat time in a classroom will assure that students will reach college and career readiness.

IV. New Hampshire's system of educator support should promote the capacity of educators to deeply engage students in learning rigorous and meaningful knowledge, skills, and work-study practices for success in college, career, and citizenship.

V. Competency-based strategies provide flexibility in the way that credit can be earned and awarded and provide students with personalized learning, including those that are offered through on-line, blended, and community based opportunities.

**Source.** 2013, 263:1, eff. Sept. 22, 2013.

### 193–H:2 Statewide Performance Targets.

I. On or before the 2018-2019 school year, schools shall ensure that all pupils are performing at the proficient level or above on the statewide assessment as established in RSA 193–C.

II. In addition to the requirement of paragraph I, schools shall meet performance based indicators under this chapter, and statewide performance targets as approved by the legislative oversight committee established in RSA 193–C and thereafter, as established in rules adopted by the state board of education pursuant to RSA 541–A.

III. Notwithstanding RSA 541–A, the state board of education shall receive approval from the legislative oversight committee established in RSA 193–C prior to the submission of any rules to the joint legislative committee on administrative rules relative to statewide performance targets and performance based indicators required under this section.

**Source.** 2003, 314:6. 2013, 263:3, eff. Sept. 22, 2013. 2018, 185:2, eff. Aug. 7, 2018.

### 193–H:3 Identification and Public Disclosure of Targeted Support and Improvement Schools and Comprehensive Support and Improvement Schools.

I. The commissioner shall annually compile and disseminate to the governor and council, the president of the senate, the speaker of the house of representatives, local school boards, superintendents of schools, and the public, and shall make available on the department website, a list of targeted support and improvement schools and comprehensive support and improvement schools.

II. A school or school district designated by the commissioner as a targeted support and improvement school or a comprehensive support and improvement school shall have 30 days from the date of the report to appeal such designation to the state board of education.

**Source.** 2003, 314:6. 2013, 263:4, eff. Sept. 22, 2013. 2018, 185:2, eff. Aug. 7, 2018.

### 193–H:4 Local Education Improvement Plan; Strategic Responses.

I. (a) A school shall have one year from the date that a school has been designated as a targeted support and improvement school or a comprehensive support and improvement school pursuant to RSA 193–H:3 to take action to remedy identified problems at the local level. The school shall create an initial plan that identifies actions that it intends implement to correct the areas of concern. The plan shall be submitted to the state board within 90 days of the date that the school or school district was designated as a targeted support and improvement school or a comprehensive support and improvement school. If the plan does not sufficiently address the areas of concern, the state board shall disapprove the plan within 30 days. If the state board disapproves the plan, the state board's designee shall work with the school district where the school is located to amend the plan so that it meets state board approval. One year following the designation, if the school or school district is not making satisfactory progress in implementing its plan, the commissioner shall issue a notice to the school district and shall initiate a process for providing assistance pursuant to this section.

(b) If a school has been designated as a targeted support and improvement school or a comprehensive support and improvement school, the school district, on behalf of the school, may request assistance from the department. The department shall, if resources allow, provide technical assistance to those schools that request assistance under this section.

(c) No later than one year after designation as a targeted support and improvement school or a comprehensive support and improvement school, the commissioner shall designate a progress review team to evaluate the implementation of the improvement plans and the progress toward state performance targets. The progress review team shall deliver a report to the state board. The report shall include evidence of satisfactory implementation and progress towards state performance targets or lack thereof and recommendations regarding future actions.

II. [Repealed.]

III. At a minimum, the corrective action plan filed by the commissioner shall:

(a) Identify the area in which the school needs to meet the annual statewide performance targets established under RSA 193–H:2.

(b) Identify and describe the strategy the school intends to implement to improve its performance.

(c) Establish and explain a strategy designed to promote family and community involvement.

(d) Detail how the school district budget reflects the goals of the local education improvement plan.

IV. In addition to the provisions of paragraph III, each plan filed by the commissioner may include the following elements:

(a) The school's curriculum including curricular priorities and instructional materials.

(b) Instructional models that incorporate research-based practices that have been proven to be effective in improving student achievement.

(c) Formal and informal opportunities to assess and monitor each child's progress.

(d) Evidence of data-based decisions.

(e) Structural reform strategies that may include schedule, organization, support mechanisms, and resources.

(f) Shared leadership structure to support school improvement.

(g) Professional development that is aligned with school improvement goals.

(h) External support and resources based on their effectiveness and alignment with the school improvement plan.

(i) Extended learning activities for students.

**Source.** 2003, 314:6. 2013, 263:5, 6, eff. Sept. 22, 2013. 2018, 185:3, 4, eff. Aug. 7, 2018.

### 193–H:5 Powers of the Department of Education.

Nothing in this chapter shall be construed to permit either the department of education or the state board of education to take control of the daily operations of any local public school.

**Source.** 2003, 314:6, eff. July 22, 2003.

## CHAPTER 193–I

## MATH LEARNING COMMUNITIES PROGRAM IN PUBLIC SECONDARY SCHOOLS



### 193–I:1 Program Established.

By July 1, 2019, the commissioner of education shall establish and encourage the implementation of a supplemental, 2-tier high school math program to be known as math learning communities, in order to meet the needs of any student who requires a better understanding of requisite math knowledge and skills and who has previously completed algebra I, but who lacks a strong foundation in mathematics to successfully transition from high school to college and career. Math learning communities shall be made available statewide to all public secondary schools. Students who would like to pursue a STEM career or postsecondary education program pathway but who are not ready to engage in mathematical reasoning and the application of math required in algebra II or other upper level math courses shall have access to this program of study and shall be encouraged to participate.

**Source.** 2018, 305:2, eff. June 25, 2018.

### 193–I:2 Structure and Sequence.

I. Eligible students shall have completed or be near completion of algebra I. The department shall encourage every public high school in the state to administer the Next-Generation Acuplacer QAS exam to students who may benefit from this program as recommended by a school teacher or guidance counselor and a parent in the spring of grade 10. Students who score less than 63 and who have the recommendation of a teacher or guidance counselor and a parent may be assigned to course I, advanced math foundations. Students who score 63 or above shall be considered for either algebra II or course II, quantitative reasoning.

II. Course I, advanced math foundations, is a review and expansion of a student's understanding and ability to apply fundamental competencies in algebra, geometry, probability, and statistics. This course provides one math credit toward high school graduation.

III. Course II, quantitative reasoning, is a college level math course for students achieving a 63 or above on the Next-Generation Acuplacer QAS exam. This course can be taken through the concurrent dual enrollment program and upon satisfactory completion shall satisfy the math requirement for high school graduation and the math requirement associated with many degree programs at the community college system of New Hampshire. This course may be offered to students in grades 11 or 12.

IV. The community college system of New Hampshire shall annually submit a report listing the New Hampshire high schools that are partners in the math learning communities program to the department of education, the house education committee and the senate education committee no later than October 1.

The submitted report shall contain, but not be limited to, the total number of students participating in the advanced mathematical foundation and quantitative reasoning courses; the number of summer institute participants; a summary of student achievement and growth using data based upon the Next-Generation Accuplacer (QAS) exam and the SAT math examination; and any other information as determined by the community college system of New Hampshire.

**Source.** 2018, 305:2, eff. June 25, 2018. 2023, 79:385, eff. July 1, 2023.

**193–I:3 to 193–I:6 Repealed by 2020, 37:4, XVIII, eff. July 29, 2020.**

## CHAPTER 193–J

## SUICIDE PREVENTION EDUCATION



### 193–J:1 Legislative Purpose.

The general court finds that:

I. Suicide cuts across ethnic, economic, social, and age boundaries and has a tremendous and traumatic impact on surviving family members, friends, and the community at-large.

II. After unintentional injury, suicide is the leading cause of death among young people between the ages of 10 and 24. At a time when unintentional injuries have been on the decline, suicides have increased.

III. In 2008, the state board of education, under RSA 186:11, was charged with providing "information about youth suicide prevention to all public and private schools to facilitate the delivery of appropriate courses and programs."

IV. The legislature recognizes that suicide is a complex issue that requires school, family, and community resources to be harnessed for appropriate and timely help to be available to New Hampshire students in order to prevent suicide.

V. The purpose of this chapter is to reduce the number of suicides in our school population by ensuring that suicide prevention education and training is available to school personnel and to students and their parents using age-appropriate and evidence-based materials.

**Source.** 2019, 315:1, eff. July 1, 2020.

### 193–J:2 Suicide Prevention Education.

I. Each school district and chartered public school shall develop a policy that guides the development and implementation of a coordinated plan to prevent, assess the risk of, intervene in, and respond to suicide. The policy shall include, but shall not be limited to, the following provisions:

(a) Training school faculty and staff, including contracted personnel and designated school volunteers, in youth suicide risk factors, warning signs, protective factors, response procedures, referrals, post-intervention, and resources available within the school and community consistent with the provisions of paragraph II.

(b) Educating students in the importance of safe and healthy choices and coping strategies, recognizing risk factors and warning signs of mental disorders and suicide in oneself and others, and providing help-seeking strategies for oneself or others, including how to engage school resources and refer friends for help.

(c) Identifying within the school the person or persons who serve as the point of contact when a student is believed to be at an elevated risk for suicide.

(d) Making referral, crisis intervention, and other related information, both within the school and the community, available for students, parents, faculty, staff, and school volunteers.

(e) Promoting cooperative efforts between school districts, chartered public schools, and community suicide prevention program personnel.

II. Each school district and chartered public school shall, within 9 months of the effective date of this chapter, require all school faculty and staff, including contracted personnel, to receive at least 2 hours of training in suicide awareness and prevention annually. Such training may include, but not be limited to, youth suicide risk factors, warning signs, protective factors, response procedures, referrals, post-intervention, and resources available within the school and community. The training may be accomplished within the framework of existing in-service training programs or offered as part of ongoing professional development activities. School districts and chartered public schools shall allow the use of self-training materials in fulfilling the annual training requirements of this paragraph and each school district and chartered public school may determine how to both administer the annual training requirements and ensure that such training requirements are met.

This paragraph may apply to all or some school volunteers in accordance with school district policy.

III. School suicide prevention policies required under paragraph I and the training required under paragraph II shall be evidence-informed.

IV. Nothing in this chapter shall require the inclusion of any specific curriculum, textbook, or other material designed to address the topic of suicide in any program or activity conducted by a school district or chartered public school.

**Source.** 2019, 315:1, eff. July 1, 2020.

### 193–J:2–a Public School Identification Cards.

I. Each school district and chartered public school that serves any students in grades 6 through 12 that issues student identification cards shall include on either side of the cards the telephone number for the National Suicide Prevention Lifeline.

II. The requirement in paragraph I shall apply to any student identification card issued for the first time or for replacement cards issued for damaged or lost student identification cards after the effective date of this section.

III. Public schools and charter schools issuing student identification cards pursuant to this section shall annually and prior to the start of each school year certify to their respective governing bodies that the contact information being included on student identification cards for the National Suicide Prevention Lifeline is accurate and up to date.

IV. The National Suicide Prevention Lifeline shall be labeled on student identification cards and include the telephone number: National Suicide Prevention Lifeline 1–800–273–8255 or 988.

**Source.** 2022, 344:2, eff. July 31, 2022.

### 193–J:3 Immunity.

Nothing in this chapter shall create a private right of action against any school administrative unit, school district, public academy, chartered public school, the state, or any employee, contractor, subcontractor, or agent thereof. A school administrative unit employee, school employee, chartered public school employee, public academy employee, regular school volunteer, pupil, parent, legal guardian, or employee of a company under contract to a school, school district, school administrative unit, or chartered public school, shall be immune from civil liability for conduct arising from or related to the implementation of, or failure to adequately implement, this chapter.

**Source.** 2019, 315:1, eff. July 1, 2020.

# CHAPTER 194

# SCHOOL DISTRICTS

**General Powers and Duties**



**High Schools**

## General Powers and Duties

### 194:1 What Constitutes a District.

Each town shall constitute a single district for school purposes; provided that districts organized under special acts of the legislature may retain their present organization, and the word "town," wherever used in the statutes in connection with the government, administration, support, or improvement of the public schools, shall mean district. The special state prison school district, as established by RSA 194:60, shall constitute a single district for school purposes, and shall be subject to the provisions of RSA 194:60. Notwithstanding any other provision of law to the contrary, in the case of unincorporated towns or unorganized places in a county, the county shall constitute the district.

**Source.** RS 69:1. CS 73:1. GS 78:1. GL 86:1. 1885, 43:1. PS 89:1. 1909, 23:1. 1921, 85, IV:1. PL 119:1. RL 138:1. RSA 194:1. 1992, 124:1. 1998, 270:5. 2007, 99:1, eff. Aug. 10, 2007.

### 194:1–a Single District School Administrative Units.

As provided in RSA 194–C:3, single district school administrative units shall be considered the same as a single school district.

**Source.** 1996, 298:2, eff. Aug. 9, 1996.

### 194:1–b Legal Residence Defined.

For the purposes of title XV, "legal residence" means legal residence as defined in RSA 193:12.

**Source.** 1998, 206:6, eff. June 18, 1998.

### 194:2 Districts to be Corporations.

All districts legally organized shall be corporations, with power to sue and be sued, to hold and dispose of real and personal property for the use of the schools therein, and to make necessary contracts in relation thereto.

**Source.** RS 70:1. CS 73:4. GS 78:14. GL 86:14. PS 89:2. 1909, 23:2. 1921, 85, IV:2. PL 119:2. RL 138:2.

### 194:3 Powers of Districts.

School districts may raise money, as required by law, or, in addition thereto:

I. To procure land for lots for schoolhouses and school administrative unit facilities, and for the enlargement of existing lots;

II. To build, purchase, rent, repair, or remove schoolhouses and outbuildings, buildings to be used for occupancy by teachers in the employ of such school district, and buildings to be used for educational administration including office facilities for school administrative units;

III. To procure insurance against such risks of loss, cost or damage to itself, its employees or its pupils as its school board may determine;

IV. To provide group plan life, accident, medical, surgical and hospitalization insurance benefits, or any combinations of such benefits, for all regular employees of the district and their dependents, the cost thereof to be borne in whole or in part by the district;

V. To plant and care for shade and ornamental trees upon schoolhouse lots;

VI. To provide suitable furniture, books, maps, charts, apparatus and conveniences for schools;

VII. To purchase vehicles for the transportation of children;

VIII. To provide for health and sanitation;

IX. To provide for adult high school diploma and continuing education programs; and

X. To pay debts.

**Source.** RS 71:1. 1845, 224. CS 75:1. 1853, 1435. 1862, 2619:1, 2. GS 78:18; 80:1. GL 86:18; 88:1. 1889, 82:1. PS 89:3. 1911, 46:1. 1913, 51:1. 1921, 85, IV:3. PL 119:3. RL 138:3. 1951, 211:1. RSA 194:3. 1959, 164:1. 1967, 267:1; 449:1. 1975, 363:2. 1979, 459:4, eff. Aug. 24, 1979.

### 194:3–a Certain Districts may Assess Tuition.

A local school district may if federal funds are not appropriated sufficient to cover the cost of educating school age pupils who live on federally owned or leased property, assess tuition up to the state average costs against parents or guardians of said pupils which cover the current per pupil cost of the district, if there are more than 100 school age pupils within the federal enclave.

**Source.** 1973, 552:1, eff. July 5, 1973.

### 194:3–b Deficit Reduction.

School districts may vote, at any annual meeting, to raise such sums of money as the voters judge necessary for the purpose of reducing an accumulated general fund deficit.

**Source.** 1994, 147:6, eff. July 22, 1994.

### 194:3–c Revolving Funds for Self-Supporting Programs.

I. A school district may establish a revolving fund for the purpose of providing moneys for school programs which are self-supporting, in whole or in part. The purposes for which such fund is established shall be specified by the district.

II. (a) A school district may raise revenues from and appropriate funds for such self-supporting school programs.

(b) Revenue may include, but is not limited to, moneys derived from the sale of goods or services associated with such programs or tuition charged for such programs. Such revenue shall be appropriated to fund only the program from which it was derived.

(c) A school district may establish a line item in its budget to supplement revenue derived from such programs. No supplemental appropriation may be made except by such budget line item.

(d) A school district shall establish regular intervals for disbursing funds to such programs for program costs approved by the local school board.

III. The revolving fund shall be subject to annual audit, and all records regarding the programs and revenue derived from such programs shall be public.

IV. Moneys in the revolving funds may be nonlapsing, if so specified by the district.

V. Upon termination of a school program funded under this section, moneys derived from such program remaining in the revolving fund shall be returned to the pupil if derived from tuition, or used as local general funds to reduce the tax rate if derived from the sale of goods or services associated with the program.

**Source.** 1996, 179:1, eff. July 1, 1996.

### 194:3–d School District Computer Networks.

I. Every school district which has computer systems or networks shall adopt a policy which outlines the intended appropriate and acceptable use, as well as the inappropriate and illegal use, of the school district computer systems and networks including, but not limited to, the Internet.

II. All users of a school district's computer systems or networks who intentionally violate the district's policy and who intentionally damage the computer system or network shall assume legal and financial liability for such damage. For purposes of this section, "user" means any person authorized to access the school district's computer systems or networks including, but not limited to, the Internet.

**Source.** 1997, 285:1, eff. Jan. 1, 1998.

### 194:3–e Reduction of School Food Waste.

A school may partner with a nonprofit or implement a program on its own to make leftover school food, that was prepared but never served, into frozen to-go meals or portions for distribution in compliance with state food safety regulations and Federal Food and Drug Administration requirements and guidelines. The protections of the Bill Emerson Good Samaritan Food Donation Act, 42 U.S.C section 1791, shall apply to any participating school. The school may send such frozen meals or portions home with any child whose family indicates a desire to participate in such program.

**Source.** 2021, 45:1, eff. July 16, 2021.

### 194:4 Notes of Districts.

If the money is hired upon the note or notes of the district, said note or notes shall be signed by the district treasurer and by the school board.

**Source.** 1909, 138:1. 1921, 85, IV:4. PL 119:4. RL 138:4.

### 194:5 Taxation.

In the assessment of school district taxes every person shall be taxed in the district in which he lives for his personal estate subject to taxation in town. Real estate shall be taxed in the district in which it is situated.

**Source.** RS 71:9. CS 75:9. GS 80:10. GL 88:16. PS 89:6. 1921, 85, IV:6. PL 119:5. RL 138:5.

### 194:6 Invoice of Property.

The selectmen may make a new invoice of all the property in the district when necessary for the just assessment of such taxes.

**Source.** 1844, 148:1. CS 75:10. GS 80:11. GL 88:17. PS 89:7. 1921, 85, IV:7. PL 119:6. RL 138:6.

### 194:7 Assessment.

The selectmen shall annually assess upon the ratable estate of the district a sum equal to the amounts determined by the district, and shall pay over the same to the district treasurer.

**Source.** 1909, 22:2. 1921, 85, IV:10. PL 119:7. RL 138:7.

### 194:8 Collection.

If such taxes are assessed after July 1 in any year upon the property of nonresidents the collector shall send to the owners of said property, or to their agents, if known, a bill of their taxes within 2 months after the delivery of the list to him, and shall, at the expiration of 4 months after such delivery, advertise and sell the property on which the taxes have not been paid in the same manner as if such taxes had been assessed in April preceding.

**Source.** 1844, 148:2. CS 75:11. GS 80:12. 1874, 105:1. GL 88:18. PS 89:8. 1921, 85, IV:8. PL 119:8. RL 138:8.

### 194:9 Apportionment of School Moneys.

Every district situate in 2 or more towns shall be entitled to its just proportion of school taxes, income from school funds, according to the value of property taxable therein.

**Source.** 1850, 974:1, 2. CS 73:18. GS 78:13. GL 86:13. PS 89:13. 1921, 85, IV:14. PL 119:9. RL 138:9.

### 194:10 Salaries of District Board and Officers.

At its annual meeting each school district shall determine the salaries of its school board and other district officers, and the district clerk shall certify the same to the selectmen.

**Source.** 1909, 22:1. 1921, 85, IV:9. PL 119:10. 1927, 14:1. RL 138:10.

### 194:11 Payment.

The district treasurer shall pay to the school board and other district officers their salaries granted by the district, and he shall likewise pay the truant officer upon the order of the school board, they certifying that he has performed the duties required of him by law.

**Source.** 1909, 22:3. 1921, 85, IV:11. PL 119:11. 1927, 14:2. RL 138:11.

### 194:12, 194:13 Repealed by 1963, 117:1, eff. Jan. 1, 1964.

### 194:14 Nonresident Pupils.

A district may determine upon what terms scholars from other districts may be admitted to its schools, and if a district neglects to make such determination the school board may do it.

**Source.** RS 73:7. CS 77:7. GS 78:19. GL 86:19. PS 89:12. 1921, 85, IV:13. PL 119:14. RL 138:14.

### 194:15 School Year.

The fiscal and scholastic year for all school districts shall end June 30 in each year.

**Source.** 1917, 122:1. 1921, 85, IV:15. PL 119:15. RL 138:15.

### 194:15–a Lord's Prayer in Public Elementary Schools.

As an affirmation of the freedom of religion in this country, a school district may authorize the recitation of the traditional Lord's prayer in public elementary schools. Pupil participation in the recitation of the prayer shall be voluntary. Pupils shall be reminded that this Lord's prayer is the prayer our pilgrim fathers recited when they came to this country in their search for freedom. Pupils shall be informed that these exercises are not meant to influence an individual's personal religious beliefs in any manner. The exercises shall be conducted so that pupils shall learn of our great freedoms, which freedoms include the freedom of religion and are symbolized by the recitation of the Lord's prayer.

**Source.** 1975, 225:1. 2002, 277:1, eff. July 17, 2002.

### 194:15–b Instruction in New Hampshire's Cultural Heritage and Ethnic History Authorized.

A school district may include one-semester courses at the elementary and secondary levels in the cultural heritage and ethnic history of New Hampshire's people, and may raise and appropriate money for this purpose.

**Source.** 1988, 122:1, eff. June 18, 1988.

### 194:15–c New Hampshire School Patriot Act.

I. As a continuation of the policy of teaching our country's history to the elementary and secondary pupils of this state, this section shall be known as the New Hampshire School Patriot Act.

II. A school district shall authorize a period of time during the school day for the recitation of the

pledge of allegiance. Pupil participation in the recitation of the pledge of allegiance shall be voluntary.

III. Pupils not participating in the recitation of the pledge of allegiance may silently stand or remain seated but shall be required to respect the rights of those pupils electing to participate. If this paragraph shall be declared to be unconstitutional or otherwise invalid, the remaining paragraphs in this section shall not be affected, and shall continue in full force and effect.

**Source.** 2002, 277:2, eff. July 17, 2002.

### 194:16 Military Drill, Etc.

A school district may include military drill and physical exercises in its course of instructions, and may raise and appropriate money for that purpose.

**Source.** 1917, 100:2. 1921, 85, IV:16. PL 119:16. RL 138:16.

### 194:17 Instruction in Use of Firearms.

A school district may include instruction in the safe and proper use of firearms including instruction in game laws and good hunting practices, and may raise and appropriate money for said purposes.

**Source.** 1953, 50:1, eff. March 26, 1953.

### 194:18 Evening Schools.

Any school district may maintain an evening school as a part of its public school system, and every district in which reside or are employed 15 or more persons between the ages of 16 and 18 years who cannot read and speak the English language understandingly shall maintain an evening or special day school for the purpose of carrying into effect the provisions of this title for such time in each year, and under such conditions and with such exceptions, as the state board may prescribe.

**Source.** 1919, 106:15. 1921, 85, IV:17. PL 119:17. RL 138:17. RSA 194:18. 1973, 72:30, eff. June 3, 1973.

### 194:19 School for Adults.

Every school district in which reside or are employed 20 or more persons above the age of 18 years who cannot read and speak the English language understandingly shall maintain schools for the instruction of such non-English-speaking persons for such time in each year, and under such conditions and with such exceptions, as the state board may prescribe.

**Source.** 1919, 106:16. 1921, 85, IV:18. PL 119:18. RL 138:18. RSA 194:19. 1973, 72:15, eff. June 3, 1973.

### 194:19–a Definition of Elementary School.

For the purposes of this chapter, an elementary school is as set forth in RSA 189:25.

**Source.** 1967, 362:1. 1981, 318:7, eff. Aug. 16, 1981.

## High Schools

### 194:20 Establishment.

Any school district may by vote or bylaw establish and maintain a high school in which the higher English branches of education, Latin, Greek and modern languages may be taught.

**Source.** 1866, 4255. GS 82:2. 1874, 56:1. GL 90:2. 1881, 23:1. PS 89:9. 1901, 96:1. 1921, 85, IV:19. PL 119:19. RL 138:19.

### 194:21 Joint Maintenance Agreements.

I. Two or more adjoining districts in the same or different towns may make contracts with each other for establishing and maintaining jointly a high school or other public school for the benefit of their pupils, and may raise and appropriate money to carry the contracts into effect; and their school boards, acting jointly or otherwise, shall have such authority and perform such duties in relation to schools so maintained as may be provided for in the contracts.

II. (a) The school boards of the component school districts shall hold at least one public hearing in each district. Reasonable notice of each hearing shall be provided no less than 10 days prior to the date of the hearing. Upon adoption of the joint maintenance agreement by the component districts, a copy of the agreement executed by each component school board shall be submitted to the state board of education for approval. If the state board of education approves the agreement, it shall forward it to the clerks of the component school districts for submission to the voters as soon as may be reasonably possible at an annual meeting or a special meeting called for the purpose. A majority of voters present and voting in each component district shall be required for approval of the joint maintenance agreement.

(b) If after review the state board of education determines that the joint maintenance agreement fails to comply with the provisions of this section, the state board shall forward written notice of its findings, including specific areas of deficiency, to the school boards of the component school districts. Such school boards shall correct any deficiencies and resubmit the agreement to the state board for review within 30 days of the state board's deficiency notice.

(c) The state board shall act on all joint maintenance agreement proposals within 30 days of receipt.

III. The school boards of the component school districts shall be authorized to incur indebtedness by the issuance and sale of bonds or notes, or otherwise, in the name of the joint maintenance agreement subject to approval by the legislative body of the component districts pursuant to RSA 33. The school boards of the component school districts shall be authorized to engage in collective bargaining pursuant to RSA 273–A and to hire staff in the name of the joint maintenance agreement, as may be necessary.

**Source.** 1845, 221:1, 2. CS 79:1. 1862, 2618:1. GS 82:3. 1869, 7:1. GL 90:3. PS 89:10. 1921, 85, IV:20. PL 119:20. RL 138:20. 2000, 215:1, eff. July 31, 2000.

### 194:21–a Long-Term Contracts.

The school districts of the state may enter into a contract with each other for the establishing and maintaining jointly a high school for the benefit of their pupils and may raise and appropriate money to carry said contracts into effect. The school boards of said districts, acting jointly or otherwise, shall have the authority and perform such duties in relation to schools so maintained as may be provided for in the contracts. The term of any such contract may be for a term not to exceed 20 years from the date of the contract. In entering into such contract either of said school districts may bind itself to the payment of tuition for the entire term of the contract and may also bind itself to annual payments on account of capital investments.

**Source.** 1959, 218:1, eff. Aug. 11, 1959.

### 194:21–b Special Meetings.

The adoption of a long-term contract as provided for by RSA 194:21–a may be taken by the school district at a regular annual meeting or a special meeting called for the purpose provided that an article is inserted in the warrant for said meeting relative to said contract.

**Source.** 1959, 218:2, eff. Aug. 11, 1959.

### 194:21–c Application of Statutes.

The provisions of RSA 194:21 relative to joint maintenance of schools, and the provisions of RSA 194:27, as amended, relative to limitations on the payment of tuition, shall not apply to the school districts of the state if any long-term contract herein provided for is adopted by said districts.

**Source.** 1959, 218:3, eff. Aug. 11, 1959.

### 194:22 Contracts With Schools.

Any school district may make a contract with an academy, high school or other literary institution located in this or, when distance or transportation facilities make it necessary, in another state, and raise and appropriate money to carry the contract into effect. If the contract is approved by the state board the school with which it is made shall be deemed a high school maintained by the district.

**Source.** 1874, 69:1. GL 90:15. 1885, 89:2. 1887, 111:1. PS 89:11. 1901, 96:6. 1903, 118:1. 1905, 90:1. 1909, 100:1. 1911, 137:1. 1915, 126:1. 1917, 219:1. 1921, 85, IV:21. PL 119:21. RL 138:21.

### 194:23 Definition of High School.

I. The term "high school" shall mean a public school or public academy comprising a span of grades beginning with the next grade following an approved elementary, middle or junior high school as defined by RSA 189:25 and ending with grade 12. Such a school shall:

(a) Offer those subjects prescribed by statute, including instruction in history, government, and constitutions of the United States and New Hampshire and of the organization and operation of New Hampshire municipal, county, and state government;

(b) Provide such other subjects as the school district maintaining such school shall determine by its school board or by vote of the district;

(c) Comply with standards prescribed by the state board of education which shall be uniform in their application to all schools; and

(d) Qualify a pupil to receive a diploma upon completion.

II. In this section, "public academy" means an independent school which contracts with one or more school districts to provide education services to such districts in compliance with RSA 194:23. All contracts between a public academy and a school district shall be subject to approval by the state board of education. In this section, "independent school" means a school which is governed by a board of trustees or other officials who are not publicly elected. An independent school shall not include a chartered public school established under RSA 194–B.

II–a. In this section, the term "high school" shall include the regional career and technical education center in the Manchester school district which complies with the provisions of RSA 188–E.

III. The enactment of paragraph II shall not affect a determination of the New Hampshire retire-

ment system board of trustees under RSA 100–A regarding the eligibility of an employer or its employees to participate in the New Hampshire retirement system.

**Source.** 1901, 96:1. 1903, 31:1; 118:1. 1905, 19:1. 1921, 85, IV:22. PL 119:22. RL 138:22. RSA 194:23. 1959, 246:1. 1975, 183:3. 1985, 151:1. 2006, 191:1. 2007, 71:3. 2008, 354:1. 2012, 221:2. 2015, 252:13, eff. July 1, 2015.

**194:23–a Repealed by 1985, 151:6, eff. July 21, 1985.**

**194:23–b Approval of High Schools.**

I. In order to satisfy compulsory school attendance laws, a high school student less than 16 years old must attend a high school which has been approved by the state board of education as complying with the provisions of RSA 194:23, or its equivalent; and the state board of education shall annually publish a list of all high schools which it has approved as meeting the requirements of RSA 194:23.

II. 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 New Hampshire pupils to attend schools that meet the standards established by one of the 2 states.

**Source.** 1959, 246:2. 1985, 151:2. 1999, 224:3. 2000, 98:1, eff. June 26, 2000.

**194:23–c Standards and Uniformity.**

The state board of education shall have the power to approve for a reasonable period of time a high school that does not fully meet the requirements of RSA 194:23 if in its judgment the financial condition of the school district or other circumstances warrant delay in full compliance.

**Source.** 1959, 246:2. 1985, 151:3, eff. July 21, 1985.

**194:23–d Repealed by 2003, 314:9, eff. July 22, 2003.**

**194:23–e Receipt of Tuition Students.**

In order to be entitled to accept tuition students, a public high school must be approved by the state board of education as complying with the provisions of RSA 194:23.

**Source.** 1959, 246:2. 1985, 151:5, eff. July 21, 1985.

**194:23–f High School Student as School Board Member.**

The provisions of this section shall apply to all public high schools maintained by the local school board as provided in RSA 189:1–c.

I. In addition to the school board members authorized in RSA 671:4, a high school shall select, in accordance with the directives of paragraph II and the provisions of RSA 189:1–c, one or more students from among its members to be nonvoting members of the school board for the district in which the high school is located. A student member shall have all the rights of a regular school board member regarding school board business except the right to vote.

II. A student board member shall be chosen by a simple majority vote of the high school student body. The student government of the high school shall establish procedures for the nomination and election of candidates. The student government shall also establish a procedure for any public high school student in the school district to petition a student board member to present proposals and opinions to the school board.

III. A student board member shall serve for a term of one year. The school board shall decide the date at which the term shall begin. Any student who will graduate during the term's duration is not eligible to be a candidate and is not eligible to vote. The student government of the high school shall establish a procedure for filling any vacancy that may occur in this position. A student board member shall serve without pay.

IV. The duties of a student school board member shall include:

(a) Attending all school board meetings except as specified in paragraph V;

(b) Representing all public high school students within the district;

(c) Presenting to the school board specific proposals and opinions from students as directed in paragraph II; and, when appropriate, placing proposals on the school board agenda in accordance with the board procedures;

(d) Serving as a liaison between students and the principal, other faculty, student government advisors, and appropriate outside agencies;

(e) Keeping public high school students informed of the business of the school board.

V. A student school board member shall be excluded from discussions and procedures of the school board involving subjects which are confidential under RSA 91–A.

**Source.** 1983, 111:3. 2009, 5:2, eff. June 16, 2009. 2022, 195:2, eff. Jan. 1, 2023.

### 194:24 Transfer of Scholar.

Whenever it shall appear that the attendance of a pupil at the school with which the contract is made will work a manifest hardship, which may be avoided by permitting the child to attend another approved school, the pupil through his parents, guardian or some other responsible person may apply to the school board for an order transferring the pupil to the more accessible school.

**Source.** 1901, 96:6. 1903, 118:1. 1905, 90:1. 1915, 126:1. 1917, 219:1. 1921, 85, IV:23. PL 119:23. RL 138:23.

### 194:25 Hearing.

The school board shall thereupon order a hearing within 10 days thereafter, and, if it shall appear to the board that the claim is well-founded, the board shall make the order prayed for, and the district in which the pupil resides shall be liable to the school to which the pupil is assigned for the pupil's tuition not to exceed in any one year a sum based upon the costs as set forth in RSA 194:27.

**Source.** 1901, 96:6. 1903, 118:1. 1905, 90:1. 1915, 126:1. 1917, 219:1. 1921, 85, IV:23. PL 119:24. RL 138:24. 1949, 139:1, eff. July 1, 1949.

### 194:26 Appeal.

The person applying for the pupil's transfer, or the governing board of the school with which the district has made the contract, may appeal from the decision of the school board to the state board within 10 days from the date of the filing of the order, or if no order is filed within 10 days after the application. The state board may upon such appeal, or if application is made directly therefor, modify the provisions of RSA 194:22 when conditions of transportation or accessibility require such action for the best interests of the pupil, and the order of the board shall be final and binding upon any school board affected thereby.

**Source.** 1901, 96:6. 1903, 118:1. 1905, 90:1. 1915, 126:1. 1917, 219:1. 1921, 85, IV:23. PL 119:25. RL 138:25. 1943, 149:1, eff. May 4, 1943.

### 194:27 Tuition.

Any district not maintaining a high school or school of corresponding grade shall pay for the tuition of any pupil who with parents or guardian resides in said district or who, as a resident of said district, is determined to be entitled to have his or her tuition paid by the district where the pupil resides, and who attends an approved public high school or public school of corresponding grade in another district, an approved public academy, or a private school approved as a school tuition program by the school board pursuant to RSA 193:3, VII. Except under contract as provided in RSA 194:22, the liability of any school district hereunder for the tuition of any pupil shall be the current expenses of operation of the receiving district for its high school, as estimated by the state board of education for the preceding school year. This current expense of operation shall include all costs except costs of transportation of pupils.

**Source.** 1901, 96:1. 1903, 118:1. 1917, 16:1. 1921, 85, IV:24. 1923, 89:1. 1925, 129:1. PL 119:26. 1927, 18:1. 1933, 126:1. RL 138:26. 1949, 139:2. RSA 194:27. 1955, 166:1. 1957, 51:1. 1973, 299:1. 1998, 271:2. 2017, 182:5, eff. Aug. 28, 2017. 2021, 106:5, eff. Aug. 5, 2021.

### 194:27–a Tuition Liability for Nongraduating Pupils.

A pupil who has attended a high school, or schools of corresponding grades, for such time as is usually required and who has not been graduated may be required to certify to the school board of the district liable for the pupil's tuition that he will make the effort required to profit from his attendance before he is entitled to any further tuition payments on his behalf. The school board of the district liable for tuition for any such pupil may refuse tuition for such pupil when it has been determined that such pupil is grossly neglecting his school work. A decision of the board to refuse tuition under such circumstances stands, subject only to review by the state board of education. The decision of the state board of education is binding and final on both the district and the pupil. Nothing in this section shall be construed to prevent a school board from making tuition payments beyond the time usually required for the completion of a high school program if in the board's judgment it is desirable to extend the educational opportunity for a pupil.

**Source.** 1969, 356:9, eff. July 1, 1969.

### 194:28 Recovery of.

If any town in which a high school or school of corresponding grade is not maintained neglects or refuses to pay for tuition as provided in RSA 194:27, such town shall be liable therefor to the parent or guardian of the child furnished with such tuition, if the parent or guardian has paid the same; otherwise to the town or city furnishing the same in an action of assumpsit.

**Source.** 1901, 96:2. 1921, 85, IV:25. PL 119:27. RL 138:27.

### 194:29, 194:30 Repealed by 1969, 356:11, eff. July 1, 1969.

### 194:31 Registers; Reports.

All academies, private schools and public schools shall be furnished with copies of the school register,

and shall make an annual report of membership to the department of education in accordance with RSA 189:28.

**Source.** 1901, 96:5. 1921, 85, IV:30. PL 119:30. RL 138:30. RSA 194:31. 1991, 169:3. 2005, 189:2, eff. Aug. 29, 2005.

### 194:31–a Student Records.

All elementary and secondary educational institutions including academies, private schools and public schools shall, upon request of a private 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.

**Source.** 1993, 147:1, eff. July 16, 1993.

### 194:32 Catalogues.

The principal of each college, academy, seminary or other institution of learning, incorporated by the laws of this state, shall annually, and before November 1 of each year, forward to the New Hampshire Genealogical Society, for its library, one copy of each printed catalogue of its officers and students and courses of studies published during the year next preceding said date.

**Source.** 1907, 40:1. 1921, 85, IV:31. PL 119:31. RL 138:31.

### 194:33 Union of Districts.

Whenever any school district organized under a special act of the legislature shall vote to abolish such district and to unite with the town district, if said town district shall vote to receive said special district, and the special district has for the 5 years next preceding such vote maintained a high school, it shall be incumbent on the town district with which it unites to thereafter keep and maintain a high school within the limits of said special district for at least 34 weeks in each year, of equal grade to that which had been previously maintained therein by such special district, said high school to be open to all scholars in the town district, of suitable age and qualifications.

**Source.** 1891, 64:4. 1921, 85, IV:32. PL 119:32. RL 138:32.

### 194:34 Maintenance of High Schools.

It shall be the duty of said town district to raise and appropriate each year thereafter sufficient money, in addition to the school money which the town in which it is situated may raise, to properly maintain such high school, or schools, as may be established under RSA 194:33.

**Source.** 1891, 64:2. 1921, 85, IV:33. PL 119:33. RL 138:33.

### 194:35 Discontinuance.

No high school shall be discontinued, or the location thereof be changed, except by the superior court, on petition of 20 or more legal voters of the town or district in which such high school is located, in addition to a majority of the school board for said town or district, after such notice as the court may order and proof that the educational interests of the town or district require such discontinuance or change.

**Source.** 1905, 20:1. 1921, 85, IV:34. PL 119:34. RL 138:34. 1943, 41:1, eff. March 3, 1943.

### 194:36 Penalty.

Any town district failing to comply with any of the provisions of this chapter shall be fined for such neglect.

**Source.** 1891, 64:4. 1921, 85, IV:35. PL 119:35. RL 138:35.

## Dissolution of Districts

### 194:37 By Vote.

I. Any special district organized under a special act of the legislature may, by a majority vote of the qualified voters present and voting at a legal meeting, dissolve its corporate existence and unite with the town district.

II. Any special district or pre-existing special district may vote by warrant article presented at the annual meeting of the school district of which the special district is a part. Only legally registered voters within the boundaries of the special district may vote on the warrant article. Such warrant articles shall be placed on school district warrants in accordance with RSA 197:6.

**Source.** 1885, 89:1. PS 89:14. 1921, 85, IV:36. PL 119:36. RL 138:36. RSA 194:37. 1988, 7:1, eff. Feb. 24, 1988.

### 194:38 By Petition.

When a town or city is divided into 2 or more districts, either district may petition the state board of education to unite the districts, and, if the board after notice and hearing finds that justice requires action, it may make an order consolidating the districts, and when and after that order is filed and recorded in the office of the secretary of state said town shall constitute a single school district.

**Source.** 1921, 123:1. PL 119:37. RL 138:37.

### 194:39 Taking Over Property.

In any such case the town district so formed shall forthwith take possession of the schoolhouses, lands, apparatus and other property owned and used for school purposes by the district so dissolved which the district might lawfully sell or convey.

**Source.** 1887, 110:1. PS 89:15. 1921, 85, IV:37. PL 119:38. RL 138:38.

### 194:40 Adjustments.

The property so taken, and also like property of the district to which the special district is united, shall be appraised by the selectmen of the town, and at the next annual assessment a tax shall be levied upon the whole town district equal to the amount of the whole appraisal; and there shall be remitted to the taxpayers of each district the appraised value of its property.

**Source.** 1885, 43:2. 1887, 110:1. PS 89:16. 1921, 85, IV:38. PL 119:39. RL 138:39.

### 194:41 Continuance; Trust Funds.

The corporate powers of a district shall continue for the purpose of settling up its affairs and of holding, managing and enjoying any property held by it in trust, notwithstanding its dissolution, but the school board of the district of which it forms a part shall be its agents to expend the income of any such trust property that is devoted to the support of schools.

**Source.** 1854, 1540:1. GS 78:24. 1870, 8:5. GL 86:28. 1887, 87:1. PS 89:24. 1921, 85, IV:46. PL 119:40. RL 138:40.

### 194:42 Application of Funds.

The school board shall first give to such district or districts such term or character of schooling as would be just and reasonable if no such fund were in existence, and only use the income to lengthen the school or schools, or to carry out the purposes of the trust under which the funds are held.

**Source.** 1887, 87:2. PS 89:25. 1921, 85, IV:47. PL 119:41. RL 138:41.

### 194:43 Meetings.

Any justice of the peace may, upon application of 3 or more voters, resident within the limits of the dissolved district, call a meeting thereof in the same manner as other school district meetings are called, at which a moderator, clerk and agents may be chosen and any other business transacted for the purposes mentioned in RSA 194:41.

**Source.** 1887, 75:1. PS 89:26. 1921, 85, IV:48. PL 119:42. RL 138:42.

### 194:44 Records.

The records of dissolved school districts whose corporate existence is not continued for any purpose shall be returned by the clerks of such districts to the town clerk's office for preservation with the public records of the town.

**Source.** 1885, 43:3. PS 89:27. 1921, 85, IV:29. PL 119:43. RL 138:43.

## Dissolution of Districts in 2 Towns

### 194:45 Adjustments.

If a district so dissolved is formed of parts of 2 or more towns an equitable apportionment of its assets and liabilities between such parts shall be made by the selectmen of the towns in which they are situate, acting as a joint board, within 60 days after the dissolution.

**Source.** 1885, 43:2. 1887, 110:1. PS 89:17. 1921, 85, IV:39. PL 119:44. RL 138:44.

### 194:46 Petition for Referee.

If such joint board fails to make an apportionment within the time limited therefor any taxpayer within the district may apply by petition to a justice of the superior court for the appointment of a referee to make the apportionment.

**Source.** 1885, 43:2. 1887, 110:1. PS 89:18. 1921, 85, IV:40. PL 119:45. RL 138:45.

### 194:47 Hearing.

The justice shall appoint a time and place of hearing upon the petition, and order notice thereof to be given to all parties interested, and after hearing he shall appoint a referee.

**Source.** PS 89:19. 1921, 85, IV:41. PL 119:46. RL 138:46.

### 194:48 Notice.

The notice shall be served by posting copies of the petition and order thereon in at least 2 public places in each of said parts, and by giving to the clerk of the dissolved district, and the clerk of each town district in which any part thereof is located, like copies 10 days at least before the day of hearing.

**Source.** PS 89:20. 1921, 85, IV:42. PL 119:47. RL 138:47.

### 194:49 Referee's Procedure.

The referee shall cause notice of his hearing to be given to all parties interested, in the same manner as is provided in RSA 194:48. He shall hear the parties, make his report in writing, and file a copy thereof with the clerk of the dissolved district and the clerk of each town interested; and the report, so made and filed, shall be final.

**Source.** 1885, 43:2. 1887, 110:1. PS 89:21. 1921, 85, IV:43. PL 119:48. RL 138:48.

### 194:50 Assessment.

Upon receiving a copy of the apportionment, the selectmen shall assess upon that part of the district within their town the amount for which it is charged,

and cause the same to be collected and paid to the town district in which the creditor part of the dissolved district is situated.

**Source.** 1885, 43:2. 1887, 110:1. PS 89:22. 1921, 85, IV:44. PL 119:49. RL 138:49.

### 194:51 Equalization.

The town district shall take the property and assets of that part of the dissolved district which is situate in such town district, and the selectmen of the town shall assess and remit taxes with reference to the property so taken, and like property of the town district, the same as in other cases.

**Source.** 1885, 43:2. 1887, 110:1. PS 89:23. 1921, 85, IV:45. PL 119:50. RL 138:50.

## Changing District Boundaries

### 194:52 Petition to Selectmen.

Any person interested in severing part of any town therefrom and annexing it to another town, or school district therein, for school purposes may apply therefor by petition to the selectmen of the town from which it is proposed to sever such territory, and to the selectmen of the town to which it is proposed to annex the same.

**Source.** 1893, 72:1. 1921, 85, IV:50. PL 119:51. RL 138:51.

### 194:53 Hearing.

It shall be the duty of said selectmen, upon notice to such petitioners and to the school boards of the respective towns and school districts interested in the proposed transfer, to hear the parties, and determine whether the reasonable accommodation of such petitioners or others requires such transfer, and to make return of their findings to the clerks of their respective towns in writing within 30 days.

**Source.** 1893, 72:2. 1921, 85, IV:51. PL 119:52. RL 138:52.

### 194:54 Certificate.

If a majority of each of said boards of selectmen report in favor of such transfer they shall sign a certificate of that fact, describing such territory, and stating that it is annexed to such adjoining town, or district therein, for school purposes, which certificate shall be recorded by the town clerk of each town.

**Source.** 1893, 72:4. 1921, 85, IV:52. PL 119:53. RL 138:53.

### 194:55 Restoration.

Any territory annexed for school purposes to an adjoining town, or school district therein, may, upon proceedings such as have been prescribed in this subdivision, be restored to the town or district from which it was severed. Such proceedings may be initiated by any person in either the school district to which the territory has been annexed, or the school district of which it was originally a part. The vote to restore annexed territory shall take effect on July 1 of the calendar year one year subsequent to the date on which the restoration vote is passed. For 3 years after such vote becomes effective, the restored territory shall be allowed to send their school children to the schools in the district to which the territory was previously annexed. The district in which the schools are located shall receive tuition for these school children.

**Source.** 1893, 72:4. 1921, 85, IV:53. PL 119:54. RL 138:54. RSA 194:55. 1988, 112:1, eff. Jan. 1, 1989.

### 194:56 Validity.

The annexation of territory under this subdivision shall have the same force and validity as if made by a special act of the legislature.

**Source.** 1893, 72:5. 1921, 85, IV:54. PL 119:55. RL 138:55.

### 194:57 Effect.

The selectmen and collector of any town to which part of any other town is annexed for school purposes shall have the same powers and duties in respect to such annexed territory, of furnishing blank inventories and of assessing and collecting taxes for school purposes, and the inhabitants and owners thereof shall for such purposes be subject to the same liabilities, as if such territory were in the town to which it is annexed.

**Source.** 1893, 72:6. 1897, 26:1. 1921, 85, IV:55. PL 119:56. RL 138:56.

### 194:58 Applicability of Provision.

The foregoing provisions of this subdivision shall not apply to special districts, but only to town districts.

**Source.** 1897, 26:1. 1921, 85, IV:56. PL 119:57. RL 138:57.

### 194:59 Special Districts.

The selectmen of any town, and the school board of any high school or other special district in the same town, may, upon petition of persons interested, after notice to the school board of the town school district of such town, and after hearing the parties, unite parts of either district to the other, a majority of the board of selectmen and majority of the school board of such special district and a majority of the school board of the town school district concurring therein, and their decision in writing being recorded on the town records.

**Source.** 1893, 72:7. 1895, 75:1. 1921, 85, IV:57. PL 119:58. RL 138:58.

## Department of Corrections Special School District

### 194:60 Special School District; Department of Corrections.

I. A special school district is established within the department of corrections, under RSA 21–H, solely for the purpose of providing approved education programs pursuant to subparagraph IV(b) of this section to eligible adult offenders who either meet the definition of "child with a disability" under RSA 186–C:2, I or are under age 21 inclusive who wish to participate.

II. The special school district shall be exempt from state board of education rules, except that the standards for the education of students with disabilities and all education programs shall be set by an interagency agreement between the department of education and the department of corrections.

III. The special school district shall be exempt from the organizational and budgetary requirements regarding other school districts or chartered public schools. The special state prison school district shall not be required to file financial reports with the department of education or the department of revenue administration.

IV. The special school district shall have authority to perform all duties necessary to operate a school including, but not limited to, the following:

(a) Timely submission of all required education program approval documents and reports to appropriate agencies.

(b) Maintenance of approved education programs which comply with the requirements as provided for in the interagency agreements between the department of corrections and the department of education. The interagency agreements shall set forth the standards for approval of a school program for department of corrections facilities, the graduation requirements necessary for the special school district to issue a high school diploma, and the standards for special education program approval.

(c) Issuance of transcripts.

(d) Performing assessments and developing individual education programs.

(e) Providing fiscal management for the state and federally-funded approved education programs.

(f) Operation of approved education programs in a manner consistent with the legitimate security and safety concerns of a penal institution.

V. The special state prison school district shall not be assigned to a school administrative unit, nor shall it be subject to the provisions of RSA 194–C.

VI. The special state prison school district shall not be eligible to receive any form of state aid to education pursuant to RSA 198, including but not limited to, state building aid, state aid, dual enrollment grants, foundation aid, or alternative foundation aid.

VII. The special state prison school district shall not have a school board.

VIII. The special school district shall not be required to provide special education programs or services to children with disabilities aged 18 through 21 inclusive who, in the educational placement prior to their incarceration in an adult correctional facility, were not actually identified as being a child with a disability under RSA 186–C:2, or who did not have an individualized education program prior to their incarceration in an adult correctional facility.

**Source.** 1998, 270:6. 2008, 354:1, eff. Sept. 5, 2008. 2023, 7:6, 7, eff. June 25, 2023.

## Chartered Public School Use of Unused District Facilities

### 194:61 Unused District Facilities.

I. In this subdivision, "unused facility" means a school building owned by a school district which is not used for academic purposes, extracurricular activities, administrative school functions, or sports and for which the school district has no school board approved written plan for future use. In order to comply with this paragraph, such school approved plan shall include academic purposes, extracurricular activities, administrative functions, or sports to be used by the school within 2 years of the plan's approval.

II. On January 1, 2022, and on July 1 every year thereafter, the superintendent of each school district shall report to the department of education each unused facility owned by the school district. The department shall establish and maintain a list of unused facilities owned by each school district and make such list available on the department's website.

III. Pursuant to paragraph I, a school district shall offer an unused facility to a chartered public school for purchase or lease as follows:

(a) If a school district's school board extends an offer to purchase or lease an unused facility to a party, other than an approved chartered public school operating in this state, the contract shall

include a provision which makes the purchase or lease subject to the right of first refusal by an approved chartered public school operating in this state.

(b) If the offer to purchase or lease is accepted, the school district selling or leasing the unused facility shall notify the charter school administrator of the department of education who shall notify all approved chartered public schools in this state, as listed on the department of education's website, of the contract to purchase or lease the unused facility. The notice provided to the charter school administrator shall contain clear language that the unused facility is available to any approved chartered public school in this state only, and shall list the offering school district's name and location, the square footage of the unused facility, the contact information of the offering school district's representative, and the expiration date of the right of first refusal which shall be 60 days after the date of the notification to the charter school administrator.

(c) A chartered public school that fails to exercise its right of first refusal shall forfeit such right as it pertains to the specific unused facility and any future right or interest in the specific unused facility.

(d) If the offering school district has not received an offer to purchase or lease an unused facility from a party, other than an approved chartered public school operating in this state, a chartered public school may initiate, and the school board of the offering school district shall, within 60 days of receiving the offer, engage in, substantive good faith negotiations for the purchase or lease of the unused facility. The negotiation period shall continue for 30 days, or less if an agreement is reached. If no agreement is reached, the commissioner of the department of education shall engage an independent mediator who shall gather independent appraisals of the value of the property when the chartered public school made an offer to purchase. The appraised value shall determine a fair market price for the offering chartered public school. In situations when the charter school made an offer to lease the property, the appraisals gathered by the mediator shall determine a fair market lease price for the offering chartered public school.

(e) If 2 or more chartered public schools notify the offering school district indicating an interest in the unused facility to lease or purchase, the offering school district shall make the final selection of the purchaser or lessee.

(f) The criteria used to evaluate parties interested in the purchase or lease of an unused facility shall be public information and shall not be subject to RSA 91–A.

IV. In right of first refusal negotiations with a chartered public school, it shall be the option of the offering school district whether to sell or lease the property under consideration, at fair market value or less, for a term to be agreed upon by the parties. A lease shall include ingress to and egress from the facility, and where a part of a facility is leased, the right to access and use of the common area shared by all tenants and users of the facility. If a chartered public school leases the entire facility, the chartered public school may incur debt to make improvements to the facility, and the school district shall subordinate its interest in the lease to such debt.

V. The chartered public school shall have 6 months after the date of making a written offer to complete the purchase or lease of the unused facility for a price negotiated with the school district.

VI. During the term of a lease, a chartered public school shall be responsible for direct expenses related to the facility or any part of the facility leased, including utilities, insurance, maintenance, property taxes, and repairs.

VII. If a chartered public school plans to sell an unused facility which it has purchased, it shall first offer the facility to the school district from which it was purchased. Such offer shall be governed by the procedures set forth in paragraphs III, IV, and V.

**Source.** 2021, 186:1, eff. Aug. 10, 2021. 2023, 198:3, eff. Aug. 4, 2023.

## CHAPTER 194–A

## EDUCATION VOUCHER PROGRAMS

[Repealed by 1986, 41:29, VI, eff. April 3, 1988.]

## CHAPTER 194–B

## CHARTERED PUBLIC SCHOOLS

### 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 ½ the cost of elementary school for chartered public schools offering half-day kindergarten.

II. "Average daily membership in attendance" or "ADMA" relative to chartered public schools means the average daily membership in attendance, as defined in RSA 189:1–d, III, of pupils in kindergarten through grade 12, in the determination year. ADMA shall only include pupils who are legal residents of New Hampshire pursuant to RSA 193:12 and educated at the charter school's expense. In this paragraph, "determination year" shall have the same meaning as in RSA 198:38, IV.

III. "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.

IV. "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.

V. "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.

VI. "Full-time enrolled pupil" means a pupil pursuant to RSA 194–B:1, XI and officially accepted full-time student by the Virtual Learning Academy Charter School admissions team.

VII. "Full-time equivalent pupil" means a pupil or group of pupils pursuant to RSA 194–B:1, XI that have completed 12 half-credit courses.

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

IX. "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.

X. "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.

XI. "Pupil" means any child who is eligible for attendance in public schools in New Hampshire.

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

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

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

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

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

XVII. "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. 2008, 274:22, 23; 354:1. 2009, 241:2. 2017, 156:93, eff. July 1, 2017. 2022, 175:1, eff. July 1, 2022.

### 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. 2009, 241:3, eff. Sept. 14, 2009.

### 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 non-chartered public schools in the district and utilizing the same regular bus schedules and routes that are provided to pupils attending non-chartered public schools within that district.

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. 2008, 354:1. 2009, 241:4. 2016, 236:1, eff. July 1, 2016.

### 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.

(ee) A proposed policy to adopt and implement the code of conduct for New Hampshire educators as adopted by the department in administrative rule. Failure to adopt and implement the code of conduct could result in the probation or revocation of the school's charter as governed by RSA 194–B:16.

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 and a ⅔ majority vote taken by the school district at a regular annual meeting pursuant to RSA 195, RSA 197, or the governing charter, called for the purpose and provided that an article is inserted in the warrant for said meeting to become a charter conversion school.

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

(c) Nothing in this section shall be construed to limit a school district's obligation to provide special education services to all qualifying students residing in the district consistent with the requirements of state and federal law.

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. 2008, 274:24, 31; 354:1. 2009, 241:15, 16, II, III. 2010, 265:2. 2012, 199:5, eff. Aug. 12, 2012. 2021, 142:2, eff. Sept. 21, 2021. 2022, 256:1, eff. Aug. 23, 2022.

### 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)–(ee). 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)–(ee). 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. 2008, 354:1. 2009, 241:5. 2011, 228:1. 2013, 144:62. 2014, 61:1, eff. July 26, 2014. 2021, 142:3, 4, eff. Sept. 21, 2021.

### 194–B:4 Repealed by 2009, 241:16, I, eff. Sept. 14, 2009.

### 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, IV, 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) 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.

VIII. (a) A chartered public school and a resident district of a student with disabilities shall enter into a memorandum of understanding (MOU) to ensure compliance with RSA 194–B:3, II(e). The MOU shall include, but not be limited to, the following: how the chartered public school and school district will cooperate with each other per RSA 194–B:11, III(c) and how the school district proposes to provide special education services and supports to students with disabilities within the chartered public school to ensure a free appropriate public education and adherence to state and federal special education laws, rules, and regulations. The MOU may also contain, but is not limited to, the following information: where the services will be provided and whether the school district will provide the services directly, or through a contract with the chartered public school or outside provider.

(b) The department of education shall develop and provide chartered public schools and school

districts with a model MOU document to use as a guide.

(c) Prior to the start of each school year, the chartered public school and the school district shall review and update the MOU to ensure compliance with state and federal law and responsibilities to provide services in accordance with individualized education plans.

**Source.** 1995, 260:6. 1998, 268:2. 2003, 273:4, 6, 7, III. 2004, 222:7. 2006, 301:3. 2008, 354:1. 2012, 119:1. 2017, 156:94, eff. July 1, 2017. 2018, 372:1, eff. Sept. 16, 2018. 2022, 313:1, eff. July 1, 2023.

### 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. 2008, 354:1, eff. Sept. 5, 2008.

### 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. 2008, 354:1, eff. Sept. 5, 2008.

### 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. 2008, 274:25, 26; 274:34, 35; 354:1. 2012, 185:2, eff. Aug. 10, 2012.

### 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. 2008, 354:1, 3. 2009, 241:6, eff. Sept. 14, 2009.

### 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. 2008, 354:1. 2013, 144:64, eff. July 1, 2013.

### 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 amounts pursuant to RSA 198:40–a directly to the chartered public school for such pupil in the chartered public school's ADMA. Nothing in this subparagraph shall alter or modify the funding of the Virtual Learning Academy Charter School.

(b)(1)(A) 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 amounts pursuant to RSA 198:40–a, II(a)–(c) and (e) plus an additional grant of $4,900 to all chartered public schools for the fiscal year ending June 30, 2024 and each fiscal year thereafter, except for the Virtual Learning Academy Charter School, directly to the chartered public school for each pupil who is a resident of this state in the chartered public school's ADMA. Beginning July 1, 2024 and every fiscal year thereafter, the department of education shall adjust the per pupil amount of the additional grant pursuant to RSA 198:40–d. The state shall

pay amounts required pursuant to RSA 198:40–a, II(d) directly to the resident district.

(B) For the Virtual Learning Academy Charter School authorized pursuant to RSA 194–B:3–a, the state shall pay tuition amounts pursuant to RSA 198:40–a, II(a)–(c) and (e), plus an additional grant of $2,036 directly to the Virtual Learning Academy Charter School for each eligible full-time enrolled pupil in the chartered public school's ADMA. The state shall pay amounts required pursuant to RSA 198:40–a, II(d) directly to the resident district. The state shall also pay tuition amounts pursuant to RSA 198:40–a, II(a) plus an additional grant of $2,036 directly to the Virtual Learning Academy Charter School for each full-time equivalent pupil. Beginning July 1, 2017 and every July 1 thereafter, the department of education shall adjust the per pupil amount of the additional grant pursuant to RSA 198:40–d.

(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 amounts pursuant to RSA 198:40–a directly to the online chartered public school for each pupil who is a resident of this state in the chartered public school's ADMA. 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. The governor is authorized to draw a warrant from the education trust fund to satisfy the state's obligation under this section. Such warrant for payment shall be issued regardless of the balance of funds available in the education trust fund. If the balance in the education trust fund, after the issuance of any such warrant, is less than zero, the state comptroller shall transfer sufficient funds from the general fund to eliminate such deficit. The commissioner of the department of administrative services shall inform the fiscal committee and the governor and council of such balance. This reporting shall not in any way prohibit or delay the distribution of payments. The department of education may request additional funds from the fiscal committee of the general court, with the approval of governor and council, for a new chartered public school approved for initial operation by the state board of education pursuant to RSA 194–B:3–a.

(e) [Repealed.]

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. For all subsequent meetings of the IEP team, the child's resident district shall provide prior notice to the representative of the chartered public school. 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. 2008, 173:12; 274:27; 274:36; 354:1, 4. 2009, 241:7. 2011, 224:154; 228:2; 258:1. 2012, 185:1. 2013, 144:63. 2015, 276:193, 259; 276:194. 2016, 22:1, 2; 262:2; 262:4. 2017, 156:95, 154, eff. July 1, 2017. 2022, 24:1, eff. June 17, 2022; 175:2, eff. July 1, 2022. 2023, 27:1, eff. July 16, 2023; 79:157, eff. July 1, 2023.

### 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. 2009, 241:8, eff. Sept. 14, 2009.

### 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. 2008, 354:1, eff. Sept. 5, 2008.

### 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. 2008, 354:1, eff. Sept. 5, 2008.

### 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; 273:7, II. 2008, 354:1, eff. Sept. 5, 2008.

### 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.

(f) The school fails to comply with the reporting requirements in accordance with RSA 198:4–f.

(g) The school fails to comply with the reporting requirements in accordance with RSA 189:28, I.

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. 2008, 354:1. 2009, 241:9, eff. Sept. 14, 2009. 2021, 44:4, eff. May 17, 2021.

### 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 by July 1 of each year.

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. 2008, 354:1. 2009, 241:10, 11, eff. Sept. 14, 2009. 2023, 198:2, eff. Aug. 4, 2023.

### 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.

### 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.

### 194–B:20 Repealed by 1995, 260:9, eff. July 1, 2000.

### 194–B:21 Oversight Committee; Report.

I. There is hereby established a joint legislative oversight committee. The committee shall meet jointly at least twice a year and shall monitor the effect of this chapter, review the chartered public school system, and make recommendations for any legislative changes. Where appropriate, the committee shall also make recommendations to the legislature to reduce the scope of, ease the administration of, simplify compliance with, eliminate regulations of, and reduce the amount of paperwork required.

II. The committee shall include the chairperson of the house education committee or designee, the chairperson of the senate education committee or designee, the chairperson of the house finance committee or designee, one representative appointed by the speaker of the house of representatives, one senator appointed by the president of the senate, and one nonvoting representative of the department of education with expertise in chartered public schools, appointed by the commissioner of the department of education, who shall not be counted in the quorum.

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

IV. The members of the oversight committee shall elect a chairperson from among the members. The first meeting of the committee shall be called by the chairperson of the house education committee or designee. The first meeting of the committee shall be held within 45 days of the effective date of this section. Three members of the committee shall constitute a quorum.

V. The committee shall submit a written report of its findings and recommendations to the president of the senate, the speaker of the house of representatives, and the chairperson of the house education committee and the senate education committee by September 1 of each year.

**Source.** 1995, 260:6. 2008, 274:28, eff. July 1, 2008. 2023, 198:1, eff. Aug. 4, 2023.

### 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.

## CHAPTER 194–C

## SCHOOL ADMINISTRATIVE UNITS



### 194–C:1 Status.

I. All school administrative units existing on the effective date of this chapter shall continue in their present form unless modified in accordance with the provisions of this chapter.

II. School administrative units legally organized shall be corporations, with power to sue and be sued, to hold and dispose of real and personal property for the establishment of facilities for administration and any instructional purposes, and to make necessary contracts in relation to any function of the corporation; provided, however, that such school administra-

tive units shall not have the power to procure land, to construct or purchase buildings, to borrow money in order to purchase real estate, or to mortgage said real estate.

**Source.** 1996, 298:3, eff. Aug. 9, 1996.

**194–C:2 Organization, Reorganization, or Withdrawal.**

I. General Provisions.

(a) Any school district pursuant to an article in the warrant for any annual or special meeting may vote to create a planning committee in the following manner:

(1) The question shall be placed on the warrant of a special or annual school district meeting, which body shall have final authority to adopt the provision to create a planning committee.

(2)(A) In districts without annual meetings, the legislative body of the school district shall consider and act upon the question in accordance with their current procedures. To the extent and if permitted by local ordinance, upon submission to the legislative body within 60 days of the legislative body's vote of a petition signed by 100 or by 2 percent, whichever is less, of the registered voters, the legislative body shall place the question on the official ballot for any regular election otherwise in accordance with their current procedures for passage of referenda.

(B) The school district legislative body shall hold a public hearing on the question at least 15 days but not more than 30 days before the question is to be voted on. Notice of the hearing shall be posted in at least 2 public places in the municipality and published in media of general availability and usage at least 7 days before the hearing.

(C) In the event that the referendum is nonbinding, the question shall be returned for reconsideration to the legislative body which shall have final authority to adopt the provision to create a planning committee.

(D) In the event that the referendum is binding, the public vote shall be the final and binding authority to adopt the provision to create a planning committee.

(3) The planning committee shall consist of the following members:

(A) Two local school board members, appointed by the local school board.

(B) One member of the financial committee having the statutory authority to make recommendations concerning school budgets, appointed by the financial committee. In communities with no such financial committee, the number of public members under subparagraph (a)(3)(C) shall be increased to 5.

(C) Four public members representing the community at large, appointed by the school district moderator or, for districts without an annual meeting, the legislative body of the school district.

(D) The superintendent, who shall be a nonvoting member of the committee.

(4)(A) The first-named school board member shall call the first meeting which shall be no later than 30 days from the date of his or her appointment. All planning committee meetings shall comply with RSA 91–A.

(B) At the first meeting, a chairperson shall be elected by the members.

(C) A notice of all meetings of the planning committee shall be posted in all school districts in the existing school administrative unit and in any new school administrative unit which may be created as a result of organization, reorganization, or withdrawal.

(D) All meetings shall allow time for public comment.

(5) The members of the committee shall serve without pay for a term ending:

(A) At the annual meeting of the district next following the creation of the committee, if the committee is created at an annual meeting; or

(B) One year from the date of appointment, if the committee is created at a special meeting.

(C) One year from the date of appointment, if appointed in districts without annual meetings.

(6) Vacancies on the committee shall be filled by the appropriate appointing authority for the balance of the unexpired term.

(7) The district may appropriate money to meet the expenses of the committee at the meeting at which it is created or at any subsequent district meeting notwithstanding the provisions of RSA 32 or RSA 197:3, and such expenses may include the cost of publication and distribution of reports.

(8) A planning committee shall act by a majority vote of its total membership.

(b) If the planning committee chooses to recommend organization of, reorganization of, or withdrawal from a school administrative unit, it shall prepare a plan which complies with the requirements of this section.

(1) Before final approval of a plan by the planning committee, it shall hold at least one public hearing on the plan within the proposed school administrative unit and shall give such public notice of the hearing at least 2 weeks before the hearing and in all affected school districts.

(2) The plan for organization of, reorganization of, or withdrawal from a school administrative unit shall be submitted to the state board of education.

(3) The plan shall be submitted to the voters in accordance with the procedures outlined in this section.

(4) If the voters fail to vote in the affirmative by the ⅗ vote required, the school district may submit the plan to the voters at the next annual school district meeting. If the plan fails to receive the necessary ⅗ vote a second time, the school district shall not offer another warrant article seeking to create a planning committee for a period of 2 years after the date of the second vote by the district.

(c) If the planning committee chooses not to recommend organization, reorganization, or withdrawal from a school administrative unit, that recommendation shall be submitted to the voters of the school district at the next annual school district meeting.

(1) If a majority of voters present and voting vote in the affirmative, the recommendation shall be accepted.

(2) If a majority of voters present and voting reject the recommendation, the vote shall represent a vote to create a new planning committee in accordance with RSA 194–C:2, II and that planning committee shall prepare a plan for organization, reorganization, or withdrawal from a school administrative unit which meets the requirements of this section.

II. ORGANIZATION.

(a) The planning committee shall:

(1) Study the advisability of establishing a school administrative unit in accordance with this chapter, its organization, operation, and control, and the advisability of constructing, maintaining, and operating a school or schools to serve the needs of such school administrative unit.

(2) Estimate the construction and operating costs of operating such school or schools.

(3) Investigate the methods of financing such school or schools, and any other matters pertaining to the organization and operation of a school administrative unit.

(4) Prepare an educational and fiscal analysis of the impact on the school districts within the existing school administrative unit and on any new school administrative unit which may be created, and prepare a proposed plan for the disposition of any school administrative unit assets and liabilities.

(5) Consult with the department of education regarding any unique issues and resolve such issues in a timely manner and submit a report or reports of its findings and recommendations to the several school districts within the existing school administrative unit.

(b) If the planning committee recommends the organization of a school administrative unit, it shall prepare a plan to provide superintendent services which meet the requirements set forth in RSA 194–C:4 for the proposed school administrative unit, and a transition plan and timeline which includes consideration of transition budgets and staffing and is signed by at least a majority of the membership of the planning committee.

(c) The planning committee shall submit a copy of the proposed plan to the several school districts within the existing school administrative unit and the school districts in any new school administrative unit which may be created as a result of organization, and shall hold at least one public hearing no less than 14 days prior to submission to the state board.

(d) The state board of education shall review the proposed plan within 60 days of receipt to determine whether the plan complies with the requirements of this section and RSA 194–C:4. If, in the opinion of the state board, all requirements have been met, it shall forward the plan to the school district clerk for a vote at a regular or special school district meeting.

(e) If the state board of education determines that all requirements of this section and RSA 194–C:4 have not been properly addressed, the deficiencies shall be noted and the plan shall be promptly returned for revision. When the plan is resubmitted, the state board of education shall promptly return the plan and make a recommenda-

tion for or against its adoption based on whether or not the plan complies with the requirements of this section and RSA 194–C:4. This recommendation shall be reported to the legislative body of the district. The state board shall not have veto power over any plan once it is resubmitted to the state board by the planning committee.

(f) The state board shall submit the organization plan to the school boards of the districts for acceptance by the districts as provided in subparagraph (c). Upon such submission, the state board shall cause the approved plan to be published once at the expense of the state in media of general availability and usage within the proposed school administrative unit.

(g) Upon the receipt of written notice of the state board's recommendation of the plan, the plan shall be submitted for approval by the school districts under the procedures outlined in paragraph I of this section. The question shall be in substantially the following form:

"Shall the school district accept the provisions of RSA 194–C providing for the organization of a school administrative unit involving school districts of _____ and _____ etc., in accordance with the provisions of the proposed plan?"

Yes _____ No _____

(h) If ⅗ of the votes cast on the question in each district shall vote in the affirmative, the clerk of each district shall forthwith send to the state board a certified copy of the warrant, certificate of posting, evidence of publication, if required, and minutes of the meeting in the district. If the state board finds that ⅗ majority of the votes cast in each district meeting have voted in favor of the establishment of the school administrative unit, it shall issue its certificate to that effect; and such certificate shall be conclusive evidence of the lawful organization and formation of the school administrative unit as of the date of its issuance.

III. Reorganization.

(a) The planning committee shall:

(1) Study the advisability of reorganizing school administrative units in accordance with this chapter, their organization, operation, and control, and the advisability of constructing, maintaining and operating a school or schools to serve the needs of reorganized school administrative units.

(2) Estimate the construction and operating costs of operating such school or schools.

(3) Investigate the methods of financing such school or schools, and any other matters pertaining to the reorganization and operation of a school administrative unit.

(4) Prepare an educational and fiscal analysis of the impact of the reorganized school administrative unit on any remaining districts in the school administrative unit and on the school districts in any new school administrative unit which may be created as a result of reorganization, and a proposed plan for the disposition of any school administrative unit assets and liabilities.

(5) Consult with the department of education regarding any unique issues and resolve such issues in a timely manner and submit a report or reports of its findings and recommendations to the several school districts within the existing school administrative unit.

(b) If the planning committee recommends the reorganization of a school administrative unit, it shall prepare a plan to provide superintendent services which meet the requirements set forth in RSA 194–C:4 for the proposed reorganized school administrative unit, and a transition plan and timeline which includes consideration of transition budgets and staffing and is signed by at least a majority of the membership of the planning committee.

(c) The planning committee may submit to the board of an existing school administrative unit, a plan for joining the existing school administrative unit. If approved, the plan shall be submitted to the state board of education and the school district voters in accordance with this section.

(d) The planning committee shall submit a copy of the proposed plan to the several school districts and shall hold at least one public hearing no less than 14 days prior to submission to the state board. Within 60 days, the state board of education shall review the proposed plan for administrative structure and to determine whether or not the proposed plan complies with the requirements of this section and RSA 194–C:4

(e) If in the opinion of the state board, all requirements of this section and RSA 194–C:4 have been met, it shall forward the plan to the school district clerk for a vote at a regular or special school district meeting.

(f) If the state board of education determines that all requirements have not been properly addressed, the deficiencies shall be noted and the plan shall be promptly returned for revision. When the plan is resubmitted, the state board of

education shall promptly return the plan and make a recommendation for or against its adoption based on whether or not the plan complies with the requirements of this section and RSA 194–C:4. This recommendation shall be reported to the legislative body of the district. The state board shall not have veto power over any plan once it is resubmitted by the planning committee.

(g) The state board shall submit the reorganization plan to the school boards of the districts for acceptance by the districts as provided in subparagraph (d). Upon such submission, the state board shall cause the approved plan to be published once at the expense of the state in media of general availability and usage within the proposed school administrative unit.

(h) Upon the receipt of written notice of the state board's recommendation of the plan, the plan shall be submitted for approval by the school districts under the procedures outlined in paragraph I of this section. The question shall be in substantially the following form:

"Shall the school district accept the provisions of RSA 194–C providing for the reorganization of a school administrative unit involving school districts of _____ and _____ etc., in accordance with the provisions of the proposed plan?"

Yes _____ No _____

(i) If 3/5 of the votes cast on the question in each district shall vote in the affirmative, the clerk of each district shall forthwith send to the state board a certified copy of the warrant, certificate of posting, evidence of publication, if required, and minutes of the meeting in the district. If the state board finds that 3/5 majority of the votes cast in each district meeting have voted in favor of the reorganization of the school administrative unit, it shall issue its certificate to that effect; and such certificate shall be conclusive evidence of the lawful organization and formation of the school administrative unit as of the date of its issuance.

IV. WITHDRAWAL.

(a) The planning committee shall:

(1) Study the advisability of the withdrawal of a specific school district from a school administrative unit in accordance with this chapter, its organization, operation and control, and the advisability of constructing, maintaining and operating a school or schools to serve the needs of such school district.

(2) Estimate the construction and operating costs of operating such school or schools.

(3) Investigate the methods of financing such school or schools, and any other matters pertaining to the organization and operation of a school administrative unit.

(4) Prepare an educational and fiscal analysis of the impact of the withdrawing district on any school districts remaining in the school administrative unit and a proposed plan for the disposition of any school administrative unit assets and liabilities.

(5) Consult with the department of education regarding any unique issues and resolve such issues in a timely manner and submit a report or reports of its findings and recommendations to the several school districts within the existing school administrative unit.

(b) If the planning committee recommends the withdrawal from a school administrative unit, it shall prepare a plan for organization or reorganization. The plan shall include providing superintendent services, which meet the requirements set forth in RSA 194–C:4, and a transition plan and timeline, which includes consideration of transition budgets and staffing for the withdrawing district, and is signed by at least a majority of the membership of the planning committee.

(c) The planning committee may submit to the board of an existing school administrative unit, a plan for joining the existing school administrative unit. If approved, the plan shall be submitted to the state board of education and the school district voters in accordance with this section.

(d) The planning committee shall submit a copy of the proposed plan to the several school districts and shall hold at least one public hearing no less than 14 days prior to submission to the state board. Within 60 days, the state board of education shall review the proposed plan for administrative structure and to determine whether or not the proposed plan complies with the requirements of this section and RSA 194–C:4.

(e) If in the opinion of the state board, all requirements have been met, it shall forward the plan to the school district clerk for a vote at a regular or special school district meeting.

(f) If the state board of education determines that all requirements have not been properly addressed, the deficiencies shall be noted and the plan shall be promptly returned for revision. When the plan is resubmitted, the state board of education shall promptly return the plan and make a recommendation for or against its adoption based on whether or not the plan complies with the

requirements of this section and RSA 194–C:4. This recommendation shall be reported to the legislative body of the school district. The state board shall not have veto power over any plan once it is resubmitted by the planning committee.

(g) The state board shall submit the plan for district withdrawal from a school administrative unit to the school board of the withdrawing district for acceptance by the district as provided in subparagraph (h). Upon such submission, the state board shall cause the approved plan to be published once at the expense of the state in media of general availability and usage within the district which proposes to withdraw from a school administrative unit.

(h) Upon the receipt of written notice of the state board's recommendation of the plan, the plan shall be submitted for approval by the school district under the procedures outlined in paragraph I of this section. The question shall be in substantially the following form:

"Shall the school district accept the provisions of RSA 194–C providing for the withdrawal from a school administrative unit involving school districts of _____ and _____ etc., in accordance with the provisions of the proposed plan?"

Yes _____ No _____

(i) If 3/5 of the votes cast on the question in the withdrawing district shall vote in the affirmative, the clerk of that district shall forthwith send to the state board a certified copy of the warrant, certificate of posting, evidence of publication, if required, and minutes of the meeting in the district. If the state board finds that 3/5 of the votes cast in that district meeting have voted in favor of withdrawing from the school administrative unit, it shall issue its certificate to that effect; and such certificate shall be conclusive evidence of the lawful organization and formation of the new, single district school administrative unit as of the date of its issuance.

**Source.** 1996, 298:3. 1997, 245:1–3. 1999, 287:1, 3, eff. Sept. 14, 1999. 2010, 5:1, eff. June 18, 2010.

### 194–C:3 Single District School Administrative Units; Exemption.

Single district school administrative units shall be considered the same as a single school district and shall be exempt from meeting the requirements of this chapter, except that they shall provide superintendent services pursuant to RSA 194–C:4.

**Source.** 1996, 298:3, eff. Aug. 9, 1996.

### 194–C:4 Superintendent Services.

Each school administrative unit or single school district shall provide the following superintendent services:

I. An educational mission which indicates how the interests of pupils will be served under the administrative structure.

II. Governance, organizational structure, and implementation of administrative services including, but not limited to:

(a) Payroll, cash flow, bills, records and files, accounts, reporting requirements, funds management, audits, and coordination with the treasurer, and advisory boards on policies necessary for compliance with all state and federal laws regarding purchasing.

(b) Recruitment, supervision, and evaluation of staff; labor contract negotiation support and the processing of grievances; arrangement for mediation, fact finding, or arbitration; and management of all employee benefits and procedural requirements.

(c) Development, review, and evaluation of curriculum, coordination of the implementation of various curricula, provisions of staff training and professional development, and development and recommendation of policies and practices necessary for compliance relating to curriculum and instruction.

(d) Compliance with laws, regulations, and rules regarding special education, Title IX, the Americans with Disabilities Act, home education, minimum standards, student records, sexual harassment, and other matters as may from time to time occur.

(e) Pupil achievement assessment through grading and state and national assessment procedures and the methods of assessment to be used.

(f) The on-going assessment of district needs relating to student population, program facilities and regulations.

(g) Writing, receiving, disbursement, and the meeting of all federal, state, and local compliance requirements.

(h) Oversight of the provision of insurance, appropriate hearings, litigation, and court issues.

(i) School board operations and the relationship between the board and the district administration.

(j) The daily administration and provision of educational services to students at the school facility including, but not limited to, fiscal affairs; staff,

student, and parent safety and building issues; and dealing with citizens at large.

(k) Assignment, usage, and maintenance of administrative and school facilities.

(l) Designation of number, grade or age levels and, as applicable, other information about students to be served.

(m) Pupil governance and discipline, including age-appropriate due process procedures.

(n) Administrative staffing.

(o) Pupil transportation.

(p) Annual budget, inclusive of all sources of funding.

(q) School calendar arrangements and the number and duration of days pupils are to be served pursuant to RSA 189:1.

(r) Identification of consultants to be used for various services.

**Source.** 1996, 298:3, eff. Aug. 9, 1996. 2010, 5:2, eff. June 18, 2010.

### 194–C:5 Organization and Duties.

I. The school board of each school administrative unit shall meet between April 1 and June 1 in each year, at a time and place fixed by the chairpersons of the several boards, and shall organize by choosing a chairperson, a secretary, and a treasurer.

II. (a) Each school administrative unit shall provide superintendent services to be performed as required by RSA 194–C:4. School districts shall not be required to have a superintendent and may assign these services to one or more administrative personnel working full or part-time; or such services may be independently contracted.

(b) The state board may establish certification requirements for superintendents in smaller and larger districts, and may designate services in addition to those established in RSA 194–C:4.

(c) Other administrative positions may be established, but only after 50 percent or more of the school districts in the school administrative unit representing 60 percent of the total pupils in the school administrative unit has voted favorably upon the establishment of the position.

III. The school board of each school administrative unit shall fix the salaries of all school administrative unit personnel, shall apportion the expense of the salaries and benefits among the several districts, and shall certify the apportionment to their respective treasurers and to the state board of education. The school administrative unit board shall have the authority to remove superintendents and other administrators.

**Source.** 1996, 298:3, eff. Aug. 9, 1996.

### 194–C:6 Federal Assistance.

School administrative unit boards are hereby authorized to cooperate with the federal government or any agency thereof to request, receive and expend federal funds for educational purposes. The receipt and expenditure of federal funds by a school administrative unit shall be accounted for in the same manner as established for federal funds processed through local school districts. Each school administrative unit is hereby directed to establish separate from its operating budget a federal grant account.

**Source.** 1996, 298:3, eff. Aug. 9, 1996.

### 194–C:7 Representation.

Every school district maintaining one or more public schools shall be entitled to 3 votes on the joint board of school administrative units, plus additional votes as provided in RSA 194–C:8. Districts not maintaining schools shall have one representative on the joint board, who shall be entitled to one vote. Each school district board member present shall be entitled to have a proportionate share of the school district's votes provided that the total votes per district shall be equally divided among the district's board members present and cast as each member present decides on any issue.

**Source.** 1996, 298:3. 1999, 287:2, eff. Sept. 14, 1999.

### 194–C:8 Weighted Voting.

In all votes regarding school administrative unit affairs, including the organization of such unit's school board and selection of officers, each district shall be entitled to one vote for each 16 pupils residing in that district and enrolled in schools under the administrative unit. A balance of 8 or more students shall entitle that district to an additional vote. A balance of fewer than 8 students shall have no net effect on a district's vote. Enrollments shall be based on the average daily membership in residence of each district for the school year which ended in the preceding June. Weighted votes shall only be used upon the demand of a majority of the members of any board present and voting in the school administrative unit. The school board members present at a school administrative unit school board meeting shall be entitled to cast the entire number of votes assigned to their school districts, provided that each representative present shall be entitled to a propor-

tionate share of the total to be cast as provided in RSA 194–C:7.

**Source.** 1996, 298:3, eff. Aug. 9, 1996.

**194–C:9 Budget.**

I. At a meeting held before January 1, the school administrative unit board shall adopt a budget required for the expenses of the school administrative unit for the next fiscal year, which budget may include the salary and expenses of supervisors of health, physical education, music, art, and guidance, and any other employees, and shall include the expenses necessary for the operation of the school administrative unit. Superintendents, assistant superintendents, business administrators, teacher consultants, and the regularly employed office personnel of the school administrative unit office shall be deemed employees of the school administrative unit for the purposes of payment of salaries and contributions to the employee's retirement system of the state of New Hampshire and workers' compensation. The school administrative unit board shall apportion the total amount of the budget among the constituent school districts in the following manner: the apportionment shall be based ½ on the average membership in attendance for the previous school year and ½ on the most recently available equalized valuation of each district as of June 30 of the preceding school year. Prior to January 15 in each year, the board shall certify to the chairperson of the school board of each constituent school district the amount so apportioned. Each district within a school administrative unit shall raise at the next annual district meeting the sum of money apportioned to it by the school administrative unit board for the expenses of services which each district received in connection with the school administrative unit office. The school administrative unit board in adopting the budget shall not add any new service to the school administrative unit budget unless a majority of the school districts in the school administrative unit representing not less than 60 percent of the total pupils in the school administrative unit have voted favorably upon the establishment of the service. A vote to accept a new service shall not be construed as a vote to raise and appropriate money within the meaning of RSA 197:3.

II. The provisions of paragraph I shall not apply to school administrative units comprising only one district. The budget for these units shall be a part of the school district budget and subject to the vote of the annual school district meeting or, for those districts without an annual meeting, by the legislative body.

III. Paragraph I of this section shall not apply to school districts which have adopted the provisions of RSA 194–C:9–a.

**Source.** 1996, 298:3. 2003, 279:1, eff. Sept. 16, 2003.

**194–C:9–a Alternative Budget Procedure; Method of Adoption.**

I. (a) Each school district, within a school administrative unit that is composed of 2 or more school districts, may vote to adopt the provisions of RSA 194–C:9–b to determine the means for adopting the school administrative unit budget by placing a question on the warrant of their next annual school district meeting. The question shall be voted on in accordance with the ballot and voting procedures in effect in that school district.

(b) The wording of the question shall be: "Shall the voters of the _____ school district within school administrative unit number _____ adopt the provisions of RSA 194–C:9–b to allow for insertion of the school administrative unit budget as a separate warrant article at annual school district meetings?"

(c) If a majority of the voters voting in the school districts within the school administrative unit approve the question, then RSA 194–C:9–b shall apply starting with the next annual school district meeting of the school districts within that school administrative unit, and shall continue until rescinded. Each school district moderator shall cause a vote by secret ballot to be taken, record the number of yeas and nays, and announce the result of the vote at the annual meeting. The ballots shall be delivered to the moderator of the school district with the latest chronological annual meeting. The moderator of the latest chronological annual meeting shall record the total number of yeas and nays, announce the results of the final vote on the method of adopting the school administrative unit budget, and deliver the ballots to the secretary of the school administrative unit. The secretary of the school administrative unit board shall certify the results to the department of revenue administration.

II. If, in any year, the question presented to the voters in subparagraph I(b) is not adopted, the question may be resubmitted as part of the warrant of the next annual school district meeting, provided each school district within the school administrative unit complies with the petition procedure set forth in RSA 197:6.

III. In order to rescind the adoption of RSA 194–C:9–b, each school district within the school ad-

ministrative unit shall comply with the petition procedure set forth in RSA 197:6 and upon such compliance, a question shall be placed on the warrant of the next annual school district meeting. The wording of the question shall be: "Shall the voters of the _____ school district within school administrative unit number ___ rescind the adoption of RSA 194–C:9–b, relative to the alternative school administrative unit budget adoption procedure, and adopt the provisions of RSA 194–C:9 as the method for governing the adoption of the school administrative unit budget?" If a majority of the voters voting in the school districts within the school administrative unit approve the question, then the provisions of RSA 194–C:9 shall govern the procedure for adopting the school administrative unit budget in such school administrative unit. Each school district moderator shall cause a secret ballot vote to be taken, record the number of yeas and nays, and announce the result of the vote at the annual meeting. The ballots shall be delivered to the moderator of the school district with the latest chronological annual meeting. The moderator of the latest chronological annual meeting shall record the total number of yeas and nays, announce the results of the final vote on the question of adopting the school administrative unit budget adoption method, and deliver the ballots to the secretary of the school administrative unit. The secretary of the school administrative unit board shall certify the results to the department of revenue administration.

IV. After a vote to adopt or rescind the alternative school administrative unit budget procedure, the secretary of the school administrative unit shall place the ballots and all envelopes or wrapping which had previously contained them in a suitable container showing the contents and the date of the vote. The ballots shall be retained for 60 days from the date of the vote or any recount, unless further preservation is necessary or unless disposal is enjoined by the superior court.

V. Any registered voter who resides in a school district within the school administrative unit may, in writing, petition the secretary of the school administrative unit for a recount of the vote no later than the Friday following the latest chronological annual meeting of school districts in the school administrative unit. The secretary shall schedule a recount, to be conducted by the school administrative unit, not earlier than 5 days nor later than 10 days after the date the secretary receives the petition.

VI. For any town which has adopted a charter under RSA 49–D:3, the method of adoption shall be the manner of amending the charter as provided under RSA 49–B.

**Source.** 2003, 279:2. 2004, 75:1–3, eff. May 7, 2004. 2012, 7:1, 2, eff. Mar. 22, 2012.

### 194–C:9–b Alternative Budget Procedure.

I. In a school administrative unit composed of 2 or more school districts which has adopted the provisions of RSA 194–C:9–a, the school administrative unit budget adopted according to RSA 194–C:9, I shall be placed before the voters of each school district of that school administrative unit in a separate warrant article at the annual school district meeting. Notwithstanding RSA 32 and RSA 40:13, the budget adopted by the school administrative unit board shall not be amended or changed in any way prior to the vote. Each school district moderator shall cause a vote by paper ballot to be taken, record the number of yeas and nays, and announce the result of the vote at the annual meeting. The ballots shall be delivered to the moderator of the school district with the latest chronological annual meeting. The moderator of the latest chronological annual meeting shall record the total number of yeas and nays, announce the results of the final vote on the question of adopting the school administrative unit budget, and deliver the ballots to the secretary of the school administrative unit. The secretary of the school administrative unit board shall certify the results to the department of revenue administration. A majority of voters voting in favor shall result in adoption of the budget proposed by the school administrative unit board. If the article receives less than a majority vote, the budget amount accepted shall be that of the previous year adjusted for continuing contracts. Wording of the warrant article shall be as follows:

"Shall the voters of _____ (name of school district) _____ adopt a school administrative unit budget of $_____ for the forthcoming fiscal year in which $_____ is assigned to the school budget of this school district?

This year's adjusted budget of $_____, with $_____ assigned to the school budget of this school district, will be adopted if the article does not receive a majority vote of all the school district voters voting in this school administrative unit."

II. After a vote on the school administrative unit budget, the secretary of the school administrative unit shall place the ballots and all envelopes or wrapping which had previously contained them in a suitable container showing the contents and the date of the vote. The ballots shall be retained for 60 days

from the date of the vote or any recount, unless further preservation is necessary or unless disposal is enjoined by the superior court.

III. Any registered voter who resides in a school district within the school administrative unit may, in writing, petition the secretary of the school administrative unit for a recount of the vote no later than the Friday following the latest chronological annual meeting of school districts in the school administrative unit. The secretary shall schedule a recount, to be conducted by the school administrative unit, not earlier than 5 days nor later than 10 days after the date the secretary receives the petition.

IV. This section shall not apply to a school administrative unit that includes a city.

**Source.** 2003, 279:2. 2004, 75:4, eff. May 7, 2004. 2012, 7:3, eff. Mar. 22, 2012.

**194–C:10 Public Hearing.**

Before final adoption of the school administrative unit budget as provided in RSA 194–C:9, at least one public hearing shall be held within the school administrative unit, at a time and place specified by the school administrative unit board chairperson, upon a preliminary budget prepared by the school administrative unit board. Notice of such public hearing and a summary of the preliminary budget shall be submitted by the secretary of the board for publication in a newspaper of general circulation in the school administrative unit at least 7 days prior to the date of the hearing. The budget, subsequent to its final approval by the school administrative unit board, shall be posted in a public place in each constituent school district and given such other publication as the school administrative unit board may determine.

**Source.** 1996, 298:3, eff. Aug. 9, 1996.

**194–C:11 Repealed by 2014, 321:2, I, eff. Sept. 30, 2014.**

**194–C:12 Repealed by 2014, 321:2, II, eff. Sept. 30, 2014.**

## CHAPTER 194–D

## OPEN ENROLLMENT SCHOOLS



**194–D:1 Definitions.**

In this chapter:

I. "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.

II. "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.

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

IV. "Receiving district" means the school district to which a pupil is sent to attend an open enrollment school.

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

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

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

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

IX. "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.** 2009, 241:14, eff. Sept. 14, 2009.

**194–D:2 Establishment; Parental Choice; Admission.**

I. Any school district legislative body may vote to designate one or more of its schools as an open enrollment school.

II. Open enrollment schools shall operate under the same laws, rules, and policies as any other public school, except as provided in this chapter.

III. No public school, except a chartered public school, shall be required to be an open enrollment school.

IV. A school district may predetermine the number of pupils residing outside an open enrollment school's district or attendance area it deems appropriate to accept.

V. Applications may be made on behalf of eligible pupils to more than one open enrollment school within the state.

VI. Every open enrollment school shall make available information about its curriculum and policies to all persons, and parents and pupils considering enrollment in that school.

VII. There shall be no application fee for pupil admission to any open enrollment school.

VIII. A pupil who meets the admission requirements of an open enrollment school, and who is a resident of the district where the school is located or is a dependent child of active duty military personnel whose move resulted from military orders, shall be given absolute admission preference over a nonresident pupil. Once admitted and unless expelled, open enrollment school pupils need not reapply for admission for subsequent years.

IX. Attendance at an open enrollment 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 open enrollment 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 open enrollment school. For the purposes of open enrollment, neither the sending nor the receiving school district shall be obligated to provide transportation services for pupils attending an open enrollment school outside the pupil's resident district.

X. 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 open enrollment schools.

XI. Military-connected students as defined in RSA 110–E:1 who are the dependent children of a member of the active uniformed military services of the United States on full-time active duty status and students who are the dependent children of a member of the military reserve on active duty orders shall be eligible for admission to the school district of their choice. Students shall be eligible if:

(a) At least one parent of the student has a Department of Defense-issued identification card; and

(b) At least one parent can provide evidence that he or she will be on active duty status or active duty orders, meaning the parent will be temporarily transferred in compliance with official orders to another location in support of combat, contingency operation or a natural disaster requiring the use of orders for more than 30 consecutive days.

XII. A school district of residence shall not prohibit the transfer of a pupil who is a child of an active military duty parent to a school in any school district, if the school district to which the parent of the pupil applies approves the application for transfer.

**Source.** 2009, 241:14, eff. Sept. 14, 2009. 2022, 310:6, 7, eff. Aug. 30, 2022.

### 194–D:3 Procedure for Adoption and Rescission; Limitations.

I. Any school district may adopt the provisions of RSA 194–D, to adopt an open enrollment school program, in the following manner:

(a) A question shall be placed on the warrant of a special or annual school district meeting which body shall have final authority to adopt the provisions of this chapter.

(b)(1) In districts without annual meetings, the legislative body of the school district shall consider and act upon the question in accordance with their current procedures. To the extent and if permitted by local ordinance, upon submission to the legislative body within 60 days of the legislative body's vote of a petition signed by 100 or by 2 percent, whichever is less, of the registered voters, the legislative body shall place the question on the official ballot for any regular election otherwise in accordance with their current procedures for passage of referenda.

(2) The school district legislative body shall hold a public hearing on the question at least 15 days but not more than 30 days before the question is to be voted on. Notice of the hearing shall be posted in at least 2 public places in the municipality and published in a newspaper of general circulation at least 7 days before the hearing.

(3) In the event that the referendum is nonbinding, the question shall be returned for reconsideration to the legislative body which shall have final authority to adopt the provisions of this chapter.

(4) In the event that the referendum is binding, the public vote shall be the final and binding authority to adopt the provisions of this chapter.

(c)(1) In adopting the provisions of RSA 194–D, a school district shall impose limitations on the number of its resident pupils who may attend open enrollment schools located inside and outside the school district. These limitations shall be represented as any percentage between zero and 100 percent of the school district's current pupil enrollment.

(2) In school districts with annual meetings, where no limitation question receives a majority vote, the limitations applying to the district shall be zero. Where 2 or more conflicting adoption and/or limitation questions receive a majority vote, that combination of adoption and limitation provisions receiving a majority vote granting greatest latitude of parental choice shall apply.

(d) For all limitation questions, the school board shall propose a percentage limitation number. The number may also be proposed by petition. To change limitation percentages, a district need only act upon the relevant limitation questions. Where no limitations are to be changed, no limitation questions shall be presented to the voters.

(e) Adoption and limitation actions shall become effective on July 1 immediately following the action to adopt or limit.

II. (a) A school district which has adopted any provisions of RSA 194–D may rescind its action or modify the limitations imposed in the manner described in paragraph I.

(b) If a majority of those voting vote to rescind the provisions of RSA 194–D or to reduce the percentages of pupils eligible to attend open enrollment schools, then as of July 1 next:

(1) If the percentage of pupils eligible for tuition to attend open enrollment schools in other districts is reduced, a resident pupil enrolled at a school outside the district shall continue to be eligible for tuition for the period necessary to complete the highest grade level offered by the school.

(2) If the percentage of pupils eligible for tuition to attend open enrollment schools in the resident district is reduced, the resident district shall make alternate arrangements in accordance with RSA 189:1–a for the education of any affected pupil.

(c) If a host district rescinds its vote enabling the operation of an open enrollment school located in that district, the open enrollment school may retain its physical location and may continue to receive students and tuition from other districts if any sending district agrees to assume the responsibilities of the host district within 18 months of the effective date of the rescission. The parent of a pupil attending that school may apply to any other open enrollment school eligible to receive pupils under the provisions of this chapter. The pupil's sending district shall not be relieved of its obligation to educate that pupil in accordance with the district's policies.

III. This section shall apply to the establishment of each individual open enrollment school.

IV. 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 open enrollment schools.

**Source.** 2009, 241:14, eff. Sept. 14, 2009.

### 194–D:4 Pupil Selection and Enrollment.

I. (a) Open enrollment schools may set maximum enrollment as they deem appropriate.

(b) Open enrollment 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) Open enrollment 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 open enrollment 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 open enrollment 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–D:2, VIII.

II. A pupil may withdraw from an open enrollment 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. The school board of the pupil's resident district may waive this limitation after a hearing.

III. A pupil may be suspended or expelled from an open enrollment school based on criteria determined by the principal and teachers in the open enrollment school and in conformance with RSA 193:13. No open enrollment school shall be obligated to enroll an expelled pupil.

IV. For the purpose of this chapter, a pupil enrolled in an open enrollment school shall be considered reassigned to the school district in which the open enrollment school is located for purposes of school attendance.

V. The school board in the district in which the open enrollment school is located may establish policies to implement open enrollment schools as provided in this chapter.

**Source.** 2009, 241:14, eff. Sept. 14, 2009.

### 194–D:5 Funding.

I. There shall be no tuition charge for any pupil attending an open enrollment school located in that pupil's resident district. For an open enrollment 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.

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

III. 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 an open enrollment school in a receiving district on an eligible per pupil basis.

IV. The commissioner of the department of education shall apply for all federal funding available to open enrollment 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 sending district may provide funds, services, equipment, materials, or personnel to an open enrollment school, in addition to the amounts specified in this section in accordance with the policies of the sending school district.

VI. An open enrollment school may accept pupils at tuition rates at less than the amounts established by this chapter.

VII. An open enrollment school may receive financial aid, private gifts, grants, or revenue as if it were a school district.

**Source.** 2009, 241:14, eff. Sept. 14, 2009.

### 194–D:6 Budgets.

That portion of a school district's estimated expenditures on open enrollment school tuition shall be shown as a separate line item in a school district's budget.

**Source.** 2009, 241:14, eff. Sept. 14, 2009.

### 194–D:7 State Board; Duties.

I. The state board shall adopt rules, pursuant to RSA 541–A, consistent with the provisions of this chapter relative to the administration of open enrollment schools.

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

**Source.** 2009, 241:14, eff. Sept. 14, 2009.

## CHAPTER 194–E

## INNOVATION SCHOOLS



### 194–E:1 Definitions.

In this section:

I. "Innovation school" means a school in which a local school board implements an innovation plan pursuant to RSA 194–E:2 with the approval of the state board.

II. "Innovation school zone" means a group of schools of a school district or multiple school districts that share common interests, such as geographical location or educational focus, or that sequentially serve classes of students as they progress through elementary and secondary education and in which a local school board implements a plan for creating an

innovation school zone pursuant to RSA 194–E:2 with the approval of the state board.

III. "State board" means the state board of education established in RSA 21–N:10.

**Source.** 2021, 27:1, eff. July 5, 2021.

**194–E:2 Local Planning and Approval.**

I. (a) A public school of a school district may submit to its local school board an innovation plan as described in paragraph III. A group of public schools of a school district or in multiple districts that share common interests, such as geographical location or educational focus, or that sequentially serve classes of students as they progress through elementary and secondary education may jointly submit to their local school board or boards a plan to create an innovation school zone as described in paragraph IV.

(b) The local school board shall hold a public hearing on the plan.

(c) The local school board shall either approve or reject the innovation plan within 60 days after receiving the plan.

(d) If the local school board rejects the plan, it shall provide to the public school or group of public schools that submitted the plan a written explanation of the basis for its decision. A public school or group of public schools may resubmit an amended innovation plan or amended plan for creating an innovation school zone at any time after denial.

(e) If the local school board approves the plan, it may proceed to seek designation of the school as an innovation school or innovation school zone.

II. A local school board may initiate and collaborate with one or more public schools of the school district or other districts to create one or more innovation plans, under paragraph III, or one or more plans to create innovation school zones, under paragraph IV. In creating an innovation plan, each public school that would be affected by the plan shall have the opportunity to participate in creation of the plan. A local school board may approve or create a plan to create an innovation school zone that includes all of the public schools of the school district.

III. Each innovation plan may include the following information:

(a) A statement of the public school's mission and why designation as an innovation school would enhance the school's ability to achieve its mission.

(b) A description of the innovations the public school would implement, which may include, but not be limited to, innovations in school staffing, curriculum and assessment, class scheduling, use of financial and other resources, and faculty recruitment, employment, evaluation, and compensation.

(c) A listing of department of education's administrative rules from which the schools are requesting a waiver and rationale for the waiver request including how and why the waiver is needed to implement its identified innovations.

(d) A listing of the programs, policies, or operational documents within the public school that would be affected by the public school's identified innovations and the manner in which they would be affected. The programs, policies, or operational documents may include, but need not be limited to:

(1) The research-based educational program the public school would implement.

(2) The length of school day and school year at the public school.

(3) The student promotion and graduation policies to be implemented at the public school.

(4) The public school's assessment plan.

(5) The proposed budget for the public school.

(6) The proposed staffing plan for the public school.

(e) An identification of the improvements in academic performance that the public school expects to achieve by implementing the innovations.

(f) An estimate of the cost savings or increased efficiencies, or both, if any, the public school expects to achieve by implementing its identified innovations.

(g) A statement of the level of support for designation as an innovation school or school zone demonstrated by students and parents of students enrolled in the public school, and the community surrounding the public school.

(h) A description of any provision of the collective bargaining agreement in effect for the personnel at the public school that would need to be waived or modified for the public school to implement its identified innovations.

(i) Any additional information required by the local school board of the school district in which the innovation plan would be implemented.

IV. Each plan for creating an innovation school zone submitted by a local school board through collaboration with a group of public schools, may include the information specified in paragraph III for each public school that would be included in the innovation school zone. A plan for creating an innovation school zone may also include the following additional information:

(a) A description of how innovations in the public schools in the school innovation zone would be integrated to achieve results that would be less likely to be accomplished by each public school working alone.

(b) An estimate of any economies of scale that would be achieved by innovations implemented jointly by the public schools within the innovation school zone.

(c) A statement of the level of support for designation as an innovation school demonstrated by students and parents of students enrolled in the public school, and the community surrounding the public school based upon the public hearing.

V. In considering or creating an innovation plan or a plan for creating an innovation school zone, each local school board may consider innovations in the following areas:

(a) Curriculum and academic standards and assessments.

(b) Accountability measures, including but not limited to expanding the use of a variety of accountability measures to more accurately present a complete measure of student learning and accomplishment.

(c) Provision of services, including but not limited to special education services, services for gifted and talented students, services for students for whom English is not the dominant language, educational services for students at risk of academic failure, expulsion, or dropping out, and support services provided by the department of health and human services or county social services agencies.

(d) Teacher recruitment, training, preparation, and professional development.

(e) Teacher employment.

(f) Performance expectations and evaluation procedures for teachers and principals.

(g) School governance and the roles, responsibilities, and expectations of principals in innovation schools or schools within an innovation school zone.

(h) Preparation and counseling of students for transition to higher education or the work force.

VI. Each public school and each local school board may seek and accept public and private gifts, grants, and donations to offset the costs of developing and implementing innovation plans and plans for creating innovation school zones.

**Source.** 2021, 27:1, eff. July 5, 2021.

**194–E:3 State Approval.**

I. A local school board may seek an innovation school or school zone designation by the state board.

II. A local school board that seeks designation of an innovation school or school zone shall submit one or more innovation plans to the department for review and comment.

III. Within 45 days after receiving a local school board's plan, the department of education shall respond to the local school board with any suggested changes or additions to the plan, including but not limited to suggestions for further innovations or for measures to increase the likelihood that the innovations will result in greater academic achievement and growth within the innovation schools or innovation school zones. Based on the department's comments, the local school board may choose to withdraw and resubmit its innovation plan or plan for creating an innovation school zone.

IV. The local school board shall forward the innovation plan to the state board for review.

V. The state board shall hold public hearing on the plan. A representative of the department of education and a representative of the proposing local board shall be present at the hearing.

VI. Within 60 days after receiving a local school board's innovation plan or plan for creating an innovation school or school zone, the state board shall either approve or reject the innovation plan using reasonable discretion in the assessment of the elements set forth in this chapter and provide written explanation of the decision to the local board.

VII. If the innovation plan is rejected, the local board may resubmit an amended innovation plan to the department at any time after rejection.

**Source.** 2021, 27:1, eff. July 5, 2021.

**194–E:4 Innovation Plans; Waiver of Regulatory Requirements.**

I. Upon the designation of an innovation school or school zone, the state board shall waive compliance with any administrative rules specified in the local district plan.

II. Each local district shall continue to be subject to all laws and rules that are not waived by the state board under this chapter.

III. No waiver shall be granted from any requirement of the federal Every Student Succeeds Act (ESSA).

IV. The local board may submit a revised innovation plan under RSA 194–E:2 at any time if it is determined that additional waivers are required.

V. Each local district and schools not specified in the innovation plan shall continue to be subject to all rules that are not waived by the state board.

**Source.** 2021, 27:1, eff. July 5, 2021.

### 194–E:5 Innovation School and School Zone Reviews.

I. Two years after state board approval of the innovation plan and every 2 years thereafter, the local board shall review the plan and the progress toward the plan objectives including improvements in academic performance and any cost savings or increased efficiencies, or both.

II. The results of the local board review shall be provided to the department of education.

III. If a local school board finds that the academic performance of students enrolled in the innovation school is not improving at a sufficient rate or that the plan is not achieving the planned results, the local school board may notify the department and state board that they wish to revoke the innovation status.

**Source.** 2021, 27:1, eff. July 5, 2021.

### 194–E:6 Department of Education Review.

I. The department shall review the results of each local board innovation plan review and analyze the results based upon data available to the department.

II. The department may at any time conduct its own review of the innovation school or school zone performance.

III. If the department finds that innovation plan performance is not satisfactory, they shall notify the local board and the state board. The local board may respond or provide a revised innovation plan pursuant to RSA 194–E:2.

IV. The state board may revoke the innovation status at any time with notification to the local board and to the department.

**Source.** 2021, 27:1, eff. July 5, 2021.

### 194–E:7 Reporting.

I. The department of education shall provide an annual report on innovation schools and school zones to the governor, the president of the senate, the speaker of the house of representatives, the chairpersons of the senate and house committees with jurisdiction over education, and the state board of education.

II. The report shall include:

(a) The number of school districts with innovation schools or school zones and the total number in the state.

(b) The number of innovation schools and the number of schools within each innovation school zone.

(c) The number of students in each innovation school or innovation school zone and a percentage of students in the local district.

(d) An overview of innovations implemented.

(e) An overview of the academic performance of the students served in innovation schools and innovation school zones, including a comparison between the students' academic performance before and after implementation of the innovations, and a comparison with the academic performance of similar schools.

(f) A list of administrative rules waived.

**Source.** 2021, 27:1, eff. July 5, 2021.

### 194–E:8 Rulemaking.

The state board of education shall adopt rules, pursuant to RSA 541–A, relative to innovation schools and innovation zones.

**Source.** 2021, 27:1, eff. July 5, 2021.

## CHAPTER 194–F

## EDUCATION FREEDOM ACCOUNTS



### 194–F:1 Definitions.

In this chapter:

I. "Adequate education grant" means the grant calculated under RSA 198:41.

II. "Curriculum" means the lessons and academic content taught in a specific course, program, or grade level.

III. "Department" means the department of education.

IV. "Education freedom account" or "EFA" means the account to which funds are allocated by the scholarship organization to the parent of an EFA student in order to pay for qualifying education expenses to educate the EFA student under this chapter.

V. "Education service provider" means a person or organization that receives payments from education freedom accounts to provide educational goods and services to EFA students.

VI. "Eligible student" means a resident of this state who is eligible to enroll in a public elementary or secondary school and whose annual household income at the time the student applies for the program is less than or equal to 350 percent of the federal poverty guidelines as updated annually in the Federal Register by the United States Department of Health and Human Services under 42 U.S.C. section 9902(2). No income threshold need be met in subsequent years, provided the student otherwise qualifies. Students in the special school district within the department of corrections established in RSA 194:60 shall not be eligible students.

VII. "EFA student" means an eligible student who is participating in the EFA program.

VIII. "Full-time" means more than 50 percent of instructional time.

IX. "Remote or hybrid" shall mean any public school that is not providing instruction in-person where the student or the educator are both not physically present in the traditional classroom due to full-time or part-time classroom closure.

X. "Parent" means a biological or adoptive parent, legal guardian, custodian, or other person with legal authority to act on behalf of an EFA student.

XI. "Program" means the education freedom account program established in this chapter.

XII. "Scholarship organization", means a scholarship organization approved under RSA 77:G, that administers and implements the EFA Act.

**Source.** 2021, 91:431, eff. Aug. 24, 2021. 2023, 110:1, eff. Aug. 26, 2023.

**194–F:2 Program.**

I. The commissioner of the department of education shall transfer to the scholarship organization the per pupil adequate education grant amount under RSA 198:40–a, plus any differentiated aid that would have been provided to a public school for that eligible student. The transfers shall be made in accordance with the distribution of adequate education grants under RSA 198:42.

II. Parents of an EFA student shall agree to use the funds deposited in their student's EFA only for the following qualifying expenses to educate the EFA student:

(a) Tuition and fees at a private school.

(b) Tuition and fees for non-public online learning programs.

(c) Tutoring services provided by an individual or a tutoring facility.

(d) Services contracted for and provided by a district public school, chartered public school, public academy, or independent school, including, but not limited to, individual classes and curricular activities and programs.

(e) Textbooks, curriculum, or other instructional materials, including, but not limited to, any supplemental materials or associated online instruction required by either a curriculum or an education service provider.

(f) Computer hardware, Internet connectivity, or other technological services and devices, that are primarily used to help meet an EFA student's educational needs.

(g) Educational software and applications.

(h) School uniforms.

(i) Fees for nationally standardized assessments, advanced placement examinations, examinations related to college or university admission or awarding of credits and tuition and/or fees for preparatory courses for such exams.

(j) Tuition and fees for summer education programs and specialized education programs.

(k) Tuition, fees, instructional materials, and examination fees at a career or technical school.

(l) Educational services and therapies, including, but not limited to, occupational, behavioral, physical, speech-language, and audiology therapies.

(m) Tuition and fees at an institution of higher education.

(n) Fees for transportation paid to a fee-for-service transportation provider for the student to travel to and from an education service provider.

(o) Any other educational expense approved by the scholarship organization.

III. The funds in an EFA may only be used for educational purposes in accordance with paragraph II.

IV. EFA funds shall not be refunded, rebated, or shared with a parent or EFA student in any manner. Any refund or rebate for goods or services purchased with EFA funds shall be credited directly to the student's EFA.

V. Parents may make payments for the costs of educational goods and services not covered by the funds in their student's EFA. However, personal deposits into an EFA shall not be permitted.

VI. Funds deposited in an EFA shall not constitute taxable income to the parent or the EFA student.

VII. An EFA shall remain in force, and any unused funds shall roll over from quarter-to-quarter and from year-to-year until the parent withdraws the EFA student from the EFA program or until the EFA student graduates from high school, unless the EFA is closed because of a substantial misuse of funds. Any unused funds shall revert to the education trust fund established in RSA 198:39 and be allocated to fund other EFAs.

VIII. Nothing in this chapter shall be construed to require that an EFA student must be enrolled, full- or part-time, in either a private school or nonpublic online school.

IX. A home education program pursuant to RSA 193–A:5 is terminated upon the commencement of a student's participation in an EFA program. A parent shall provide notification pursuant to RSA 193–A:5 when a student starts participating in an EFA program.

**Source.** 2021, 91:431, eff. Aug. 24, 2021.

### 194–F:3 Application for an Education Freedom Account.

I. A parent may apply to the scholarship organization to establish an EFA for an eligible student. The scholarship organization shall accept and approve applications for the fall and spring semesters each year and shall establish procedures for approving applications in an expeditious manner.

II. The scholarship organization shall create a standard form that parents can submit to establish their student's eligibility for the EFA program and shall ensure that the application is publicly available and may be submitted through various sources, including the Internet.

III. The scholarship organization shall approve an application for an EFA if:

(a) The parent submits an application for an EFA in accordance with application procedures established by the scholarship organization.

(b) The student on whose behalf the parent is applying is an eligible student.

(c) Funds are available for the EFA.

(d) The parent signs an agreement with the scholarship organization:

(1) To provide an education for the eligible student in the core knowledge domains that include science, mathematics, language, government, history, health, reading, writing, spelling, the history of the constitutions of New Hampshire and the United States, and an exposure to and appreciation of art and music.

(2) Not to enroll the eligible student as a full-time student in their resident district public school while participating in the EFA program.

(3) To provide an annual record of educational attainment by:

(A) Having the student take a nationally-standardized, norm-referenced achievement test and to provide the results to the scholarship organization by the end of each school year which the scholarship organization shall make available to the department as aggregate scores; or

(B) Having the student take the statewide student assessment test pursuant to RSA 193–C:6; or

(C) Maintaining a portfolio including, but not limited to, a log which designates by title the reading materials used; samples of writings, worksheets, workbooks, or creative materials used or developed by the student. The parent shall have a certified teacher or a teacher currently teaching in a nonpublic school, who is selected by the parent, evaluate the student's educational progress upon review of a portfolio and discussion with the parent or student.

(4) To use the funds in the EFA only for qualifying expenses to educate the eligible student as established by the EFA program.

(5) To comply with the rules and requirements of the EFA program.

IV. The signed agreement between the parent and the scholarship organization shall satisfy the compulsory school attendance requirements of RSA 193:1.

V. The scholarship organization shall annually renew a student's EFA if funds are available.

VI. Upon notice to the scholarship organization, an EFA student may choose to stop receiving EFA funding and enroll full-time in a public school.

(a) Enrolling as a full-time student in the resident district public school shall result in the immediate suspension of payment of additional funds into the student's EFA. However, an EFA that has been open for at least one full school year shall remain open and active for the parent to make qualifying expenditures to educate the student from funds remaining in the EFA. When no funds remain in the student's EFA, the scholarship organization may close the EFA.

(b) If an eligible student decides to return to the EFA program, payments into the student's existing EFA may resume if the EFA is still open and active. A new EFA may be established if the student's EFA was closed.

**Source.** 2021, 91:431, eff. Aug. 24, 2021.

**194–F:4 Authority and Responsibilities of the Scholarship Organization.**

The scholarship organization shall have the following additional duties, obligations, and authority:

I. The scholarship organization shall maintain an updated list of education service providers and shall ensure that the list is publicly available through various sources, including the Internet.

II. The scholarship organization shall provide parents with a written explanation of the allowable uses of EFA funds, the responsibilities of parents, the duties of the scholarship organization, and the role of any financial management firms that the scholarship organization may contract with to administer any aspect of the EFA program.

III. The scholarship organization shall ensure that parents of students with disabilities receive a written explanation of their rights to services pursuant to federal and state law specific to the education options available in the EFA program. The explanation shall be developed and maintained by the department of education, bureau of special education support.

IV. The scholarship organization shall, in cooperation with the department, determine eligibility for differentiated aid subject to any applicable state and federal laws.

V. The scholarship organization may withhold from deposits or deduct from EFAs an amount to cover the costs of administering the EFA program, up to a maximum of 10 percent annually.

VI. The scholarship organization shall implement a commercially viable system for payment of services from EFAs to education service providers by electronic or online funds transfer.

(a) The scholarship organization shall not adopt a system that relies exclusively on requiring parents to be reimbursed for out-of-pocket expenses, but rather shall provide maximum flexibility to parents by facilitating direct payments to education service providers. Scholarship organizations may pre-approve requests for reimbursements for qualifying expenses, including expenses pursuant to RSA 194–F:2, II, but shall not disperse funds to parents without receipt that such pre-approved purchase has been made.

(b) A scholarship organization may contract with a private institution or organization to develop the payment system.

VII. The scholarship organization may also seek to implement a commercially viable system for parents to publicly rate, review, and share information about education service providers, ideally as part of the same system that facilitates the electronic or online funds transfers.

VIII. If an education service provider requires partial payment of tuition or fees prior to the start of the academic year to reserve space for an EFA student admitted to the education service provider, such partial payment may be paid by the scholarship organization, if funds are available, prior to the start of the school year in which the EFA is awarded and deducted in an equitable manner from subsequent quarterly EFA deposits to ensure adequate funds remain available throughout the school year; but if an EFA student decides not to use the education service provider, the partial reservation payment shall be returned to the scholarship organization by such education service provider and credited to the student's EFA.

IX. The scholarship organization shall continue making deposits into a student's EFA until:

(a) The scholarship organization determines that the EFA student is no longer an eligible student.

(b) The scholarship organization determines that there was substantial misuse of the funds in the EFA.

(c) The parent or EFA student withdraws from the EFA program.

(d) The EFA student enrolls full-time in the resident district public school.

(e) The EFA student graduates from high school.

X. The scholarship organization may conduct or contract for the auditing of individual EFAs, and shall at a minimum conduct random audits of EFAs on an annual basis.

XI. The scholarship organization may make any parent or EFA student ineligible for the EFA program in the event of intentional and substantial misuse of EFA funds.

(a) The scholarship organization shall create procedures to ensure that a fair process exists to determine whether an intentional and substantial misuse of EFA funds has occurred.

(b) If an EFA student is free from personal misconduct, that student shall be eligible for an EFA in the future if placed with a new guardian or other person with the legal authority to act on behalf of the student.

(c) The scholarship organization may refer suspected cases of intentional and substantial misuse of EFA funds to the attorney general for investigation if evidence of fraudulent use of EFA funds is obtained.

(d) A parent or EFA student may appeal the scholarship organization's decision to deny eligibility for the EFA program to the department.

XII. The scholarship organization may bar an education service provider from accepting payments from EFAs if the scholarship organization determines that the education service provider has:

(a) Intentionally and substantially misrepresented information or failed to refund any overpayments in a timely manner.

(b) Routinely failed to provide students with promised educational goods or services.

XIII. The scholarship organization shall create procedures to ensure that a fair process exists to determine whether an education service provider may be barred from receiving payments from EFAs.

(a) If the scholarship organization bars an education service provider from receiving payments from EFAs, it shall notify parents and EFA students of its decision as quickly as possible.

(b) Education service providers may appeal the scholarship organization's decision to bar them from receiving payments from the EFA to the department.

XIV. The scholarship organization may accept gifts and grants from any source to cover administrative costs, to inform the public about the EFA program, or to fund additional EFAs.

XV. The department shall adopt rules that are necessary for the administration of this chapter.

XVI. The scholarship organization shall adopt policies or procedures that are necessary for the administration of this chapter. This may include policies or procedures:

(a) Establishing or contracting for the establishment of an online anonymous fraud reporting service.

(b) Establishing an anonymous telephone number for fraud reporting.

(c) Requiring a surety bond for education service providers receiving more than $100,000 in EFA funds.

(d) Refunding payments from education service providers to EFAs.

(e) Ensuring appropriate use and rigorous oversight of all funds expended under this program.

XVII. The scholarship organization shall not exclude, discriminate against, or otherwise disadvantage any education provider with respect to programs or services under this section based in whole or in part on the provider's religious character or affiliation, including religiously based or mission-based policies or practices.

**Source.** 2021, 91:431, eff. Aug. 24, 2021. 2023, 131:1, eff. Aug. 29, 2023.

### 194–F:5 Parent and Education Service Provider Advisory Commission.

I. There is established the parent and education service provider advisory commission to assist the scholarship organization by providing recommendations about implementing, administering, and improving the EFA program.

II. The commission shall consist of 7 members who shall be parents of EFA students or education service providers and shall represent no fewer than 4 counties in the state. The members shall be appointed by the director of the scholarship organization and serve at the director's pleasure for one calendar year after which they may be reappointed. The director of the scholarship organization, or designee, shall

serve as a non-voting chairperson of the commission. The commissioner of the department of education, or designee, shall serve as a non-voting member of the commission.

III. The scholarship organization may request the commission to meet, in person or virtually, to review appeals of education service provider denials pursuant to RSA 194–F:4, XI and to provide a recommendation to the scholarship organization as to whether an education service provider should be allowed to receive, or continue receiving, payments from EFAs.

**Source.** 2021, 91:431, eff. Aug. 24, 2021.

### 194–F:6 Requirements for Education Service Providers.

I. The scholarship organization may approve education service providers on its own initiative, at the request of parents, or by notice to the scholarship organization provided by prospective education service providers.

II. A prospective education service provider that wishes to receive payments from EFAs shall:

(a) Submit notice to the scholarship organization that it wishes to receive payments from EFAs.

(b) Agree not to refund, rebate, or share EFA funds with parents or EFA students in any manner, except that funds may be remitted or refunded to an EFA in accordance with procedures established by the scholarship organization.

(c) Comply with all state and federal anti-discrimination laws.

**Source.** 2021, 91:431, eff. Aug. 24, 2021.

### 194–F:7 Independence of Education Service Providers.

I. Nothing in this chapter shall be deemed to limit the independence or autonomy of an education service provider or to make the actions of an education service provider the actions of the state government.

II. Education service providers shall be given maximum freedom to provide for the educational needs of EFA students without governmental control.

III. Nothing in this chapter shall be construed to expand the regulatory authority of the state, its officers, or any school district to impose any additional regulation of education service providers beyond those necessary to enforce the requirements of the EFA program.

IV. Any education service provider that accepts payment from an EFA under this chapter is not an agent of the state or federal government.

V. An education service provider shall not be required to alter its creed, practices, admissions policy, or curriculum in order to accept payments from an EFA.

**Source.** 2021, 91:431, eff. Aug. 24, 2021.

### 194–F:8 Responsibilities of Public Schools and School Districts.

A public school, or school district, that previously enrolled an EFA student shall provide a private school that is also an education service provider and that has enrolled an EFA student with a complete copy of the ESA student's school records, in a timely manner, while complying with 20 U.S.C. section 1232g, the Family Educational Rights and Privacy Act of 1974.

**Source.** 2021, 91:431, eff. Aug. 24, 2021.

### 194–F:9 Legal Proceedings.

I. In any legal proceeding challenging the application of this chapter to an education service provider, the state bears the burden of establishing that the law is necessary and does not impose any undue burden on the education service provider.

II. No liability shall arise on the part of the scholarship organization or the state or of any public school or school district based on the award of or use of an EFA pursuant to this chapter.

III. If any part of this chapter is challenged in a state court as violating either the state or federal constitutions, parents of eligible and/or EFA students shall be permitted to intervene as of right in such lawsuit for the purposes of defending the EFA program's constitutionality. However, for the purposes of judicial administration, a court may require that all parents file a joint brief, so long as they are not required to join any brief filed on behalf of any named state defendant.

IV. If any provision of this chapter, or the application thereof to any person or circumstances, is held invalid, such invalidity shall not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are declared to be severable.

**Source.** 2021, 91:431, eff. Aug. 24, 2021.

**194–F:10 Phase–Out Grants.**

I. For each school district, the commissioner shall calculate the amount of the reduction in adequate education grants pursuant to RSA 194–F:2, I for each student receiving an EFA under this chapter. In the first year of the grant reduction, the commissioner shall calculate 50 percent of the reduction for each student and shall disburse that amount to the district as a district funding phaseout grant. In the second year of the grant reduction, the commissioner shall calculate 25 percent of the reduction for each student and shall disburse that amount to the district as a district funding phase-out grant. All district funding phase-out grants shall be included in the September 1 disbursement required pursuant to RSA 198:42.

II. The phase-out grants will terminate for new EFA students receiving an EFA effective July 1, 2026.

**Source.** 2021, 91:431, eff. Aug. 24, 2021.

**194–F:11 Appropriation From Education Trust Fund.**

The amount necessary to fund any grants or transfers of funds authorized under this chapter is hereby appropriated to the department from the education trust fund created under RSA 198:39. The governor is authorized to draw a warrant from the education trust fund to satisfy the state's obligation under this section. Such warrant for payment shall be issued regardless of the balance of funds available in the education trust fund. If the balance in the education trust fund, after the issuance of any such warrant, is less than zero, the comptroller shall transfer sufficient funds from the general fund to eliminate such deficit. The commissioner of the department of administrative services shall inform the fiscal committee and the governor and council of such balance. This reporting shall not in any way prohibit or delay the distribution of any grant or transfer of funds authorized under this chapter.

**Source.** 2021, 91:431, eff. Aug. 24, 2021.

**194–F:12 Legislative Oversight Committee Established.**

There is established an education freedom savings account oversight committee.

I. The members of the committee shall be as follows:

(a) Two members of the senate, one of whom shall be a member of the majority party and one of whom shall be a member of the minority party, appointed by the president of the senate.

(b) Three members of the house of representatives, one of whom shall be a member of the majority party and one of whom shall be a member of the minority party, appointed by the speaker of the house of representatives.

II. Members of the committee shall receive mileage at the legislative rate when attending to the duties of the committee.

III. The committee shall monitor the implementation of RSA 194–F, including the impact of state education funding to local district schools, and make recommendations for any legislative changes to the education freedom savings account program.

IV. The members of the study committee shall elect a chairperson from among the members. The first meeting of the committee shall be called by the first-named senate member. The first meeting of the committee shall be held within 45 days of the effective date of this section. Three members of the committee shall constitute a quorum.

V. The committee shall submit a report on or before November 30, 2022, and each year thereafter, to the general court including findings, recommendations, and any corrective or technical improvements that the education freedom account program may require.

**Source.** 2021, 91:431, eff. Aug. 24, 2021.

## CHAPTER 195

## COOPERATIVE SCHOOL DISTRICTS

### 195:1 Definitions.

The terms used in this chapter shall be construed as follows, unless a different meaning is clearly apparent from the language or context:

I. "Cooperative school district" means a district composed of 2 or more school districts of the state associated together under the provisions of this chapter and may include either the elementary schools, the secondary schools, or both.

II. "Elementary school" shall mean all grades from the kindergarten or grade one through grade 6, or kindergarten or grade one through grade 8.

III. "Secondary school" shall mean all grades from grade 7 through grade 12, or grade 9 through grade 12.

IV. "Cooperative school board" shall mean a school board serving a cooperative school district.

V. "Pre-existing district" shall mean a district or portion of a district which is included within the boundaries of a proposed or established cooperative school district.

VI. [Repealed.]

VII. "Commissioner" shall mean commissioner of education.

VIII. "Date of operating responsibility" shall mean the date or dates set in the resolution adopted at the organization meeting or in the articles of agreement adopted by the several school districts on which the cooperative school district shall take over operating control of those schools within such district which it was organized to operate. Wherever the words "establishment" or "date of establishment" appear in this chapter, they shall be given a meaning synonymous with "date of operating control".

IX. "Valuation" shall mean the valuation as determined by the commissioner of revenue administration for debt limits, under the provisions of RSA 33.

**Source.** 1947, 199:1. 1951, 213:1, par. 1. 1953, 225:1. RSA 195:1. 1955, 334:6. 1963, 258:3. 1973, 544:8. 1986, 41:29, VII, eff. April 3, 1988.

### 195:2 Standards.

I. (a) It is the purpose of this chapter to increase educational opportunities within the state by encouraging the formation of cooperative school districts which will each:

(1) Be a natural social and economic region.

(2) Have an adequate minimum taxable valuation.

(3) Have a number of pupils sufficient to permit the efficient use of school facilities within the district and to provide improved instruction.

(b) The state board of education shall approve articles of agreement for a proposed cooperative school district, or agreements for the enlargement of a cooperative school district, only after determining that the formation or enlargement of the district will be in accord with such standards and the purposes set forth herein.

II. [Repealed.]

III. ADVISORY POWERS OF BOARD. The board may prepare recommended forms of articles of agreement and existing arrangements for cooperative school districts and may furnish its advisory services to cooperative school district planning boards or school boards who have such matters under consideration.

**Source.** 1951, 213:1, par. 2. RSA 195:2. 1963, 258:4. 1979, 459:4. 1996, 158:1, 2, eff. July 1, 1996.

### 195:3 Repealed by 1963, 258:14, eff. July 1, 1963.

### 195:4 Powers.

I. During the period from the date of the vote of the organization of any cooperative school district organized prior to July 1, 1963, to the date of operat-

ing responsibility such cooperative school district shall have all the authority and privileges of a regular school district for bonding purposes, for the construction of school facilities and for all other necessary functions to obtain proper facilities for the provision of a complete program of education. When necessary the school board of the cooperative school district is authorized to prepare a budget and call a special meeting of the voters of the district for the purpose of adopting the budget and to determine the financial appropriations. Such meeting shall have the same authority as an annual meeting for these purposes.

II. ELECTION OF OFFICERS. Every such school district may, as provided in RSA 195:19, adopt a bylaw to specify the number, composition, method of selection, and terms of office of its cooperative school board; provided that its cooperative school board shall consist of an odd number of members, not more than 15 for terms not exceeding 3 years.

III. CHECKLISTS. At the meetings held in the preexisting districts for the purpose of accepting the articles of agreement, or any existing arrangements, and at the organization meeting of the cooperative school district the checklist for each preexisting district shall be used. The school board of any preexisting district which does not have a checklist shall make, post, and correct a list of the voters in the district for use at such meetings as supervisors are required to do in regard to the list of voters in their towns. Thereafter the cooperative school board shall make, post, and correct a list of the voters of the cooperative school district acting as supervisors are required to do, except that such list shall indicate with respect to each voter the preexisting district in which the voter is domiciled. Any 2 members of the cooperative school board shall constitute a quorum at sessions for the correction of the checklist. Notwithstanding the foregoing provisions whenever each of the preexisting school districts is coextensive with the town in which it is located the cooperative school district may, at an annual cooperative school district meeting, under an article in the warrant for such meeting, vote that the supervisors of each town, acting as the supervisors of the cooperative school district, shall make, post and correct in each preexisting district a checklist of the voters in each preexisting district and shall certify the making, posting, and correction of the checklist acting as supervisors of the cooperative school district. At each annual meeting for the election of officers of the cooperative district the checklists prepared by the supervisors in each preexisting district in accordance with the provisions of this paragraph shall be used and the town supervisors from each preexisting district shall attend such annual meeting. The voters of the cooperative district shall be those whose names appear on the checklists as provided by this paragraph. The supervisors shall be paid such compensation as the district may provide.

IV. For purposes of state-wide supervision a cooperative school district shall be a school district.

V. The members of the cooperative school board shall serve with or without remuneration as the district shall determine, but they shall be paid their necessary expenses while upon official business.

**Source.** 1951, 213:1, par. 4. 1953, 225:3. RSA 195:4. 1961, 44:1; 206:2, 3. 1963, 258:2. 1971, 252:2. 1979, 321:3. 1996, 158:3; 222:14. 2003, 289:18, eff. Sept. 1, 2003.

### 195:4–a Repealed by 1996, 158:19, II, eff. July 1, 1996.

### 195:5 School Board; Powers and Duties.

The cooperative school board elected at the organization meeting shall organize and take office at the close of such meeting and proceed to assume its responsibilities and duties with respect to the administration and planning of the new cooperative school district; provided, however, that the cooperative board shall have no administrative authority as to the schools in the pre-existing districts until the date of operating responsibility. Thereafter all cooperative school district officers shall assume office at the close of the annual meeting. The cooperative school board shall have the same powers and duties as school boards in school districts as prescribed by RSA 189. Except as provided in this chapter, all the provisions of this chapter or of any other general law relating to or affecting school districts in the state shall apply to cooperative school districts organized as herein provided.

I. CLERK. The cooperative school board shall appoint annually and fix the salary of the district clerk who shall not be a member of the cooperative school board. The district clerk shall serve also as the clerk of the cooperative school board.

II. TREASURER. The treasurer of a cooperative school district shall be appointed by the cooperative school board for one or more terms not to exceed 5 years each, shall not be a member of the cooperative school board, and shall receive for services such sum as the cooperative school board may determine. The treasurer shall, before entering upon the duties of such office, give a bond to the cooperative school district with a surety company authorized to do busi-

ness within the state in a form approved by the commissioner of revenue administration, and the premium shall be paid by the cooperative school district. The provisions of RSA 21–J:17, applicable to uniform accounting by school districts, shall apply to cooperative school districts.

**Source.** 1947, 199:4, 5. 1951, 213:1, par. 5. 1953, 225:4. RSA 195:5. 1963, 258:5. 1973, 544:8. 1996, 222:4, eff. Aug. 9, 1996.

### 195:6 Powers and Duties of Cooperative School Districts.

I. Each cooperative school district shall be a body corporate and politic with power to sue and be sued, to acquire, hold and dispose of real and personal property for the use of schools therein, and to make necessary contracts in relation thereto, and have and possess all the powers and be subject to all the liabilities conferred and imposed upon school districts under the provisions of RSA 194. Whenever a cooperative school district assumes all the functions of a pre-existing district, it shall also assume the outstanding indebtedness and obligations thereof as of the date of operating responsibility; and on such date of operating responsibility the pre-existing districts shall be deemed dissolved, and any and all assets, property and records thereof not previously disposed of shall vest in the cooperative school district, unless otherwise provided in the articles of agreement or existing arrangements.

II. Each cooperative school district shall have the power to borrow money and issue its notes or bonds in conformity with the provisions of RSA 33, provided, however, indebtedness of a cooperative district organized to provide both elementary and secondary schools may be incurred to an amount not to exceed 10 percent of its assessed valuation as last equalized by the commissioner of revenue administration.

III. Whenever only a part of the educational facilities of a local school district are incorporated into a cooperative school district, such local district shall continue in existence and function as previously. The cooperative school district shall assume only those outstanding debts and obligations of the local school district which pertain to the property acquired by the cooperative school district for use by the cooperative school district. In such case no cooperative school district shall for elementary school purposes incur debt to an amount exceeding 5 percent, and for secondary school purposes, if organized for grades 9 through 12, to an amount exceeding 5 percent, and for secondary school purposes if organized for grades 7 through 12, to an amount not exceeding 6 percent of the total assessed valuation of such district as last equalized by the commissioner of revenue administration. No cooperative school district described in this paragraph shall incur indebtedness if it subjects the taxable property of any school district forming a part thereof to debt, when added to the debt of such school district, of more than 10 percent of the total assessed value of such taxable property as last equalized by the commissioner of revenue administration.

**Source.** 1947, 199:3. 1951, 213:1, par. 6. 1953, 225:5, 6. RSA 195:6. 1955, 334:5, 8. 1957, 126:1, 2. 1959, 209:1, 2. 1963, 258:6. 1973, 544:8. 1996, 158:4, eff. July 1, 1996.

### 195:7 Costs of Capital Outlay and Operation.

I. If a cooperative school district was organized prior to July 1, 1963, during the first 5 years after the formation of a cooperative school district each preexisting district shall pay its share of all capital outlay costs and operational costs in accordance with either one of the following formulas as determined by a majority vote of the cooperative district meeting:

(a) All such costs shall be apportioned on the basis of the ratio that the equalized valuation of each preexisting district bears to that of the cooperative district; or

(b) One-half of all such costs shall be apportioned on the basis of the ratio that the equalized valuation of each preexisting district bears to that of the cooperative district and ½ shall be apportioned on the average daily membership for the preceding year.

(c) Some other formula offered by the cooperative school board with the board's recommendation, adopted by the cooperative school district and approved by the state board of education.

II. Home education pupils who do not receive services from the cooperative school district, except an evaluation pursuant to RSA 193–A:6, II, shall not be included in the average daily membership relative to apportionment formulas.

**Source.** 1951, 213:1, par. 7. RSA 195:7. 1955, 334:9. 1959, 195:1. 1961, 206:4. 1996, 158:5; 222:15. 1999, 17:37, eff. April 29, 1999; 281:5, eff. July 16, 1999.

### 195:8 Reconsideration Procedure.

If a cooperative school district was organized prior to July 1, 1963, the basis for the apportionment of all such costs may be subject to review, pursuant to an article for that purpose duly inserted in the warrant for a district meeting to be held at any time after the expiration of the 5–year period measured from the date of the first annual meeting. If the apportionment formula for a cooperative school district has been duly changed, or if an article to continue the current formula has been passed at a district meet-

ing, the basis for the apportionment of all such costs may be subject to review, pursuant to an article for that purpose duly inserted in the warrant for a district meeting to be held at any time after the expiration of the 5–year period measured from the date of the meeting at which the last change was made to the cost apportionment formula or the last article to continue the current formula was passed. In either case, the cooperative school district may then by majority vote elect to apportion all such costs by the adoption of one of the formulas set forth in RSA 195:7, I(a), (b), or (c). Such apportionment may be reviewed in the same manner at any time in order to permit the enlargement of the territory of a school district or an increase in the number of grades for which the district shall be responsible.

**Source.** 1947, 199:8. 1951, 213:1, par. 8. 1953, 226:8. RSA 195:8. 1955, 334:10. 1959, 195:2. 1961, 206:5. 1963, 258:7. 1996, 158:5; 222:16. 2000, 59:1, eff. June 16, 2000. 2021, 80:1, eff. Aug. 17, 2021.

### 195:9 Taking Over Property.

I. Whenever a cooperative school district planning board is formed and it is proposed that a cooperative school district is to be established, the properties belonging to the districts that are to be used by the cooperative district shall be separately appraised by a committee to consist of 3 persons. The commissioner of education shall designate one person on the committee, and the commissioner of revenue administration shall designate 2 persons, one of whom shall be a member of or a qualified appraiser employed by the department of revenue administration. A member who is not in the employ of the state shall be paid $25 per day plus actual expenses in the performance of such member's duties. A member who is in the employ of the state shall not be paid extra compensation other than the state salary, but shall be reimbursed for actual expenses in the performance of such member's duties.

II. All expenses incurred in conducting an appraisal by the persons designated by the commissioner of revenue administration including the salaries and expenses of state employees, shall be paid in the first instance from the appropriation for the department of revenue administration. Likewise, the salary and expenses incurred by the person designated by the commissioner of education, including the salaries and expenses of state employees, shall be paid in the first instance from the appropriation for the department of education. The commissioner of revenue administration and the commissioner of education shall report the amount of money paid by them for the appraisal to the cooperative school district planning board. The planning board shall reimburse the department of revenue administration and the department of education for these expenses. If the planning board does not have sufficient funds to make reimbursement, it shall apportion the expenses among the several districts requesting the appraisal. The reimbursements shall be credited to the appropriations for the department of revenue administration and the department of education.

III. The decision of the committee with respect to the appraisal shall be final. Unless otherwise provided in the articles of agreement, at the next annual assessment a tax equivalent to the total appraised value of the property to be used by the cooperative district shall be levied upon the several districts comprising the cooperative school district in the proportion that the equalized valuation of each bears to the equalized valuation of the whole and there shall be remitted to the taxpayers of each pre-existing district the appraised value of its property. Whenever the cooperative school board decides the foregoing adjustment will work a hardship on any one or all of the pre-existing districts, it may, of its own motion, or upon petition of any of the residents of a pre-existing district provide that such adjustment be made over a period of not exceeding 20 years.

**Source.** 1951, 213:1, par. 9. RSA 195:9. 1955, 334:11. 1963, 258:8. 1967, 340:1. 1973, 544:11, XXV. 1996, 222:7, eff. Aug. 9, 1996.

### 195:9–a Property Not Taken Over by District.

Whenever a cooperative district is formed and assumes all of the functions of a preexisting school district but does not take over all of the property in a preexisting district, the school board of such preexisting district shall call a special school district meeting prior to the time of establishment of the cooperative district to see what action shall be taken relative to the remaining property. Where such special meeting neglects to dispose of remaining real property, the successor in interest to a preexisting school district that is coextensive with a city or town is the city or town.

**Source.** 1955, 334:1. 2001, 35:3, eff. June 8, 2001.

### 195:10 Disposal of Property.

Whenever any property of a cooperative school district is disposed of, the proceeds thereof shall be credited to each pre-existing district in the same proportion as the costs of making capital improvements are credited.

**Source.** 1951, 213:1, par. 10, eff. Aug. 13, 1951.

### 195:11 Continuance of Trust Funds.

All trust funds held or enjoyed by any pre-existing district shall be held and applied as the terms of the trust indicate. If such trust allows, the funds may be applied for the same uses and purposes of the cooperative district.

**Source.** 1951, 213:1, par. 11. RSA 195:11. 1955, 334:12, eff. Aug. 5, 1955.

### 195:11–a Capital Reserves and Cash Balances.

When all of the functions of a school district are to be assumed by a cooperative district the balance of any capital reserve fund established by a school district and any cash balance in the hands of the treasurer or money due the district at the time of establishment of the cooperative district less any outstanding bills or debts other than long term indebtedness which is to become the obligation of the cooperative district, shall be used as a credit against the cooperative district assessment to be raised by the pre-existing district for the first year of operation or may be spread over a period of not more than 5 years as the voters of the pre-existing school district shall determine at either any annual meeting or a special school district meeting called for that purpose prior to the establishment of the cooperative district.

**Source.** 1955, 334:2, eff. Aug. 5, 1955.

### 195:12 Budget.

At least 30 days prior to the annual meeting, the cooperative school board shall prepare a budget for the ensuing year, after holding at least one public hearing upon a preliminary budget at some convenient place in the district, of which at least 7 days' notice shall have been given, and said budget, subsequent to its final approval by such board, shall be posted in a public place in each pre-existing district and given such other publication as the cooperative school board may determine. The provisions of RSA 32 shall apply to a cooperative school district.

**Source.** 1947, 199:9. 1951, 213:1, par. 12. 1953, 225:7. RSA 195:12. 1963, 258:9. 1996, 158:6, eff. July 1, 1996.

### 195:12–a Budget Committee.

I. A cooperative school district at an annual meeting, under a proper article in the warrant, may vote to establish a budget committee pursuant to RSA 32:14 and may rescind such action in a like manner. The budget committee shall have the same number of members as the cooperative district school board plus one additional member from the school board as provided in this paragraph. The terms of office and manner of election of members shall be determined in the same manner as for the cooperative school board. Whenever it is voted to establish a budget committee, the moderator in the first instance shall appoint the members of the budget committee, except for the additional member appointed from the school board, within 15 days of the vote establishing the committee. The members appointed by the moderator shall serve until the next annual meeting when the meeting shall elect their successors. No member of the cooperative school board shall be appointed or elected to the budget committee except that the chairperson of the cooperative school board shall appoint a member of the board to serve on the budget committee with all the powers and duties of any other member of the committee. After appointment or election the budget committee shall promptly organize and choose a chairperson, vice-chairperson, and secretary. The secretary shall keep records of the proceedings of the budget committee, which shall be public records open to public inspection.

II. Such cooperative school budget committee shall have the powers and duties of the municipal budget committee under the provisions of RSA 32 insofar as the budget for the cooperative school district is concerned and insofar as RSA 32 is applicable to the cooperative school budget.

III. Such committee shall seasonably provide the cooperative school board with a sufficient number of copies of the budget prepared by it, and the same shall be posted with each copy of the warrant in the manner provided by RSA 195:13.

**Source.** 1961, 206:6. 1963, 258:10, 10–a. 1967, 136:1, 2. 1971, 252:3. 1979, 321:4. 1996, 158:6, eff. July 1, 1996; 222:17, eff. July 1, 1996.

### 195:13 Meetings, Annual, Special.

A meeting of every cooperative school district shall be held annually between the dates set forth in RSA 197:1 for the choice of district officers, raising and appropriating money for the support of its schools for the fiscal year beginning the next July, and for the transaction of other district business. Special meetings may be called by majority vote of the school board. A special meeting shall be held within 30 days following the receipt by the school board of a petition calling for such a meeting and setting forth the subject matter upon which action is desired signed by at least 5 percent of the voters who are duly registered on the checklists of the district on the date the petition is submitted. The provisions of RSA 197, excepting the provisions of RSA 197:2, shall apply to cooperative school district meetings, except that a copy of the warrant shall be posted in a public

place in each pre-existing district as well as at the place of meeting.

**Source.** 1942, 199:10. 1951, 213:1, par. 13. RSA 195:13. 1969, 211:1. 1971, 562:5. 1973, 427:1. 1981, 250:2, eff. Sept. 1, 1981.

**195:13–a Repealed by 1979, 321:2, I, eff. Aug. 21, 1979.**

**195:14 Certification of District Taxes.**

I. Voted Appropriations.

(a) The cooperative school board shall annually within 20 days of the close of the meeting certify to the commissioner of revenue administration and the state department of education, upon blanks prescribed and provided by the commissioner of revenue administration for the purpose, a certificate of the several appropriations voted by the district and estimated revenues, so far as known, and such other information as the commissioner of revenue administration may require.

(b) The commissioner of revenue administration shall examine such certificates and delete any appropriations which appear not made in accordance with the law, and adjust any sum, in accordance with RSA 21–J:35, which may be used as a setoff against the amount appropriated when it appears to the commissioner of revenue administration such adjustment is in the best public interest.

(c) The commissioner of revenue administration shall certify to the state department of education the amount to be apportioned among the pre-existing school districts. This amount shall be the balance before the adequate education grant revenues are applied.

(d) Unless the provisions of RSA 195:14–a are adopted, the state department of education shall determine each municipality's proportional share of the net appropriation after application of the grants as follows:

(1) First, the department shall determine each pre-existing district's proportional share of the amount to be apportioned based on the cooperative school district formula.

(2) Second, the department shall then deduct each pre-existing school district's adequate education grant.

(3) If the resulting amount is less than zero, the department shall reduce the adequate education grant under RSA 198:41 by the difference.

(4) The department shall notify the commissioner of the department of revenue administration of its determination.

(e) Upon certification by the commissioner of revenue administration, the selectmen of each town shall seasonably assess the taxes as provided by law.

(f) The selectmen shall pay over to the treasurer of the cooperative district such portions of the sums so raised as may reasonably be required according to a schedule of payments needed for the year as prepared by the treasurer and approved by the cooperative school board, but no such payment shall be greater in percentage to the total sum to be raised by one local district than that of any other local district comprising such cooperative school district.

II. Non-voted Appropriations.

(a) Whenever a cooperative school district assumes any obligations of a preexisting district the cooperative school board shall also certify to the commissioner of revenue administration and the state department of education the amount to be raised by taxation to pay such obligations as they become due, and the state department of education shall determine the proportional part thereof to be borne by each preexisting district and notify the commissioner of revenue administration.

(b) The commissioner of revenue administration shall then add the amount determined under subparagraph (a) to the other sums to be raised by said pre-existing districts and include the same in computing the rate percent of taxation for each pre-existing district, unless the articles of agreement or existing arrangement provides otherwise.

(c) Whenever a cooperative school district has assumed the obligations of a preexisting district, the amount of each payment of principal and interest on all obligations which have been thus assumed shall be annually assessed and collected without any vote or other act of approval whatsoever.

III. (a) The adequate education grant used in subparagraph I(d) shall be based on the revised estimated revenues contained in the report required in RSA 198:4–d, II.

(b) If the commissioner finds that the actual adequacy grant used in the prior year was inaccurate or inappropriate, the commissioner shall perform a town-specific reconciliation adjustment for each town's estimates in question against the apportionment. The difference between the recomputed apportionment and the apportionment determined under subparagraph (a), and the difference between the actual adequate education grant pro-

vided under RSA 198:42 for the prior year and the grant amount estimated in the prior year under subparagraph (a), shall be the basis for the town-specific reconciliation adjustment.

**Source.** 1947, 199:11. 1951, 213:1, par. 14. RSA 195:14. 1955, 334:3. 1963, 258:11. 1973, 544:8. 1995, 137:5. 1996, 158:7. 1999, 17:38; 281:6–8. 2004, 200:10. 2005, 257:16. 2006, 6:5. 2007, 270:3, eff. June 29, 2007. 2012, 198:8, eff. July 1, 2012.

### 195:14–a Alternative Method of Apportioning Operating Costs.

I. As an alternative to the apportionment of operating costs set forth in RSA 195:14, the cooperative school board may fix a specific percentage of the state adequate education grant amount received in a given year to be applied to the operating costs of the cooperative school district, before the apportionment of remaining cooperative school district operating costs. Such percentage shall not be less than zero percent and not more than 100 percent and shall be the same in each city or town in the cooperative school district.

II. The question on the adoption of an alternative method of apportioning operating costs shall be proposed as an article in the warrant of the next cooperative school district annual or special meeting pursuant to RSA 195:13. A majority of voters present and voting on the question in each city or town in the cooperative school district shall be required to approve the alternative method of apportioning operating costs. Upon approval, the clerk of the cooperative school district shall send to the state board of education a certified copy of the warrant.

III. The procedure for modification or rescission of an alternative method of apportioning operating costs shall be as set forth in the alternative method of apportioning operating costs and shall not be subject to the provisions of RSA 195:18, III(i). A majority of voters present and voting on the question in each city or town in the cooperative school district shall be required to approve the modification or rescission.

**Source.** 2004, 244:1. 2006, 6:6. 2007, 270:3, eff. June 29, 2007.

### 195:15 State Aid.

The state aid to which a cooperative elementary and/or secondary district shall be entitled shall be the total of those shares of the aid to which the pupils attending the cooperative district would have entitled the pre-existing districts, had they remained in the pre-existing districts. For the purposes of crediting the cooperative district's adequate education cost to the pre-existing districts, each such pre-existing district shall have its adequate education cost under RSA 198:38, VII credited against its share of the cooperative school district budget. However, cooperative school districts formed by 2 or more pre-existing districts whose boundaries approximate those of a single township in which they are located shall be treated as a single school district for the purposes of this section.

**Source.** 1947, 199:12. 1951, 213:1, par. 15. RSA 195:15. 1955, 334:13. 1996, 158:8. 1999, 281:9. 2004, 200:11, eff. June 9, 2004.

### 195:15–a Building Aid.

Except as hereinafter provided, for the purpose of receiving state building aid, or other similar aid toward school buildings, which may hereafter be provided, the amount of such aid for cooperative school districts shall apply only to those cooperative or union school districts which were formed from 2 or more districts from 2 or more towns. A cooperative school district formed as a result of a conversion from an authorized regional enrollment area plan shall not be eligible for school building aid for the purchase of property in a pre-existing district which had received building aid for the construction of said building or buildings, provided, however, that any aid for which the pre-existing district is currently eligible shall be continued and shall be paid to the cooperative school district. A cooperative school district formed from 2 or more school districts within one town shall be deemed to be a school district and not a cooperative school district insofar as receipt of state building or other similar aid toward school buildings is concerned. The limitations of this section relative to cooperative school districts formed from districts within one town shall apply only to those which are so organized after July 1, 1955. Such cooperative school district organized prior to July 1, 1955, shall be deemed a cooperative school district for the purpose of receiving such building aid.

**Source.** 1955, 334:14. 1997, 320:1, eff. July 1, 1998.

### 195:16 Enlargement of Territory.

A cooperative school district organized prior to July 1, 1963 may be enlarged in the following manner:

I. The school board of any school district situated in proximity to an existing cooperative school district may petition the cooperative school board to meet with it to study jointly the advisability and the terms of enlarging the cooperative school district to include such district. It shall thereupon be the duty of the cooperative school board to meet with the other school board as requested and engage in such joint study. After such joint study the 2 school boards may recommend that the cooperative school district

be so enlarged, and if they so recommend, they shall submit proposed articles of agreement in writing signed by a majority of each board setting forth in detail:

(a) The date of operating responsibility, when the cooperative district shall assume control of operation of schools within the joining school district, upon which date the joining school district shall cease to exist;

(b) The number, composition, method of selection and terms of office of its cooperative school board, all in accordance with the provisions of RSA 195:19 through 23 inclusive, provided that its cooperative school board shall consist of an odd number of members not more than 15 for terms not exceeding 3 years;

(c) The specific school properties and other assets in the district to be acquired by the cooperative school district and the disposition of those not acquired including the records;

(d) The initial location of the school or schools which will serve the joining school district;

(e) The indebtedness of the joining school district which the cooperative school district is to assume;

(f) The method of apportioning the capital outlay costs and operational costs under RSA 195:7 or under the articles of agreement of the cooperative school district, which method may be different from the formula previously adopted by the cooperative school district notwithstanding the provisions of RSA 195:8 or its articles of agreement;

(g) The manner in which state aid referred to in RSA 195:15 or any other available state aid shall be allocated, unless otherwise expressly provided by law;

(h) Provisions similar to those outlined in RSA 195:18, IV, if desirable; and

(i) Any other matters, not incompatible with law, which the 2 school boards may consider appropriate to include in the agreement.

II. An executed copy of such proposed articles of agreement shall be submitted to the board; and if it finds that the proposed enlargement would be in accord with the standards set forth in RSA 195:2 and approves the agreement, it shall cause the agreement to be submitted to the cooperative school district and to the joining school district for acceptance by each.

III. The cooperative school board and the school board of the joining school district, upon receipt of written notice of such approval by the board, shall cause the agreement to be filed with their respective district clerks and submitted to the voters of their respective districts as soon as may reasonably be possible at duly called meetings, the voting to be by ballot with the use of the checklist, after reasonable opportunity for debate in open meeting. The article in the warrant and the question on the ballot shall be in substantially the following form:

> "Shall the proposed agreement on file with the district clerk, joining _____ school district to _____ cooperative school district be approved?"

Yes _____ No _____

If a majority of the voters present and voting at such meetings in each district shall vote in the affirmative, the clerk of each district shall forthwith send to the board a certified copy of the warrant, certificate of posting, evidence of publication, if required, and minutes of meeting. If the board finds that a majority of the voters present and voting in each district meeting have voted in favor of the enlargement, it shall issue its certificate to that effect, and such certificate shall be conclusive evidence of the lawful enlargement of the cooperative school district. Articles of agreement so adopted shall be deemed to amend the inconsistent provisions in any pre-existing articles of agreement of the cooperative school district.

III–a. Within 60 days after the board has issued its certificate of the lawful enlargement of the cooperative school district, the board shall fix a time and place for a special meeting of the qualified voters within the districts, and shall prepare the warrant for the meeting after consultation with school boards of the pre-existing school district and cooperative school district. The warrant shall include articles for the selection of such school board members as may be necessary as a result of the enlargement and other items of business that require action under the terms of the articles of agreement. The warrant shall be under the hand of the commissioner, in the name of the board, and the commissioner shall cause attested copies of same to be posted at least 14 days before the meeting in 3 public places in each district and a copy of the same to be published at least one week before the date of the meeting in some newspaper generally circulated within the cooperative school district. The expense of posting and publishing the warrant shall be paid by the state. The agent or agents of the commissioner who post and cause publication of the warrant shall make a return thereof, which, with the warrant, shall be made a part of the district records. The meeting shall be called to order

by the moderator of the cooperative school district. This meeting shall have the same power and authority as an annual meeting with reference to the raising or appropriating of money. At this meeting and at all future special and annual meetings, qualified voters of the joining district are eligible for participation in all matters of the cooperative school district.

IV. Except for operating responsibility with respect to the schools in the joining district, which authority shall commence on the date specified in the articles of agreement, the cooperative school district and its school board shall have full powers and duties in the enlarged district from the date of the certificate of enlargement.

V. The failure of the voters to approve the acquisition of a school district shall not prevent the commencement of enlargement proceedings under this section with respect to such district thereafter.

**Source.** 1951, 213:1, par. 16. RSA 195:16. 1963, 258:12. 1969, 70:1. 1971, 252:4, 5. 1996, 158:9, eff. July 1, 1996.

### 195:16–a Increase or Decrease in Grades.

Any cooperative school district may amend its existing arrangement or articles of agreement to increase or decrease the grades for which the cooperative school district provides education. If the cooperative district was organized pursuant to RSA 195:18, it shall proceed by amendment of its articles of agreement. The cooperative school board shall cease responsibility for the excluded school grades as of the date specified in the amended articles of agreement or the existing arrangement.

**Source.** 1963, 258:13. 1996, 158:9. 1997, 320:3, eff. Aug. 22, 1997.

### 195:16–b Power of Eminent Domain.

Whenever a cooperative school district cannot acquire by purchase a good title to any real estate or interest therein needed by it for its purposes either because of the unwillingness of the owner to sell at a reasonable price, the owner's inability to convey a good title, or for other reason, the cooperative school district may apply by petition to the superior court for the county in which such real estate or interest therein is located to acquire such real estate or interest therein in the name of such district and to have assessed the damages occasioned by the taking. Thereafter the procedure shall follow that prescribed in RSA 498–A.

**Source.** 1963, 258:13. 1996, 222:9, eff. Aug. 9, 1996.

### 195:16–c Powers of Superior Court as to Pre-existing Districts.

If there shall arise any occasion which shall require the doing of any act or thing by or in behalf of a pre-existing district which has ceased to exist by reason of its inclusion in a cooperative school district, the superior court shall have the power, upon application of 3 registered voters domiciled in the territory of the pre-existing school district, to appoint an agent who, subject to the approval of the superior court, shall have the power on behalf of and in the name of the pre-existing school district to do any act or thing that may be just under the circumstances.

**Source.** 1963, 258:13. 2003, 289:19, eff. Sept. 1, 2003.

### 195:17 Repealed by 1996, 158:19, eff. July 1, 1996.

## Cooperative School Districts Hereafter Formed

### 195:18 Procedure for Formation of Cooperative School District.

Cooperative school districts shall be organized solely in accordance with the following procedure:

I. (a) Any school district pursuant to an article in the warrant for any annual or special meeting may vote to create a cooperative school district planning committee consisting of 3 qualified voters of whom at least one shall be a member of the school board. The members of the committee shall be elected at the meeting at which the committee is created, unless the district determines that they shall be appointed by the moderator. The members of the committee shall serve without pay for a term ending (1) at the third annual meeting of the district following the creation of the committee, if the committee is created at an annual meeting, or (2) at the first annual meeting of the district next following the expiration of 3 years from the date of the creation of the committee, if the committee is created at a special meeting, or (3) upon the final adjournment of the organization meeting of any cooperative school district of which the district becomes a part. If the term of the committee ends at an annual meeting of the district, the district may create a successor cooperative school district planning committee pursuant to the foregoing provisions. Vacancies on the committee shall be filled by the moderator for the balance of the unexpired term. The district may appropriate money to meet the expenses of the committee at the meeting at which it is created or at any subsequent district meeting notwithstanding the provisions of RSA 32 or RSA 197:3, and such expenses may include the cost of publication and distribution of reports. Cooperative

school district planning committees from any 2 or more school districts may join together to form a cooperative school district planning board which shall organize by the election of a chairperson and a clerk-treasurer. The planning board may thereafter admit to membership planning committees from other school districts, but the members of a planning committee shall not be members of more than one planning board at any one time. A cooperative school district planning board shall act by a majority vote of its total membership.

(b) Any school district which votes at any annual or special district meeting to create a cooperative school district planning committee under RSA 195:18 shall elect the members of such committee as provided in RSA 195:18.

II. It shall be the duty of the cooperative school district planning board to study the advisability of establishing a cooperative school district in accordance with the standards set forth in RSA 195:2, its organization, operation and control, and the advisability of constructing, maintaining and operating a school or schools to serve the needs of such district; to estimate the construction and operating costs thereof; to investigate the methods of financing such school or schools, and any other matters pertaining to the organization and operation of a cooperative school district; and to submit a report or reports of its findings and recommendations to the several school districts.

III. A cooperative school district planning board may recommend that a cooperative school district composed of all the school districts represented by its membership or any specified combination of such school districts be established. The planning board shall prepare proposed articles of agreement for the proposed cooperative school district, which shall be signed by at least a majority of the membership of the planning board, which set forth the following:

(a) The school districts which shall be combined to form the proposed cooperative school district and the name of such cooperative school district.

(b) The number, composition, method of selection and terms of office of its cooperative school board, all in accordance with the provisions of RSA 195:19 through 23 inclusive, provided that the cooperative school board shall consist of an odd number of members not more than 15 for terms not exceeding 3 years.

(c) The grades for which the cooperative school district shall be responsible.

(d) The specific properties of pre-existing districts to be acquired by the cooperative school district and the general location of any proposed new schools to be initially established or constructed by the cooperative school district.

(e) The method of apportioning the operating expenses of the cooperative school district among the several preexisting districts and the time and manner of payment of such shares. Home education pupils who do not receive services from the cooperative school district, except an evaluation pursuant to RSA 193–A:6, II shall not be included in the average daily membership relative to apportionment formulas.

(f) The indebtedness of any preexisting district which the cooperative school district is to assume.

(g) The method of apportioning the capital expenses of the cooperative school district among the several preexisting districts, which need not be the same as the method for apportioning operating expenses, and the time and manner of payment of such shares. Capital expenses shall include the costs of acquiring land and buildings for school purposes, including property owned by a preexisting district; the construction, furnishing and equipping of school buildings and facilities; and the payment of the principal and interest of any indebtedness which is incurred to pay for the same or which is assumed by the cooperative school district. Home education pupils who do not receive services from the cooperative school district, except an evaluation pursuant to RSA 193–A:6, II, shall not be included in the average daily membership relative to apportionment formulas.

(h) The manner in which the state aid referred to in RSA 195:15, or any other available state aid, shall be allocated, unless it is otherwise expressly provided by the law making such aid available.

(i) The method by which the articles of agreement may be amended with the approval of the board; except that no amendment may permit secession of territory. The provisions adopted under either subparagraph (e) or (g) above may be subject to review pursuant to an article for that purpose duly inserted in the warrant for a district meeting which may be held at any time after the expiration of the 5–year period measured from the date of the first annual meeting. If the apportionment formula for a cooperative school district has been duly changed, or if an article to continue the current formula has been passed at a district meeting, the basis for the apportionment of all such costs may be subject to review pursuant to an

article for that purpose duly inserted in the warrant for a district meeting which may be held at any time after the expiration of the 5–year period measured from the date of the meeting at which the last change was made to the cost apportionment or the last article to continue the current formula was passed. However, such provisions may be amended at any time in order to permit the enlargement of a cooperative school district or an increase in the number of grades for which the cooperative school district shall be responsible.

(j) The date of operating responsibility of the proposed cooperative school district, and a proposed program for the assumption of operating responsibility for education by the proposed cooperative school district and any school construction; which the cooperative school district shall have the power to vary by vote as circumstances may require.

(k) For cooperative districts formed after the effective date of this subparagraph, a plan for dissolution of the cooperative school district. Issues to be considered shall include, but shall not be limited to, the process for ongoing education following dissolution, maintenance of student records, employment, ongoing liability, capital issues, and bond issues.

(l) Any other matters, not incompatible with law, which the cooperative school district planning board may consider appropriate to include in the articles of agreement.

IV. Notwithstanding the provisions of RSA 195:9, the articles of agreement, or any amendment thereto, may provide for the donation, the sale or the transfer under a lease-purchase agreement of any school property owned by a pre-existing district to the cooperative school district, except that no lease-purchase agreement shall extend for a period of more than 20 years. The adoption of the articles of agreement or any such amendment shall be sufficient authorization for the appropriate school boards to carry out the transaction. Obligations incurred by the cooperative school district in connection with any lease-purchase agreement hereunder shall not be deemed indebtedness of the cooperative school district for the purposes of ascertaining its borrowing capacity.

V. Before final approval of a proposed articles of agreement by the planning board, it shall hold at least one public hearing thereon within the proposed cooperative school district and shall give such notice thereof as it may determine to be reasonable. An executed copy of the proposed articles of agreement shall be submitted by the planning board to the board, and, when the board finds that the same are in accord with the standards set forth in RSA 195:2, it shall approve the same and cause them to be submitted to the school boards of the several pre-existing districts for acceptance by the districts as provided in paragraph VI. Upon such submission, the board shall cause the approved articles of agreement to be published once in some newspaper generally circulated within the proposed cooperative school district at the expense of the state. The planning board may amend a proposed articles of agreement to conform to recommendations of the board after holding a further public hearing thereon with notice as above provided.

VI. Upon the receipt of written notice of the board's approval of the articles of agreement, the school board of each preexisting district which is to be included in the cooperative school district shall cause the articles of agreement to be filed with the clerk of such preexisting district and submitted to the voters of the district as soon as may reasonably be possible at an annual meeting or at a special meeting called for the purpose, the voting to be by ballot with the use of the checklist, after reasonable opportunity for debate in open meeting. The duty to call such meeting for such purpose may be enforced by the superior court in an equity proceeding commenced by any voter or taxpayer of such school district. The article in the warrant for each district meeting and the question on the ballot to be used at the meeting shall be in substantially the following form:

> "Shall the school district accept the provisions of RSA 195 (as amended) providing for the establishment of a cooperative school district, together with the school districts of _____ and _____ etc., in accordance with the provisions of the proposed articles of agreement filed with the school district clerk?"

Yes _____ No _____

If a majority of the voters present and voting in each district shall vote in the affirmative, the clerk of each preexisting district shall forthwith send to the board a certified copy of the warrant, certificate of posting, evidence of publication if required, and minutes of the meeting in such district. If the board finds that a majority of the voters present and voting in each preexisting district meeting have voted in favor of the establishment of the cooperative school district, it shall issue its certificate to that effect. Such certificate shall be conclusive evidence of the lawful organi-

zation and formation of the cooperative school district as of the date of its issuance.

VII. If any pre-existing district fails to vote in the affirmative on the proposed articles of agreement within 90 days after its school board receives notice of approval thereof by the board, such district shall be deemed to have rejected the same. If the proposed articles of agreement fail of adoption as herein required, they may be resubmitted to all or a different combination of the several pre-existing districts either in their original form or as amended by the cooperative school district planning board, with the approval of the board, such articles if amended to be published once by the board as provided in the case of initial articles of agreement in paragraph V, and shall in such case be again acted upon by each district, as provided herein; but, prior to the approval thereof by the board for resubmission, the planning board shall hold one further hearing thereon as provided in paragraph V in the case of initial articles of agreement.

VIII. The board shall fix a time and place for a special meeting of the qualified voters within the cooperative school district for the purpose of organization and shall prepare the warrant for the meeting after consultation with the cooperative school district planning board. The warrant shall include articles for the selection of a school board and other necessary officers, the appropriation of money for the operation of the district, and any other items of business that require action at the organization meeting. The warrant shall be under the hand of the commissioner, in the name of the board, and the commissioner shall cause attested copies of same to be posted at least 14 days before the meeting in 3 public places in each pre-existing district and a copy of the same to be published at least one week before the date of the meeting in some newspaper generally circulated within the cooperative school district. The expense of posting and publishing the warrant shall be paid by the state. The agent or agents of the commissioner who post and cause publication of the warrant shall make a return thereof, which, with the warrant, shall be made a part of the district records. The organization meeting shall have the same power and authority as an annual meeting with reference to the raising or appropriating of money.

IX. The organization meeting of a cooperative school district shall be called to order by the chairperson of the cooperative school district planning board, or by the clerk-treasurer thereof, who shall serve as temporary chairperson for the first order of business which shall be the election of a moderator and of a temporary clerk, by ballot, who shall be qualified voters of the district. From and after the issuance of the certificate of formation by the board to the date of operating responsibility of the cooperative school district, such district shall have all the authority and powers of a regular school district for the purposes of incurring indebtedness, for the construction of school facilities and for such other functions as are necessary to obtain proper facilities for a complete program of education. When necessary in such interim, the school board of the cooperative school district is authorized to prepare a budget and call a special meeting of the voters of the district, which meeting shall have the same authority as an annual meeting, for the purpose of adopting the budget, making necessary appropriations, and borrowing money. Whenever the organization meeting is held on or before April 20 in any calendar year, no annual meeting need be held in such calendar year. Sums of money raised and appropriated at the organization meeting or any interim meeting prior to the first annual meeting shall be forthwith certified to the commissioner of revenue administration and the state department of education upon blanks prescribed and provided by the commissioner of revenue administration for the purpose, together with a certificate of estimated revenues, so far as known, and such other information as the commissioner of revenue administration may require. The commissioner of revenue administration shall examine such certificates and delete any appropriations which appear not made in accordance with the law, and adjust any sum which may be used as a setoff against the amount appropriated when it appears to the commissioner such adjustment is in the best public interest. The commissioner of revenue administration shall certify to the state department of education the total amount of taxes to be raised for said cooperative school district and the state department of education shall determine the proportional share of said taxes to be borne by each preexisting school district and notify the commissioner of revenue administration of its determination. Upon certification by the commissioner of revenue administration the selectmen of each town shall seasonably assess the taxes as provided by law. The selectmen shall pay over to the treasurer of the cooperative district such portion of the sums so raised as may reasonably be required according to a schedule of payments needed for the year as prepared by the treasurer and approved by the cooperative school board, but no such payment shall be greater in percentage to the total sum to be raised by one local district than that of any other local district comprising such cooperative school district.

X. The provisions of RSA 195:7 and 8 shall not apply to cooperative school districts organized under this section, but all other sections of this chapter shall apply to such districts, except as otherwise expressly provided in this section or in any articles of agreement adopted pursuant hereto.

XI. Notwithstanding the provisions of paragraphs I-X or any other law to the contrary, no single school district that includes a city shall be prohibited from participating in a school district planning committee.

**Source.** 1963, 258:1. 1971, 252:6, 7. 1973, 544:8. 1991, 148:1. 1996, 158:10–12; 222:11–13, 18. 1999, 17:39, 40; 281:10, 11. 2000, 59:2, eff. June 16, 2000. 2018, 255:1, eff. Aug. 11, 2018. 2021, 80:2, eff. Aug. 17, 2021.

### Apportionment of Cooperative School Boards

#### 195:19 Statement of Policy.

It is the purpose of this subdivision to provide a means for cooperative school districts now existing or hereafter formed to meet the constitutional mandate of one-man one-vote as annunciated by the United States supreme court. It is the intention of the legislature to provide flexibility to the cooperative school district in meeting the requirements of the one-man one-vote doctrine within the limitations of this chapter.

**Source.** 1971, 252:1, eff. Aug. 22, 1971.

#### 195:19–a Composition of Cooperative School Boards.

The number, composition, method of selection, and terms of members of cooperative school boards shall be as provided in the bylaws or articles of agreement of the cooperative school district, as the case may be; provided, however, that such bylaws and articles of agreement shall be limited to the alternatives contained herein where applicable; and provided further that no cooperative school district in existence on August 22, 1971 shall be required to conform hereto unless it is so voted pursuant to RSA 671:9.

I. All members of the cooperative school board shall be elected at large; or

II. The cooperative school district shall be divided into single board member districts according to population with as nearly equal population in each district as possible; or

III. The cooperative school district shall be divided into multiboard member districts or a combination of single member or multimember districts so that proportional representation will be most nearly achieved; or

IV. The members of the cooperative school board shall each be domiciled in and represent a pre-existing district with each pre-existing district having at least one such resident representative but all members of the cooperative school board shall be elected at large; or

V. Such other method of selection of cooperative school board members compatible with proportional representation, one-man one-vote principle as may be approved by the state board of education.

VI. The terms of the members of the cooperative school board shall be as provided in the bylaws or articles of agreement provided that in no case shall such terms exceed 3 years.

VII. Whenever the bylaws or articles of agreement provide for the election of cooperative school board members pursuant to this chapter, said election shall be with the use of the non-partisan ballot system under RSA 669.

**Source.** 1996, 158:13, eff. July 1, 1996.

#### 195:19–b Reapportionment.

Any cooperative school district organized under any of the provisions of RSA 195 or pursuant to any special act may at any regular or special meeting vote to change the number, composition, method of selection, and terms of office of members on the board of the district, provided that in no event shall the board exceed 15 members nor terms exceed 3 years; and may change the apportionment of the board in relation to the pre-existing school districts.

**Source.** 1996, 158:13, eff. July 1, 1996.

#### 195:19–c Special Provisions for Cooperative School Districts.

I. At the organizational meeting of the cooperative school district, the checklists for each pre-existing district shall be used. The school board of any pre-existing district which does not have a checklist shall make a list of the legal voters in the district for use at such meeting as supervisors are required to do in towns as provided in RSA 654:25-654:31. Thereafter, the cooperative school board shall make, correct and post a list of the legal voters of the cooperative school district acting as supervisors are required to do; except that such list shall indicate with respect to each voter the pre-existing district in which he is domiciled. Notwithstanding the foregoing provisions, whenever each of the pre-existing school districts is coextensive with the town in which it is located, the cooperative school district may, at an annual cooperative school district meeting, under an article in the

warrant for such meeting, vote that the supervisors of each town, acting as the supervisors of the cooperative school district, shall make, correct and post in each pre-existing district a checklist of the voters in each pre-existing district and shall certify to the same acting as supervisors of the cooperative school district and shall attend the cooperative school district meeting. At each cooperative school district election, the checklists prepared by the supervisors in each pre-existing district in accordance with this section shall be used.

II. An updated checklist shall be used at all cooperative school district elections and meetings for the same purposes as checklists are used by towns as provided in RSA 669:5.

III. Notwithstanding any other provision of law, any registered voter on a town or city checklist, who has his domicile within a cooperative school district, shall be eligible to vote at any cooperative school district election or meeting in the district where he has his domicile. The supervisors of the checklists for the various cities and towns within a cooperative school district shall make an appropriate notation on their respective checklists with respect to which school district a registered voter is entitled to vote in.

IV. Notwithstanding any other provision of law, any cooperative school district, which uses the checklists of the cities and towns within the district for an election or meeting pursuant to paragraph III, shall not be required to maintain a separate school district checklist or conduct sessions of the supervisors of the checklist.

**Source.** 1996, 158:13, eff. July 1, 1996.

**195:20 Repealed by 1979, 321:2, II, eff. Aug. 21, 1979.**

**195:21 Repealed by 1979, 321:2, III, eff. Aug. 21, 1979.**

**195:22 Method of Proposal.**

A plan for reapportionment, including the terms of office of members to be elected pursuant thereto, as provided for by RSA 195:19–c:

I. May be submitted to the voters by the school board at any regular meeting of the district, and

II. Shall be submitted to the voters on petition, which shall include the proposed plan, to the school board, signed by no less than 10 percent of the qualified voters in a cooperative district at the next regular meeting or at a special meeting of the district if requested in the petition.

**Source.** 1971, 252:1. 1996, 158:14, eff. July 1, 1996.

**195:23 Repealed by 1979, 321:2, IV, eff. Aug. 21, 1979.**

**Withdrawal From Cooperative School District**

**195:24 Repealed by 1996, 158:19, eff. July 1, 1996.**

**195:25 Procedure for Review.**

I. After the tenth anniversary of the date of operating responsibility, the school board of a cooperative school district may initiate a review of the feasibility and suitability of the withdrawal of one or more member districts from the cooperative district. A similar review shall be initiated if, after the tenth anniversary of the date of operating responsibility, a pre-existing district shall, by a majority vote on a warrant article at a regular or special town meeting, direct the school board of a cooperative school district to initiate such a review. In either case, the review shall be conducted by a committee composed of one member of the school board from each of the pre-existing districts, one member of the board of selectmen from each town within the cooperative school district, and such other members as may be appointed by the committee. The committee shall have its first meeting no later 60 days following its creation or by the vote at the annual meeting which established the committee.

II. Within 180 days after the committee's first meeting, the committee shall report its findings to the state board of education. The committee shall submit a report to the school board of the cooperative school district. The report shall indicate whether the withdrawal of one or more towns from the cooperative school district is recommended, not recommended, or whether more time and information are needed to make a determination.

III. If the committee finds that the withdrawal of one or more towns from the cooperative school district is recommended, the committee shall develop a withdrawal plan in accordance with RSA 195:26. The plan shall be submitted to the state board of education no later than November 1. Members of the committee who voted against recommending withdrawal may file a minority report with the state board of education no later than November 1.

IV. If the committee finds that the withdrawal of one or more towns from the cooperative school districts is not recommended, the committee shall file a report with the school board of the cooperative school district and the committee shall be dissolved. Mem-

bers of the committee who voted to recommend the withdrawal of one or more towns from the cooperative school district may file a minority report with the school board of the cooperative school district.

V. If the committee finds that more time and information are needed to make a determination, the committee shall reconvene within 30 days of filing its initial report and continue its work. In such a case, the committee shall, within 180 of filing its initial report, file a subsequent report with the school board of the cooperative school district indicating whether the withdraw of one or more towns from the cooperative school district is recommended or not recommended. If the committee finds that the withdrawal of one or more towns from the cooperative school district is not recommended, members of the committee who voted to recommend the withdrawal of one or more towns from the cooperative school district may file a minority report with the school board of the cooperative school district. If the committee finds that the withdrawal of one or more towns from the cooperative school district is recommended, the committee shall develop a withdrawal plan in accordance with RSA 195:26. The plan shall be submitted to the state board of education no later than November 1. Members of the committee who voted against the withdrawal plan and its recommendations may file a minority report with the state board of education no later than November 1.

VI. If the state board approves the withdrawal plan, whether submitted by the committee or by minority report, the plan shall be submitted to the voters of the cooperative school district in accordance with RSA 195:29.

**Source.** 1977, 439:1. 1979, 129:1. 2005, 110:1, eff. June 15, 2005. 2018, 1:1, eff. Mar. 27, 2018.

### 195:26 Withdrawal Plan.

A plan for the withdrawal of a member district or districts of a cooperative school district shall include the following:

I. The name of the withdrawing district or districts and the grades.

II. The number, composition, method of selection, and terms of office of the school board of the withdrawing district or districts and of the cooperative school board.

III. The method of apportioning the operating and capital expenses among the members of the cooperative school district if a change is to be proposed in conjunction with the withdrawal procedure.

IV. The proposed date of operating responsibility, at which time the withdrawing district shall be responsible for the education of its pupils and after which the cooperative district will no longer have such financial and educational responsibility.

V. The liability of the withdrawing district for its share of any outstanding indebtedness of the cooperative school district as detailed in RSA 195:27.

VI. A plan for the education of all students in the withdrawing school district and for the continuation of the school system of the cooperative district. This shall detail the proposed assignment of students in grades operated by the cooperative and withdrawing district or districts including, if any, tuition arrangements or contracts.

VII. Any other matters, not incompatible with law, which the planning committee may consider appropriate to include in the withdrawal plan.

**Source.** 1977, 439:1, eff. Sept. 3, 1977.

### 195:27 Liability of Withdrawing District.

Each withdrawing district shall remain liable for its share of the indebtedness of the capital costs of the cooperative school district which is outstanding when the withdrawal vote takes effect, and the withdrawing district shall pay to the cooperative school district annually (a) that percentage of the payments of principal and interest of such debt thereafter due which is the same as the percentage for which the withdrawing district was responsible in the school year immediately preceding the effective date of the withdrawal vote, and (b) all amounts of state aid for the purchase or construction of school buildings and any other state aids which are lost by the cooperative school district after the withdrawal of a district as a result of such withdrawal, as determined by the state board of education, except that the withdrawing district shall not be liable for any indebtedness or loss of state aid or other aid contracted after the district has duly notified the remaining districts in the cooperative that a withdrawal study is being requested. Payments in discharge of such liability shall be made in accordance with a schedule agreed upon by the school board of the cooperative school district and the withdrawing school district or, in the event they fail to agree, as fixed by the state board of education. Such payments shall be deemed to be trust funds and shall be applied by the cooperative school district solely in payment of its indebtedness which was incurred to finance cooperative school facilities and which was outstanding on the effective date of the withdrawal vote. A school district which withdraws from the

cooperative school district shall forfeit its equity in any cooperative district schools.

**Source.** 1977, 439:1, eff. Sept. 3, 1977.

### 195:28 Disposition of Property.

If a pre-existing school district withdraws from the cooperative school district, the cooperative school district shall transfer and convey title to any school building and land located in the withdrawing district to the withdrawing district upon payment by the withdrawing district of the costs of capital improvements and additions to said school building incurred by the cooperative school district, less the share which the withdrawing school district has already paid toward such costs and the share which the withdrawing school district is required to contribute toward such costs as provided in RSA 195:27. The amount of said capital improvements and additions and the time of transfer of title shall be determined by the agreement for withdrawal between the cooperative school district and the withdrawing school district. The withdrawing school district forfeits its equity in all other cooperative school district facilities.

**Source.** 1977, 439:1, eff. Sept. 3, 1977.

### 195:29 Vote on Withdrawal.

If the state board approves the plan for withdrawal, the board shall cause the withdrawal plan to be published once in some newspaper generally circulated within the cooperative school district. Upon receipt of a written notice of the board's approval of the withdrawal agreement, the school board of the cooperative district shall cause the withdrawal plan to be filed with the clerk of the cooperative school district and submitted to the voters of the district as soon as may reasonably be possible at an annual or special meeting called for the purpose, the voting to be by ballot with the use of the checklist, after reasonable opportunity for debate in open meeting. The article in the warrant for the district meeting and the question on the ballot to be used at the meeting shall be in substantially the following form:

"Shall the school district accept the provisions of RSA 195 (as amended) providing for the withdrawal of the preexisting district of _____ from the _____ cooperative school district in accordance with the provisions of the proposed withdrawal plan filed with the school district clerk?"

Yes _____ No _____

I. If a majority of voters present and voting in the withdrawing preexisting district vote in the negative, against withdrawal, then the withdrawal process is terminated.

II. If a majority of the voters present and voting in the withdrawing preexisting district shall vote in the affirmative, in favor of withdrawal and a majority of the voters present and voting in the entire cooperative district shall vote in the affirmative, in favor of withdrawal, the clerk of the cooperative school district shall forthwith send to the state board of education a certified copy of the warrant, certificate of posting, evidence of publication, and minutes of the meeting.

III. If a ⅗ supermajority of the voters present and voting in the withdrawing preexisting district vote in the affirmative, in favor of the withdrawal, the clerk of the cooperative school district shall forthwith send to the state board of education a certified copy of the warrant, certificate of posting, evidence of publication, and minutes of the meeting unless a ⅗ supermajority of the voters present and voting in the entire cooperative district vote in the negative, against withdrawal.

IV. If the state board of education finds that a majority of the voters present and voting, in the withdrawing preexisting district and the entire cooperative district, or by the alternative supermajority vote under paragraph III, have voted in favor of the withdrawal plan, it shall issue its certificate to that effect and such certificate shall be conclusive evidence of the withdrawal of the preexisting district and the continuation of the cooperative school district as of the date of its issuance, or the dissolution of a 2–district cooperative if the cooperative was formed by 2 preexisting districts. A withdrawal plan shall be prepared and it shall provide for the disposition of property held within the cooperative and a statement of assumption of liabilities.

**Source.** 1977, 439:1. 1979, 129:2. 1996, 158:15, eff. July 1, 1996. 2018, 78:1, eff. July 24, 2018. 2023, 136:1, eff. July 30, 2023.

### 195:30 Time of Withdrawal.

The vote to withdraw from a cooperative school district shall take effect on July 1 of the calendar year one year subsequent to the date on which the withdrawal vote is passed. A preexisting school district which withdraws from a cooperative school district shall remain a part of the school administrative unit of which it was a member prior to withdrawal unless the withdrawing district complies with the school administrative unit withdrawal process set forth in RSA 194–C:2. After passage of the withdrawal vote and the issuance by the state board of education of its certificate of withdrawal, a special

meeting of the voters in the withdrawing district shall be held at a time set by the state board of education. The warrant for this special meeting, approved by the state board of education and signed by the commissioner, shall provide for the election of officers in the withdrawing school district. The commissioner of education shall have authority to appoint officers pro tem as may be necessary and prepare the warrant for the special meeting held to elect officers. This meeting shall have the same power and authority as an annual meeting with reference to the raising or appropriating of money. The district officers elected at said meeting shall take office immediately and shall carry out the duties of their office and may take any action otherwise permitted by law which is necessary in order to carry out the provisions of the withdrawal.

**Source.** 1977, 439:1. 1979, 129:3, eff. Aug. 4, 1979. 2010, 5:3, eff. June 18, 2010.

### 195:31 Modification.

In the event that the cooperative district adopts the provisions of RSA 194–B, the percentage of pupils authorized by a vote of the cooperative school district shall be permitted to attend a chartered public school which may be established in the district and approved by the voters in accordance with RSA 194–B:3.

**Source.** 2000, 106:1, eff. July 7, 2000. 2008, 354:1, eff. Sept. 5, 2008. 2009, 241:12, eff. Sept. 14, 2009.

### Commission to Study Issues Relating to Pre-Existing Districts Withdrawing from a Cooperative School District

### 195:32 Repealed by 2016, 225:2, eff. Nov. 1, 2017.

## CHAPTER 195–A

## AUTHORIZED REGIONAL ENROLLMENT AREA (AREA) SCHOOLS



### 195–A:1 Definitions.

The terms used in this chapter shall be construed as follows, unless a different meaning is clearly apparent from the language or context:

I. "School district" shall mean a town school district, a special school district, a cooperative school district, an incorporated school district operating within a city, and a city operating a dependent school department.

II. "Elementary school" shall mean a program comprising all grades from the kindergarten or grade one through grade 6, or kindergarten or grade one through grade 8.

III. "Secondary school" shall mean a program comprising all grades from grade 7 through grade 12, or grade 9 through grade 12 and may include a junior high school program comprising grades 7 and 8 or 7, 8 and 9 as well as a high school program.

IV. "Area school" shall mean an authorized regional enrollment area school, which may be elementary or secondary, and which when approved as hereinafter provided, shall be the assigned school for all the resident elementary or secondary pupils of the school districts or portions thereof within the region which it is established to serve.

V. "Sending district" shall mean any school district or portion thereof which sends its resident pupils to an area school located in a receiving district, paying tuition therefor to the receiving district.

VI. "Receiving district" shall mean a school district in which an area school is located.

VII. "School board" shall mean the school board, board of education or school committee of each school district.

VIII. [Repealed.]

IX. "Tuition" shall mean the sum of money which each sending district is obligated to pay to the receiving district to defray the cost of education of each of its resident pupils, for a school year, at the area school in the receiving district to which such pupils are assigned and it may be subdivided into elementary school tuition, junior high school tuition, high school tuition, or any other reasonable combination of grades, and shall be fixed as provided in RSA 195–A:3. Tuition may include an annual rental charge per pupil. The obligation of a sending district to pay tuition to a receiving school shall not be

deemed indebtedness of such district for the purpose of determining its borrowing capacity under RSA 33.

X. "Annual rental charge per pupil" shall mean that additional payment included in tuition as defined in paragraph IX which represents a fair charge for building occupancy. It may also include a fair charge for any debt service and reduction of principal, which may become due between date of bond issue and date of building occupancy.

XI. "Date of operating responsibility" shall mean the date on which the area school shall officially open and shall relieve the schools of the sending districts, serving the corresponding grades, of their obligation to operate.

XII. "Meeting of a receiving district" may include any regular or special session of its legislative body in the case of a city with a dependent school department, or of its school board in the case of any separately incorporated school district within a city in which district meetings have been abolished.

**Source.** 1963, 277:1. 1965, 112:1, 2; 311:1. 1967, 152:1. 1969, 104:7. 1986, 41:29, VIII, eff. April 3, 1988.

### 195–A:2 Policy and Standards.

I. It is the purpose of this chapter to increase educational opportunities within the state by encouraging the establishment of area schools in the receiving districts which will serve the receiving district and the sending districts throughout a natural social and economic region which has an adequate minimum taxable valuation and a number of pupils sufficient to permit efficient use of such area school facilities and to provide improved instruction. The state board may formulate and adopt additional standards consistent with this purpose and these standards; and the state board shall approve plans for the establishment of area schools only after determining that such establishment will be in accord with such standards and purposes set forth herein.

II. GEOGRAPHICAL PLAN. The state board is authorized and directed to prepare and publish a plan subdividing the territory of the state into suggested regions for area schools indicating the suggested receiving district or districts for the schools of each region, which shall be compatible with the plan for suggested cooperative school districts, and which plan shall meet the standards formulated under paragraph I. This plan shall be reasonably compatible with the areas of the several school administrative units. From time to time thereafter the state board may modify such plan.

III. ADVISORY POWERS OF STATE BOARD. The state board may prepare recommended forms of written plans for area schools and for enlargement of the areas served thereby and may furnish its advisory services to area school planning boards or school boards who have such matters under consideration.

**Source.** 1963, 277:1. 1979, 459:4, eff. Aug. 24, 1979.

### 195–A:3 Procedure.

I. Any town, city or special school district pursuant to an article in the warrant for any annual or special meeting may vote to create an area school planning committee consisting of 3 qualified voters of whom at least one shall be a member of the school board. The members of the committee shall be elected at the meeting at which the committee is created, unless the district determines that they shall be appointed by the moderator. The members of the committee shall serve without pay for a term ending (a) at the third annual meeting of the district following the creation of the committee, if the committee is created at an annual meeting, or (b) at the first annual meeting of the district next following the expiration of 3 years from the date of the creation of the committee, if the committee is created at a special meeting, or (c) upon issuance by the state board of its certificate that a plan for an area school has been adopted in which the district is a participant. If the term of the committee ends at an annual meeting of the district, the district may create a successor area school planning committee pursuant to the foregoing provisions. Vacancies on the committee shall be filled by the moderator for the balance of the unexpired term. The district may appropriate money to meet the expenses of the committee at the meeting at which it is created or at any subsequent district meeting, notwithstanding the provisions of RSA 32 or RSA 197:3; and such expenses may include the cost of publication and distribution of reports. Area school planning committees from any 2 or more school districts may join together to form an area school planning board, which shall organize by the election of a chairman and a clerk-treasurer. The planning board may thereafter admit to membership planning committees from other school districts, but the members of a planning committee shall not be members of more than one planning board at any one time; provided, however, that a planning board so created may also study the advisability of forming a cooperative school district, if eligible therefor. An area school planning board shall act by a majority vote of its total membership.

II. In cities which operate a dependent school department, the power to create and appoint such an area school planning committee of 3, whose members shall serve for a term of 3 years from date of appointment, is vested in the school board; but the expenses of such planning committee, as defined in paragraph I, shall be raised and appropriated by the legislative body of such city upon certification by the school board. Vacancies on the committee shall be filled by the school board for the balance of the unexpired term, and the school board may create and appoint a successor area school planning committee pursuant to the foregoing provisions.

III. In cities in which there is a separately incorporated school district but where district meetings have been abolished, the power to create and appoint such an area school planning committee of 3, whose members shall serve for a term of 3 years from date of appointment, is vested in the school board who shall also have the power to raise and appropriate money for the expenses of such committee as defined in paragraph I. Vacancies on the committee shall be filled by the school board for the balance of the unexpired term, and the school board may create and appoint a successor area school planning committee pursuant to the foregoing provisions.

IV. It shall be the duty of the area school planning board to study the advisability of adopting an area school plan within the region in accordance with the standards set forth in RSA 195–A:2 and the advisability of establishing or constructing, maintaining and operating an area school or schools to serve the needs of such region; to estimate the construction and operating costs thereof; to estimate the tuition costs; to investigate the methods of financing such area school or schools, and any other matters pertaining to the organization and operation of an area school; and to submit a report or reports of its findings and recommendations to the several school districts.

V. An area school planning board may recommend that there be established an authorized regional enrollment area plan for elementary or secondary schools, or both, or any other reasonable combination of grades, composed of all the school districts represented by its membership or any specified combination thereof. At the time such recommendation is made, the planning board shall prepare a written plan for the proposed regional enrollment area, which shall be signed by at least a majority of the membership of such board, which shall set forth the following:

(a) The name or names of each area school or schools proposed, and the receiving district in which such schools shall be located;

(b) The sending districts or portions thereof which, together with the receiving district, shall form the region which each area school or schools shall serve;

(c) The grades for which each area school or schools shall be responsible (which may include a combination of elementary and secondary grades or any other reasonable classification);

(d) The formula for calculation of tuition;

(e) The manner in which any form of state aid shall be credited, unless otherwise expressly provided by law;

(f) The existing school buildings in the several school districts which shall be discontinued;

(g) The existing school buildings in the receiving district which shall be designated as an area school or schools including any existing buildings to be initially enlarged;

(h) The proposed new area school building or buildings to be initially constructed in the receiving district and the initial location of same;

(i) The estimated initial enrollment in each area school from each of the sending districts and from the receiving district;

(j) The proposed date or dates of operating responsibility of each planned area school, which date may be subsequently postponed by the state board upon petition of a receiving or sending district, in the event of unforeseen circumstances or for good cause shown;

(k) The scheduled date or dates during each year upon which tuition payments shall be made by the sending districts to the receiving districts and whether the tuition shall be payable in installments, or in a lump sum;

(l) Procedure for improvement or changes in curriculum and other school programs and services;

(m) The method, time, and manner in which the plan may be amended, subject to state board approval, where not incompatible with law;

(n) The term of the agreement, which shall be for a minimum of 10 years unless otherwise provided by mutual agreement of the school districts consistent with the provisions of RSA 195–A:3, XI;

(o) The manner in which the interests of the school boards of the sending districts will be addressed;

(p) Whether the districts within the area plan shall adopt the provisions of RSA 194–B, and how the adoption of such provisions will affect the districts within the area plan;

(q) Any other matters, not incompatible with law, which the area school planning board may consider appropriate to include in such written plan.

VI. Before finally agreeing upon a proposed regional plan, the area school planning board shall hold at least one public hearing thereon in each district within the proposed region and shall give such notice thereof as it shall determine to be reasonable. An executed copy of the proposed plan shall be submitted by such planning board to the state board, and when the state board finds that such plan is in accord with the provisions of RSA 195–A:2 and of paragraph V of this section and is otherwise lawful and feasible, it shall approve the same and cause it to be submitted to the school boards of the several school districts included in the plan for acceptance by these school districts as provided in paragraph VII. The planning board may amend a proposed regional plan to conform to recommendations of the state board without holding further public hearings thereon.

VII. Upon receipt of written notice of the state board's approval of such plan, the school board of each town or special school district and of each incorporated school district within a city, which is included in the plan, shall cause such plan to be filed with the district clerk and to be submitted to the voters of the district as soon as may reasonably be possible at an annual or special meeting called for the purpose, the voting to be by ballot with the use of the checklist, after reasonable opportunity for debate in open meeting. The duty to call such meeting for such purpose may be enforced by the superior court in an equity proceeding commenced by any voter or taxpayer of such school district. The article in the warrant for such district meeting and the question on the ballot to be used at the meeting, shall be in substantially the following form:

> "Shall the school district accept the provisions of RSA 195–A (as amended) providing for the establishment of an area school or schools located in _____ to serve the following grades _____ from the school districts of _____ and _____ and _____, etc. in accordance with the provisions of the plan on file with the district clerk?"
>
> Yes ☐ No ☐

VIII. In the case of cities with dependent school departments, the school board shall submit such plan, as approved by the state board, to the city clerk who shall communicate it to the legislative body of such city, and it shall be the duty of such legislative body, as soon as may be reasonably possible, to act upon the question set forth in paragraph VII with such nominal modification in the question as may be necessary, voting by roll call. In the case of any separately incorporated school district within a city in which district meetings have been abolished, the school board shall have power to adopt such plan for the district, voting by roll call on the question set forth in paragraph VII.

IX. If a majority of the voters present and voting in such school district meeting, including the legislative body of a city with a dependent school department and the school board of a city school district which has abolished district meetings, shall vote in the affirmative, the clerk of each school district shall forthwith send to the state board a certified copy of the warrant, certificate of posting, evidence of publication, if required, and minutes of the meeting or resolution adopted, as may be applicable to his district. If the state board finds that the plan has been thus adopted by each of the school districts named in the plan, it shall issue its certificate to that effect, which shall be conclusive evidence of the lawful adoption of the plan.

X. If any school district fails to vote in the affirmative on the proposed plan within 90 days after its school board receives notice of approval thereof by the state board, such district shall be deemed to have rejected the same. If the proposed plan fails of adoption by one or more of such school districts as herein required, it may be resubmitted to all or a different combination of such school districts either in its original form or as amended by the area school planning board, with the approval of the state board, and shall in such case be again acted upon by each school district as provided herein, but no further public hearing need be held by the planning board prior to such resubmission.

XI. An area plan adopted by the voters of the sending and receiving districts shall be valid for a minimum of 10 years unless otherwise provided by mutual agreement of the school districts. The area plan may be renegotiated at the request of a sending or receiving district or extended for additional 10-year periods upon a mutual vote of each sending

and receiving school district legislative body 2 years prior to the expiration of the area plan.

**Source.** 1963, 277:1. 1965, 112:3, 4; 311:2, 3. 1969, 104:8. 1998, 271:3. 1999, 15:1; 119:1. 2000, 106:2, eff. July 7, 2000. 2009, 241:13, eff. Sept. 14, 2009.

### 195–A:4 Application of School Laws.

An area school shall be maintained and operated by the receiving district and its school board in accordance with all the general school laws applicable to schools of the grades which it includes, except only as otherwise provided in this chapter. The receiving district shall be obligated to provide for the elementary or secondary school education, or both, of all the resident pupils of the sending districts as well as its own, in accordance with the approved regional plan as adopted under RSA 195–A:3. The sending districts shall be obligated to assign and send their resident pupils to the area school, or schools, in the receiving district as provided in such plan and to raise and appropriate annually the tuition of each such pupil to be paid to the receiving district. The liability to pay tuition may be enforced by the receiving district in an action of debt against a delinquent sending district to be commenced in the superior court for the county in which either district is located. Transportation of resident pupils of the sending districts to the area school shall be governed by the general school laws applicable thereto and shall be the responsibility of each sending district. An area school shall be deemed the assigned school for all resident pupils in the region which it is established to serve, for purposes of the school attendance laws, except as provided in RSA 193:3.

**Source.** 1963, 277:1, eff. July 1, 1964.

### 195–A:4–a Exception.

Notwithstanding any other provision of law or any agreement between a receiving district and a sending district, the school board of a receiving district and the school board of a sending district may mutually agree upon a showing of hardship by pupils from a sending district to exempt such pupils from any agreement requiring them to attend the receiving district's schools. A pupil exempted from such agreement would make suitable arrangements to attend school outside the receiving district. The sending district shall be liable for tuition payments to the district of actual attendance. Any exception so granted shall be for the period of one school year and shall be renewed only upon mutual agreement between the school boards concerned. In the case of the withdrawal of accreditation by the accrediting agency of the school attended in the receiving district, and by application of the person having custody of the pupil, the board of the sending district may agree to exempt pupils from a sending district from any agreement requiring them to attend the receiving district's schools. If the sending district grants the exemption, this exemption provision shall remain in effect until the accreditation of the receiving school is reinstated. A pupil exempted under this section may complete the academic year in the school to which the pupil is assigned. The provisions of this section shall apply only to area agreements negotiated on or after the effective date of this act unless the agreement indicates otherwise.

**Source.** 1973, 78:1. 1992, 134:2, eff. July 3, 1992.

### 195–A:5 Joint School Board Meetings.

The state board shall cause to be held, at reasonable intervals, at the request of a school board or school boards of the receiving or sending district, or on its own motion, a joint board meeting of the school boards of all school districts in the authorized regional enrollment area for the purpose of consulting and advising about any and all matters of joint interest. Each school board shall be entitled to 3 representatives at such meetings, which shall be presided over by an agent of the state board designated by the commissioner of education. Such meetings shall be advisory, consultative, and informational in nature and shall not infringe upon the legal authority and responsibility of the school board of the receiving district over the schools within such district.

**Source.** 1963, 277:1, eff. July 1, 1964.

### 195–A:6 Area School Property.

The legal title to, and administration of, an area school building, land and equipment, shall be vested in the receiving district, but it shall hold such property in trust for the benefit of all the school districts in the authorized regional enrollment area, as their respective equitable interests therein may appear.

**Source.** 1963, 277:1, eff. July 1, 1964.

### 195–A:7 Construction of Area Schools.

The construction of an area school including the purchase of school buildings, the construction of additions or alterations to existing buildings, the required new construction of such facilities during the life of the plan, the equipment thereof, and necessary land acquisition therefor, shall be the responsibility of the receiving district but it must, at all times, provide facilities of sufficient capacity to meet the estimated educational needs of the receiving and sending districts together. A receiving district may borrow

money for such purposes as provided in RSA 33 as amended. However, in calculating whether it is within its debt limit, there shall be charged thereto an amount no greater than its proportionate share of any such required capital outlay, which shall be the proportion which its then estimated enrollment in the area school to be purchased, constructed or enlarged, bears to the then estimated total enrollment therein as determined by order of the state board. Also in determining the debt limit of the receiving district this same proportion of its estimated enrollment in the area school shall apply to any indebtedness outstanding of the receiving district that existed at the time of the date of operating responsibility of the authorized regional enrollment area, when such indebtedness was incurred for facilities which are included in the area school plan. The total amount of such bond or serial note issue shall be general obligations of the receiving district, fully secured by its powers of taxation. Upon application of the school board of the receiving district, that amount of such bond or serial note issue, which is in excess of the proportionate share of the receiving district as determined by the state board, shall be eligible for state guarantee, either on a declining balance basis or as a separate issue fully guaranteed, as the governor and council may decide, in accordance with RSA 195–C. The school board of the receiving district, without vote of the district, shall apply all tuition payments received from sending districts in each year first to the payment of the currently scheduled, or any past due, annual installments of principal or interest on that amount of such bond or serial note issue which is guaranteed by the state; and only after adequate provision has been made therefor may any portion of such revenue be used for other purposes.

**Source.** 1963, 277:1. 1965, 112:5. 1969, 347:1. 1971, 83:1, eff. June 30, 1971.

**195–A:8 Repealed by 1965, 112:6, eff. May 28, 1965.**

**195–A:9 Discontinuance of Schools Replaced by an Area School.**

Upon the date of operating responsibility of an area school, the school buildings of the various sending districts and receiving district which formerly served the same grades as the area school and have been rendered surplus thereby under the approved plan, shall automatically be deemed closed and discontinued notwithstanding the provisions of RSA 194:35 or any other applicable statute, unless the school district in which any such building is located shall have expressly voted to devote the same to some different educational use.

**Source.** 1963, 277:1, eff. July 1, 1964.

**195–A:10 Repealed by 1969, 104:13, eff. June 24, 1969.**

**195–A:11 Special Aid to Small Area High Schools.**

In certain areas of the state where due to sparsity of population and distance between centers of population, an area high school cannot be established to serve as many school districts or pupils as would otherwise be standard, the receiving districts in any such small authorized regional enrollment areas as may be approved and established hereunder for a high school, in addition to the aid granted in RSA 198:19, shall be paid annually by the state board, from a fund appropriated by the general court, special supplemental aid in such proportionate amounts from the fund thus made available as may be determined by the state board, in accordance with the relative need of such smaller area high schools, for the purpose of faculty improvement. Such special aid shall be fairly and equitably apportioned by the state board as of June 30 in each year and paid to the eligible receiving districts in the succeeding fiscal year based upon conditions prevailing in the preceding fiscal year. Such special aid shall be deducted from current expenses of operation before tuition is calculated.

**Source.** 1963, 277:1, eff. July 1, 1964.

**195–A:12 Enlargement of Authorized Regional Enrollment Area.**

I. The school board of a school district located in proximity to an authorized regional enrollment area, which did not join the plan when it was initially established, may petition the school board of the receiving district of such area to join the area plan. Thereupon it shall be the duty of the 2 school boards to engage in a joint study of the advisability thereof. The 2 school boards acting jointly shall have all the powers of an area school planning board as provided in RSA 195–A:3 and may prepare and sign a written plan which shall contain such of the provisions required by RSA 195–A:3, V, as may be applicable.

II. An executed copy of the proposed plan shall be submitted by the joint board to the state board and thereafter the procedure shall be that prescribed in paragraphs VI, VII, VIII, IX and X of RSA 195–A:3; provided, however, that such plan shall be submitted only to the voters of the receiving district

and proposed new sending district and that prior public hearing thereon may be waived by the joint board.

**Source.** 1963, 277:1. 1965, 112:8, eff. May 28, 1965.

### 195–A:13 Addition of New Grades to Area Plan.

Whenever several school districts have adopted and established an authorized regional enrollment area plan as provided in this chapter but have not applied such plan to all grades of elementary and secondary schools in the area, they may subsequently extend such plan to all or part of the omitted grades by establishing a new area school planning board as provided in RSA 195–A:3 and by proceeding as provided in said section to prepare a supplemental authorized regional enrollment area plan for such additional grades.

**Source.** 1963, 277:1, eff. July 1, 1964.

### 195–A:14 Review of Area Plan and Withdrawal of Districts.

I. After the third anniversary of the date of operating responsibility, if requested by either a sending or receiving district governing body, an area school plan review board shall be established. The review board shall consist of 3 members from the school board of each school district which belongs to the area plan, and such members shall be selected by and from their respective school boards. The review board may also include 3 members from the school board of each of any one or more school districts located in proximity to the authorized regional enrollment area. The review board shall organize by the election of a chairman and a clerk, and may adopt rules for the calling and conduct of its meetings. It shall be the duty of the review board to consider the effectiveness of the area school plan as a method for providing improved educational services. If the review board by a majority vote of all its members determines that the area school plan should be modified, it shall submit an amended area school plan to the state board for its approval. An amended area school plan may provide for the addition of one or more new sending districts, the withdrawal of one or more sending districts, the withdrawal of the receiving district, the substitution of a different district as the receiving district, a change in the grades covered by the area plan, or any combination of the foregoing, or for the dissolution of the area; and it shall provide for the equitable adjustment of the rights and responsibilities of each member of the plan, whether present or prospective, with respect to area school facilities. If such provisions include payments from one school district to another, they may be made over a period of not more than 10 years, but the obligation to make such payments shall not be deemed indebtedness of the obligor school district for the purpose of determining its borrowing capacity under RSA 33. In addition to the foregoing powers, an area school plan review board may act as a cooperative school district planning board pursuant to RSA 195–A:15; and instead of submitting an amended area school plan, the review board may prepare and recommend the adoption of articles of agreement for a cooperative school district.

II. In considering whether to approve an amended area school plan, the state board shall apply the standards set forth in RSA 195–A:2 and shall also consider the capacity of each school district which would be affected by the adoption of the amended area school plan to successfully discharge the educational and financial responsibilities which would result from such adoption. If the state board finds that the adoption of the amended area school plan would be in the best interests of the state and of the school districts affected thereby, it shall so notify the school board of each such school district. Thereafter, each school district, its school board, voters or legislative body, and other appropriate officers, shall deal with the amended area school plan in accordance with the procedures set forth in RSA 195–A:3 as though such amended plan were an original plan being submitted under RSA 195–A:3, except that the form of the question used in each school district shall be prepared by the state board and included in its notice to each district; and the forms of question used in the several districts may be different as circumstances require. If the amended area school plan is adopted, the state board shall issue its certificate to that effect, which shall be conclusive evidence of the lawful adoption of the amended area school plan. If the amended plan is not adopted, no further action with respect to the amended area school plan shall be taken until another area school plan review board has been established pursuant to paragraph I of this section.

III. After the third anniversary of the date of operating responsibility a sending or receiving school district, at an annual or special school district meeting, may vote to undertake a study of the feasibility and suitability of a withdrawal from the area. The study shall be conducted by a committee composed of 2 school board members from each district of the area, the superintendent of schools as a non-voting member, and 2 members of the town or city governing body from the school district requesting the

study. Within 180 days after the date of its formation, the committee shall submit to the state board of education either a report that withdrawal is not feasible or suitable or a report that includes a withdrawal plan prepared in accordance with paragraph IV. If the committee determines that withdrawal is not feasible or suitable, the district which voted to undertake the study may submit a minority report at the same time as the committee report is filed with the state board of education. If the committee report does not include a withdrawal plan, the minority report may include a withdrawal plan prepared in accordance with paragraph IV.

IV. A plan for the withdrawal of a district or districts from an area shall include the following:

(a) The name or names of the withdrawing district or districts and the grades.

(b) The proposed date of withdrawal from the area, at which time the withdrawing district shall be responsible for the education of its pupils and after which the area shall no longer have such educational responsibility.

(c) The liability of the withdrawing district for its share of any outstanding indebtedness of the area in accordance with paragraph V or, if the area was formed by 2 districts, provision for the disposition of property and a statement of assumption of liabilities upon dissolution of the area.

(d) A detailed analysis of the financial and educational consequences of the proposed withdrawal.

(e) The manner in which the withdrawing district or districts shall provide for the education of all pupils in the withdrawing district or districts and a plan for the education of the pupils in the remaining sending and/or receiving districts. This shall include the proposed assignment of pupils and any necessary tuition arrangements or contracts.

(f) Modifications to the area agreement necessitated by the withdrawal plan.

(g) Any other matters which the committee, consistent with the law, may consider appropriate to include in the withdrawal plan.

V. Each withdrawing sending district shall remain liable to the area, or to the receiving district in the case of a dissolution of the area, for a rental charge, as determined by the area agreement, for the length of any outstanding bond issue, and for the reduction of school building aid based on the decrease of the annual grant for the payment of debt service for school construction. Payments in discharge of such liability shall be made in accordance with a schedule which may provide for annual payments for the length of the existing bond issue or any other schedule agreed upon by the school boards of the area, or, in the event they fail to agree, as determined by the state board of education. Such payments shall be deemed to be trust funds and shall be applied by the area solely in payment of its indebtedness which was incurred to finance area school facilities and which was outstanding on the effective date of the withdrawal vote.

VI. A receiving district, 4 months prior to a vote on a bond issue for construction of new facilities or additions to an area school, shall notify a sending district of a pending vote on a bond issue. Upon receipt of such notice, a sending district may initiate a withdrawal study in accordance with paragraph III. If the sending district has initiated a withdrawal study prior to the vote in the receiving district, the sending district shall not be further obligated to any bonded indebtedness as a result of such bond issue vote if the voters in the sending district approve, by a majority vote, the withdrawal plan.

VII. The committee established pursuant to paragraph III shall submit a copy of all reports, including any minority reports, to the state board of education. If a report includes a plan for withdrawal, the state board of education shall review the proposed plan to determine whether or not the proposed plan meets the requirements of paragraph IV. If, in the opinion of the state board, the requirements have been properly addressed, the state board shall recommend for or against its adoption based on its assessment of the plan's feasibility. If, in the opinion of the state board, the requirements have not been properly addressed, the deficiencies shall be noted and the plan shall be promptly returned for revision. When the plan is resubmitted, the state board shall promptly review the revised plan, return the plan, and make a recommendation for or against its adoption based on its assessment of the plan's feasibility. The state board's recommendation shall be reported to the legislative body of the area districts. The state board shall forward the plan for withdrawal to the school board of the withdrawing school district. The school board shall publish the withdrawal plan once in a newspaper generally circulated within the area districts. The school board shall file the plan for withdrawal with the clerk of the withdrawing district and shall insert the plan in the warrant for the next annual meeting. The article in the warrant for the district meeting and the question on the ballot to be used at the meeting shall be in substantially the following form:

"Shall the school district accept the provisions of RSA 195–A:14, as amended, providing for the withdrawal of the sending (or receiving) district of _____ from the _____ area in accordance with the provisions of the proposed withdrawal plan filed with the school district clerk?"

Yes _____ No _____

If a majority of the voters present and voting shall vote in the affirmative, the clerk of the school district shall forthwith send to the state board of education a certified copy of the warrant, certificate of posting, evidence of publication, and minutes of the meeting. If the board finds that a majority of the voters present and voting have voted in favor of the withdrawal plan, it shall be conclusive evidence of the withdrawal of the district and the continuation of the area or the dissolution of a 2-district area.

VIII. The vote to withdraw from an area shall take effect on July 1 of the calendar year which shall be at least 2 years after the date on which the withdrawal vote is adopted. The plan may provide for an earlier date.

**Source.** 1963, 277:1. 1969, 347:2. 1971, 187:1, 2. 1979, 9:1. 1988, 214:1. 1998, 271:4, 5. 1999, 15:2, eff. June 25, 1999; 119:2, eff. Aug. 9, 1999.

### 195–A:15 Conversion of Area School Plan to Cooperative School District.

I. The school districts comprising an authorized regional enrollment area plan may convert the plan to a cooperative school district as provided in RSA 195:18 upon the expiration of 5 years after date of operating responsibility, and thereafter. Provided, however, that, if such area plan then includes a city school district or the dependent school department of a city, such conversion may only be accomplished by special act of the legislature upon petition of the cooperative school district planning board. In proceedings for conversion, the school boards of the several school districts in the area plan, acting jointly, shall constitute the cooperative school district planning board. The articles of agreement for such conversion shall provide for assumption by the cooperative school district of all outstanding debt of each receiving district incurred for its area schools, and shall provide for termination of tuition payments on date of operating responsibility of the new cooperative district.

II. [Repealed.]

**Source.** 1963, 277:1. 1969, 347:3. 1991, 188:4, eff. May 27, 1991 at 12:01 a.m.

### 195–A:16 Modification.

Parties to any authorized regional area agreement may, either at the time of the original agreement, or at any subsequent modification of the agreement, specify that the agreement shall cover less than 100 percent of the student population of the sending district. In the event that a chartered public school is approved within a sending or receiving district, after final approval by the state board, an area review board shall be convened pursuant to RSA 195–A:14 solely for the purpose of considering an amendment to the area agreement relative to the adoption of the chartered public school provisions under RSA 194–B. Any such amendment shall be consistent with the provisions of RSA 195–A:3, V(p). An area plan amended under this section shall be submitted to the state board for approval no later than December 1 of the year of amendment.

**Source.** 1992, 134:1. 2000, 106:3, eff. July 7, 2000. 2008, 354:1, eff. Sept. 5, 2008.

## CHAPTER 195–B

## STATE GUARANTEE

[Repealed by 1967, 154:6, eff. July 24, 1967.]

## CHAPTER 195–C

## SCHOOL BUILDING AUTHORITY— STATE GUARANTEE



### 195–C:1 School Building Authority.

I. There shall be a school building authority, referred to in this chapter as the authority, consisting of the state treasurer, the commissioner of education, the state fire marshal or designee, and 3 other members appointed by the governor, one of whom shall have expertise in education, one of whom shall have expertise in finance, and one of whom shall have expertise in building construction or engineering, with the advice and consent of the council, for terms of 3 years and until their successors are appointed and qualify. The governor shall designate one of said members as chairman. In case of vacancy among the appointive members of the authority, the governor, with the advice and consent of the council, shall fill the same for the unexpired term. The appointive members of the authority shall receive as compensation for their services, while actually engaged in the

business of the authority, the sum of $8 per day plus their necessary subsistence expenses. The appointive members of the authority shall be paid mileage at the state employees rate, plus necessary travel expenses, only when performing activities at the request of the state board of education.

II. It shall be the duty of the authority to consider and investigate all applications of school districts for awards of state guarantees with respect to borrowings authorized by such districts for school projects of not less than $100,000 involving the construction, enlargement or alteration of school buildings, and to make a written report on each application to the governor and council. If the authority finds that a school project will be of public use and benefit and that the amount of the authorized borrowing appears to be within the financial means and available resources of the school district making the application, the authority may include in its report a recommendation that a state guarantee be awarded on a split issue basis with respect to a specific amount of the bonds or notes of the district or that a state guarantee be awarded on a declining balance basis with respect to a specific percentage of each of such bonds or notes. In determining what amount or percentage to recommend under the provisions of this chapter, the authority shall consider the need for the project in comparison with the need for other projects throughout the state and the capacity of the state to guarantee indebtedness within the limits contained in this chapter.

III. The authority may make reasonable procedural rules and regulations and prescribe forms to be used in its proceedings. The authority may also establish from time to time schedules of service charges to be paid by districts which issue bonds or notes guaranteed by the state pursuant to this chapter, but no charge shall exceed 1/10 of one percent of the principal amount of the bonds or notes which are issued and with respect to which the state guarantee is applicable. The charge to a district shall not be payable until after the bonds or notes on which the charge is based have been issued, and such charge may be paid from the proceeds of the bonds or notes including premiums, but exclusive of accrued interest. Service charges shall be paid to the state treasurer and shall be credited to the account of the authority. Such account shall not lapse and shall be available to the authority as a continuing fund subject to expenditure for the use of the authority pursuant to votes thereof.

IV. (a) The authority shall advise the state board of education by investigating matters concerning school facilities referred to them by the state board of education. Such matters shall include, but shall not be limited to, standards for school building construction pursuant to RSA 21–N:9, II(c), safety standards related to school buildings, financing of school construction projects, award of high performance school construction grants, and any other specific concerns about particular school buildings that have been brought to the attention of the state board of education.

(b) The authority shall seek the assistance and expertise of state and local agencies and private entities as may be necessary.

**Source.** 1967, 154:1. 1970, 51:7. 1985, 240:1, eff. Aug. 3, 1985. 2008, 289:1, 2, eff. Aug. 26, 2008. 2012, 275:7, eff. Aug. 18, 2012. 2023, 35:3, eff. July 1, 2023.

### 195–C:2 State Guarantee.

Upon the receipt of a report from the authority containing a recommendation that bonds or notes of a school district should be guaranteed by the state, the governor with the advice and consent of the council may award an unconditional state guarantee with respect to such bonds or notes in accordance with the authority's recommendation or in some lesser amount or percentage, or on the alternative basis of guarantee, as the best interests of the state may require. The full faith and credit of the state are and shall be pledged for any such guarantees, and the total outstanding amount of the principal of and interest on such bonds and notes which has been guaranteed by the state under this section shall at no time exceed $95,000,000. The governor, with the advice and consent of the council, is authorized to draw a warrant for such a sum out of any money in the treasury not otherwise appropriated, for the purpose of honoring any guarantee awarded under this section. In the event that any state funds shall be so used, the state may recover the amount thereof as provided in RSA 530.

**Source.** 1967, 154:1. 1970, 51:8. 1971, 294:1. 1985, 240:2. 1986, 172:1. 1987, 191:1. 1999, 335:1, eff. Jan. 1, 2000. 2008, 49:2, eff. July 1, 2008. 2009, 144:200, eff. July 1, 2009.

### 195–C:3 Definition and Limit of Split Issue Guarantee.

An award of a state guarantee on a split-issue basis under RSA 195–C:2 shall specify the face amount of the bonds or notes which shall comprise the guarantee portion of the total authorized borrowing, and such guarantee shall be applicable with respect to that amount of the bonds or notes and interest on such bonds or notes. The guaranteed portion of the total authorized borrowing shall not exceed 75 per-

cent thereof. Bonds or notes bearing a state guarantee awarded on a split-issue basis shall be offered and sold at public sale, after such advertisement as the school board deems appropriate, as a separate and distinct issue from any issue of bonds or notes which are not guaranteed by the state. All state guaranteed bonds or notes issued to finance a particular project shall be made payable no later than the payment date of the last maturing unguaranteed bond or note which is issued to finance the same project. The bonds or notes comprising the guaranteed portion of an authorized borrowing and the bonds or notes comprising the unguaranteed portion of an authorized borrowing may be issued from time to time, provided that the guaranteed portion which shall have been issued at any time shall not exceed 3 times the unguaranteed portion which shall then have been issued. The state's guarantee shall be evidenced on each guaranteed bond or note by an endorsement signed by the state treasurer in substantially the following form:

The State of New Hampshire hereby unconditionally guarantees the payment of the whole of the principal and interest of the within (bond) (note) and for the performance of such guarantee the full faith and credit of the State are pledged.

State Treasurer

**Source.** 1967, 154:1. 1970, 51:9. 1985, 240:3, eff. Aug. 3, 1985.

**195–C:4 Definition and Limit of Declining Balance Guarantee.**

An award of a state guarantee on a declining balance basis under RSA 195–C:2 shall specify the percentage of the guarantee, and such guarantee shall be applicable in such percentage with respect to any amount of a bond, note or coupon comprising the authorized borrowing which the issuing district is unable to pay or refuses to pay upon the presentation of such bond, note or coupon. Such percentage shall not be more than 75 percent. The bonds or notes comprising an authorized borrowing guaranteed on a declining balance basis may be issued from time to time and may be sold at public or private sale. The state's guarantee shall be evidenced on each bond or note by an endorsement signed by the state treasurer in substantially the following form:

The State of New Hampshire hereby unconditionally guarantees the payment of ... percent of any amount of the principal of or the interest on this (bond) (note) which the issuer of this (bond) (note) is unable to pay or refuses to pay upon presentation, and for the performance of such guarantee the full faith and credit of the State are pledged.

State Treasurer

**Source.** 1967, 154:1. 1970, 51:10. 1985, 240:4, eff. Aug. 3, 1985.

**195–C:5 Repealed by 1985, 240:6, eff. Aug. 3, 1985.**

## CHAPTER 195–D

## NEW HAMPSHIRE HEALTH AND EDUCATION FACILITIES AUTHORITY



**195–D:1 Declaration of Policy.**

It is declared to be the policy of the state that for the benefit of the people of the state, the increase of their commerce, welfare, and prosperity and the improvement of their health and living conditions, it is essential that this and future generations of youths be given the fullest opportunity to learn and develop their intellectual and mental capacities; that it is essential that participating educational institutions within the state be provided with appropriate additional means to assist such youths in achieving the required levels of learning and development of their intellectual and mental capacities; that it is essential that participating health care institutions within the

state be provided with appropriate additional means to expand, enlarge and establish health care and other related facilities; that it is essential that participating health care institutions and participating educational institutions within the state be encouraged and assisted in reducing the costs of providing health care or education; that it is essential that powers be conferred on the New Hampshire health and education facilities authority as will assure the successful completion of projects to be initiated by the corporation or the refinancing of existing indebtedness as provided in this chapter so as to accomplish the purposes of this chapter all to the public benefit and good. It is further declared that the exercise by the corporation of the powers conferred on the corporation under this chapter will constitute the performance of an essential governmental function.

**Source.** 1969, 318:1. 1970, 16:1. 1979, 384:1. 1981, 532:1. 1982, 16:1. 1991, 298:1. 1999, 253:2, eff. July 9, 1999.

### 195–D:2 Citation.

This chapter as amended may be referred to as and cited as the "New Hampshire Health and Education Facilities Authority Act".

**Source.** 1969, 318:1. 1970, 16:2. 1971, 198:1. 1999, 253:3, eff. July 9, 1999.

### 195–D:3 Definitions.

As used in this chapter, the following words and terms have the following meanings, unless the context indicates another or different meaning or intent:

I. "Corporation" means the New Hampshire health and education facilities authority created and established as a corporation and constituted and established as a public body corporate and agency of the state under RSA 195–D:4, or any board, body, commission, department, or officer succeeding to the principal functions thereof or to whom the powers conferred upon the corporation by this chapter shall be given by law.

II. "Project."

(a) In the case of a participating educational institution, means any structure designed for use as a dormitory or other housing facility, dining facility, student union, academic building, administrative facility, library, classroom building, research facility, faculty office facility, athletic facility, health care facility, laboratory, maintenance, storage or utility facility, child day care facility, or other building or structure essential, necessary or useful for instruction in a program of education provided by a participating educational institution, or any multi-purpose structure designed to combine 2 or more of the functions performed by the types of structures enumerated above, and shall include all real and personal property, lands, improvements, driveways, roads, approaches, pedestrian access roads, rights-of-way, utilities, easements, machinery and equipment, and all other appurtenances and facilities either on, above or under the ground which are used or usable in connection with any of the aforementioned structures, and shall also include landscaping, site preparation, furniture, machinery, equipment and other similar items necessary or convenient for the operation of a particular facility or structure in the manner for which its use is intended, and;

(b) In the case of a participating health care institution means any structures designed for use as a hospital, clinic, nursing home providing sheltered care, intermediate care, life-care, continuing care or medical services, health maintenance organization, home health care provider, ambulatory care clinic or other health care facility, laboratory, laundry, nurses' or interns' residence or other multi-unit housing facility for staff, employees, patients or relatives of patients admitted for treatment in such health care facility, doctors' office building, appropriately designed housing facilities for the residence or care of the elderly, administration building, research facility, maintenance, storage, or utility facility or other structures or facilities related to any of the foregoing or required or useful for the operation of a participating health care institution, including parking and other facilities or structures essential or convenient for the orderly conduct of such participating health care institution, and shall include all real and personal property, lands, improvements, driveways, roads, approaches, pedestrian access roads, rights-of-way, utilities, easements, parking lots, machinery and equipment, and all other appurtenances and facilities either on, above or under the ground which are used or usable in connection with any of the aforementioned structures, and shall also include landscaping, site preparation, furniture, machinery and equipment and other similar items necessary or convenient for the operation of a particular facility or structure in the manner for which its use is intended.

(c) Subject to RSA 195–D:9 and RSA 195–D:21, a project, or any portion thereof, may be located within or outside the state.

III. "Cost" as applied to a project or any portion thereof financed under the provisions of this chapter shall mean the cost of construction, building, acquisi-

tion, equipping, alteration, enlargement, reconstruction and remodeling of a project and acquisition of all lands, structures, property, real or personal, rights, rights-of-way, franchises, easements, and interests acquired, necessary, used for, or useful for or in connection with a project and all other undertakings which the corporation deems reasonable or necessary for the development of a project, including but not limited to the cost of demolishing or removing any buildings or structures on land so acquired, the cost of acquiring any lands to which such buildings or structures may be moved, the cost of all machinery and equipment, financing charges, interest prior to and during construction, and if judged advisable by the corporation, for a period after completion of such construction the cost of financing the project, including interest on bonds and notes issued by the corporation to finance the project; provisions for working capital, whether or not in connection with a project; reserves for principal and interest and for extensions, enlargements, additions and improvements; cost of architectural, engineering, financial, legal or other special services, plans, specifications, studies, surveys, estimates of cost and revenues; administrative and operating expenses; expenses necessary or incident to determining the feasibility or practicability of constructing the project; and such other expenses necessary or incident to the construction and acquisition of the project, the financing of such construction, and acquisition and the placing of the project in operation and all costs and expenses necessary or incidental to the acquisition of or commitment to acquire any federally guaranteed security and to the issuance and obtaining of any federally insured mortgage note.

IV. "Bonds" or the words "revenue bonds" means revenue bonds of the corporation issued under the provisions of this chapter, including revenue refunding bonds, notwithstanding that the same may be secured by the mortgage or the full faith and credit of a participating educational institution or of a participating health care institution or any other lawfully pledged security of a participating educational institution or of a participating health care institution.

V. "Institution for postsecondary education or higher education" means an educational institution which by virtue of law or charter is a public or other nonprofit educational institution empowered to provide a program of education beyond the high school level and awards a bachelor's or graduate degree or provides a program of not less than 2 years' duration which is accepted for full credit toward a bachelor's degree. Said definition shall include the university system of New Hampshire or any of its components when revenue bonds are to be issued for the acquisition, construction, renovation or refinancing of any structure designed for use as a dormitory or other housing facility, dining hall or other food service facility, student union, bookstore, or other revenue-producing facility of the university system of New Hampshire or any of its components, which revenue bonds are to be secured by the pledge of the revenue from such revenue-producing facilities, but not by the full faith and credit of the university system, any of its components, or the state of New Hampshire.

VI. "Participating educational institution" means an institution for postsecondary education or higher education; an institution for secondary education; an institution providing an educational program; or a child care provider which, pursuant to the provisions of this chapter undertakes the financing and construction or acquisition of a project or undertakes the refunding or refinancing of bonds or other obligations or of a mortgage or of advances as provided in and permitted by this chapter.

VI–a. "Institution providing an educational program" means a not-for-profit or charitable institution, public or private, which is exempt from federal taxation pursuant to section 501 of the Internal Revenue Code of 1986, as amended, and which provides a program of education for the purpose of enhancing the knowledge or abilities of its members or the general public.

VII. "Hospital" means any nonprofit hospital licensed in the state in which the hospital is located.

VIII. "Participating health care institution" means a hospital; nursing home; health maintenance organization; home health care provider; an institution providing a health care program; or ambulatory care clinic which, pursuant to the provisions of this chapter, undertakes the financing and construction or acquisition of a project or undertakes the refunding or refinancing of bonds or other obligations or of a mortgage or of advances as provided in and permitted by this chapter.

VIII–a. "Institution providing a health care program" means a not-for-profit or charitable institution, public or private, which is exempt from federal taxation pursuant to section 501 of the Internal Revenue Code of 1986, as amended, and which is either licensed to provide any health care service or function or provides a program involving or otherwise related to the delivery of healthcare by institutions or professionals, whether in the form of treatment, education,

the provision or delivery of health care services or otherwise.

IX. "Refinancing of existing indebtedness" means (a) liquidation, with the proceeds of bonds or notes issued by the corporation, of any indebtedness of a participating institution incurred to finance or aid in financing a lawful purpose of such participating institution which would constitute a project had it been undertaken and financed by the corporation; or (b) consolidation of such indebtedness with indebtedness of the corporation incurred for a project of such participating institution; or (c) purchase of a federally guaranteed security issued with respect to the financing of a lawful purpose of a participating institution which would constitute a project had it been undertaken and financed by the corporation.

X. "Federally guaranteed security" means any security, investment or evidence of indebtedness which is issued pursuant to the national housing act or any successor provision of law, each as amended from time to time, and which is either, directly or indirectly, insured or guaranteed, in whole or in part, as to the repayment of principal and interest by the United States of America or any instrumentality thereof.

XI. "Federally insured mortgage note" means any loan secured by a mortgage for any facility of a participating institution which is either, directly or indirectly, insured or guaranteed, in whole or in part, as to the repayment of principal and interest by the United States of America or any instrumentality thereof, or any commitment by the United States of America or any instrumentality thereof to so insure or guarantee such a loan secured by a mortgage.

XII. "Nursing home," notwithstanding any other provision of law to the contrary, means any nonprofit or charitable institution or organization, public or private, which is exempt from federal taxation pursuant to section 501 of the United States Internal Revenue Code of 1986 as amended, and which is engaged in the operation of, or formed for the purpose of operating, a facility in which nursing care, sheltered care, intermediate care, life-care or continuing care, and medical services are prescribed by or performed under the general direction of persons licensed to practice medicine or surgery, and in whole or in part is, or shall be upon completion, licensed as a residential care facility under RSA 151:2, I(e) or licensed as a nursing home under the laws of New Hampshire or licensed by the state in which it is located.

XIII. "Health maintenance organization" means the same as defined in RSA 420–B which is nonprofit and whether or not it is affiliated with a hospital or any other association of medical practitioners.

XIV. "Institution for secondary education" means a nonprofit institution for education, which:

(a) Provides a program of education which is preparatory for postsecondary or higher education; or

(b) Is a residential facility which is licensed as a group home or child care institution by the state within which it is located.

XV. "Participating institution" means a participating educational institution or a participating health care institution.

XVI. "Home health care provider" means a home health care provider as defined in RSA 151:2–b which offers, and is licensed under RSA 151:2, I(b) or by the state within which it is located to offer health care services and which is a nonprofit or charitable institution or organization, public or private, which is exempt from federal taxation pursuant to section 501 of the United States Internal Revenue Code of 1986 as amended.

XVII. "Ambulatory care clinic" means any nonprofit or charitable institution or organization, public or private, which is exempt from federal taxation pursuant to section 501 of the United States Internal Revenue Code of 1986 as amended, and which is engaged in the operation of, or formed for the purpose of operating, an ambulatory health care facility in which health care services are offered to the public on an outpatient basis by or under the direction of licensed physicians and licensed health care professionals.

XVIII. "Child care provider" means a provider of child day care as defined in RSA 170–E:2, III, including a child day care agency as defined in RSA 170–E:2, IV, and any other not-for-profit or charitable institution, public or private, which is exempt from federal taxation pursuant to the Internal Revenue Code of 1986 as amended, 26 U.S.C. section 501 et seq., and which provides or otherwise assists in the provision of facilities, equipment, services, or economic assistance of any type to a child day care agency.

XIX. "Affiliate" means any entity which controls or is controlled by, or is under common control with, another entity. For purposes of this definition, an entity controls another entity when the first entity possesses or exercises directly, or indirectly through one or more other affiliates or related entities, the

power to direct the management and policies of the other entity, whether through the ownership of voting rights, membership, or the power to appoint members, trustees, or directors, by contract or otherwise.

**Source.** 1969, 318:1. 1970, 16:3–6. 1971, 198:2–6. 1979, 384:2, 3. 1981, 532:2–4. 1982, 16:2–4. 1983, 291:1, I; 423:24–26. 1986, 151:1. 1990, 90:1. 1991, 298:2. 1992, 276:5–8. 1993, 335:17, 18. 1998, 303:3–5. 1999, 253:4–10, eff. July 9, 1999. 2012, 282:13, eff. June 30, 2015. 2018, 331:2–10, eff. June 25, 2018.

### 195–D:4 New Hampshire Health and Education Facilities Authority Constituted Public Body Corporate and Agency of the State.

I. The New Hampshire Health and Education Facilities Authority is created as a corporation and is constituted and established as a public body corporate and agency of the state for the exercising of the powers conferred on the corporation by this chapter.

II. All of the powers of the corporation are vested in a board of directors of 7 members who shall be appointed by the governor and council. The terms of 2 of the members shall expire on June 30, 1970; the terms of 2 members shall expire on June 30, 1971; and the terms of 3 members shall expire respectively on June 30, 1972, June 30, 1973 and June 30, 1974. Successors to those members of the board of directors whose terms expire each year shall be appointed by the governor and council prior to June 1 in each year, for terms of 5 years each. If a vacancy occurs in the membership of the board of directors, the governor and council shall appoint a successor for the unexpired term. Any member of the board of directors shall be eligible for re-appointment.

III. Each member of the board of directors, before entering upon his duties, shall take an oath to administer the duties of his office faithfully and impartially, and such oath shall be filed in the office of the secretary of state.

IV. The board of directors shall elect one of its members as chairperson, another as vice chairperson, and shall also elect a secretary, who need not be a member of the board. Four members of the board of directors constitute a quorum, and the vote of a majority of the members constituting a quorum present and voting is necessary for any action taken by the corporation. A vacancy in the membership of the board of directors of the corporation does not impair the right of a quorum to exercise all the powers and perform the duties of the corporation. Notwithstanding RSA 91–A or any other law to the contrary, members of the board shall be permitted to participate in meetings by telephone, provided that any board member so participating shall be able to be heard and to hear every other board member participating in the meeting, and unless the board is meeting in nonpublic session pursuant to RSA 91–A:3, shall be able to hear and be heard by all members of the public attending the meeting, and that the meeting is held at a physical location available to the public and identified in the notice of the meeting, and that at least 2 members of the authority are physically present at the meeting. Voting members of the board participating by telephone shall be treated as present at the meeting for all purposes, including the establishment of quorum.

V. Any action taken by the corporation under the provisions of this chapter may be authorized by resolution at any regular or special meeting, and each such resolution shall take effect immediately and need not be published or posted. However, any action taken that directly affects any institution by name is not effective as to that institution until notice of the action has been delivered to the institution, by mail or otherwise.

VI. The members of the board of directors and the officers of the corporation shall not receive any compensation for the performance of their duties under this chapter, but each such member or officer shall be paid his necessary expenses incurred while in the performance of such duties. These expenses, as well as any expenses incurred by the corporation as a result of indemnifying or holding harmless its directors, officers, and employees, are part of the expenses authorized by RSA 195–D:5, to be a charge as an administration cost.

**Source.** 1969, 318:1. 1970, 16:7–10. 1994, 86:1. 1999, 253:11, 12, eff. July 9, 1999.

### 195–D:5 General Grant of Powers.

The corporation has the following powers, together with all powers incidental thereto or necessary for the performance of those hereinafter stated:

I. To have perpetual succession as a public body corporate and agency of the state and to adopt bylaws for the regulation of its affairs and the conduct of its business;

II. To sue and be sued, plead and be impleaded;

III. To adopt an official seal and alter the same at pleasure;

IV. To maintain an office at such place or places as it may designate;

V. To determine the location and character of any project to be financed under the provisions of this chapter, and to construct, reconstruct, maintain, re-

pair, operate, lease, as lessee or lessor, and regulate the same; to enter into contracts for any or all of such purposes; to enter into contracts for the management and operation of a project; and to designate a participating institution as its agent to determine the location and character of a project undertaken by such participating institution under the provisions of this chapter as its agent to construct, reconstruct, maintain, repair, operate, lease, as lessee or lessor, and regulate the same; and as its agent to enter into contracts for any or all of such purposes, including contracts for the management and operation of such projects;

VI. To issue bonds, bond anticipation notes and other obligations of the corporation for any of its corporate purposes, and to fund or refund the same, all as provided in this chapter;

VII. Generally, to fix and revise from time to time and charge and collect rates, rents, fees and charges for the use of and for the services furnished or to be furnished by a project or any portion thereof; and to contract with any person, partnership, association or corporation or other body, public or private, in respect thereof and to designate a participating institution as its agent to fix, revise, charge and collect such rates, rents, fees and charges and to make such contracts;

VIII. To establish rules and regulations for the use of a project or any portion thereof and to designate a participating institution as its agent to establish rules and regulations for the use of a project undertaken by such participating institution;

IX. To employ consulting engineers, architects, attorneys, accountants, construction and financial experts, superintendents, managers, and such other employees and agents as are necessary in its judgment, and to fix their compensation;

X. To receive and accept from any public agency loans or grants for or in aid of the construction of a project or any portion thereof, and to receive and accept loans, grants, aid, or contributions from any source of either money, property, labor, or other things of value, to be held, used, and applied only for the purposes for which such loans, grants, aid, and contributions are made;

XI. To mortgage any project and the site thereof for the benefit of the holders of revenue bonds issued to finance the project;

XII. To make loans to any participating institution for the construction of a project in accordance with an agreement between the corporation and the participating institution. However, no such loan shall exceed the total cost of construction and equipment of the project as determined by the participating institution and approved by the corporation;

XIII. To acquire any federally guaranteed security with respect to the financing of a project or the refinancing of existing indebtedness and to pledge or otherwise use such federally guaranteed security in such manner as the corporation deems necessary or appropriate to secure or otherwise provide a source of repayment on any of its bonds or notes or to enter into any appropriate agreement with a participating institution whereby the corporation may make a loan to such participating institution for the purpose of acquiring and entering into commitments to acquire any federally guaranteed security with respect to financing of a project or the refinancing of existing indebtedness; provided, however, that the corporation, prior to making any such acquisition, commitment or loan with respect to financing a project, shall first determine, and thereafter shall enter into an agreement with any such participating institution to require, that the proceeds derived from the acquisition of any such federally guaranteed security will be used for the purpose of providing for a project;

XIV. To charge to and equitably apportion between participating institutions its administrative costs and expenses incurred in the exercise of the powers and duties conferred by this chapter;

XV. To accept any gifts or grants or loans of funds or property or financial or other aid in any form from the federal government or any agency or instrumentality thereof or from the state or any agency or instrumentality thereof or from any other source, and to comply, subject to the provisions of this chapter, with the terms and conditions thereof;

XVI. To do all things necessary or convenient to carry out the purposes of this chapter; and

XVII. To provide for the refinancing of existing indebtedness or to make loans to a participating institution for the purpose of providing for the refinancing of existing indebtedness or repaying advances made or given by such participating institution with respect to the acquisition or construction of a project.

XVIII. Before the university system of New Hampshire or any of its components may participate in any of the provisions of this chapter, each project must receive the approval of the capital project overview committee of the general court and the approval of the governor.

XIX. To protect, indemnify, and hold harmless its members of the board of directors, officers and employees from any costs, damages, awards, judgments, or settlements arising from any claim, civil action, lawsuit, or other proceeding against them.

**Source.** 1969, 318:1. 1970, 16:11–16. 1979, 384:4, 5. 1986, 151:2. 1991, 298:3. 1994, 86:2, eff. July 5, 1994. 2023, 192:4, eff. Aug. 4, 2023.

### 195–D:5–a Exemption From Rules of Other Agencies; Exemption From Administrative Procedure Act; Rulemaking Authority.

I. The corporation shall be exempt from the rules of any department, commission, board, bureau, or agency of the state except as provided in this chapter.

II. The corporation shall be exempt from the provisions of RSA 541–A and may adopt rules in accordance with its own procedures to facilitate, implement, execute the powers, duties, and purposes of the corporation enumerated in this chapter, and such additional powers and duties as may be conferred upon it by the legislature. The corporation shall file in the office of legislative services a copy of all existing rules adopted by the corporation. Any rule adopted after the effective date of this section or any amendment or repeal of any existing rule shall be filed in the office of legislative services within 7 days of such adoption, amendment, or repeal.

**Source.** 1999, 253:13, eff. July 9, 1999.

### 195–D:6 Acquisition of Property.

The corporation is authorized and empowered, directly or by and through a participating institution, as its agent to acquire by purchase, gift or devise, solely from funds provided under the authority of this chapter, such lands, structures, property, real or personal, rights, rights-of-way, franchises, easements and other interests in land, including lands lying under water and riparian rights, which are located within or without the state as it judges necessary or convenient for the construction or operation of a project, upon such terms and at such prices as considered by it to be reasonable and can be agreed upon between it and the owner thereof, and to take title thereto in the name of the corporation.

**Source.** 1969, 318:1. 1970, 16:17. 1991, 298:4, eff. Aug. 19, 1991.

### 195–D:7 Title to Projects.

When the principal of and interest on revenue bonds of the corporation issued to finance the construction and acquisition of a particular project or projects at a participating institution, including any revenue refunding bonds issued to refund and refinance such revenue bonds, have been fully paid and retired or when adequate provision has been made to fully pay and retire the same, and all other conditions of the resolution or trust agreement authorizing and securing the same have been satisfied and the lien of such resolution or trust agreement has been released in accordance with the provisions thereof, the corporation shall promptly do such things and execute such deeds and conveyances as are necessary and required to convey title to such project or projects to such participating institution, free and clear of all liens and encumbrances, all to the extent that title to such project or projects is not, at the time, then vested in such participating institution.

**Source.** 1969, 318:1. 1970, 16:18. 1991, 298:5, eff. Aug. 19, 1991.

### 195–D:8 Notes of the Corporation.

The corporation has the power and is hereby authorized from time to time to issue its negotiable notes for any corporate purpose, including the payment of all or any part of the cost of any project or the refinancing of existing indebtedness, and renew from time to time any notes by the issuance of new notes, whether the notes to be renewed have or have not matured. The corporation may issue notes partly to renew notes or to discharge other obligations then outstanding and partly for any other purpose. The notes may be authorized, sold, executed and delivered in the same manner as bonds. Any resolution or resolutions authorizing notes of the corporation or any issue thereof may contain any provisions which the corporation is authorized to include in any resolution or resolutions authorizing revenue bonds of the corporation or any issue thereof, and the corporation may include in any notes any terms, covenants or conditions which it is authorized to include in any bonds. All such notes shall be payable solely from the revenues of the corporation, subject only to any contractual rights of the holders of any of its notes or other obligations then outstanding.

**Source.** 1969, 318:1. 1971, 198:7. 1979, 384:6, eff. Aug. 22, 1979.

### 195–D:9 Bonds of the Corporation.

I. The corporation is authorized to issue its negotiable revenue bonds from time to time for any corporate purposes, including the financing of all or part of the costs of any projects or the refinancing of existing indebtedness.

II. In anticipation of the sale of such revenue bonds the corporation may issue negotiable bond anticipation notes and may renew the same from time to time, but the maximum maturity of any such note, including renewals thereof, shall not exceed 5 years

from the date of issue of the original note. Such notes shall be paid from any revenues of the corporation available therefor and not otherwise pledged, or from the proceeds of sale of the revenue bonds of the corporation in anticipation of which they were issued. The notes shall be issued in the same manner as the revenue bonds. Such notes and the resolution or resolutions authorizing the same may contain any provisions, conditions, or limitations which a bond resolution of the corporation may contain.

III. The revenue bonds and notes of every issue shall be payable solely out of revenue of the corporation, subject only to any agreements with the holders of particular revenue bonds or notes pledging any particular revenues. Notwithstanding that revenue bonds and notes may be payable from a special fund, if they are otherwise of such form and character as to be negotiable instruments under the terms of the uniform commercial code of the state the revenue bonds and notes shall be and are hereby made negotiable instruments within the meaning of and for all purposes of the uniform commercial code, subject only to the provisions of the revenue bonds and notes for registration.

IV. The revenue bonds may be issued as serial bonds or as term bonds, or the corporation, in its discretion, may issue bonds of both types. The revenue bonds shall be authorized by resolution of the corporation and shall bear such date or dates, mature at such time or times, not exceeding 40 years from their respective dates, bear interest at such rate or rates, shall be payable at such time or times, be in such denominations, be in such form, either coupon or registered, carry such registration privileges, be executed in such manner, be payable in lawful money of the United States of America at such place or places, and be subject to such terms of redemption, as such resolution or resolutions provide. In the event that term bonds are issued, the resolution authorizing the same may make such provisions for the establishment and management of adequate sinking funds for the payment thereof, as the corporation judges necessary. The revenue bonds or notes may be sold at public or private sale for such price or prices as the corporation determines. Pending preparation of the definitive bonds, the corporation may issue interim receipts or certificates which shall be exchanged for such definitive bonds.

V. Any resolution or resolutions authorizing any revenue bonds or any issue of revenue bonds may contain provisions, which shall be a part of the contract with the holders of the revenue bonds to be authorized, as to:

(a) Pledging all or any part of the revenues of a project or any revenue producing contract or contracts made by the corporation with any individual, partnership, corporation, or association or other body, public or private, to secure the payment of the revenue bonds or of any particular issue of revenue bonds, subject to such agreements with bondholders as then exist;

(b) The rentals, fees, and other charges to be charged, and the amounts to be raised in each year thereby, and the use and disposition of the revenues;

(c) The setting aside of reserves or sinking funds, and the regulation and disposition thereof;

(d) Limitations on the right of the corporation or its agent to restrict and regulate the use of the project;

(e) Limitations on the purpose to which the proceeds of sale of any issue of revenue bonds then or thereafter to be issued may be applied and pledging such proceeds to secure the payment of the revenue bonds or any issue of the revenue bonds;

(f) Limitations on the issuance of additional bonds; the terms upon which additional bonds may be issued and secured; the refunding of outstanding bonds;

(g) The procedure, if any, by which the terms of any contract with bondholders may be amended or abrogated, the amount of bonds the holders of which must consent thereto, and the manner in which such consent may be given;

(h) Limitations on the amount of moneys derived from the project to be expended for operating, administrative or other expenses of the corporation;

(i) Defining the acts or omissions to act which shall constitute a default in the duties of the corporation to holders of its obligations and providing the rights and remedies of such holders in the event of a default;

(j) The mortgaging of a project and the site thereof for the purpose of securing the bondholders;

(k) Such other additional covenants, agreements, and provisions as are judged desirable or necessary by the corporation for the security of the holders of such bonds.

VI. Neither the members of the corporation nor any person executing the revenue bonds or notes shall be liable personally on the revenue bonds or notes or be subject to any personal liability or accountability by reason of the issuance thereof.

VII. The corporation has the power, out of any funds available therefor, to purchase its bonds or notes. The corporation may hold, pledge, cancel, or resell such bonds, subject to and in accordance with agreements with bondholders.

VIII. [Repealed.]

IX. The proceeds of revenue bonds issued under this section may be used for a project in this state or another state, provided that if the proceeds of the bond are used for a project any portion of which is located in another state, the participating institution or affiliate shall (a) be organized under New Hampshire law; (b) have a facility located in New Hampshire; or (c) provide or plan to provide an educational program or health care program or services in this state.

**Source.** 1969, 318:1. 1971, 198:8, 9. 1979, 384:7. 1991, 298:6. 1999, 253:18, eff. July 9, 1999. 2018, 331:11, eff. June 25, 2018.

### 195–D:10 Trust Agreement.

In the discretion of the corporation, any revenue bonds issued under the provisions of this chapter may be secured by a trust agreement by and between the corporation and a corporate trustee or trustees, which may be any trust company or bank having the powers of a trust company within or without the state. Such trust agreement or the resolution providing for the issuance of such revenue bonds may pledge or assign the revenues to be received or proceeds of any contract or contracts pledged and may convey or mortgage the project or any portion thereof. Such trust agreement or resolution providing for the issuance of such revenue bonds may contain such provisions for protecting and enforcing the rights and remedies of the bondholders as are reasonable and proper and not in violation of law, including particularly such provisions as have been specifically authorized in this chapter to be included in any resolution or resolutions of the corporation authorizing revenue bonds thereof. It is lawful for any bank or trust company incorporated under the laws of the state which may act as depositary of the proceeds of bonds or of revenues or other moneys to furnish such indemnifying bonds or to pledge such securities as may be required by the corporation. Any such trust agreement may set forth the rights and remedies of the bondholders and of the trustee or trustees, and may restrict the individual right of action by bondholders. In addition to the foregoing, any such trust agreement or resolution may contain such other provisions as the corporation judges reasonable and proper for the security of the bondholders. All expenses incurred in carrying out the provisions of such trust agreement or resolution may be treated as a part of the cost of the operation of a project.

**Source.** 1969, 318:1, eff. Aug. 29, 1969.

### 195–D:11 Credit of State Not Pledged.

Revenue bonds issued under the provisions of this chapter do not and shall not be construed to constitute a debt or liability of the state or of any municipality or political subdivision thereof or a pledge of the faith and credit of the state or of any such municipality or political subdivision. These revenue bonds are payable solely from the revenue funds provided by this chapter for their payment. All such revenue bonds shall contain on the face thereof a statement to the effect that neither the state nor the corporation are obligated to pay the same or the interest thereon except from revenues of the project or projects for which they are issued and that neither the faith and credit nor the taxing power of the state or of any municipality or political subdivision thereof is pledged to the payment of the principal of or the interest on such bonds. The issuance of revenue bonds under the provisions of this chapter shall not directly or indirectly or contingently obligate the state or any municipality or political subdivision thereof to levy or to pledge any form of taxation whatever therefor or to make any appropriation for their payment.

**Source.** 1969, 318:1, eff. Aug. 29, 1969.

### 195–D:12 Revenues.

The corporation is authorized to fix, revise, charge, and collect rates, rents, fees and charges for the use of and for the services furnished or to be furnished by each project and to contract with any person, partnership, association or corporation, or other body, public or private, in respect thereof. Such rates, rents, fees and charges shall be fixed and adjusted in respect of the aggregate of rates, rents, fees and charges from such project so as to provide funds sufficient with other revenues, if any, (a) to pay the cost of maintaining, repairing, and operating the project and each and every portion thereof, to the extent that the corporation has not otherwise adequately provided for the payment thereof, (b) to pay the principal of and the interest on outstanding revenue bonds of the corporation issued in respect of such project as the same become due and payable, and (c) to create and maintain reserves required or provided for in any resolution authorizing, or trust agreement securing, such revenue bonds of the corporation. Such rates, rents, fees, and charges shall not be

subject to supervision or regulation by any department, commission, board, body, bureau or agency of the state other than the corporation. A sufficient amount of the revenues derived in respect of a project, except such part of such revenues as may be necessary to pay the cost of maintenance, repair, and operation and to provide reserves and for renewals, replacements, extensions, enlargements, and improvements as may be provided for in the resolution authorizing the issuance of any revenue bonds of the corporation or in the trust agreement securing the same, shall be set aside at such regular intervals as may be provided in such resolution or trust agreement in a sinking or other similar fund which is hereby pledged to, and charged with, the payment of the principal of and the interest on such revenue bonds as the same become due, and the redemption price or the purchase price of bonds retired by call or purchase as therein provided. Such pledge shall be valid and binding from the time when the pledge is made; the rates, rents, fees and charges, and other revenues or other moneys so pledged and thereafter received by the corporation are immediately subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of any such pledge is valid and binding as against all parties having claims of any kind in tort, contract, or otherwise against the corporation, irrespective of whether such parties have notice thereof. Neither the resolution nor any trust agreement by which a pledge is created need be filed or recorded except in the records of the corporation. The use and disposition of moneys to the credit of such sinking or other similar fund shall be subject to the provisions of the resolution authorizing the issuance of such bonds or of such trust agreement. Except as otherwise provided in such resolution or such trust agreement, such sinking or other similar fund shall be a fund for all such revenue bonds issued to finance projects at a particular participating institution without distinction or priority of one over another. However, the corporation in any such resolution or trust agreement may provide that such sinking or other similar fund shall be the fund for a particular project at a participating institution and for the revenue bonds issued to finance a particular project and may, additionally, permit and provide for the issuance of revenue bonds having a subordinate lien in respect of the security herein authorized to other revenue bonds of the corporation and, in such case, the corporation may create separate sinking or other similar funds in respect of such subordinate lien bonds.

**Source.** 1969, 318:1. 1970, 16:19. 1991, 298:7, eff. Aug. 19, 1991.

**195–D:13 Trust Funds.**

All moneys received pursuant to the authority of this chapter whether as proceeds from the sale of bonds or as revenues, are trust funds to be held and applied solely as provided in this chapter. Any officer with whom, or any bank or trust company with which, such moneys are deposited shall act as trustee of such moneys and shall hold and apply the same for the purposes of this chapter, subject to such regulations as this chapter and the resolution authorizing the bonds of any issue or the trust agreement securing such bonds provide.

**Source.** 1969, 318:1, eff. Aug. 29, 1969.

**195–D:14 Remedies.**

Any holder of revenue bonds issued under the provisions of this chapter or of any of the coupons appertaining thereto, and the trustee or trustees under any trust agreement, except to the extent the rights herein given may be restricted by any such resolution authorizing the issuance of, or any such trust agreement securing, such bonds, may, either at law or in equity, by suit, action, mandamus, or other proceedings, protect and enforce any and all rights under the laws of the state or granted under this chapter or under such resolution or trust agreement, and may enforce and compel the performance of all duties required by this chapter or by such resolution or trust agreement to be performed by the corporation or by any officer, employee, or agent thereof, including the fixing, charging, and collecting of the rates, rents, fees and charges authorized in this chapter and required by the provisions of such resolution or trust agreement to be fixed, established, and collected.

**Source.** 1969, 318:1, eff. Aug. 29, 1969.

**195–D:15 Exemption From Taxation; Payments in Lieu of Taxes.**

The exercise of the powers granted by this chapter will be in all respects for the benefit of the people of the state, for the increase of their commerce, welfare and prosperity, and for the improvement of their health and living conditions, and will constitute the performance of an essential governmental function, and neither the corporation nor its agent shall or may be required to pay any taxes or assessment upon or in respect of a project or any property acquired or used by the corporation or its agent or under the jurisdiction, control, possession or supervision of the same or upon the activities of the corporation or its agent in the operation or maintenance of the project under the provisions of this chapter, or upon income

or other revenues received therefrom, and any bonds, notes and other obligations issued under the provisions of this chapter, their transfer and the income therefrom, including any profit made on the sale thereof, as well as the income and property of the corporation, are at all times exempt from taxation of every kind by the state and by the municipalities and all other political subdivisions of the state; provided that the participating institution shall be required to make annual payments in lieu of taxes on;

I. Any project or any portion thereof owned by such participating institution or by the corporation pursuant to the provisions of this chapter if said project or any portion thereof would not be exempt from taxation pursuant to RSA 72:23 as amended and as in effect on the date that the findings of the designee of the governor and council are made for the particular project pursuant to RSA 195–D:21; or

II. Any portion or all of a project which provides permanent housing for married students, staff, or employees of a participating educational institution or permanent housing for staff, employees or relatives of patients of a participating health care institution. The amount of the annual payment in lieu of taxes shall be equal to that sum which would otherwise have been payable for real estate taxes on such project or part thereof pursuant to RSA 74 and RSA 75. All such payments in lieu of taxes shall be made to the city or town in which such project or portion thereof is located on December 1 of each year. The corporation shall not be liable to make any such payments in lieu of taxes, except to the extent that moneys have been deposited with it for the specific purpose of making such payments in lieu of taxes. The liability for such payments in lieu of taxes shall constitute a general obligation of the participating institution. Upon any failure of such participating institution to make such payments in lieu of taxes as herein provided, no liens of any nature shall attach against any project, or any portion thereof, or against the assets or revenues of such participating institution, pledged to secure bonds or other obligations of the corporation for the period during which bonds or other obligations issued to finance the project are outstanding; provided, however, the city or town shall have a lien to secure the making of such payments in lieu of taxes which lien shall attach against all real estate of the participating institution not pledged, mortgaged or otherwise encumbered to secure bonds or other obligations of the corporation and which lien shall further attach against all real estate comprising the project but only on the date the bonds or other obligations issued to finance such project or part thereof have been fully retired. The corporation shall within 5 days of such date notify such city or town of the date on which the bonds or other obligations issued to finance the project or part thereof have been fully retired. The city or town may enforce the foregoing liens by a collector's sale of property subject to such liens in the manner provided in RSA 80. Notwithstanding the foregoing provisions, the governing body of such city or town, as defined in RSA 203:3, III, may agree with such participating institution to waive its rights to such payments in lieu of taxes, or any portion thereof, over the period during which bonds or other obligations issued to finance the project are outstanding or for some lesser period of time.

**Source.** 1969, 318:1. 1971, 198:10; 554:2. 1991, 298:8, eff. Aug. 19, 1991.

### 195–D:16 Revenue Refunding Bonds.

I. The corporation is authorized to provide for the issuance of its revenue bonds for the purpose of refunding any revenue bonds of the corporation then outstanding, including the payment of any redemption premium thereon and any interest accrued or to accrue to the earliest or subsequent date of redemption, purchase or maturity of such revenue bonds, and, if judged advisable by the corporation, for the additional purpose of paying all or any part of the cost of constructing and acquiring additions, improvements, extensions, or enlargements of a project or any portion thereof.

II. The proceeds of any such revenue bonds issued for the purpose of refunding outstanding revenue bonds may, in the discretion of the corporation, be applied to the purchase or retirement at maturity or redemption of such outstanding revenue bonds either on their earliest or any subsequent redemption date, and may, pending such application, be placed in escrow to be applied to such purchase or retirement at maturity or redemption on such date as may be determined by the corporation.

III. Any such escrowed proceeds, pending such use, may be invested and reinvested in obligations of or guaranteed by the United States of America, or in obligations of agencies of the United States of America, or in certificates of deposit or time deposits secured by obligations of or guaranteed by the United States of America, maturing at such time or times that are appropriate to assure the prompt payment, as to principal, interest, and redemption premium, if any, of the outstanding revenue bonds to be so refunded. The interest, income, and profits, if any, earned or realized on any such investment may also

be applied to the payment of the outstanding revenue bonds to be so refunded. After the terms of the escrow have been fully satisfied and carried out, any balance of such proceeds and interest, income and profits, if any, earned or realized on the investments thereof may be returned to the corporation for use by it in any lawful manner.

IV. The portion of the proceeds of any such revenue bonds issued for the additional purpose of paying all or any part of the cost of construction and acquiring additions, improvements, extensions or enlargements of a project may be invested and reinvested in obligations of or guaranteed by the United States of America, or in obligations of agencies of the United States of America, or in certificates of deposit or time deposits secured by obligations of or guaranteed by the United States of America, maturing not later than the time or times when such proceeds will be needed for the purpose of paying all or any part of such cost. The interest, income and profits, if any, earned or realized on such investment may be applied to the payment of all or any part of such cost or may be used by the corporation in any lawful manner.

V. All such revenue bonds shall be issued and secured and are subject to the provisions of this chapter in the same manner and to the same extent as any other revenue bonds issued pursuant to this chapter.

**Source.** 1969, 318:1. 1970, 16:20, 21, eff. June 27, 1970.

### 195–D:17 Bonds Eligible for Investment.

Bonds issued by the corporation under the provisions of this chapter are securities in which all public officers and public bodies of the state and its political subdivisions, all insurance companies, trust companies, banking associations, credit unions, building and loan associations, investment companies, executors, administrators, trustees and other fiduciaries, pension, profit-sharing, and retirement funds may properly invest funds, including capital in their control or belonging to them. Such bonds are securities which may properly be deposited with and received by any state or municipal officer or any agency or political subdivision of the state for any purpose for which the deposit of bonds or other obligations of the state is now or may be authorized by law after August 29, 1969.

**Source.** 1969, 318:1, eff. Aug. 29, 1969.

### 195–D:18 Biennial Report and Audit.

I. Within 4 months after the close of the second fiscal year of the corporation and biennially thereafter, it shall make a report to the governor and council of its activities for both preceding fiscal years and such report shall set forth a complete operating and financial statement covering the corporation's operations during the 2 preceding fiscal years including a complete and detached report setting forth:

(a) Its operations and accomplishments;

(b) Its receipts and expenditures during each preceding fiscal year in accordance with the categories or classifications established by the corporation for its operating and capital outlay purposes;

(c) Its assets and liabilities at the end of each preceding fiscal year; and

(d) A schedule of its bonds and notes outstanding at the end of each preceding fiscal year, together with a statement of the amounts redeemed and incurred during each preceding fiscal year.

II. The corporation shall cause an audit of its books and accounts to be made at least once each second fiscal year by certified public accountants and the cost thereof shall be paid by the corporation from funds available to it pursuant to this chapter.

**Source.** 1969, 318:1. 1971, 198:11. 1973, 140:28, eff. Jan. 1, 1974.

### 195–D:19 Source of Payment of Expenses.

All expenses incurred in carrying out the provisions of this chapter shall be payable solely from funds provided under the authority of this chapter and no liability or obligation shall be incurred by the corporation under this chapter, beyond the extent to which moneys shall have been provided under the provisions of this chapter.

**Source.** 1969, 318:1, eff. Aug. 29, 1969.

### 195–D:20 State Not Liable.

The state is not liable for the payment of the principal of or interest on any bonds of the corporation, or for the performance of any pledge, mortgage, obligation or agreement of any kind whatsoever which may be undertaken by the corporation, and none of the bonds of the corporation nor any of its agreements or obligations shall be construed to constitute an indebtedness of the state within the meaning of any constitutional or statutory provision whatsoever, nor shall the issuance of bonds under the provisions of this chapter directly or indirectly or contingently obligate the state or any municipality or political subdivision thereof to levy or to pledge any form of taxation whatever therefor or to make any appropriation for their payment.

**Source.** 1969, 318:1, eff. Aug. 29, 1969.

**195–D:21 Procedure Before Issuance of Bonds.**

Notwithstanding any other provision of this chapter, the corporation is not empowered to undertake any project or refinancing of existing indebtedness authorized by this chapter unless, prior to the issuance of any bonds hereunder, the governor and his council, or their designee, have found after a hearing thereon that:

I. In the case of undertaking a project, the construction and acquisition of such project will enable or assist a participating educational institution to provide education or a participating health care institution to provide health care facilities; and

II. Such project to be undertaken or a project to which the refinancing of existing indebtedness relates will be leased to, or owned by, a financially responsible participating institution or an affiliate thereof; and

III. Adequate provision has been, or will be, made for the payment of the cost of the construction and acquisition of such project to be undertaken or for the refinancing of existing indebtedness and that under no circumstances will the state be obligated directly or indirectly, for the payment of the principal of, or interest on, any obligations issued to finance such construction and acquisition or to provide for the refinancing of existing indebtedness, or obligations to which such refinancing of existing indebtedness relates; and

IV. Adequate provision has been, or will be, made in any lease or mortgage or financing of the project to be undertaken or any property leased or mortgaged or financed in connection with the issuance of bonds or notes hereunder for the payment of all costs of operation, maintenance and upkeep of such project or property by the lessee, sublessee, mortgagor, borrower or occupant so that under no circumstances will the state be obligated, directly or indirectly, for the payment of such costs; and

V. In the case of undertaking a project, adequate provision has been made to obligate a participating educational institution to hold and use the project for educational purposes or to obligate a participating health care institution to hold and use the project for health care purposes so long as the principal of and interest on bonds or other obligations issued by the corporation to finance the cost of such project or projects, including any refunding bonds issued to refund and refinance such bonds, have not been fully paid and retired and all other conditions of the resolution or trust agreement authorizing and securing the same have not been satisfied and the lien of such resolution or trust agreement has not been released in accordance with the provisions thereof; and

VI. The construction and acquisition of such project or projects or any refinancing of existing indebtedness will be within the authority conferred by this chapter upon the corporation; and

VII. In the case of undertaking a project, the construction and acquisition of such project or projects serves a need presently not fulfilled in providing education or health care facilities and is of public use and benefit; and

VIII. In the case of refinancing of existing indebtedness, such refinancing will assist the participating institution in either lowering the cost of providing education or health care facilities or such refinancing is in connection with a project being provided by the participating institution.

**Source.** 1969, 318:1. 1970, 16:22, 23. 1971, 198:12. 1979, 384:8. 1981, 532:5–8. 1982, 16:5–8. 1991, 298:9, eff. Aug. 19, 1991. 2018, 331:12, 13, eff. June 25, 2018.

**195–D:22 Agreement of the State.**

The state does hereby pledge to and agree with the holders of any bonds, notes and other obligations issued under this chapter, and with those parties who may enter into contracts with the corporation pursuant to the provisions of this chapter, that the state will not limit, alter, restrict, or impair the rights hereby vested in the corporation and the participating institutions to acquire, construct, reconstruct, maintain and operate any project as defined in this chapter or to establish, revise, charge and collect rates, rents, fees and other charges as may be convenient or necessary to produce sufficient revenues to meet the expenses of maintenance and operation thereof and to fulfill the terms of any agreements made with the holders of bonds, notes or other obligations authorized and issued by this chapter, and with the parties who may enter into contracts with the corporation pursuant to the provisions of this chapter, or in any way impair the rights or remedies of the holders of such bonds, notes or other obligations or such parties until the bonds, notes and such other obligations, together with interest thereon, with interest on any unpaid installment of interest and all costs and expenses in connection with any action or proceeding by or on behalf of the bondholders, are fully met and discharged and such contracts are fully performed on the part of the corporation. However, nothing in this chapter precludes such limitation or alteration if and when adequate provision is made by law for the protection of the holders of such bonds, notes or other obligations of the corporation or

those entering into such contracts with the corporation. The corporation is authorized to include this pledge and undertaking for the state in such bonds, notes or other obligations or contracts.

**Source.** 1969, 318:1. 1971, 198:13. 1991, 298:10, eff. Aug. 19, 1991.

### 195–D:23 Act Cumulative; No Notice Required.

Neither this chapter nor anything herein contained is or shall be construed as a restriction or limitation upon any powers which the New Hampshire health and education facilities authority might otherwise have under any laws of this state, and this chapter is cumulative of any such powers. This chapter does and shall be construed to provide a complete, additional, and alternative method for the doing of the things authorized thereby and shall be regarded as supplemental and additional to powers conferred by other laws. However, the issuance of revenue bonds, notes and other obligations and revenue refunding bonds under the provisions of this chapter need not comply with the requirements of any other state law applicable to the issuance of bonds, notes and other obligations and contracts for the construction and acquisition of any project undertaken pursuant to this chapter need not comply with the provisions of any other state law applicable to contracts for the construction and acquisition of state owned property. No proceedings, notice or approval shall be required for the issuance of any bonds, notes and other obligations or any instrument as security therefor, except as is provided in this chapter.

**Source.** 1969, 318:1. 1970, 16:24. 1971, 198:14. 1999, 253:14, eff. July 9, 1999.

### 195–D:24 Act Liberally Construed.

This chapter, being necessary for the welfare of the state and its inhabitants, shall be liberally construed so as to effect its purposes.

**Source.** 1969, 318:1, eff. Aug. 29, 1969.

## CHAPTER 195–E

## LOAN CORPORATIONS



### 195–E:1 Declaration of Policy.

It is declared to be the policy of this state that for the benefit of the people of the state, the increase of their commerce, welfare, and prosperity and the improvement of their health and living conditions, it is essential that students attending higher educational institutions be given the fullest opportunity to learn and develop their intellectual and mental capacities. It is recognized that the financial costs to obtain an education beyond the high school level are often burdensome or prohibitive, and it is essential that qualified students or their parents be provided with low cost financial assistance in order that the students may attend such schools and to reduce the total amount of loan payments following graduation. In order to achieve this policy, it is essential that state residents be provided with an appropriate source of financing their postsecondary educations and that educational institutions wherever situated be provided with appropriate additional means to assist qualified students or their parents financially so that the students might achieve the required levels of learning and development of their intellectual and mental capacities. In order to assure the continued viability of existing loan programs whereby educational loans are made available to qualified students or their parents, it is necessary and desirable to provide an efficient, stable secondary market to which such loans may be sold, transferred, or pledged in exchange for funds with which the original lender will be enabled to continue or increase participation in such loan programs. Therefore, the general court has conferred certain powers on educational institutions, on loan corporations, on the New Hampshire higher education assistance foundation, and on the New Hampshire health and education facilities authority to assure the successful origination, distribution and collection of loans so as to accomplish the purposes of this chapter, all to the public benefit and good. It is further declared that the exercise by the educational institutions, the loan corporations, the New Hampshire higher education assistance foundation and the New Hampshire health and education facilities authority of the powers conferred under this

chapter will constitute the performance of an essential governmental function.

**Source.** 1981, 229:1. 1983, 112:1. 1986, 23:1. 1994, 86:3. 1999, 253:15. 2005, 120:1, eff. Aug. 14, 2005.

### 195–E:2 Definitions.

In this chapter:

I. "Authority" means the New Hampshire health and education facilities authority, established under RSA 195–D:4.

II. "Loan corporation" means any corporation established under RSA 195–E:3. A loan corporation may make student loans to students of more than one qualified educational institution, or to the parents of those students.

III. "Educational institution" means any institution for postsecondary or higher education as defined in RSA 195–D:3, V, and in addition means any institution for postsecondary training and education or which awards an undergraduate or advanced degree, whether located within or without the state of New Hampshire.

IV. "Qualified educational institution" means any educational institution whose principal campus or principal facilities are located within the state of New Hampshire.

V. "Eligible student" means any student attending a qualified educational institution and any New Hampshire resident attending an educational institution.

VI. "Foundation" means the New Hampshire higher education assistance foundation or any voluntary nonprofit corporation organized under RSA 292 by 5 members of the board of trustees of the New Hampshire higher education assistance foundation who have been duly authorized so to do by a ⅔ vote of the said board of trustees.

VII. "Parent" means mother, father or adoptive parent and shall include any person with the duty and authority to make important decisions in matters having a permanent effect on the life and development of the student and to be concerned about the general welfare of the student.

**Source.** 1981, 229:1. 1983, 112:2. 1986, 23:2, 3. 1999, 253:16, eff. July 9, 1999.

### 195–E:3 Loan Corporation Authorized.

I. Any qualified educational institution may form a voluntary nonprofit corporation in accordance with this chapter for the purposes specified in this chapter. A qualified educational institution may form a loan corporation either:

(a) By organizing a new voluntary nonprofit corporation as provided in this chapter; or

(b) By amending the articles of agreement and bylaws of an existing voluntary nonprofit corporation organized under RSA 292 to conform the articles and bylaws to the requirements of RSA 195–E:5-9; or

(c) By adopting the articles of agreement and bylaws of an existing corporation validly organized by any other entity pursuant to subparagraphs (a) or (b); or

(d) By merging any voluntary nonprofit corporation organized under RSA 292 with any existing loan corporation validly organized by any other entity pursuant to subparagraphs (a) or (b).

II. The provisions of RSA 195–E:3-9 shall not apply to the foundation.

**Source.** 1981, 229:1. 1983, 112:3, eff. May 25, 1983.

### 195–E:4 Incorporators.

I. A qualified educational institution may, by a ⅔ vote of its board of trustees or other governing body, agree to form a loan corporation for the purpose of providing low cost financial assistance to qualified students enrolled at the institution or to their parents. The articles of agreement, articles of amendment, articles of merger, or agreement adopting the articles of agreement and bylaws of any existing loan corporation shall be signed by 5 members of the board of trustees or other governing body who are so authorized in writing by the board of trustees or other body. If a loan corporation is formed pursuant to RSA 195–E:3, I(a) or (b), the 5 members of the board of trustees or other governing body shall act as the incorporators of the loan corporation.

II. The incorporators shall be deemed to be acting in their capacities as members of and on behalf of the board of trustees or other governing body.

**Source.** 1981, 229:1. 1983, 112:4. 1986, 23:4, eff. June 17, 1986.

### 195–E:5 Articles of Agreement.

The articles of agreement of a loan corporation shall contain the following:

I. The name of the loan corporation, which shall clearly identify the qualified educational institution or institutions involved and shall contain the words "Loan Corporation";

II. The object for which the loan corporation is established;

III. The provisions for disposition of the corporate assets in the event of dissolution of the loan corporation;

IV. The address at which the business of the loan corporation is to be carried on;

V. The amount of capital stock, if any, or the number of shares, if any;

VI. The signature and post office address of each of the incorporators;

VII. A true copy of the vote of the educational institution agreeing to form a loan corporation; and

VIII. A true copy of the authorization for each incorporator to sign the articles of incorporation.

**Source.** 1981, 229:1. 1983, 112:5, eff. May 25, 1983.

**195–E:6 Repealed by 1983, 112:12, eff. May 25, 1983.**

**195–E:7 Recording.**

The secretary of state shall record the articles of agreement in his office. When so recorded the signers shall be a loan corporation. The loan corporation and its officers and members shall have all the rights and powers and shall be subject to all the duties and liabilities as those of voluntary corporations established under RSA 292; provided that these rights, powers, duties or liabilities may be limited or expanded by this chapter.

**Source.** 1981, 229:1, eff. Aug. 10, 1981.

**195–E:8 Fees for Recording.**

The fee for recording the articles of agreement and any record of amendment in the office of the secretary of state shall be the same as the fees which are required for voluntary nonprofit corporations under RSA 292:5.

**Source.** 1981, 229:1, eff. Aug. 10, 1981.

**195–E:9 Repealed by 1983, 112:12, eff. May 25, 1983.**

**195–E:10 Issuance of Bonds.**

I. The authority is empowered to issue bonds and other obligations for the purposes specified in this chapter in accordance with this section.

II. [Repealed.]

III. No bonds or other obligations shall be issued except after the governor and council, or their designee, after hearing, shall have found that:

(a) The origination or acquisition of low cost loans by a loan corporation, a qualified educational institution or the foundation to qualified students or their parents will assist the students in attending their educational institutions and will lower the cost to the students of financing their educations;

(b) Adequate provision has been or will be made for the payment of the principal of, or interest on, any obligations issued by the authority to finance such loan programs.

(c) Adequate provision has been made for the payment of the reasonable expenses of administration of the loan programs as are necessitated by the programs.

(d) The proposed procedures for redistribution of the bond proceeds, collection of student payments, interest charges and any other matters concerning the administration of the loan program are in conformance with law.

IV. The authority, to further its student loan programs, shall have the power to:

(a) Determine the nature of student loan programs for eligible students or their parents for which the authority will issue bonds;

(b) Enter into contracts for any or all student loan program purposes;

(c) Enter into contracts for the administration or servicing of student loans;

(d) Designate the foundation, a particular qualified educational institution or institutions, or loan corporation or corporations, as its agent for accomplishing its purposes;

(e) Make loans with proceeds of the sale of its bonds to the foundation, any qualified educational institution, or any loan corporation in accordance with an agreement between the authority and such other party or parties; provided that the proceeds of any loan made to the foundation shall be used by the foundation to purchase, originate or make loans to any eligible student or to the parents of any eligible student, but the proceeds of any loan made to a qualified educational institution or to a loan corporation shall be used by such qualified educational institution or such loan corporation to purchase, originate or make loans only to eligible students attending qualified educational institutions, or to the parents of these students;

(f) Receive and accept from any public agency or any other source loans, grants, guarantees or insurance with respect to student loans and the student loan programs;

(g) Establish guidelines governing the actions of the foundation, loan corporations, and qualified ed-

ucational institutions in participating in the authority's student loan program; and

(h) Exercise all powers incidental and necessary for the performance of the powers listed in this paragraph.

**Source.** 1981, 229:1. 1983, 112:6, 7. 1986, 23:5–7. 1994, 86:4, 6, eff. July 5, 1994.

### 195–E:11 Rights of the Authority, Foundation, Qualified Educational Institution and Loan Corporations.

In issuing bonds for a student loan program, the authority, the foundation, any qualified educational institution and any loan corporations created under this chapter shall have all the power and authority and be subject to all of the rights, liabilities and responsibilities as provided in RSA 195–D, insofar as these provisions do not conflict with this chapter. Nothing in this chapter shall otherwise limit any other bond issuance or other powers of the authority set forth in RSA 195–D.

**Source.** 1981, 229:1. 1983, 112:8, eff. May 25, 1983.

### 195–E:12 Credit of State Not Pledged.

I. Revenue bonds issued under this chapter do not constitute a debt or liability of the state or of any municipality or political subdivision of the state or a pledge of the faith and credit of the state or of any municipality or political subdivision.

II. These revenue bonds are payable solely from the revenues or other funds derived from student loans, either directly or indirectly provided by this chapter for their payment. All such revenue bonds shall contain on the face of the bond a statement to the effect that neither the state nor the authority is obligated to pay the bond or the interest on the bond except from revenues or other funds derived from student loans, either directly or indirectly provided by this chapter, and that neither the faith and credit nor the taxing power of the state or of any municipality or political subdivision of the state is pledged to the payment of the principal of or the interest on the bonds. The issuance of revenue bonds under this chapter shall not directly or indirectly or contingently obligate the state or any municipality or political subdivision of the state to levy or to pledge any form of taxation whatever for the bonds or to make any appropriation for their payment.

**Source.** 1981, 229:1, eff. Aug. 10, 1981.

### 195–E:13 Source of Payment of Expenses.

All reasonable expenses incurred in carrying out the provisions of this chapter shall be payable by the foundation, the respective qualified educational institutions, or the respective loan corporations, as the case may be, and no liability or obligation shall be incurred by the authority or any other state agency.

**Source.** 1981, 229:1. 1983, 112:9, eff. May 25, 1983.

### 195–E:14 Administration of Loans; No Discrimination.

I. The foundation, a qualified educational institution and a loan corporation shall have the full power and authority and be subject to all rights, responsibilities and liabilities for the administration of a loan program and for the distribution and collection of loans to qualified students or their parents, including the determination of who is eligible to receive loans, the amounts of the loans, repayment schedules and interest rates to be charged; provided that the terms are in accordance with law and do not discriminate against any person on account of race, creed, national origin, sex, gender identity, sexual orientation, or age. In the case of student loans made to eligible students or the parents of such students who attend educational institutions that are not qualified educational institutions, the foundation shall have primary responsibility for the administration of such portion of the loan program and the servicing of such loans; provided, however, that this sentence shall not prohibit the foundation from contracting with another entity for assistance in such administration and servicing as agent for the foundation.

II. The foundation, any qualified educational institution, and any loan corporation are authorized to contract with other service corporations to provide bookkeeping, data processing, loan servicing, loan administration and related fiscal services required for the conduct of their business.

**Source.** 1981, 229:1. 1983, 112:10. 1986, 23:8, eff. June 17, 1986. 2019, 332:14, eff. Oct. 15, 2019.

### 195–E:15 Exemption From Taxation.

The exercise of the powers granted by this chapter will be in all respects for the benefit of the people of the state, for the increase of their commerce, welfare and prosperity, and for the improvement of their health and living conditions, and will constitute the performance of an essential governmental function. Neither the authority nor the loan corporations shall be required to pay any taxes or assessment upon the activities of the authority or the loan corporations or their agents in the administration and operation of loan programs pursuant to this chapter.

**Source.** 1981, 229:1, eff. Aug. 10, 1981.

### 195–E:15–a Designation of Eligible Lender for Federally Guaranteed Student Loans.

New Hampshire Higher Education Loan Corporation, a New Hampshire voluntary, nonprofit corporation, is hereby designated as "eligible lender" within the meaning of 20 U.S.C. section 1085(d)(1)(D), to enable it to provide a secondary market for federally guaranteed student loans. Furthermore, New Hampshire Higher Education Loan Corporation is requested to acquire student loan notes pursuant to and in accordance with the provisions of 26 U.S.C. section 150(d), as it may be amended from time to time.

**Source.** 1993, 335:19. 1994, 86:5, eff. July 5, 1994.

### 195–E:16 Severability.

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

**Source.** 1981, 229:1, eff. Aug. 10, 1981.

## CHAPTER 195–F

## NEW HAMPSHIRE MUNICIPAL BOND BANK EDUCATIONAL INSTITUTIONS BOND FINANCING ACT



### 195–F:1 Declaration of Policy.

It is declared to be the policy of the state that for the benefit of the people of the state, the increase of their commerce, welfare, and prosperity and the improvement of their living conditions, it is essential that this and future generations of youths be given the fullest opportunity to learn and develop their intellectual and mental capacities; that it is essential that educational institutions, as defined herein, within the state be provided with appropriate additional means to assist such youths in achieving the required levels of learning and development of their intellectual and mental capacities; that it is essential that the state, through the New Hampshire municipal bond bank acting on its behalf, foster and promote by all reasonable means the provision of adequate markets and facilities for borrowing money by educational institutions, as defined herein, for the financing of their projects and improvements from proceeds of bonds or notes issued by such educational institutions, and to assist such educational institutions in fulfilling their needs for such purposes by creation of indebtedness and to the extent possible to encourage continued investor interest in the bonds or notes of such educational institutions as sound and preferred securities for investment, particularly for those educational institutions not otherwise able readily to borrow for such purposes at reasonable rates of interest, so as to accomplish the purposes of this chapter all to the public benefit and good.

**Source.** 1982, 5:1, eff. Feb. 19, 1982.

### 195–F:2 Citation.

This chapter shall be known as, and may be cited as, the New Hampshire municipal bond bank educational institutions bond financing act.

**Source.** 1982, 5:1, eff. Feb. 19, 1982.

### 195–F:3 Definitions.

As used in this chapter:

I. "Bank" means the New Hampshire municipal bond bank created and established by RSA 35–A:4.

II. "Bonds" means bonds of the bank issued pursuant to this chapter.

III. "Educational institution" means a public or other nonprofit institution situated within the state, which is either approved by the state board of education as a public academy under the standards pertaining to public high schools, and empowered to provide a program of education at the elementary or secondary level to students whose tuition costs are paid by the municipalities or the school districts in which the students reside, or any other institution which provides a program of education within the state which is preparatory for secondary, postsecondary, or higher education.

IV. "Educational institution project or improvement" means any structure designed for use as a

dining facility, academic building, administrative facility, library, research facility, faculty office facility, athletic facility, first-aid room or its equivalent, laboratory, maintenance, storage or utility facility, or any multi-purpose structure designed to combine 2 or more of the functions performed by the types of structures enumerated above, and shall include all real and personal property, lands, improvements, driveways, roads, approaches, pedestrian access roads, rights-of-way, utilities, easements, machinery and equipment, and all other appurtenances and facilities either on, above or under the ground which are used or usable in connection with any of the above mentioned structures, and shall also include landscaping, site preparation, furniture, machinery, equipment and other similar items necessary or convenient for the operation of a particular facility or structure in the manner for which its use is intended, but shall not include such items as books, fuel, supplies, or other items which are customarily considered as a current operating charge.

V. "Educational institution bond" means a bond or note or other evidence of debt issued by an educational institution and payable from the revenues of such educational institution and secured by the revenues, the mortgage, the full faith and credit of an educational institution or any other lawfully pledged security of an educational institution, including a pledge of revenues to be received by the educational institution pursuant to agreements between the educational institution and school districts entered into pursuant to RSA 194:22.

VI. "Educational institution general fund" means the fund created or established as provided in RSA 195–F:7.

VII. "Educational institution reserve fund" means any of the educational institution reserve funds created or established as provided in RSA 195–F:6.

VIII. "Fully marketable form" means an educational institution bond duly executed and accompanied by such opinion of counsel and other documentation as is customary in the field of educational institution financing, provided that the educational institution bond so executed need not be printed or lithographed nor be in more than one denomination.

IX. "Notes" means any notes of the bank issued pursuant to this chapter.

X. "Revenues" means all fees, charges, moneys, profits, payments of principal of or interest on educational institution bonds and other investments, gifts, grants, contributions, appropriations and all other income derived or to be derived by the bank under this chapter.

**Source.** 1982, 5:1. 1998, 69:1, eff. July 11, 1998.

### 195–F:4 Bond Bank's Authority.

I. The New Hampshire municipal bond bank established pursuant to RSA 35–A is hereby authorized and empowered to lend money to educational institutions through the purchase by the bank of educational institution bonds in fully marketable form. The bank, for the purposes authorized by this chapter, including the funding of interest during construction and for not more than 18 months thereafter, is hereby authorized and empowered to authorize and issue its bonds and notes payable solely from the revenues or funds therefor available to the bank for financing educational institution projects or improvements, and to otherwise assist educational institutions as provided in this chapter.

II. The bank shall establish a special division to administer the purchase and sale of educational institution bonds and of its bonds and notes issued pursuant to this chapter.

III. The bank shall administer the educational institution general fund and educational institution reserve fund established by this chapter separate from those general funds and reserve funds established pursuant to RSA 35–A and RSA 374–C.

IV. Bonds and notes of the bank issued under the provisions of this chapter shall not be in any way a debt or liability of the state and shall not create or constitute any indebtedness, liability or obligation of the state or be or constitute a pledge of the faith and credit of the state but all such bonds and notes, unless funded or refunded by bonds or notes of the bank, shall be payable solely from revenues or funds pledged or available for their payment as authorized herein. Each bond and note shall contain on its face a statement to the effect that the bank is obligated to pay the principal thereof and the interest thereon only from revenues or funds of the bank and that the state is not obligated to pay such principal or interest and that neither the faith and credit nor the taxing power of the state is pledged to the payment of the principal of or the interest on such bonds or notes.

V. All expenses incurred in carrying out the provisions of this chapter shall be payable solely from revenues or funds provided or to be provided under the provisions of this chapter and nothing in this chapter shall be construed to authorize the bank to incur any indebtedness or liability payable by the state.

VI. The bank may contract with holders of its bonds and notes in the manner provided in RSA 35–A:9.

VII. In the event of default by the bank on any bonds or notes issued under this chapter, a trustee shall be appointed pursuant to RSA 35–A:15, but shall act only with respect to such bonds or notes issued hereunder.

VIII. The provisions of RSA 35–A:4; RSA 35–A:6, I through X, inclusive; XI, but with respect to educational institutions rather than governmental units, and XV; RSA 35–A:7, II through IV, inclusive; RSA 35–A:8, I and III through VIII, inclusive; RSA 35–A:9, but with respect to educational institution bonds rather than municipal bonds; RSA 35–A:10; RSA 35–A:15, but with respect to educational institution bonds rather than municipal bonds; RSA 35–A:16; RSA 35–A:17; RSA 35–A:23; RSA 35–A:24, but with respect to educational institutions and educational institution bonds rather than governmental units and municipal bonds; RSA 35–A:25; RSA 35–A:26; RSA 35–A:36; and RSA 35–A:37 shall apply as they may be applicable to the financing of educational institution projects or improvements in accordance with this chapter.

IX. Notwithstanding any other provision of this chapter, the bank shall not lend money to an educational institution for any educational institution project or improvement as authorized by this chapter unless, prior to the issuance of any bonds hereunder, the bank has found that:

(a) The construction and acquisition of such project or improvement will enable or assist an educational institution to provide education within the state; and

(b) Such project or improvement will be leased to, or owned by, a financially responsible educational institution within the state; and

(c) Adequate provision has been, or will be, made for the payment of the cost of the construction and acquisition of such project or improvement and that under no circumstances will the state be obligated directly or indirectly, for the payment of the principal of, or interest on, any obligations issued to finance such construction and acquisition; and

(d) Adequate provision has been, or will be, made in any lease or mortgage of the project for the payment of all costs of operation, maintenance and upkeep of such project by the lessee, sublessee, mortgagor or occupant so that under no circumstances will the state be obligated, directly or indirectly, for the payment of such costs; and

(e) Adequate provision has been made to obligate the educational institution to hold and use the project for educational purposes so long as the principal of and interest on bonds issued by the bank to finance the cost of such project or improvement, including any refunding bonds issued to refund and refinance such bonds, have not been fully paid and retired and all other conditions of the resolution or trust agreement, if any, authorizing and securing the same have not been satisfied and the lien of such resolution or trust agreement has not been released in accordance with the provisions thereof;

(f) The lending of money by the bank to the educational institution is within the authority conferred by this chapter upon the bank; and

(g) The construction and acquisition of such project or improvement serves a need presently not fulfilled in providing education within the state and is of public use and benefit.

**Source.** 1982, 5:1, eff. Feb. 19, 1982.

### 195–F:5 General Power.

In addition to those powers enumerated in RSA 35–A:6, the bank shall have the authority to purchase or hold educational institution bonds at such prices and in such manner as the bank shall deem advisable and to sell educational institution bonds acquired or held by it at such prices without relation to cost and in such manner as the bank shall deem advisable. The bank may require the educational institution to secure the bonds as to payment of both principal and interest by a pledge of, lien upon or bond interest in, its revenues or properties, including a mortgage thereof, as the bank determines necessary to secure the payment of such bonds purchased and the interest thereon as the same become due. The bank may assign any such pledge, lien or bond interest to or for the benefit of the holders of its bonds. The bank may fix and prescribe any form of application or procedure to be required of an educational institution for the purpose of any loan or the purchase of its educational institution bonds, and to fix the terms and conditions of any such loan or purchase and to enter into agreements with educational institutions with respect to any such loan or purchase. The bank shall have the powers prescribed in RSA 35–A:8 with respect to bonds issued under this chapter, provided, however, that such bonds shall not be general obligations of the bank, but shall be special obligations of the bank payable only from the revenues pledged to

their payment. Any pledge of revenues or moneys under this chapter shall have the same effect as a pledge under RSA 35–A:10.

**Source.** 1982, 5:1, eff. Feb. 19, 1982.

### 195–F:6 Reserve Funds.

I. The bank may create and establish one or more educational institution reserve funds, hereafter referred to as "reserve funds", and shall pay into each such reserve fund any proceeds of sale of notes or bonds to the extent provided in the resolution or resolutions of the bank authorizing the issuance thereof and any other moneys which may be or become available to the bank for the purpose of such fund from any other source or sources. All moneys held in any reserve fund are hereby pledged to, and charged with, the payment of the principal of and the interest on such bonds with respect to which such reserve fund may be established, as the same shall become due, and the redemption price or the purchase price of bonds retired by call or purchase as therein provided. The use and disposition of moneys to the credit of such reserve fund shall be subject to the provisions of the resolution authorizing the issuance of such bonds or of such trust agreement. Except as may otherwise be provided in such resolution or such trust agreement, such reserve fund shall be a fund for all such bonds issued pursuant to a particular resolution to provide financing for educational institutions without distinction or priority of any bond over another.

II. Moneys in any reserve fund shall not be withdrawn therefrom at any time in such amount as would reduce the amount of such fund to less than the reserve fund requirement, if any, established for such fund, as provided in paragraph IV, except for the purpose of making, with respect to bonds secured in whole or in part by such fund, payment when due, of principal, interest, redemption premiums and the sinking fund payments, if any, with respect to such bonds for the payment of which other moneys of the bank are not available. Any income or interest earned by any reserve fund resulting from the investment thereof or any other moneys therein may be transferred by the bank to other funds or accounts of the bank to the extent it does not reduce the amount of that reserve fund below the reserve fund requirements for such fund.

III. The bank shall not at any time issue bonds, secured in whole or in part by a reserve fund, if upon the issuance of such bonds, the amount in such reserve fund will be less than the reserve fund requirement for such fund, unless the bank at the time of issuance of such bonds shall deposit in such fund from the proceeds of the bonds issued, or from other sources, an amount which, together with the amount then in such fund, will not be less than the reserve fund requirement for such fund. The bank may at any time issue its bonds or notes for the purpose of providing any amount necessary to increase the amount in the reserve fund to the required debt service reserve, or to meet such higher or additional reserve as may be fixed by the bank with respect to such fund. In computing the amount of the required debt service reserve, investments, held as a part thereof shall be valued in the manner provided in the bond resolution.

IV. As used herein "reserve fund requirement" means, as of any date of computation, the amount or amounts, if any, required to be on deposit in the reserve fund as provided by resolution of the bank authorizing such bonds. The required reserve fund requirement shall be as of any date of computation, an aggregate amount of not more than 150 percent of the largest amount of money, required by the terms of all contracts between the bank and its bondholders to be raised in the then current or any succeeding calendar year for the payment of interest on and maturing principal of that portion of outstanding bonds the proceeds of which were applied solely to the purchase of educational institution bonds and sinking fund payments required by the terms of any such contracts to sinking funds established for the payment or redemption of such bonds, all calculated on the assumption that bonds shall cease to be outstanding after the date of such computation by reason of the payment of such bonds at their respective maturities and the payments of such required moneys to sinking funds and the application thereof in accordance with the terms of all such contracts to the retirement of bonds.

V. Moneys at any time in the reserve fund may be invested in the same manner as permitted for investment of funds belonging to the state or held in the treasury.

**Source.** 1982, 5:1, eff. Feb. 19, 1982.

### 195–F:7 Educational Institution General Fund.

I. The bank shall establish and maintain a fund called the "educational institution general fund" which shall consist of and in which there shall be deposited (1) fees received or charges made by the bank for use of its services or facilities under this chapter; (2) any moneys which the bank shall transfer thereto from the reserve fund pursuant to RSA 195–F:6, II; (3) moneys received by the bank as

payments of principal of or interest on educational institution bonds purchased by the bank, or received as proceeds of sale of any educational institution bonds or investment obligations of the bank, or received as proceeds of sale of bonds or notes of the bank, and required under the terms of any resolution of the bank or contract with the holders of its bonds or notes to be deposited therein; (4) any moneys required under the terms of any resolution of the bank or contract with the holders of its bonds or notes to be deposited therein; and (5) any moneys transferred thereto from any other fund or made available for the purpose of the fund or for the operating expenses of the bank. Any such moneys in the educational institution general fund may, subject to any contracts between the bank and its bondholders or noteholders, be transferred to the educational institution reserve fund to pay principal of or interest on bonds or notes of the bank when the same shall become due and payable, whether at maturity or upon redemption including payment of any premium upon redemption prior to maturity, and any moneys in the educational institution general fund may be used for the purchase of educational institution bonds and for all other purposes of the bank including payment of its operating expenses.

II. No amount shall be paid or expended out of the educational institution general fund or from any account therein (which account the bank may establish therein for the purpose of payment of its operating expenses) for operating expenses of the bank relative to the purchase, holding and sale of educational institution bonds in any year in excess of the amount provided for the operating expenses of the educational institution division of the bank by the annual budget then in effect with respect to such year or any amendment thereof in effect at the time of such payment or expenditure for operating expenses relative to this chapter.

III. The bank may at any time use any available moneys in the educational institution general fund for the purchase of its bonds or notes or for the redemption thereof, and any such bonds purchased for retirement shall be thereupon cancelled.

IV. The bank is hereby authorized and empowered to create and establish in the educational institution general fund such accounts, subaccounts or special accounts which in the opinion of the bank are necessary, desirable or convenient for the purposes of the bank under this chapter.

**Source.** 1982, 5:1, eff. Feb. 19, 1982.

### 195–F:8 Additional Accounts.

The bank may establish such additional and further reserves or such other funds or accounts as may be, in its discretion, necessary, desirable or convenient to further the accomplishment of the purposes of the bank delineated under this chapter or to comply with the provisions of any agreement made by or any resolution of the bank.

**Source.** 1982, 5:1, eff. Feb. 19, 1982.

### 195–F:9 Agreement by State.

The state does pledge to and agree with the holders of the bonds or notes issued pursuant to authority contained in this chapter that the state will not limit or restrict the rights hereby vested in the bank to purchase, acquire, hold, sell or dispose of educational institution bonds or other investments or to make loans to educational institutions or to establish and collect such fees or other charges as may be convenient or necessary to produce sufficient revenues to meet the expenses of operation of the bank, and to fulfill the term of any agreements made with the holders of its bonds or notes authorized by this chapter or in any way impair the rights or remedies of the holders of such bonds or notes until the bonds and notes, together with interest thereon, and interest on any unpaid installments of interest, and all costs and expenses in connection with any action or proceedings by or on behalf of such holders are fully met, paid and discharged.

**Source.** 1982, 5:1, eff. Feb. 19, 1982.

### 195–F:10 Legal Investments.

To the extent that other securities of an educational institution are legal investments under state law, the state and all public officers, and agencies thereof, all banks, trust companies, savings banks and institutions, building and loan associations, savings and loan associations, investment companies, and other persons carrying on a banking business, all insurance companies, insurance associations and other persons carrying on an insurance business, and all executors, administrators, guardians, trustees and other fiduciaries, may legally invest any sinking funds, moneys or other funds belonging to them or within their control in any bonds or notes issued pursuant to this chapter, and such bonds or notes shall be authorized security for any and all public deposits.

**Source.** 1982, 5:1, eff. Feb. 19, 1982.

**195–F:11 Exemption From Taxes, Levy and Sale.**

I. All property of the educational institution division of the bank is hereby declared to be public property devoted to an essential public and governmental function and purpose and shall be exempt from all taxes and special assessments of the state or any subdivision thereof. All bonds or notes issued pursuant to this chapter are hereby declared to be issued by a body corporate and public of this state and for an essential public and governmental purpose and such bonds and notes, and the interest thereon and the income therefrom, and all fees, charges, funds, revenues, income and other moneys pledged or available to pay or secure the payment of such bonds or notes, or interest thereon, shall at all times be exempt from taxation except for transfer, inheritance and estate taxes.

II. All property of the educational institution division of the bank shall be exempt from levy and sale by virtue of an execution and no execution or other judicial process shall issue against the same nor shall any judgment against the bank be a charge or lien upon its property; provided, that nothing herein contained shall apply to or limit the rights of the holder of any bonds or notes to pursue any remedy for the enforcement of any pledge or lien given by the bank on its revenues or other moneys.

**Source.** 1982, 5:1, eff. Feb. 19, 1982.

**195–F:12 Insurance or Guaranty.**

The bank is authorized and empowered to obtain from any department or agency of the United States or from any nongovernmental insurer any insurance or guaranty (to the extent now or hereafter available) as to, or of, or for, the payment or repayment of, interest or principal, or both, or any part thereof, on any bonds or notes issued by the bank, or on any educational institution bonds purchased or held by the bank, pursuant to the provisions of this chapter; and notwithstanding any other provisions of this chapter to enter into any agreement or contract whatsoever with respect to any such insurance or guaranty except to the extent that the same would in any way impair or interfere with the ability of the bank to perform and fulfill the terms of any agreement made with the holders of the bonds or notes of the bank.

**Source.** 1982, 5:1, eff. Feb. 19, 1982.

**195–F:13 Federal Funds; Withholding of Moneys.**

I. The state treasurer is hereby authorized to receive from the United States or from any department or agency thereof any amounts of money as and when appropriated, allocated, granted, turned over or in any way provided for the purposes of this chapter, and said amounts shall be paid to the bank and be available to the bank.

II. Any funds or moneys in the custody or control of the state treasurer whether the same shall become available by reason of any grant, allocation or appropriation by the United States or the state or agencies thereof to assist any educational institution in payment of its educational institution bonds owned or held by the bank, or required by the terms of any other law to be paid to holders or owners of educational institution bonds upon failure or default of an educational institution to pay the principal of or interest on its educational institution bonds as and when due and payable, shall, to the extent that any such funds or moneys be applicable with respect to educational institution bonds of a particular educational institution which are then owned or held by the bank and as to which such educational institution has failed or defaulted to make payment of principal or interest as and when due, be paid to the bank for deposit in the reserve fund and made available to the bank.

III. To the extent that the state treasurer shall be the custodian at any time of any funds of moneys due or payable to an educational institution at any time subsequent to written notice to the state treasurer from the bank to the effect that such educational institution has not paid or is in default as to the payment of principal of or interest on any educational institution bonds then held or owned by the bank, the state treasurer shall withhold the payment of such funds or moneys from such educational institution until the amount of such principal or interest then due and unpaid has been paid to the bank, or the state treasurer has been advised that arrangements, satisfactory to the bank, have been made for the payment of such principal and interest.

**Source.** 1982, 5:1, eff. Feb. 19, 1982.

**195–F:14 Additional Powers.**

In order to carry out the purposes and provisions of this chapter, the bank, in addition to any powers granted to it elsewhere in this chapter and in RSA 35–A, shall have the following powers:

I. To charge for its costs and services in review or consideration of any proposed loan to an educational institution or purchase of educational institution bonds, and to charge therefor whether or not such loan shall have been made or such educational institution bonds shall have been purchased;

II. In connection with any loan to an educational institution, to consider the need, desirability or eligibility of such loan and the ability of such educational institution to secure borrowed money from other sources and the costs thereof;

III. To fix and establish any and all terms and provisions with respect to any purchase of educational institution bonds by the bank, including date and maturities of such bonds, provision as to redemption or payment prior to maturity, and any and all other matters which in connection therewith are necessary, desirable or advisable in the judgment of the bank;

IV. To the extent permitted under its contracts with the holders of bonds or notes of the bank, to consent to any modification with respect to rate of interest, time and payment of any installment of principal or interest, security or any other term or bond or note, contract or agreement of any kind to which the bank is a party; and

V. To apply for, accept, receive and expend any grants or other moneys that may be made available to it by the federal government or any other public or private source for the purposes of this chapter.

**Source.** 1982, 5:1, eff. Feb. 19, 1982.

### 195–F:15 Limitations Not Applicable; Contracts of Educational Institutions; Terms of Bonds.

Notwithstanding the provisions of any law or statute applicable to or constituting any limitation on the maximum rate of interest per annum payable on bonds or notes, or as to annual interest cost to maturity of money borrowed or received upon issuance of bonds or notes, every educational institution is hereby authorized and empowered to contract to pay interest on, or an interest cost per annum for, money borrowed from the bank and evidenced by their educational institution bonds purchased by the bank notwithstanding any statutory limitation as to rate of interest per annum payable or as to annual interest cost to maturity of money borrowed by such educational institution. Notwithstanding the provisions of any law or statute to the contrary and without taking any further action or obtaining any further approval than required by this chapter, every educational institution is hereby authorized and empowered to take any action necessary to secure such educational institution bonds as provided in RSA 195–F:5, to contract with the bank with respect to any loan from the bank or purchase of such educational institution bonds and such contract shall contain the terms and conditions of such loan or purchase. Every educational institution is hereby authorized and empowered to pay fees and charges required to be paid to the bank for its services. Notwithstanding the provisions of any law or statute applicable to or constituting any limitation on the sale of bonds or notes, any educational institution may sell bonds or notes to the bank without limitation as to denomination and such bonds or notes may be fully registered, registrable as to principal or in bearer form, may bear interest at such rate or rates all in accordance with the foregoing provisions of this section, may be evidenced in such manner and may contain other provisions not inconsistent herewith, and may be sold to the bank without advertisement at a price of par and accrued interest, all as shall be provided in respect of the foregoing or other matters in the proceedings of the educational institution pursuant to which the bonds or notes are authorized to be issued. The educational institution may provide for the exchange of coupon bonds for fully registered bonds and of fully registered bonds for coupon bonds and for the exchange of any such bonds after issuance for bonds of larger or smaller denominations, all in such manner as may be provided in the proceedings authorizing their issuance, provided the bonds in changed form or denominations shall be exchanged for the surrendered bonds in the same aggregate principal amounts and in such manner that no overlapping interest is paid, and such bonds in changed form or denominations shall bear interest at the same rate or rates and shall mature on the same date or dates as the bonds for which they are exchanged. Where any exchange is made under this section the bonds surrendered by the holders at the time of the exchange shall be cancelled. The exchange shall be made only at the request of the holders of the bonds to be surrendered. The educational institution may require all expenses incurred in connection with the exchange to be paid by the holders. In case any of the officers whose signatures appear on the bonds or coupons shall cease to be officers before the delivery of such bonds, such signatures shall be valid or sufficient for all purposes, the same as if they had remained in office.

**Source.** 1982, 5:1, eff. Feb. 19, 1982.

### 195–F:16 Waiver of Defenses; Rights of Holders.

Upon the sale and issuance of any educational institution bonds to the bank by any educational institution, such educational institution shall be held and be deemed to have agreed that in the event of the failure of such educational institution to pay the interest on or the principal of any of such educational institution bonds owned or held by the bank as and

when due and payable, such educational institution shall have waived all and any defenses to nonpayment, the bank shall thereupon constitute a holder or owner of such educational institution bonds as being in default, and that notwithstanding the provisions of any other law as to time or duration of default or percentage of holders or owners of bonds entitled to exercise rights of such holders or owners of bonds in default, or to invoke any remedies or powers thereof or of any trustee in connection therewith or of any board, body, agency or commission of the state having jurisdiction in such matter or circumstance, the bank may then and thereupon avail itself of all other remedies, rights and provisions of law applicable in such circumstance, and that the failure to exercise or exert any such rights or remedies within any time or period provided by law shall not be raised as a defense by such educational institution, and that all of the bonds of the issue of bonds of such educational institution as to which there has been such nonpayment shall for all of the purposes of this section be held and be deemed to have become due and payable and to be unpaid. The bank is hereby authorized and empowered to carry out the provisions of this section and to exercise all of the rights and remedies and provisions of law herein provided or referred to.

**Source.** 1982, 5:1, eff. Feb. 19, 1982.

### 195–F:17 Cooperation by State Agencies.

All officers, departments, boards, agencies, divisions and commissions of the state are hereby authorized and empowered to render any and all of such services to the bank as may be within the area of their respective governmental functions as fixed or established by law and as may be requested by the bank. All of such officers, departments, boards, agencies, divisions and commissions are authorized and directed to comply promptly with any such reasonable request by the bank as to the making of any study or review as to desirability, need, cost or expense with respect to any educational institution project or improvement, or the financial feasibility thereof or the financial or fiscal responsibility or ability in connection therewith of any educational institution making application for a loan to the bank and for the purchase by the bank of educational institution bonds to be issued by such educational institution. The cost and expense of any services requested by the bank shall, at the request of the officer, department, board, agency, division or commission rendering such service, be met and provided for by the bank.

**Source.** 1982, 5:1, eff. Feb. 19, 1982.

### 195–F:18 Agreements With Financial Institutions.

The bank is hereby authorized and empowered to enter into such agreements or contracts with any banks, trust companies, banking or financial institutions, within or without the state, as may be necessary, desirable or convenient in the opinion of the bank for rendering services to the bank in connection with the care, custody or safekeeping of educational institution bonds or other investments held or owned by the bank and services in connection with the payment or collection of amounts due and payable as to principal or interest, and for services in connection with the delivery to the bank of educational institution bonds or other investments purchased by it or sold by it, and to pay the cost of such services. The bank is further authorized and empowered in connection with any of such services to be rendered by any such banks, trust companies or banking or financial institutions as to the custody and safekeeping of any of its educational institution bonds or investments, to require security in the way of collateral bonds, surety agreements or security agreements in such form and in such amount as, in the opinion of the bank, is necessary or desirable for the purpose of the bank.

**Source.** 1982, 5:1, eff. Feb. 19, 1982.

### 195–F:19 Effectuation of Purposes.

In order to effectively carry out its purpose under this chapter of making loans to educational institutions by purchase of educational institution bonds, and by receipt of its income from service charges and from payments of interest on and the maturing principal of educational institution bonds purchased and held by it, and in order to produce revenues or income to the bank sufficient at all times to meet its costs and expenses of operation under this chapter and to pay the principal of and interest on its outstanding bonds and notes when due, the bank shall at all times, and to the greatest extent possible, so plan to issue its bonds and notes and so lend money to educational institutions by the purchase of educational institution bonds so that the aforesaid intention and purpose is achieved without in any manner or respect jeopardizing any rights of the holders of bonds or notes of the bank or affecting other matters provided for in or pursuant to this chapter.

**Source.** 1982, 5:1, eff. Feb. 19, 1982.

### 195–F:20 Form of Investments.

All educational institution bonds or other investments of moneys of the bank permitted or provided for under this chapter shall at all times be purchased

and held in fully marketable form (subject to provisions for any registration in the name of the bank). All educational institution bonds at any time purchased, held or owned by the bank shall upon delivery to the bank be accompanied by all documentation customary in the field of educational institution financing, including opinion of counsel, certification and guaranty as to signatures, and certification as to absence of litigation and such other or further documentation as shall from time to time be required by the bank.

**Source.** 1982, 5:1, eff. Feb. 19, 1982.

## CHAPTER 195–G

## COLLEGE SAVINGS BOND PROGRAM



### 195–G:1 Declaration of Policy.

It is declared to be the policy of this state that for the benefit of the people of the state, the increase of their commerce, welfare, and prosperity and the improvement of their health and living conditions, it is essential that students attending higher educational institutions be given the fullest opportunity to learn and develop their intellectual and mental capacities. It is recognized that the financial costs to obtain an education beyond the high school level are often burdensome or prohibitive, and it is essential that qualified students or their parents be provided with methods to finance postsecondary education. It is essential that state residents be provided with an appropriate method of financing their postsecondary educations so that they might achieve the required levels of learning and development of their intellectual and mental capacities. Therefore, the general court has conferred certain powers on the state treasurer to accomplish the purposes of this chapter, all to the public benefit and good. It is further declared that the exercise by the state treasurer of the powers conferred under this chapter shall constitute the performance of an essential governmental function.

**Source.** 1989, 394:1, eff. Aug. 4, 1989.

### 195–G:2 Definitions.

In this chapter "college saving bonds" means general obligation bonds of the state issued pursuant to RSA 6–A and this chapter.

**Source.** 1989, 394:1, eff. Aug. 4, 1989.

### 195–G:3 College Savings Bonds.

Bonds sold pursuant to RSA 6–A:12 may be designated by the state treasurer as college savings bonds. Such college savings bonds shall mature not less than 5 years nor more than 20 years from the date of issuance, unless the state treasurer determines otherwise, and shall be subject to such financial incentives as may be otherwise provided.

**Source.** 1989, 394:1, eff. Aug. 4, 1989.

### 195–G:4 Negotiated Sale of Bonds.

No college savings bonds shall be sold at a negotiated sale unless the underwriter or underwriters to which such bonds are sold:

I. Are organized, incorporated or have their principal place of business in the state; or

II. In the judgment of the state treasurer, have sufficient capability to make a broad distribution of such bonds to investors residing in the state.

**Source.** 1989, 394:1, eff. Aug. 4, 1989.

## CHAPTER 195–H

## COLLEGE TUITION SAVINGS PLAN



### 195–H:1 Definitions.

In this chapter:

I. "Commission" means the New Hampshire college tuition savings plan advisory commission.

II. "Eligible educational institution" means that which is defined in 26 U.S.C. section 529(e)(5).

III. [Repealed.]

IV. "Savings plan" means any plan administered as the New Hampshire college tuition savings plan.

**Source.** 1997, 304:2. 1998, 150:1. 2007, 196:1, 7, I, eff. Aug. 17, 2007.

**195–H:2 Advisory Commission Established; Reports.**

I. (a) There is established the New Hampshire college tuition savings plan advisory commission which shall ensure the proper administration and management of the savings plan. The advisory commission shall ensure that the savings plan complies with the requirements of section 529 of the Internal Revenue Code of 1986, as amended, and any related federal law applicable to the savings plan. The commission shall also be responsible for ensuring the proper administration, implementation, and management of the New Hampshire excellence in higher education endowment trust fund established in RSA 6:38, and the governor's scholarship program and fund established in RSA 195–H:11–14. The commission, by a majority vote, may transfer funds between the New Hampshire excellence in higher education endowment trust fund and the governor's scholarship fund. The commission shall consist of the following members:

(1) The state treasurer.

(2) Two members of the house of representatives, one of whom shall be a member of the house finance committee, appointed by the speaker of the house.

(3) Two members of the senate, appointed by the senate president.

(4) The governor, or designee.

(5) Two public members, one of whom shall have business experience, appointed by the governor.

(6) One member representing the college and university system of New Hampshire, appointed by the chancellor.

(7) One member of the higher education commission established in RSA 21–N:8–a, II, appointed by majority vote of the members of the commission.

(8) One member representing the community college system of New Hampshire, appointed by the chancellor of the community college system of New Hampshire.

(9) One member representing the New Hampshire college and university council, appointed by the members of the council.

(10) One member representing the New Hampshire Higher Education Assistance Foundation, appointed by the foundation.

(b) Except for the members appointed under subparagraphs (a)(1)-(4), members shall be appointed for 2-year terms.

II. Members of the commission shall serve without compensation, except that legislative members shall receive mileage at the legislative rate.

III. The commission shall keep written records of all its proceedings.

IV. No member of the commission shall have any personal interest in the gains or profits of any investment made by the commission; nor shall any member of the commission, directly or indirectly, for such member or as an agent, in any manner use the same except to make such current and necessary payments as are authorized by the commission; nor shall any member of the commission become an endorser or surety, or in any manner an obligor, for money loaned to or borrowed from the commission.

V. Members of the commission shall be held harmless from either criminal or civil liability for any decisions made or services rendered under the provisions of this chapter.

VI. (a) The state treasurer shall make quarterly reports regarding the status of the savings plan to the commission.

(b)(1) At least annually, the commission shall issue to each participant, a statement which shall include the participant's beginning balance, contributions, and earnings credited to their account during the previous fiscal year.

(2) At least annually, the commission shall make annual reports regarding the status of the savings program to each participant in the savings plan and to the state library.

**Source.** 1997, 304:2. 1999, 328:2. 2007, 196:2, eff. Aug. 17, 2007; 361:27, eff. July 17, 2007. 2011, 224:133, eff. July 1, 2011. 2019, 346:439, eff. July 1, 2019. 2021, 91:162, eff. July 1, 2021.

**195–H:3 Rulemaking.**

The commission shall adopt rules relative to:

I. The administration, management, promotion, and marketing of the savings plan.

II. Maintaining the tuition savings program in compliance with Internal Revenue Service standards for qualified state tuition programs.

III to VII. [Repealed.]

VIII. The administration, implementation, and promotion of the New Hampshire excellence in higher education endowment trust fund established in RSA 6:38.

**Source.** 1997, 304:2. 1998, 150:2. 1999, 328:3. 2007, 196:7, II, eff. Aug. 17, 2007.

**195–H:4 College Tuition Savings Plan.**

I. (a) The treasurer shall, as needed, issue requests for proposals to evaluate and determine the vehicle for investments of the savings plan and its administration.

(b) The commission shall consider and, if appropriate, give preference to proposals best meeting the following criteria:

(1) Ability to administer financial programs with individual account maintenance and reporting.

(2) Ability to develop and administer an investment program of a nature similar to the objectives of the college tuition savings plan.

(3) Ability to augment the college tuition savings plan with other programs or informational services considered beneficial by the commission.

(c) The final selection of the vehicle for investments and its administration shall be made by the commission.

II. The commission shall determine and make recommendations regarding the use of personnel in the treasurer's office with costs for such administrative support to be funded from the savings plan.

III. The savings plan shall be on a "cash only" basis, and shall include provisions for automatic deductions.

IV. The savings plan shall be established in such form as shall be determined by the commission and may be established as a trust to be declared by the state treasurer. The savings plan or such trust may be divided into multiple investment portfolios. If so divided, and if distinct records are maintained for any such portfolio and the assets associated with any such portfolio are accounted for separately from the other assets of the trust, then the debts, liabilities, obligations, and expenses incurred, contracted for, or otherwise existing with respect to a particular portfolio shall be enforceable against the assets of such portfolio only, and not against the assets of the trust generally.

V. [Repealed.]

**Source.** 1997, 304:2. 1998, 150:3. 2007, 196:3, 4, eff. Aug. 17, 2007. 2011, 224:123, eff. July 1, 2011. 2013, 144:92, eff. July 1, 2013.

**195–H:5 Residency.**

Persons shall be eligible to participate in and benefit from the savings plan, regardless of state of residency.

**Source.** 1997, 304:2. 2007, 196:5, eff. Aug. 17, 2007.

**195–H:6 to 195–H:8 Repealed by 2007, 196:7, III, eff. Aug. 17, 2007.**

**195–H:9 Liability Exemption.**

Neither the state nor any eligible educational institution shall be liable for any shortage of funds in the event that the accruals from the savings plan are insufficient to meet the tuition requirements of such institution chosen by the student for which the plan was intended.

**Source.** 1997, 304:2. 2007, 196:6, eff. Aug. 17, 2007.

**195–H:10 Funds Exempt From Interest and Dividends Tax.**

*[RSA 195–H:10 repealed by 2021, 91:99, V, effective January 1, 2025.]*

Income and distributions from any qualified tuition program as defined in the Internal Revenue Code of 1986, as amended, shall be exempt from the New Hampshire interest and dividends tax pursuant to RSA 77:4–e, provided that distributions from the plan which are subject to federal income tax shall be subject to the interest and dividends tax pursuant to RSA 77 on the accrued income portion of the savings plan distribution.

**Source.** 1997, 304:2. 2003, 64:2. 2007, 196:6, eff. Aug. 17, 2007.

**Governor's Scholarship Program and Fund**

**195–H:11 Definitions.**

In this subdivision:

I. "Eligible institution" means a postsecondary educational institution or training program within the university system of New Hampshire as defined in RSA 187–A, a postsecondary educational institution within the community college system of New Hampshire as defined in RSA 188–F, or a private postsecondary institution approved to operate in this state that:

(a) Is approved by the higher education commission pursuant to RSA 21–N:8–a and accredited by the New England Commission of Higher Education; and

(b) Is a not-for-profit organization eligible to receive federal Title IV funds.

II. "Eligible student" means a first-year, full-time, Pell Grant-eligible student who meets the eligibility and residency requirements of RSA 195–H:13. "First–year" means a student who has never enrolled in an eligible institution.

III. "Full-time" means an enrolled student who is carrying an academic course load that is determined

to be full-time by the eligible institution based on a standard applicable to all students enrolled in a particular educational program. The student's course load may include any combination of courses, work, research, or special studies that the eligible institution considers sufficient to classify the student as full-time.

**Source.** 2021, 91:163, eff. July 1, 2021.

### 195–H:12 Governor's Scholarship Program and Fund Established.

I. There is hereby established the governor's scholarship program and the governor's scholarship fund. The program and fund shall be administered by the commission. The fund shall be kept distinct and separate from all other funds and shall be used to provide scholarships which a recipient shall apply to the costs of an education at an eligible institution. The funds shall be distributed to an eligible institution based on the number of eligible students awarded a scholarship and upon receipt of a request for reimbursement for such scholarship funds accompanied by appropriate documentation.

II. The state treasurer shall credit to the fund any appropriation relating to the governor's scholarship fund made in each fiscal year to the commission. The state treasurer shall invest the fund in accordance with RSA 6:8. Any earnings shall be added to the fund.

III. All moneys in the fund shall be nonlapsing and continually appropriated to the commission for the purposes of this subdivision.

IV. The commission may institute promotional programs and solicit and receive cash gifts or other donations for the purpose of supporting educational scholarships from the fund. The commission shall not solicit or accept real property.

V. All gifts, grants, and donations of any kind shall be credited to the fund.

**Source.** 2021, 91:163, eff. July 1, 2021.

### 195–H:13 Eligibility.

I. Any person who meets the following requirements shall be an eligible student:

(a) A person shall meet the residency requirements of RSA 193:12; be a graduate of a New Hampshire high school, public academy, chartered public school, New Hampshire private preparatory high school, or a high school-level home education program as defined in RSA 193–A; have received a New Hampshire high school equivalency certificate; have completed at least 3 years of high school in this state; be pursuing a certificate, associate, or bachelor degree at an eligible institution in this state; and be eligible to receive a Pell grant; or

(b) A person shall be a graduate of a preparatory high school outside of this state while a dependent of a parent or legal guardian who is a legal resident of this state and who has custody of the dependent; or

(c) A person shall have a parent or guardian who has served in or has retired from the United States Army, Navy, Air Force, Marine Corps, or Coast Guard within the last 4 years and is a resident of this state; or

(d) A person shall be a graduate of a high school, public academy, chartered public high school, or a high school-level home education program outside of this state but have maintained his or her primary residence in this state for not less than 5 years preceding the date of application for a scholarship.

II. A person shall meet the qualifications for academic performance or work experience as established by the commission.

III. A person shall not have been adjudicated delinquent or convicted or pled guilty or nolo contendere to any felonies or any second or subsequent alcohol or drug-related offenses under the laws of this or any other state, or under the laws of the United States, except that an otherwise eligible person who has been adjudicated delinquent or has been convicted or pled guilty or nolo contendere to a second or subsequent alcohol or drug-related misdemeanor offense shall be eligible or continue to be eligible for a scholarship after the expiration of one academic year from the date of adjudication, conviction, or plea.

**Source.** 2021, 91:163, eff. July 1, 2021.

### 195–H:14 Procedures.

I. All scholarship funds shall be distributed to the eligible student by the eligible institution. The institution shall include the scholarship in the student's financial aid package and may seek subsequent reimbursement. The state shall provide the reimbursements twice per year to each eligible institution for the number of eligible students enrolled in the current semester or term who are receiving a scholarship. The institution shall submit the list of scholarship recipients to the commission or its designee no later than November 30 and April 30 of each academic year, and shall be reimbursed within 30 days of submission.

II. An eligible student may receive a scholarship in the amount of $1,000 per year provided he or she maintains at least a 2.0 grade point average. An eligible student who earned the New Hampshire scholar designation at the time of high school graduation may receive a scholarship in the amount of $2,000 per year provided he or she maintains at least a 2.5 grade point average. The eligible institution shall not reduce any merit or need-based grant aid that would have otherwise been provided to the eligible student. An eligible student may receive an annual scholarship for a maximum of 4 years.

III. In the event the state does not reimburse the eligible institution for scholarship amounts paid to an eligible student receiving an award, the eligible institution shall agree not to seek additional payments from the eligible student and to absorb the loss of funds without any consequence to the eligible student.

IV. The commission shall adopt rules, pursuant to RSA 541–A, relative to awarding and disbursing scholarship funds to an eligible student enrolled in an eligible institution.

V. An eligible student, who initially attends a community college and transfers directly to an eligible institution, without a break in attendance, shall remain an eligible student for a maximum of 4 years of total eligibility.

VI. The commission may hire staff or enter into a contract for services or personnel necessary to administer the program.

**Source.** 2021, 91:163, eff. July 1, 2021.

## CHAPTER 195–I

## AUTOMATED EXTERNAL DEFIBRILLATOR ADVISORY COMMISSION

[Repealed by 2009, 42:2, III, eff. Jan. 1, 2014.]

## CHAPTER 195–J

## NEW HAMPSHIRE CHILDREN'S SAVINGS ACCOUNT PROGRAM

[Repealed by 2020, 37:4, XIX, eff. July 29, 2020.]

## CHAPTER 195–K

## ACHIEVING A BETTER LIFE EXPERIENCE (ABLE) SAVINGS ACCOUNT PROGRAM



### 195–K:1 Definitions.

In this chapter:

I. "Achieving a Better Life Experience Act of 2014" means the federal Achieving a Better Life Experience (ABLE) Act of 2014 which allows individuals with disabilities to establish tax-free 529A savings accounts to save for medical, housing, transportation, employment training, education, and other quality of life expenses.

II. "Executive director" means the executive director of the governor's commission on disability established in RSA 275–C.

III. "Individuals with disabilities" means individuals who are eligible for the program because their disabilities occurred on or before the individual attained age 26, as required by 26 U.S.C. section 529A(e)(1)–(2) of the federal Achieving a Better Life Experience Act of 2014.

IV. "Savings plan" means any plan administered as the New Hampshire ABLE savings account program.

**Source.** 2016, 9:1, eff. Mar. 16, 2016.

### 195–K:2 Achieving a Better Life Experience (ABLE) Savings Account Program.

I. The state treasurer and the executive director shall establish and administer a qualified ABLE savings account program as authorized in the Achieving a Better Life Experience Act of 2014, and in accordance with the provisions of section 529A of the United States Internal Revenue Code of 1986, as amended, and may enter into such contracts as the state treasurer and the executive director deem necessary to achieve this purpose, subject to the approval of the governor and council.

II. The state treasurer and the executive director shall adopt rules relative to the administration, management, promotion, and marketing of the qualified ABLE program and ensure that the qualified ABLE program complies with section 529A of the Internal Revenue Code of 1986, as amended, and any related federal law applicable to the qualified ABLE program.

III. Any personnel and administrative costs related to plan administration within the state treasurer's

office and the governor's commission on disability shall be funded from the savings plan.

IV. No general fund moneys shall be expended in support of the savings plan or its implementation.

**Source.** 2016, 9:1, eff. Mar. 16, 2016.

### 195–K:3 ABLE Savings Plan.

I. (a) The state treasurer and the executive director shall, as needed, issue requests for proposals to evaluate and determine the vehicle for investments of the savings plan and its administration.

(b) The state treasurer and the executive director shall consider and, if appropriate, give preference to proposals best meeting the following criteria:

(1) Ability to administer financial programs with individual account maintenance and reporting.

(2) Ability to develop and administer an investment program of a nature similar to the objectives of the ABLE savings plan.

(c) The final selection of the vehicle for investments and its administration shall be made by the state treasurer and the executive director.

(d) The state treasurer and the executive director may consider and contract with an ABLE savings account program previously established in another state.

II. The savings plan may be on a "cash only" basis, and may include provisions for automatic deductions.

III. The savings plan or such trust may be divided into multiple investment portfolios. If so divided, and if distinct records are maintained for any such portfolio and the assets associated with any such portfolio are accounted for separately from the other assets of the trust, then the debts, liabilities, obligations, and expenses incurred, contracted for, or otherwise existing with respect to a particular portfolio may be enforceable against the assets of such portfolio only, and not against the assets of the trust generally.

**Source.** 2016, 9:1, eff. Mar. 16, 2016.

### 195–K:4 Funds Exempt From Interest and Dividends Tax.

*[RSA 195–K:4 repealed by 2021, 91:99, VI effective January 1, 2025.]*

Income and distributions from any qualified ABLE program as defined in the Internal Revenue Code of 1986, as amended, shall be exempt from the interest and dividends tax pursuant to RSA 77:4–h, provided that distributions from the plan which are subject to federal income tax shall be subject to the interest and dividends tax pursuant to RSA 77 on the accrued income portion of the savings plan distribution.

**Source.** 2016, 9:1, eff. Mar. 16, 2016.

### 195–K:5 Authority to Issue Request for Proposals.

I. Within 6 months of the issuance of regulations by the Internal Revenue Service and the federal Department of Treasury governing implementation of any savings account programs authorized pursuant to the federal Achieving a Better Life Experience Act of 2014 (ABLE), the state treasurer, in consultation with the executive director, shall issue a request for proposals from third-party vendors to implement a savings plan pursuant to this chapter and in accordance with provisions of section 529A of the United States Internal Revenue Code of 1986, as amended. The state treasurer and executive director shall implement a savings plan pursuant to this chapter within 6 months after a suitable third-party vendor has been selected.

II. In selecting a third-party vendor, the state treasurer and executive director of the governor's commission on disability shall consider, and, if appropriate, give preference to proposals best meeting the following criteria:

(a) Ability to administer financial programs with individual account maintenance and reporting.

(b) Ability to develop and administer an investment program of a nature similar to the objectives of the ABLE plan.

III. The final selection of the vehicle for investments and administration shall be made by the treasurer and the executive director.

IV. The state treasurer and the executive director may consider and contract with an ABLE savings account program previously established in another state.

**Source.** 2016, 9:1, eff. Mar. 16, 2016.

## CHAPTER 196

## SCHOOL DISTRICT BONDS

[Omitted.]

## CHAPTER 197

## SCHOOL MEETINGS AND OFFICERS

**School Meetings**

## School Meetings

### 197:1 Annual.

A meeting of every school district shall be held annually between March 1 and March 25, inclusive, or in accordance with RSA 40:13 if that provision is adopted in the district, for raising and appropriating money for the support of schools for the fiscal year beginning the next July 1, for the transaction of other district business and, in those districts not electing their district officers at town meeting, for the choice of district officers.

**Source.** RS 70:3. CS 74:1. GS 79:3. GL 87:3. PS 90:1. 1921, 85, V:1. PL 120:1. RL 139:1. RSA 197:1. 1961, 134:1. 1981, 250:3. 1997, 318:10, eff. Aug. 22, 1997.

**197:1–a Repealed by 1979, 321:2, V, eff. Aug. 21, 1979.**

**197:1–b Repealed by 1979, 321:2, VI, eff. Aug. 21, 1979.**

**197:1–c Repealed by 1979, 321:2, VII, eff. Aug. 21, 1979.**

**197:1–d Repealed by 1979, 321:2, VIII, eff. Aug. 21, 1979.**

**197:1–e Repealed by 1979, 321:2, IX, eff. Aug. 21, 1979.**

**197:1–f Repealed by 1979, 321:2, X, eff. Aug. 21, 1979.**

### 197:1–g Posting Warrants.

If the annual meeting of the school district for other business is to be held at some other time than at the town meeting the school board shall post the warrant for said annual meeting omitting the article relative to election of district officers. The school warrant for the election of district officers shall prescribe the time the polls are to open and also an hour before which the polls may not close. Said prescribed times shall be the same as those set for the opening and closing of polls for the town meeting.

**Source.** 1963, 195:1. 1979, 321:5, eff. Aug. 21, 1979.

### 197:2 Special.

A special meeting of a school district shall be held whenever, in the opinion of the school board, there is occasion therefor, or whenever 50 or more voters, or ¼ of the voters of the district, whichever is less, shall have made written application to the school board therefor, setting forth the subject matter upon which action is desired. No special school district meeting shall be held in conjunction with the biennial election, except when a special school district meeting has been approved by the court and a school district has adopted the official ballot referendum form of meeting pursuant to RSA 40:14.

**Source.** RS 70:4. CS 74:2. GS 79:3. GL 87:3. PS 90:2. 1921, 85, V:2. PL 120:2. RL 139:2. RSA 197:2. 1969, 104:9. 1991, 370:6. 2005, 83:1, eff. Aug. 6, 2005.

### 197:3 Raising Money at Special Meeting.

I. (a) No school district at any special meeting shall raise or appropriate money nor reduce or rescind any appropriation made at a previous meeting, unless the vote thereon is by ballot, nor unless the ballots cast at such meeting shall be equal in number to at least ½ of the number of voters of such district

entitled to vote at the regular meeting next preceding such special meeting; and, if a checklist was used at the last preceding regular meeting, the same shall be used to ascertain the number of legal voters in said district; and such checklist, corrected according to law, may be used at such special meeting upon request of 10 legal voters of the district. In case an emergency arises requiring an immediate expenditure of money, the school board may petition the superior court for permission to hold a special district meeting, which, if granted, shall give said district meeting the same authority as an annual district meeting.

(b) "Emergency" for the purposes of this section shall mean a sudden or unexpected situation or occurrence, or combination of occurrences, of a serious and urgent nature, that demands prompt or immediate action, including an immediate expenditure of money. This definition, however, does not establish a requirement that an emergency involves a crisis in every set of circumstances.

(c) To verify that an emergency exists, a petitioner shall present, and the court shall consider, a number of factors including:

(1) The severity of the harm to be avoided.

(2) The urgency of the petitioner's need.

(3) Whether the claimed emergency was foreseeable or avoidable.

(4) Whether the appropriation could have been made at the annual meeting.

(5) Whether there are alternative remedies not requiring an appropriation.

(d) The court shall not allow a special meeting if the emergency involves a collective bargaining agreement that was voted down at the regular meeting, including a collective bargaining agreement modified after the regular meeting.

II. Ten days prior to petitioning the superior court, the school board shall notify, by certified mail, the commissioner of the department of revenue administration that an emergency exists by providing the commissioner with a copy of the explanation of the emergency, the warrant article or articles and the petition to be submitted to the superior court. The petition to the superior court shall include a certification that the commissioner of the department of revenue administration has been notified pursuant to this paragraph.

III. In the event that the legislative body at an annual meeting amends or rejects the cost items or fact finder's reports as submitted pursuant to RSA 273–A, notwithstanding paragraphs I and II, the school board may call one special meeting for the sole purpose of addressing all negotiated cost items without petitioning the superior court for authorization. Such special meeting may be authorized only by a contingent warrant article inserted on the warrant or official ballot either by petition or by the governing body. The wording of the question shall be as follows: "Shall (the local political subdivision), if article _____ is defeated, authorize the governing body to call one special meeting, at its option, to address article _____ cost items only?" The refusal of the legislative body to authorize a special meeting as provided in this paragraph shall not affect any other provision of law. Any special meeting held under this paragraph shall be combined with the revised operating budget meeting under RSA 40:13, XI, if any, and shall not be counted toward the number of special meetings which may be held in a given calendar or fiscal year.

IV. When the school board votes to petition the superior court for permission to hold a special school district meeting, the school board shall post notice of such vote within 24 hours after taking the vote and a minimum of 10 days prior to filing the petition with the court. The school board shall post notice of the court date for an evidentiary hearing on the petition within 24 hours after receiving notice of the court date from the court. Such notices shall be posted at the office of the school board and at 2 or more other conspicuous places in the school district, and in the next available edition of one or more local newspapers with a wide circulation in the school district. If the district is a multi-town school district, the notices shall be posted at the office of the school board and at 2 or more other conspicuous places in each town of the multi-town school district, and in the next available edition of one or more newspapers with a wide circulation in all towns of the multi-town school district.

V. Notwithstanding any other provision of law, no special meeting to raise and appropriate money, or to reduce or rescind any appropriation made at a previous meeting, may be held unless the vote is taken on or before December 31 of any budget cycle. However, the district may bring such items as could not be addressed prior to December 31 before the voters at the next annual school district meeting. Such supplemental appropriations, together with appropriations raised under RSA 197:1, shall be assessed against property as of April 1.

**Source.** 1907, 121:1. 1921, 85, V:3. PL 120:3. 1927, 56:2. RL 139:3. 1947, 178:1. RSA 197:3. 1989, 172:3. 1997, 317:2; 318:11; 319:1. 1998, 55:2, eff. July 4, 1998; 190:1, eff. Aug. 15, 1998. 2021, 77:1, eff. Aug. 17, 2021.

**197:3–a Special Meeting for Change in Education Funding.**

In response to statutory changes resulting in reductions or increases in distribution of state revenues for education pursuant to RSA 198:41 to school districts which would take effect after the adoption of a new school district budget and would apply in the fiscal year covered by the new budget, the governing body of a school district may, after consultation with the budget committee, call a special meeting of the legislative body to consider a reduction, rescission, or increase of appropriations made at an annual meeting, subject to the following:

I. The governing body of a school district that has adopted the official ballot referendum form of meeting under RSA 40:13 may elect to hold and conduct the meeting in accordance with the provisions of this section in a single session for deliberating and voting, and without regard to the provisions of RSA 40:13.

II. A special meeting under this section shall not be petitioned under RSA 197:2, and no petitioned warrant articles shall be inserted in the warrant.

III. The governing body's warrant shall specify, in one or more articles, the amounts of appropriations proposed for reduction, rescission, or increase from the operating budget or separate warrant articles, or both, adopted at the annual meeting.

IV. The governing body shall hold a public hearing on the proposed reductions, rescissions, or increase at least 14 days prior to the meeting. Notice of the time, place, and subject of such hearing shall be posted in at least 2 public places within the school district, one of which shall be on the school district's website, if such exists, at least 7 days prior to the hearing.

V. The governing body of such school district shall post a notice of the meeting, which shall include the warrant, in at least 2 public places within the school district, one of which shall be on the school district's website, if such exists, at least 7 days prior to the meeting. Additional notice shall be published in a newspaper of local or regional circulation in the school district, provided that if there is no newspaper of local or regional circulation in which notice can be published at least 7 days before the date of the meeting, public notice shall be posted in at least one additional place within the school district.

VI. The meeting shall be conducted in accordance with the provisions of this section. The most recently updated checklist shall be used.

VII. The legislative body may approve or disapprove any proposed reduction, rescission, or increase of appropriations, or may approve lesser reductions. The legislative body shall not approve greater reductions than what is in the warrant, or reduce or rescind an appropriation not specified in the warrant, or act on any other business at the meeting.

VIII. Except as provided in this section, the provisions of the following chapters, as they apply to special meetings of the legislative body of a school district, shall not be required for special meetings held pursuant to this paragraph: RSA 32, RSA 39, RSA 49–D, RSA 197, RSA 654, RSA 669, RSA 670, and RSA 671.

**Source.** 2013, 197:1, eff. Sept. 7, 2013.

**197:4 Meeting Places.**

School district meetings, including the first session of meetings in school districts which have adopted official ballot voting procedures under RSA 40:13 and 14, may be held at such suitable places, which have 2-way visual and audio closed circuit capacity, as in the opinion of the officers calling the meeting will best accommodate the voters.

**Source.** 1879, 57:37. PS 90:3. 1921, 85, V:4. PL 120:4. RL 139:4. 1997, 319:2, eff. Aug. 22, 1997.

**197:4–a Meeting Outside District.**

I. A school district may hold its district meeting outside the geographical boundaries of the district, if the district does not have a facility with a large enough seating capacity to accommodate the meeting.

II. Warrants and other items required to be posted shall be posted for review by qualified voters at the place of the meeting on the day of the meeting.

III. The school district officers shall arrange transportation, for those voters who need it, from the usual polling place in the district to the out-of-district facility and back to the usual polling place.

IV. The out-of-district meeting shall be held in an adjacent town or nearest appropriate facility.

**Source.** 1993, 120:2, eff. July 16, 1993.

**197:5 Warning.**

School district meetings shall be warned by the school board, or, in cases authorized by law, by a justice of superior court, by a warrant addressed to the voters of the district, stating the time and place of the meeting and the subject matter of the business to be acted upon. In all districts which have not adopted the provisions of this title providing for

medical inspection in schools the warrant shall contain an article relating thereto.

**Source.** RS 70:3. CS 74:1. GS 79:1, 3. GL 87:1, 4. PS 90:4. 1921, 85, V:5. PL 120:5. RL 139:5. RSA 197:5. 1969, 182:1. 2003, 289:20, eff. Sept. 1, 2003.

### 197:5–a Budget.

The school board, if the school district is not controlled by the municipal budget act, shall prepare a budget for the annual or any special meeting upon a form prescribed and provided by the commissioner of revenue administration and shall post the same with and at the same time as the warrant for the meeting is posted.

**Source.** 1963, 120:7. 1973, 544:8, eff. Sept. 1, 1973.

### 197:5–b Budgetary Official Ballot.

Notwithstanding any other provision of law, any school district may vote to raise and appropriate money for the support of schools by official ballot as provided for in RSA 49–D:3, II–a by following the procedures set forth in RSA 49–B. The school district may also include within its charter a plan for voting by official ballot, pursuant to RSA 49–B and RSA 49–D, on such other warrant articles as the school district may determine. The membership of any charter commission established in a multi-town school district shall reflect each member town's proportionate membership on the school board. For purposes of this section, all references in RSA 49–B and RSA 49–D to "municipal," "municipality," "city," and "town" shall mean and include "school district," and all references to "elected body" and "governing body" shall mean and include "school board."

**Source.** 1995, 53:6. 1997, 319:9. 1998, 100:1, eff. July 19, 1998.

### 197:6 Warrant and Articles.

Upon the written application of 25 or more voters or 2 percent of the voters of the school district, whichever is less, although in no event shall fewer than 10 registered voters be sufficient, presented to the school board or one of them not later than 30 days before the date prescribed for the school district meeting or the second Tuesday in March, whichever is earlier, the school board shall insert in the school district warrant for such meeting the petitioned article with only such minor textual changes as may be required. No article may be inserted after posting of said warrant. Corrections to petitioned warrant articles shall not in any way change the intended effect of the article as presented in the original petition. The right to have an article inserted in the warrant conferred by this section shall not be invalidated by the provisions of RSA 32.

**Source.** PS 90:5. 1921, 85, V:6. PL 120:6. RL 139:6. 1949, 284:1. RSA 197:6. 1965, 36:1. 1971, 79:2. 1991, 242:1. 1993, 176:11. 2000, 199:1, eff. July 29, 2000. 2018, 325:2, eff. Aug. 24, 2018.

### 197:6–a Penalty.

A school board is guilty of a violation if it refuses to insert an article in the warrant, after being petitioned to do so in accordance with RSA 197:6.

**Source.** 1971, 79:3. 1977, 588:25, eff. Sept. 16, 1977.

### 197:7 Posting Warrant.

The school board or justice issuing a warrant shall cause an attested copy of it to be posted at the place of meeting, and a like copy at one other place in the district, 14 days before the day of meeting, not counting the day of posting nor the day of the meeting, but including any Saturdays, Sundays and legal holidays within said period.

**Source.** PS 90:6. 1921, 85, V:7. PL 120:7. RL 139:7. RSA 197:7. 1967, 90:2. 1975, 11:4, eff. April 25, 1975.

### 197:8 Special Meetings.

The school board when calling a special meeting shall, within one week after posting the warrant therefor, cause a copy of said warrant to be published once in a newspaper of general circulation in said district.

**Source.** 1945, 39:3, eff. March 6, 1945.

### 197:9 By a Justice of Superior Court.

If the school board unreasonably neglect or refuse to warn an annual meeting, or to call a special meeting after a sufficient application therefor is made to them, a justice of superior court, upon petition of 10 or more voters, or ⅙ of the voters of the district, may issue such warrant and cause it to be posted, and, if for a special meeting, to be published as required by law. The members of the school board shall be made parties defendant to such petition.

**Source.** RS 70:5. CS 74:3. GS 79:4. GL 87:4. PS 90:7. 1921, 85, V:8. PL 120:8. RL 139:8. RSA 197:9. 1969, 182:2, eff. May 28, 1969.

### 197:10 Return; Record.

The warrant, with a certificate thereon, verified by oath, stating the time and places when and where copies of it were posted, shall be given to the clerk of the district at or before the time of the meeting, and shall be recorded by the clerk in the records of the district.

**Source.** 1845, 222:4. CS 74:4. GS 79:5. GL 87:5. PS 90:8. 1921, 85, V:9. PL 120:9. RL 139:9. 1997, 319:3, eff. Aug. 22, 1997.

**197:11 Repealed by 1979, 321:2, XI, eff. Aug. 21, 1979.**

**197:12 Repealed by 1979, 321:2, XII, eff. Aug. 21, 1979.**

**197:12–a Repealed by 1979, 321:2, XIII, eff. Aug. 21, 1979.**

**197:13 Repealed by 1979, 321:2, XIV, eff. Aug. 21, 1979.**

**District Officers**

**197:14 Repealed by 1979, 321:2, XV, eff. Aug. 21, 1979.**

**197:15 Repealed by 1979, 321:2, XVI, eff. Aug. 21, 1979.**

**197:16 Repealed by 1979, 321:2, XVII, eff. Aug. 21, 1979.**

**197:17 Repealed by 1979, 321:2, XVIII, eff. Aug. 21, 1979.**

**197:18 Repealed by 1979, 321:2, XIX, eff. Aug. 21, 1979.**

**197:19 Moderator.**

The moderator shall have the like power and duty as a moderator of a town meeting to conduct the business and to preserve order, and in the conduct of a school district meeting, all the statutory duties, powers and authority granted to town moderators, and may administer oaths to district officers and in the district business.

**Source.** 1852, 1301. CS 74:8. GS 79:11. GL 87:11. PS 90:17. 1921, 85, V:18. PL 120:18. RL 139:18. RSA 197:19. 1971, 524:5. 1979, 321:6, eff. Aug. 21, 1979.

**197:19–a Assistant Moderator.**

The moderator may appoint an assistant moderator, who shall take the oath of office in the same manner as the moderator and shall hold office at the pleasure of the moderator, and shall have all the powers and duties which the moderator has subject to the control of the moderator.

**Source.** 1957, 84:2, eff. April 24, 1957.

**197:20 Clerk.**

The clerk shall keep a true record of all the doings of each meeting; shall make an attested copy of any record of the district for any person upon request and tender of legal fees therefor; shall act as moderator of any meeting until a moderator pro tempore shall be chosen, if the moderator is absent or the office has become vacant; and shall have the same power to administer oaths which the moderator has. If the clerk is absent at any meeting a clerk pro tempore shall be chosen.

**Source.** RS 70:8. CS 74:10. GS 79:12. 1868, 1:28. GL 87:12. PS 90:18. 1921, 85, V:19. PL 120:19. RL 139:19. 1951, 37:2. RSA 197:20. 1963, 120:5, eff. Jan. 1, 1964.

**197:20–a Repealed by 1979, 321:2, XX, eff. Aug. 21, 1979.**

**197:21 Repealed by 1979, 321:2, XXI, eff. Aug. 21, 1979.**

**197:22 Treasurer's Bond.**

The treasurer shall, before entering upon the duties of such office, give a bond to the district with sufficient sureties, to the acceptance of the school board, for the faithful performance of the treasurer's official duties.

**Source.** 1887, 105:8. PS 90:20. 1921, 85, V:21. PL 120:21. RL 139:21. 1997, 319:4, eff. Aug. 22, 1997.

**197:23 Repealed by 1963, 87:2, eff. July 16, 1963.**

**197:23–a Treasurer's Duties.**

I. The treasurer shall have custody of all moneys belonging to the district and shall pay out the same only upon orders of the school board or upon orders of the 2 or more members of the school board empowered by the school board as a whole to authorize payments. The treasurer shall deposit the moneys in participation units in the public deposit investment pool established pursuant to RSA 6:45, or in federally insured banks authorized to accept deposits under RSA 6:8, I and I–a. In addition, funds may be deposited in banks outside the state if such banks pledge and deliver to a third party custodial bank or the regional federal reserve bank collateral security for such deposits of the following types:

(a) United States government obligations,

(b) United States government agency obligations; or

(c) Obligations of the state of New Hampshire in value at least equal to the amount of the deposit in each case.

II. The amount of collected funds on deposit in any one bank shall not at any time exceed the sum of its paid-up capital and surplus.

III. The treasurer shall keep in suitable books provided for the purpose a fair and correct account of all sums received into and paid from the district treasury, and of all notes given by the district, with the particulars thereof. At the close of each fiscal

year, the treasurer shall make a report to the district, giving a particular account of all of the treasurer's financial transactions during the year. The treasurer shall furnish to the school board statements from the books, and submit the books and vouchers to them and to the auditors for examination, whenever so requested.

IV. Whenever the treasurer has in custody an excess of funds which are not immediately needed for the purpose of expenditure, the treasurer shall, with the approval of the school board, invest the same in participation units in the public deposit investment pool established pursuant to RSA 6:45, or in deposits, including money market accounts, or certificates of deposit, or repurchase agreements, and all other types of interest bearing accounts, of federally insured banks authorized to accept deposits under RSA 6:8, I and I–a and in obligations fully guaranteed as to principal and interest by the United States government. The obligations may be held directly or in the form of securities of or other interests in any open-end or closed-end management-type investment company or investment trust registered under 15 U.S.C. section 80a–1 et seq., if the portfolio of the investment company or investment trust is limited to such obligations and repurchase agreements fully collateralized by such obligations. Any person who directly or indirectly receives any such funds for deposit or for investment in securities of any kind shall, prior to acceptance of such funds, make available at the time of such deposit or investment an option to have such funds secured by collateral having a value at least equal to the amount of such funds. Such collateral shall be segregated for the exclusive benefit of the district. Only securities defined by the bank commissioner as provided by rules adopted pursuant to RSA 383–B:3–301(e) shall be eligible to be pledged as collateral. At least yearly, the school board shall review and adopt an investment policy for the investment of public funds in conformance with the provisions of applicable statutes.

V. As an alternative to the option of collateralization for excess funds provided in paragraph IV, the treasurer may also invest public funds in interest-bearing deposits which meet all of the following conditions:

(a) The funds are initially invested through a federally insured bank authorized to accept deposits under RSA 6:8, I and I–a selected by the treasurer.

(b) The selected bank arranges for the redeposit of funds which exceed the federal deposit insurance limitation of the selected bank in deposits in one or more federally insured financial institutions located in the United States, for the account of the treasurer.

(c) The full amount of principal and any accrued interest of each such deposit is covered by federal deposit insurance.

(d) The selected bank acts as custodian with respect to each such deposit for the account of the treasurer.

(e) On the same date that the funds are redeposited by the selected bank, the selected bank receives an amount of deposits from customers of other federally insured financial institutions equal to or greater than the amount of the funds initially invested through the selected bank by the treasurer.

**Source.** 1887, 105:8. PS 90:21. 1921, 85, V:22. PL 120:20. RL 139:22. RSA 197:23. 1963, 87:1. 1973, 490:4. 1979, 161:1. 1991, 268:12; 383:7. 1996, 209:12. 1997, 208:13; 319:10. 1998, 40:4. 2007, 347:4, eff. Sept. 14, 2007. 2008, 120:21, eff. Aug. 2, 2008. 2010, 7:5, eff. July 3, 2010. 2013, 97:5, eff. Aug. 19, 2013. 2015, 272:45, eff. Oct. 1, 2015. 2021, 65:20–22, eff. Aug. 3, 2021. 2023, 36:2, eff. July 16, 2023.

### 197:24 Acting Treasurer.

If any person holding the office of treasurer shall, by reason of illness, accident, absence from the state, or other cause, become temporarily incapacitated and unable to perform the duties of such office, the school board may, unless the district has a deputy treasurer appointed in accordance with RSA 197:24–a who is not similarly unavailable to perform the requisite duties, declare a temporary vacancy and appoint an acting district treasurer to perform the duties of the office for a limited period of time and fix the appointee's compensation and the amount of bond. The appointee shall be subject to the requirements and liabilities of such office during the appointee's term.

**Source.** 1939, 160:2. RL 130:23. RSA 197:24. 1979, 136:1. 1997, 319:6, eff. Aug. 22, 1997.

### 197:24–a Deputy Treasurer.

The school district treasurer may appoint a deputy treasurer, subject to approval by the school board, who shall be qualified in the same manner as the treasurer and who shall perform the duties of the treasurer in the case of the treasurer's absence by sickness, resignation, or otherwise. The deputy shall be sworn, shall have the powers of the treasurer, may be removed at the pleasure of the treasurer and shall, before entering upon the duties of such office, give bond as provided in RSA 197:22.

**Source.** 1979, 136:2. 1997, 319:7, eff. Aug. 22, 1997. 2010, 23:1, eff. July 6, 2010.

### 197:25 Auditors.

If a district has not hired an auditor under RSA 21–J:19, the locally elected auditors shall carefully examine the accounts of the treasurer and school board at the close of each fiscal year by following the procedures in RSA 41:31–a through 41:31–d.

**Source.** PS 90:22. 1921, 85, V:23. PL 120:23. RL 139:24. 2010, 262:4, eff. Sept. 4, 2010.

### 197:26 Vacancies.

The school board shall fill vacancies occurring on the board, and in other district offices, except that of moderator, until the next annual meeting of the district. In case of vacancy of the entire membership of the board, or the remaining members are unable to agree upon an appointment, the selectmen, upon application of one or more voters in the district, shall fill the vacancies so existing until the next annual meeting of the district.

**Source.** RS 70:9. CS 74:11. GS 79:13. GL 87:13. PS 90:23. 1921, 85, V:24. PL 120:24. RL 139:25.

### 197:27 Repealed by 1979, 321:2, XXII, eff. Aug. 21, 1979.

## CHAPTER 198

## SCHOOL MONEY

## District Taxes

**198:1 to 198:3 Repealed by 1999, 17:58, VII, eff. April 29, 1999.**

### 198:4 Estimates.

The school board of each district in its annual report shall state in detail the additional sums of money, if any, which will be required during the ensuing fiscal year for the support of the public schools, for the purchase of textbooks, scholars' supplies, flags and appurtenances, for the payment of the tuition of the pupils in the district in high schools, academies, and any private school approved as a school tuition program by the school board in accordance with law, and for the payment of all other statutory obligations of the district.

**Source.** RS 72:2. CS 76:2. GS 77:2. GL 85:2. PS 88:2. 1909, 52:1. 1915, 68:1. 1919, 106:21. 1921, 85, VI:4. PL 121:4. RL 140:4. 2017, 182:6, eff. Aug. 28, 2017. 2021, 106:4, eff. Aug. 5, 2021.

### 198:4–a Report of Appropriations Voted.

I. The commissioner of revenue administration shall adopt rules, pursuant to RSA 541–A, relative to blanks for certifying appropriations by the school board and the information which they must contain.

II. The school board shall, annually within 20 days of the close of the meeting as required in RSA 21–J:34, II, certify to the commissioner of revenue administration, the state department of education and the board of selectmen upon said blanks provided by the commissioner, a certificate of the several appropriations voted by the district and estimated revenues, so far as known.

III. The commissioner of revenue administration shall examine such certificates and delete any appropriation which is not made in accordance with the law, and adjust any sum which may be used as a setoff against the amount appropriated when it appears to the commissioner of revenue administration such adjustment is in the best public interest.

IV. The commissioner of revenue administration shall compute the rate percent of taxation for school district purposes from such certificate.

**Source.** 1963, 120:6. 1973, 544:8. 1981, 128:28. 1994, 147:7, eff. July 22, 1994.

### 198:4–b Contingency Fund.

I. A school district annually by an article separate from the budget and all other articles in the warrant, or the governing body of a city upon recommendation of the school board, when the operation of the schools is by a department of the city, may establish a contingency fund to meet the cost of unanticipated expenses that may arise during the year. A detailed report of all expenditures from the contingency fund shall be made annually by the school board and published with their report.

II. Notwithstanding any other provision of law, a school district by a vote of the legislative body may authorize, indefinitely until specific rescission, the school district to retain any unused portion of the year-end unassigned general funds, from the preceding fiscal year in subsequent fiscal years, provided that the total amount of year-end unassigned general funds does not exceed, in any fiscal year, 5 percent of the current fiscal year's net assessment under RSA 198:5.

(a) Prior to expending retained general funds, the school board shall hold a prior public hearing

on the action to be taken with such funds. Notice of the time, place, and subject of such hearing shall be published in a newspaper of general circulation in the relevant municipality at least 7 days before the meeting is held.

(b) An annual accounting and report of the activities of the retained general funds shall be presented to the school board of the district and published in the annual report.

III. The legislative body of the city of Manchester, upon recommendation of the school committee, may authorize, indefinitely until specific rescission, the school district to retain year-end unassigned general funds.

**Source.** 1965, 123:4. 1998, 389:12, eff. Oct. 1, 1998. 2012, 221:1, eff. Aug. 12, 2012. 2014, 190:6, eff. Sept. 9, 2014. 2020, 38:25, eff. Sept. 27, 2020.

### 198:4–c Building Trades Fund.

Any school district may appropriate money to establish a revolving fund to aid instruction in the building construction trades. The fund shall be used to pay necessary costs of construction projects which are carried out as part of the instructional program, including the purchase of real estate. No project shall be undertaken unless the fund contains enough money to cover the proposed budget. When the building is completed it shall be sold and the money received put into the fund for use in another construction project.

**Source.** 1981, 164:1, eff. June 2, 1981.

### 198:4–d Reports Required; Cities and School Districts.

The governing body of each city, school district, and chartered public school shall submit to the commissioner of the department of education the following reports pursuant to rules adopted under RSA 541–A by the commissioner of revenue administration which establish the form and content of such reports:

I. A report filed by the governing body of each city, school district, and chartered public school shall certify the appropriations voted by the meeting of the appropriate legislative body, whether city council, mayor and council, or mayor and board of aldermen, or by each annual or special school district meeting, along with estimated revenues. This report shall be filed within 20 days of the close of the meeting.

II. A report filed by the governing body of each city, school district, and chartered public school shall revise all the estimated revenues for the year. This report shall be filed by September 1 of each year. The revised estimates by school districts for the adequate education grants calculated under RSA 198:41 shall be considered the most accurate within 5 percent of the amount estimated pursuant to RSA 198:40–a.

III. A financial report for each city, school district, and chartered public school shall be filed showing the summary of receipts and expenditures, according to uniform classifications, during the preceding fiscal year, and a balance sheet showing assets and liabilities at the close of the year. This report shall be submitted on or before September 1 of each year. Each statistical report submitted under this section shall include a certification signed by the chairperson of the school district's governing body or the chairperson of the board of trustees of approved public academies that states: "I certify, under the pains and penalties of perjury, to the best of my knowledge and belief, that all of the information contained in this document is true, accurate and complete."

III–a. The department of education and the department of revenue administration together shall develop and recommend school accounting standards. The departments shall report to the speaker of the house, the senate president, and the governor concerning such accounting standards on or before December 1, 1999.

IV. The budget committee in school districts operating under the municipal budget law shall file the budget within 20 days of the close of the annual or special meeting.

V. If a city or school district or chartered public school is audited by an independent public accountant, it shall submit a copy of the audited financial statements in accordance with RSA 21–J:19, III.

VI. If a city or school district is audited under RSA 671:5, the procedures in RSA 41:31–a through 41:31–d shall be followed.

**Source.** 1989, 357:4. 1998, 389:3, 4, eff. Oct. 1, 1998. 2010, 262:3, eff. Sept. 4, 2010. 2012, 198:7, eff. July 1, 2012. 2016, 8:12, eff. Mar. 16, 2016. 2021, 44:5, eff. May 17, 2021.

### 198:4–e Annual Report Required; Towns.

The governing body of each town shall submit to the commissioner of the department of education, within 20 days of the close of the annual town meeting, a copy of the annual town report.

**Source.** 1989, 357:4, eff. Aug. 1, 1989.

### 198:4–f Penalty for Failure to File Report.

I. A school district, city, chartered public school, or public academy shall file the reports due under

RSA 198:4–d, III no later than September 1 of each year.

II. For just cause, the commissioner of the department of education may grant a school district, city, chartered public school, or public academy up to a 30–day extension to such reporting deadline. The commissioner may further extend the deadline when unusual or unforeseen circumstances prevent a school district, city, chartered public school, or public academy from submitting the required reports under paragraph I before the expiration of such extension.

III. The commissioner shall notify the governing body of the school district, city, chartered public school, or public academy that all state aid to education shall be withheld until complete and accurate information is submitted. In the case of a chartered public school which fails to comply with the reporting requirements by the established deadlines for 2 consecutive years, the commissioner may request the state board of education to revoke the enabling charter.

**Source.** 1989, 357:4. 2003, 314:4, eff. July 22, 2003. 2021, 44:1, eff. May 17, 2021.

### 198:5 Assessment.

The selectmen of the town, in their next annual assessment, shall assess upon the taxable property of the district a sum sufficient to meet the obligations above enumerated, with such alterations thereof as may be voted by the district, and shall pay the same over to the district treasurer as the school board shall require for the maintenance of schools.

**Source.** RS 72:2. CS 76:2. GS 77:2. GL 85:2. PS 88:2. 1909, 52:1. 1915, 68:1. 1919, 106:21. 1921, 85, VI:4. PL 121:5. 1927, 20:1. RL 140:5.

### 198:6 Assessment on Ward's Property.

When a guardian and ward reside in the same town the selectmen shall assign the tax assessed upon the ward's personal property to the school district in which the ward lives and has a home.

**Source.** 1852, 1308:1. CS 76:5. GS 77:5. GL 85:5. PS 88:5. 1921, 85, VI:8. PL 121:6. RL 140:6. 1996, 195:4, eff. Aug. 2, 1996.

### 198:7 Neglect to Assess, Etc.

If the selectmen neglect to assess, assign or pay over the school money as aforesaid they shall pay for each neglect a sum equal to that so neglected to be assessed, assigned or paid over, to be recovered by action of debt, in the name and for the use of the district by the school board.

**Source.** RS 72:5. CS 76:6. GS 77:6. GL 85:6. PS 88:6. 1921, 85, VI:8. PL 121:7. RL 140:7.

## State Aid

**198:8 Repealed by 1985, 244:15, I, eff. July 1, 1985.**

**198:9 Repealed by 1985, 244:15, II, eff. July 1, 1985.**

**198:10 Repealed by 1985, 244:15, III, eff. July 1, 1985.**

**198:10–a Repealed by 1985, 244:15, IV, eff. July 1, 1985.**

**198:10–b Repealed by 1985, 244:15, V, eff. July 1, 1985.**

**198:11 Repealed by 1985, 244:15, VI, eff. July 1, 1985.**

**198:12 Repealed by 1985, 244:15, VII, eff. July 1, 1985.**

**198:13 Repealed by 1955, 331:1, eff. July 1, 1955.**

**198:14 Repealed by 1985, 244:15, VIII, eff. July 1, 1985.**

**198:14–a Repealed by 1967, 362:3, eff. July 3, 1967.**

**198:15 Repealed by 1985, 244:15, IX, eff. July 1, 1985.**

## School Building Aid

### 198:15–a Grant for School Construction.

I. To aid local school districts in meeting the costs of school buildings, the department of education shall, from funds appropriated by the general court to carry out the provisions of this subdivision, pay to the school districts of the state, sums in accordance with the provisions of this subdivision or the alternative school building aid provisions under RSA 198:15–u through RSA 198:15–w.

I–a. For purposes of this subdivision, "school district" means any school district duly organized, any city maintaining a school department within its corporate organization, any cooperative school district as defined in RSA 195:1, any receiving district operating an area school as defined in RSA 195–A:1, or any receiving district providing an education to pupils from one or more sending districts under a contract entered into pursuant to RSA 194:21–a or RSA 194:22.

II. Beginning with construction authorized by a local school district on or after July 1, 2013, office

facilities for school administrative units and the purchase or lease-purchase of temporary space for any purpose, including but not limited to modulars, trailers, or other similar structures to be used as classroom, office, or storage space shall not be eligible for school building aid grants.

III. Facilities constructed using school building aid grants shall be used as instructional facilities for kindergarten through grade 12 for at least 20 years. A school district that discontinues the use of the facilities within 20 years shall be required to repay the state 100 percent of the state grant received. Upon a showing of good cause by the school district, the commissioner of the department of education may waive this penalty in whole or part on a case by case basis.

IV. Beginning July 1, 2013, and every fiscal year thereafter, school building aid grants for construction or renovation projects approved by the department of education shall not exceed $50,000,000 per fiscal year less any debt service payments owed in the fiscal year, unless otherwise provided by an act of the general court. School building aid grants shall be funded from appropriations in the state operating budget and no state bonds shall be authorized or issued for the purpose of funding such school building aid grants.

V. The department of education shall develop and maintain a 10–year school facilities plan of potential school building grant projects. Potential projects shall include, but not be limited to, criteria pursuant to RSA 198:15–c, II(b). The 10–year plan is intended to create a method to identify and enhance school facilities in a safe, healthy, and efficient manner while providing adequate learning environments for New Hampshire's students. The 10–year plan shall be updated every biennium to provide the department a summary of projects and school facility capital expenditures that are anticipated for the next 10 years. The plan shall identify new construction, renovation, and emergency projects, and describe the overall condition of projects contained in the plan. In support of the 10–year plan, it is recommended that each district have in place and provide the department a long-range capital improvement program that identifies school facility goals, provides projected expenditures, and outlines procedures and guidelines to be followed to accomplish goals. Each district is encouraged to review and update the district's anticipated school facility capital improvement plan on a 2–year recurring basis or as needed. The department shall use this information to better plan, prioritize, and project new anticipated capital construction and renovation expenditures relative to the state building aid program. The state board of education shall adopt rules pursuant to RSA 541–A relative to this paragraph.

**Source.** 1955, 335:9, par. 14–a. 1967, 449:2. 2003, 296:1; 306:1. 2005, 180:1, eff. Aug. 29, 2005. 2009, 144:12, eff. July 1, 2009. 2012, 275:1, eff. Aug. 18, 2012. 2021, 91:314, eff. July 1, 2021. 2023, 5:1, eff. June 25, 2023; 35:2, eff. July 1, 2023.

### 198:15–b Amount of Grant.

I. (a) For construction authorized by a school district on or before July 1, 2013, the amount of the annual grant to any school district shall be the grant amount approved by the department of education at the time of final approval of the project.

(b)(1) For construction authorized by a school district after July 1, 2013, the amount of grant to the school district shall be calculated based on the criteria set forth in RSA 198:15–u through RSA 198:15–w.

(2) The state board of education shall approve the disbursement of 80 percent of the eligible grant amount upon approval of the application for school building aid grants by the state board of education, and shall disburse the balance of the grant amount upon completion of the construction and verification of the final cost of construction by the department of education.

(3) The amount of the grant to any chartered public school established in accordance with RSA 194–B:3–a shall be 30 percent of the eligible cost of construction.

(4) Funds received from federal grants or grants from other state programs shall be subtracted from total project costs when computing grants under this paragraph.

II. For the purposes of this subdivision, "eligible school construction projects" shall mean a project designed to be energy efficient and include any one or more of the following for the construction of instructional facilities:

(a) Construction of a new school building, including land acquisition and development of a site.

(b) Construction of an addition to an existing building, including land acquisition and development of a site.

(c) Substantial renovations approved by the commissioner of education.

(d) Purchase and renovation of existing buildings, including land acquisition and development of a site.

(e) Purchase or lease-purchase of mechanical, structural, or electrical equipment, including the cost of installation of such equipment, which is designed to improve energy efficiency or indoor air quality in school buildings. All grant amounts awarded under this subparagraph shall be returned to the state if such equipment is removed from the school building by the vendor due to the school district's failure to comply with the terms of the lease-purchase agreement. Lease-purchase agreements shall be subject to the requirements of RSA 33:7–e.

III. The provisions of this paragraph shall apply to any school building aid grants made pursuant to RSA 198:15–a through RSA 198:15–w.

(a) The department of education shall issue annually maximum eligible cost standards for the eligible school construction projects, qualifying for a school building aid grant. These standards shall take into account the type, size, and location of the school and shall be based on an appropriate construction cost index developed or adopted by the department which shall reflect cost differences in the several regions of the state. Maximum cost standards shall be computed and published annually and expressed as a maximum cost per square foot.

(b) The state board of education shall adopt rules pursuant to RSA 541–A relative to the maximum eligible size standards for the construction of school buildings qualifying for a school building aid grant. These standards shall take into account the type and size of the school and shall be based on the minimum size appropriate for the construction of a school. Maximum size standards shall be expressed as a maximum gross square footage per pupil. Space determined by the department to be excessive or unnecessary to fulfill educational needs shall not be eligible for state building aid grants.

(c) The state board of education shall adopt rules pursuant to RSA 541–A relative to the maximum usable site size for land purchases qualifying for a school building aid grant. These standards shall take into account the type and size of the school and shall be based on the minimum site size appropriate for the construction of a school. Maximum size standards shall be expressed as a maximum acreage per pupil.

(d) For the purpose of calculating the total school building aid grants made under RSA 198:15–a through RSA 198:15–w, the final approved cost for an eligible school construction project shall not exceed the cost that would result if the project conformed to the maximum cost and size standards. The provisions of this section shall not preclude an eligible applicant from exceeding the maximum standards provided, however, the cost of the portion of the facilities which exceed the maximum standards shall not be eligible for school building aid grants.

(e) The commissioner of the department of education shall have the authority to waive eligible cost and size standards for an eligible school construction project for good reason shown.

**Source.** 1955, 335:9, par. 14–b. 1957, 301:1. 1963, 277:3. 1965, 150:2. 1967, 362:4; 399:1; 449:3. 1969, 347:4. 1971, 452:1. 1975, 447:1. 1979, 208:1; 459:4. 1981, 568:84. 1983, 469:63, 148, 149. 1998, 214:1. 2000, 215:2, 3. 2003, 296:3, 4; 306:1. 2004, 124:1. 2005, 180:2; 208:1, 2; 228:1. 2006, 131:1, eff. May 19, 2006. 2010, 327:2, eff. Sept. 18, 2010. 2012, 275:2, eff. Aug. 18, 2012. 2013, 226:2, eff. Sept. 13, 2013 at 12:01 a.m.; 239:1, eff. Sept. 13, 2013. 2023, 35:1, eff. July 1, 2023.

### 198:15–c Approval of Plans; Specifications, and Costs of Construction or Purchase.

I. (a) A school district maintaining approved schools, desiring to avail itself of the grants herein provided shall submit schematic design plans, cost estimates, and other items determined by the department of education for an eligible school construction project prior to the start of the construction. Projects with approval from the school district's legislative body to construct, not subject to receiving building aid, are not eligible.

(b) Beginning January 1, 2025 and each year thereafter, to be considered for a school building aid grant, the complete building aid application shall be submitted no later than April 1 of the fiscal year that immediately precedes the fiscal year in which the school desires to seek the district's legislative body's approval for construction. The application shall include at a minimum, schematic design plans, cost estimates, educational needs assessment, existing facility conditions assessment including, but not limited to a review of the mechanical, electrical, plumbing, and structural components of the building, proof of an annual school budget to support good maintenance, and other documentation as required by the department and identified in the department's school building construction rules.

(c) As deemed appropriate, emergency projects that are recommended by the commissioner of education shall be addressed on a case-by-case basis by the state board of education at any time during the school year. A school construction project requiring the replacement of all or a significant

portion of a school facility which is declared uninhabitable or is identified as an imminent danger or substantial risk by the state fire marshal or a state or federal agency, and which results from an unanticipated and sudden natural or human disaster, shall qualify as an emergency project.

II. (a) The commissioner shall accept school building aid grant applications based upon completeness and submit a preliminary school building aid grant list, with applications ranked in accordance with subparagraph II(b) and rules of the department, to the school building authority established pursuant to RSA 195–C by August 1 each year. The school building authority shall verify the ranking submitted by the commissioner and submit a list in descending rank order to the state board of education for approval. If the ranking submitted to the school building authority differs from the preliminary school building aid grant list, the school building authority shall justify the new ranking using the same criteria in subparagraph II(b) and in rules of the department. The school building authority shall submit the school building aid rank order listing with written report of findings to the state board no later than October 15, each year. The state board of education shall verify the ranking submitted by the school building authority. If the ranking submitted to the state board of education differs from the preliminary school building aid grant list submitted by the commissioner, the state board of education shall justify the new ranking using the same criteria in subparagraph II(b) and rules of the department. The state board of education shall approve and publish the descending rank order list of approved eligible school construction projects by November 15 each year. School districts which have projects approved for funding shall be notified by the department of education of the projected amount to be funded within 10 days of approval. The project rating system and criteria used to rate project applications which shall include an administrative review process for appeal of a school district's project point rating, shall be developed by the department of education and approved by the state board of education.

(b) The commissioner of the department of education shall accept school building construction proposals based upon completeness. The department of education shall consider and score each proposal based on the following criteria:

(1) Unsafe conditions.

(2) Facilities not in compliance with the Americans With Disabilities Act, or obsolete, inefficient, or unsuitable facilities or mechanical and building systems.

(3) Overcrowding and associated influences to instructional areas and programming.

(4) Enrollment projections and population shifts.

(5) A school district's fiscal capacity based on measurable criteria such as the percentage of pupils eligible for free and reduced price meals.

(6) School security design and integration of security systems.

(7) The project contributes to operational cost efficiencies, consolidation, or reduced property taxes.

(8) High performance of design that provides environments that are energy and resource efficient. Energy and resource efficient designs are those that improve indoor air quality, air temperature, or water quality; reduce heating costs; provide better lighting; and increase average attendance.

(9) Any other criteria that the state board of education may determine are necessary.

(c) Except as provided in subparagraph (d), applications on the approved ranked list the previous fiscal year, including the school construction projects on the descending rank order list approved by the state board of education on November 10, 2022, but did not receive a grant due to insufficient funds in the previous fiscal year, shall be ranked ahead of any application that was not on the list in the previous fiscal year provided that construction of the project has not started.

(d) Applications with critical needs pursuant to subparagraph II(b) and substantial deficiencies, as defined by the department of education's school construction rules, may be ranked ahead of applications received in the prior fiscal year.

(e) Projects that did not receive approval from the school district's legislative body may resubmit those projects to the department for future consideration.

III. A school district that accepts school building aid for construction shall engage the services of a project manager for construction or reconstruction projects of $1,000,000 or more, unless the commissioner waives such requirement as unnecessary. The school district's project manager shall have his or her own comprehensive liability and auto insurance, worker's compensation coverage, and professional liability coverage. The state board of education shall adopt rules pursuant to RSA 541–A relative to the

required services, responsibilities, and qualifications for the school district's project manager.

**Source.** 1955, 335:9, par. 14–c. 1967, 362:5; 399:2. 1989, 357:3. 2003, 306:1. 2005, 228:2, eff. Sept. 9, 2005. 2010, 327:3, eff. Sept. 18, 2010. 2012, 275:3, eff. Aug. 18, 2012. 2013, 239:2, eff. Sept. 13, 2013. 2016, 72:1, eff. July 18, 2016. 2019, 290:1, eff. Sept. 27, 2019. 2023, 35:1, eff. July 1, 2023.

### 198:15–d Time of Computation of Grant.

As of January 1 in each year, the department of education shall cause to be computed the amount of the annual grants for school building aid to be paid to eligible school districts in the succeeding fiscal year. The computation shall be based upon the total of eligible costs of construction of school buildings approved by the legislative body of the school district and the department of education for which loans are outstanding in each school district for the fiscal year in which the computations are made.

**Source.** 1955, 335:9, par. 14–d. 1957, 301:2. 1991, 169:4. 2003, 306:1, eff. Sept. 16, 2003. 2008, 289:3, eff. Aug. 26, 2008.

### 198:15–e Proration and Unexpended Funds.

In any fiscal year, the amount appropriated for distribution as school building grants in accordance with the version of RSA 198:15–b in effect prior to July 1, 2012 shall first be awarded to a school district for an eligible project funded before July 1, 2012. If the amount appropriated is insufficient the appropriation shall be prorated proportionally among the districts entitled to a grant. If the amount appropriated exceeds the amount necessary to fully fund grants to a school district for eligible construction projects funded before July 1, 2012, the remaining amount of the appropriation shall be awarded to a school district for an eligible new proposal in the ranked order developed pursuant to RSA 198:15–c, II(a) and II(b). Such a district shall receive a grant equal to 100 percent of the eligible amount of the request until the amount appropriated has been exhausted. A partial grant may be awarded to the extent that funds are available. If a school district declines a full or partial grant, a grant shall be made to the next ranked school district until the amount appropriated has been exhausted. Any amounts not distributed in the first year of any biennium may be distributed in the second year if required to distribute the maximum amount permissible under RSA 198:15–a.

**Source.** 1955, 335:9, par. 14–e. 2008, 289:4, eff. Aug. 26, 2008. 2012, 275:4, eff. Aug. 18, 2012.

### 198:15–f Repealed by 1963, 277:4, eff. July 1, 1964.

### 198:15–g Federal School Building Aid.

The department of education is hereby designated as the agency of the state of New Hampshire for the receipt and distribution of federal funds in aid of school building construction and is hereby given such authority in connection therewith as it may be required to possess by any federal act relating thereto in order to receive and distribute such funds, and it is hereby authorized to cooperate with the federal government or any agency thereof in the development of plans for the distribution of federal funds in aid of the construction of school buildings and to receive and expend in accordance with such plans all funds made available to it or the state of New Hampshire by the federal government or any of its agencies; provided, however, to the extent permitted by any federal act relating thereto, the department of education, in formulating plans for the distribution of federal funds, may give consideration to the effort made by any local school district in providing school buildings, its financial ability to pay for school buildings, the encouragement of cooperative school districts and the amounts received or to be received by school districts as state aid to school buildings under the provisions of this chapter as now or hereafter amended.

**Source.** 1957, 301:3. 1986, 41:23, eff. April 3, 1988.

### 198:15–h Repealed by 2023, 35:5, eff. July 1, 2023.

### 198:15–hh Annual Grant for Leased Space.

I. The amount of the annual grant for a lease to any school district duly organized, any city maintaining a school department within its corporate organization, any cooperative school district as defined in RSA 195:1, or any receiving district operating an area school as defined in RSA 195–A:1, shall be a sum equal to 30 percent of the amount of the annual payment of the lease incurred, for the cost of leasing permanent space in a building or buildings not owned by the school district or school administrative unit which is used for the operation of a high school vocational technical education program, to the extent approved by the state board of education. For the purposes of this section, the amount of the annual grant for a lease to a vocational technical education center shall be calculated in the same manner as a cooperative school district. The amount of the annual grant for a chartered public school authorized under RSA 194–B:3–a shall be a sum equal to 30 percent of the annual lease payment incurred for the cost of leasing space; provided that no annual grant for leased space provided to a chartered public school in accordance with this section shall exceed $50,000 in any fiscal year. The total amount of grants to schools pursuant to this section shall not exceed the state appropriation for leased space. If the amount

appropriated is insufficient therefor, the appropriation shall be prorated proportionally among the schools eligible for a grant. Such lease agreements shall be eligible for grants under this section, provided all of the following conditions apply:

(a) A school district, city, cooperative school district, joint maintenance agreement, receiving district operating an area school as defined in RSA 195–A:1, or chartered public school authorized under RSA 194–B:3–a, which receives grants under this section shall remain eligible to apply for, receive, and expend moneys from other state or federal sources made available for the purpose of purchasing new equipment, materials, or supplies necessary for the operation of the program. Moneys received from such other state or federal sources shall not be used to make permanent upgrades or renovations to the leased space.

(b) A lease agreement for permanent space shall be adopted in the same manner as required by law for the passage of construction bonds in the school district, city, cooperative school district, joint maintenance agreement, or receiving district operating an area school as defined in RSA 195–A:1. A lease agreement for a chartered public school shall be approved by the chartered public school board of trustees pursuant to RSA 194–B:5, III(c).

(c) An initial lease agreement for a term of 10 years or less shall be eligible to receive grants under this section. Upon renewal, a lease agreement may remain eligible to receive grants, provided the commissioner of the department of education determines that the lease agreement represents an efficient use of state and local resources.

(d) In any fiscal year where the state pays a pro rata share of school building aid grants, the state shall pay the same pro rata share for lease agreements approved under this section.

II. Lease agreements for the use of portable or modular classroom space shall not be eligible for grants.

III. A school district, city, cooperative school district, joint maintenance agreement, receiving district operating an area school as defined in RSA 195–A:1, or chartered public school authorized under RSA 194–B:3–a shall submit details of the lease arrangement, including a copy of the proposed lease agreement, in writing to the state board of education on such forms as the state board may prescribe. Grant applications for leased space shall be submitted before January 1 of each year in order to be eligible for grants in the fiscal year following the year of submittal. The state board of education shall, no later than March 1, 2004, adopt rules pursuant to RSA 541–A, relative to procedures for grant applications for leased space.

IV. Any state aid for leased space pursuant to this section shall require a separate appropriation, and shall not be included in the state appropriation for school building aid.

**Source.** 2003, 296:5, eff. July 1, 2003. 2011, 193:1, 2, eff. Aug. 13, 2011. 2012, 275:9, eff. Aug. 18, 2012. 2019, 346:56, eff. July 1, 2019. 2021, 91:313, eff. July 1, 2021. 2023, 35:4, eff. July 1, 2023.

### Kindergarten Incentive Program

**198:15–i to 198:15–k Repealed by 1999, 17:58, VIII, eff. April 29, 1999.**

### Kindergarten Aid; Alternative Kindergarten Programs

**198:15–*l* to 198:15–q Repealed by 1999, 17:58, VIII, eff. April 29, 1999.**

### Kindergarten Construction Program

**198:15–r Kindergarten Construction Program Established.**

I. There is established in the department of education a kindergarten construction program to provide certain construction grants which shall be available to eligible school districts that currently do not operate a public kindergarten program. These grants shall be available until all school districts in the state operate a kindergarten program within an approved public school. Such eligible districts shall receive, at their election, either:

(a) A construction grant to cover 75 percent of the actual cost of construction of kindergarten facilities, exclusive of site acquisition and core facilities; or

(b) A construction grant to cover 100 percent of the actual cost of the design and construction of a basic code compliant kindergarten facility, but shall not include site acquisition and core facilities. In this subparagraph, "basic code compliant kindergarten facility" means a new building or an addition to an existing building that the commissioner of the department of education determines satisfies the minimum standards for school approval for a kindergarten program and all applicable building code standards. The commissioner shall establish specifications pursuant RSA 198:15–s, IV for such a basic code compliant facility.

II. A school district that displaces pupils from an existing classroom space in order to use such space to

provide a kindergarten program shall be eligible for a construction grant under subparagraphs I(a) or (b) to cover the costs incurred in constructing or renovating new classroom space for the displaced pupils.

III. Grants under subparagraphs I(a) or (b) shall also cover the cost of initial furniture, fixtures, and equipment needed to operate a kindergarten program.

IV. [Repealed.]

V. A school district may contract with another school district to provide a public kindergarten program that meets or exceeds the minimum standards for school approval as adopted by the department of education.

VI. The provisions of RSA 32:8 and RSA 32:11 shall not apply to costs incurred by a school district under this section.

VII. Nothing in this subdivision shall prohibit the inclusion of the site and related facilities that are not eligible for funding by the state under this subdivision as part of kindergarten construction costs from being included in a regular building aid funding request as provided in RSA 198:15–b. However, no school district which receives any funding under this subdivision shall be eligible to receive school building aid under RSA 198:15–b for the same project.

VIII. Kindergarten facilities constructed under this subdivision shall be the property of the school district or the city maintaining a school department.

IX. A district shall not be deemed ineligible from receiving the full amount of a construction or transition grant for which it is otherwise eligible as a result of the district already expending funds for construction or transition costs related to providing a kindergarten program beginning in the 2008–2009 or 2009–2010 school years.

**Source.** 1997, 348:5. 2001, 287:1, 2. 2003, 319:136. 2005, 164:3. 2006, 198:1, eff. July 1, 2006. 2008, 384:1, eff. July 11, 2008; 384:6, II, eff. July 1, 2013.

### 198:15–s Eligibility; Administration.

I. [Repealed.]

II. [Repealed.]

III. A kindergarten construction grant request shall contain, at a minimum, the following information:

(a) A set of educational specifications, prepared by district staff.

(b) Construction plans and cost estimates, prepared by a licensed architect. Construction plans and cost estimates shall comply with the following:

(1) To be eligible for reimbursement pursuant to RSA 198:15–r, kindergarten construction shall be approved by the school district's legislative body on or before June 30, 2013.

(2) The number of classrooms shall be based upon the largest projected kindergarten enrollment in the first 5 years following construction, based on a minimum of 20 students per half-day kindergarten class.

(3) Classrooms shall be no larger than 1,000 square feet in size including restrooms and storage space.

(4) Costs shall be limited to the annual maximum eligible cost standards in accordance with RSA 198:15–b, unless waived by the commissioner of the department of education for good cause.

(5) Classroom furniture and equipment purchased for temporary classrooms pursuant to RSA 198:15–r, IV shall be relocated to permanent classrooms or replaced at district expense.

(c) An assurance signed by the superintendent and the chair of the school board that facilities constructed under this subdivision will be used for a public kindergarten program.

IV. The department of education shall administer the kindergarten construction program and shall be responsible for the following:

(a) Providing technical assistance relative to kindergarten construction to school districts.

(b) Developing and maintaining a kindergarten construction guide, including a list of recommended furnishings and equipment for kindergarten classrooms.

(c) Establishing forms and procedures for school districts to use for the development and submission to the department of education of kindergarten construction grant requests.

(d) Reviewing grant requests, including educational specifications, kindergarten construction plans, and cost estimates, and forwarding them to the commissioner of education with recommendations relative to their adequacy, educational appropriateness, and cost effectiveness.

(e) Distributing kindergarten construction grant payments to eligible districts in accordance with the payment schedule specified by the commissioner of education in the district's grant approval notification.

(f) Assuring that the facilities are used as specified in the grant request.

**Source.** 1997, 348:5. 2001, 287:6, I, eff. July 1, 2001. 2008, 384:6, III, eff. July 11, 2008. 2011, 224:331, eff. July 1, 2011. 2012, 275:5, eff. Aug. 18, 2012.

### 198:15–t Penalty.

If, within 20 years of the completion of kindergarten facilities constructed under this subdivision, a school district or city maintaining a school department discontinues the kindergarten program or uses these classrooms for other than kindergarten, it shall be required to pay back to the state 100 percent of the kindergarten construction grant payments received under RSA 198:15–s, IV(e). Upon a showing of good cause by the school district, the commissioner of education may waive this penalty in whole or part on a case by case basis.

**Source.** 1997, 348:5, eff. July 1, 1997.

## Alternative School Building Aid

### 198:15–u Definitions.

As used in this subdivision:

I. "Median family income" means that income for each municipality using the most recent data available from the United States Bureau of the Census.

II. "Equalized valuation per pupil" means the average equalized valuation within the school district over the most recent 5 years divided by the current number of pupils within the school district expressed as an average from the most recent 5 years of available data collected by the department of education.

**Source.** 2003, 296:2, eff. July 1, 2005.

### 198:15–v Alternative School Building Aid Grants.

I. The amount of the annual grant to any school district duly organized, any city maintaining a school department within its corporate organization, any cooperative school district as defined in RSA 195:1, or any receiving district operating an area school as defined in RSA 195–A:1, shall be determined as follows:

(a) Determine each municipality's equalized valuation per pupil by dividing the municipality's equalized valuation by the average daily membership in residence within each municipality. Assign each municipality a rank beginning with the municipality having the lowest equalized valuation per pupil ranked as number one, and continuing therefrom.

(b) Determine each municipality's median family income, and assign each municipality a rank beginning with the municipality having the lowest median family income ranked as number one and continuing therefrom.

(c) Add the rankings assigned in subparagraphs I(a) and I(b) and divide the sum by 2 to yield the building aid factor.

II. (a) The amount of the annual grant in this subdivision shall be a sum equal to a percentage of the amount of the annual payment of principal on all outstanding borrowings of the school district, city, cooperative school district, joint maintenance agreement, or receiving district, for all approved costs of construction or purchase of school buildings and school administrative unit facilities, for grants approved on or before July 1, 2013 according to the following table:

| Building Aid Factor | Single District | Preexisting District in a Cooperative School District, Area School, or Joint Maintenance Agreement |
|---|---|---|
| 0–59 | 60 percent | 60 percent |
| 60–69 | 55 percent | 60 percent |
| 70–89 | 45 percent | 55 percent |
| 90–114 | 40 percent | 50 percent |
| 115 or greater | 30 percent | 40 percent |

(b) For projects approved after July 1, 2013, the amount of the grant to any school district, city, cooperative school district, joint maintenance agreement, or receiving district shall be a sum equal to the percentage of all approved costs for construction or purchase of school buildings according to the following table:

| Building Aid Factor | Building Aid Grant |
|---|---|
| 0–59 | 60 percent |
| 60–69 | 55 percent |
| 70–89 | 45 percent |
| 90–114 | 40 percent |
| 115 or greater | 30 percent |

III. A cooperative school district, receiving district operating an area school, or joint maintenance agreement grant amount shall be determined by cal-

culating the percentage of the average daily membership in residence represented by each municipality which has entered into the agreement and multiplying this percentage by each municipality's percentage of annual building aid eligibility under paragraph II of this section. This product shall be multiplied by the projected cost of the building project. The sum of the resulting products shall be the annual building aid grant for the cooperative school district, area school, or joint maintenance agreement.

**Source.** 2003, 296:2, eff. July 1, 2005. 2012, 275:6, eff. Aug. 18, 2012.

### 198:15–w Alternative School Building Aid Grants; Procedures.

The provisions of RSA 198:15–c through 198:15–h shall apply to any grant made under this subdivision.

**Source.** 2003, 296:2, eff. July 1, 2005.

### 198:15–x Repealed by 2012, 47:2, eff. Dec. 2, 2012.

## Public School Infrastructure Fund and Public School Infrastructure Commission

### 198:15–y Public School Infrastructure Fund.

I. The general court recognizes that there is a need to provide funding for infrastructure projects for public elementary and secondary schools. Therefore, it is the intent of this chapter to designate certain surplus funds in the 2016–2017 biennial budget to provide grants to fund select school infrastructure projects in accordance with this chapter.

II. There is hereby established in the office of the state treasurer the public school infrastructure fund which shall be kept distinct and separate from all other funds and which shall be administered by the department of education. After transferring sufficient funds to the revenue stabilization reserve account to bring the balance of that account to $100,000,000, the state treasurer shall transfer the remainder of the general fund surplus for fiscal year 2017, as determined by the official audit performed pursuant to RSA 21–I:8, II(a), to the fund. Any earnings on fund moneys shall be added to the fund. All moneys in the fund shall be nonlapsing and continually appropriated. The department of education may retain up to 3 percent of the total annual appropriation of the public school infrastructure fund on or after July 1, 2019, to be used to administer the public school infrastructure program.

III. The governor, in consultation with the public school infrastructure commission, may authorize fund expenditures with approval of the fiscal committee of the general court and the executive council. Funds may be expended for the following purposes:

(a) A school building or infrastructure proposal in which the condition of such school building or portion thereof constitutes a clear and imminent danger to the life or safety of occupants or other persons and requires remediation as soon as practicable.

(b) A school building or infrastructure proposal in which a structural deficiency in the function or operation of a school building or portion thereof presents a substantial risk to the life or safety of the occupants or other persons and is more than a technical violation of the fire code, and requires remediation as soon as practicable.

(c) Support of fiber optic connections for schools to enhance and improve reliance on Internet technology tools, provided matching funds are available.

(d) Funding for the department of safety, division of homeland security and emergency management's school emergency readiness program to improve security in public schools, after the completion of a security assessment, and in consultation with municipal officials.

(e) A school building or infrastructure proposal which is necessary to comply with Americans with Disabilities Act (ADA) regulations.

(f) Energy efficient school buses or other vehicles used for transportation of students.

(g) Other school building or infrastructure needs the governor, in consultation with the public school infrastructure commission, may identify, except for school building aid projects that are otherwise prohibited by law.

IV. In order for a school to be eligible for a grant from the public school infrastructure fund, the public school infrastructure commission in consultation with the department of education shall determine that the school has a need unmet by federal stimulus funds for the project.

**Source.** 2017, 156:67, eff. June 30, 2017. 2019, 27:1, eff. May 15, 2019; 346:318, 319, eff. July 1, 2019. 2021, 91:62, eff. July 1, 2021.

### 198:15–z Public School Infrastructure Commission Established.

I. There is hereby established the public school infrastructure commission, which shall advise the governor on proposals for expenditures from the public school infrastructure fund established in RSA 198:15–y. The commission shall consist of the following members:

(a) Two members of the house of representatives, appointed by the speaker of the house of representatives.

(b) Two members of the senate, appointed by the president of the senate.

(c) The director of the division of homeland security and emergency management, department of safety, or designee.

(d) The commissioner of the department of education, or designee.

(e) The chairperson of the New Hampshire school building authority, or designee.

(f) The chairperson of the state board of education, or designee.

II. Members of the commission shall serve at the pleasure of their appointing authority.

III. Members of the commission shall serve without compensation, except that legislative members shall receive mileage at the legislative rate when attending to the duties of the commission.

IV. 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 45 days of the effective date of this section. The commission shall meet at least monthly. The commission shall provide a report on or before June 30, 2021 to the general court with information on fund expenditures for the year, projects begun or completed during the previous year, the balance in the public school infrastructure fund, and any other information the commission deems appropriate.

V. The commission shall review the work and projects funded by the public school infrastructure fund during the previous year.

**Source.** 2017, 156:67, eff. June 30, 2017. 2019, 27:2, eff. May 15, 2019.

## Miscellaneous Provisions

### 198:16 Unincorporated Towns and Unorganized Places.

I. By August 1, 1989, the department of education shall certify to county commissioners of each county responsible for unincorporated towns, unorganized places, and towns where by act of the legislature the school districts have been abolished, the amount of money deemed necessary to be raised by taxation to pay the costs of education for school children from such towns and places.

II. The certified amount shall be assessed under RSA 81 on the taxpayers of each unincorporated town, unorganized place, and town where by act of the legislature the school district has been abolished on a pro rata basis based upon the actual number of school children who reside in each town or place.

III. The county commissioners shall, following receipt of the taxes collected under this section, pay them to the county treasurer. From time to time, as deemed advisable by the department of education, it shall submit to the county commissioners bills for payment for the costs of education of the children from such unincorporated towns, unorganized places, and towns where by act of the legislature the school districts have been abolished and the education of the children made the responsibility of the state.

IV. The unexpended proceeds of any balance in the fund created under RSA 198:16 prior to October 1, 1989, shall be transferred to the county treasurers of counties with unincorporated towns, unorganized places, and towns where by act of the legislature the school districts have been abolished on a pro rata basis according to the number of school children who reside in each county. The pro rata distribution shall be based on the number of school children who resided in each unincorporated town and unorganized place, or town where by act of the legislature the school districts have been abolished at the close of the 1988-89 school year. The distribution shall be made prior to December 1, 1989.

**Source.** 1919, 106:23. 1921, 85, VI:6. PL 121:15. RL 140:15. RSA 198:16. 1955, 224:2. 1963, 147:2. 1973, 544:8. 1989, 262:1, eff. May 26, 1989; 266:33, eff. July 1, 1989.

### 198:16–a Repealed by 1989, 266:36, III, eff. July 1, 1989.

### 198:17 Repealed by 1961, 249:2, eff. March 31, 1962.

### 198:18 Cooperative School District Aid.

I. As an incentive to the pre-existing districts which, heretofore or hereafter, undertake the obligations of a cooperative school district, the state board shall, from funds appropriated by the general court to carry out the provisions hereof, pay annually to each cooperative school district sums in accordance with the following schedule: For each pupil from a pre-existing district who attends a cooperative school located in another pre-existing district in average daily membership in the preceding school year, in a cooperative elementary school, $45; in a cooperative junior high school or equivalent program, $60; and in a cooperative high school, $75.

II. As of June 30 in each year the state board shall cause to be computed the amount of annual grants to be paid to cooperative school districts in the succeeding fiscal year based upon average daily memberships in the preceding fiscal year. If in any year the amount appropriated for distribution hereunder is insufficient therefor, the available appropriation shall be apportioned proportionately among the several cooperative school districts. Any available appropriation not fully distributed in the first year of any biennium may be distributed in the second year if required to meet the formula established in paragraph I.

**Source.** 1963, 277:2, eff. July 1, 1964.

### 198:19 Area School Aid.

I. As an incentive to receiving and sending districts which undertake the obligations of an area school, the state board shall, from funds appropriated by the general court to carry out the provisions of this chapter, pay annually to each receiving district sums in accordance with the following schedule: For each pupil from a sending district in average daily membership in the preceding school year; in an area elementary school, $ 45; in an area junior high school or equivalent program, $ 60; and in an area high school, $ 75.

II. As of June 30 in each year, the state board shall cause to be computed the amount of annual grants to be paid to eligible receiving districts for use as provided in area plans approved hereunder, in the succeeding fiscal year, based upon average daily membership from sending districts in the preceding fiscal year. If, in any year, the amount appropriated for distribution hereunder is insufficient therefor, the available appropriation shall be distributed proportionately among the receiving districts entitled to such grant. Any available appropriations not fully distributed in the first year of any biennium may be distributed in the second year if required to meet the formula established in paragraph I.

**Source.** 1969, 104:12, eff. June 24, 1969.

### 198:20 Closing of Nonpublic Schools.

Whenever a nonpublic school, or a portion thereof, closes and any of its pupils become enrolled in the public schools, the state board in determining eligibility for any form of state aid computed wholly or in part on the basis of average daily membership of pupils may count these newly enrolled pupils as though they had been in average daily membership at the public schools of the district during the preceding school year.

**Source.** 1969, 104:14. 1971, 211:1, eff. Aug. 17, 1971.

### 198:20–a Payment of Governmental Moneys Prohibited in Nonpublic School Without Program Approval by the Board of Education for Disabled Children.

No state moneys or moneys raised and appropriated by any political subdivision of the state or any federal moneys administered by the state or any political subdivision thereof shall be paid or granted to a nonpublic school for the education and training of disabled children as defined by RSA 186–C:2, I which has not been approved by the state board of education pursuant to those policies adopted under the provisions of RSA 186:11, XXIX.

**Source.** 1974, 28:2. 1990, 140:2, X, eff. June 18, 1990.

### 198:20–b Appropriation for Unanticipated Funds Made Available During Year.

I. Notwithstanding any other provision of law to the contrary, any school district at an annual meeting may adopt an article authorizing indefinitely, until specific rescission of such authority, the school board to apply for, accept and expend, without further action by the school district, unanticipated money from a state, federal or other governmental unit or a private source which becomes available during the fiscal year. The following shall apply:

(a) Such warrant article to be voted on shall read: "Shall the school district accept the provisions of RSA 198:20–b providing that any school district at an annual meeting may adopt an article authorizing indefinitely, until specific rescission of such authority, the school board to apply for, accept and expend, without further action by the school district, unanticipated money from a state, federal or other governmental unit or a private source which becomes available during the fiscal year?"

(b) If a majority of voters voting on the question vote in the affirmative, the proposed warrant article shall be in effect in accordance with the terms of the article until such time as the school district votes to rescind its vote.

II. Such money shall be used only for legal purposes for which a school district may appropriate money. No funds disbursed from the education trust fund pursuant to RSA 198:42 shall, under any circumstances, emergency or otherwise, be deemed to be unanticipated money under the provisions of this section.

III. (a) For unanticipated funds in the amount of $20,000 or more, the school board shall hold a prior

public hearing on the action to be taken. Notice of the time, place, and subject of such hearing shall be published in a newspaper of general circulation in the relevant municipality at least 7 days before the meeting is held.

(b) A school board may establish the amount of unanticipated funds required for notice under this subparagraph, provided such amount is less than $20,000. For unanticipated funds in an amount less than $20,000, the school board shall post notice of the funds in the agenda and shall include notice in the minutes of the school board meeting in which such funds are discussed. The acceptance of unanticipated funds under this subparagraph shall be made in public session of any regular school board meeting.

IV. Action to be taken under this section shall:

(a) Not require the expenditure of other school district funds except those funds lawfully appropriated for the same purpose; and

(b) Be exempt from all provisions of RSA 32 relative to limitation and expenditure of school district moneys.

**Source.** 1981, 167:1. 1991, 329:1. 1993, 176:12, 13. 2000, 201:1. 2005, 188:1, eff. Aug. 29, 2005. 2023, 38:1, eff. July 18, 2023.

**198:20–c Trust Funds Created for Specific Purposes; Expenditures; Administration.**

I. The school district may at any annual or special meeting appropriate such sums of money as it deems necessary to create expendable trust funds for specific purposes for the maintenance and operation of schools and for any other public purpose that is not foreign to the school district's institution or incompatible with the objects of their organization. The school board may be named agents to expend such trust funds. Expenditure from such trust funds shall be made only for the purpose for which the trust fund was established.

II. School district trust funds created pursuant to this section shall be held in custody by the trustee named pursuant to RSA 31:22 of trust funds of the town wherein the school district lies, or in the case of school districts embracing 2 or more towns, by the trustees of trust funds of that town which the voters of the school district may elect at the annual school district meeting. In order to expend such funds, the school board shall hold a public hearing prior to the expenditure to be made. Notice of the time, place, and subject of such hearing shall be published in a newspaper of general circulation in the relevant municipality at least 7 days before the meeting is held.

III. A trust fund created under the provisions of this section that is established for the purpose of maintaining health insurance funds for the benefit of employees and retired employees of any school district, including an OPEB trust established pursuant to paragraph VII, shall be exempt from the provisions of paragraph II, and when so established, the school district may name its own trustees who may expend any funds in the trust for the payment of health claims or health insurance premiums for the benefit of any employees or retired employees of the school district. An annual accounting and report of the activities of the trust shall be presented to the school board of the district and published in the annual report.

IV. Trust funds created pursuant to this section shall be revocable by majority vote of the legal voters present and voting at any annual meeting, unless the vote creating the trust expressly provides that the trust shall be irrevocable, and upon revocation the trustees of trust funds holding the account for said trust shall pay all the moneys in such funds to the school treasurer.

V. Notwithstanding any other provision of law, any trust fund created under this section shall be subject to the same provisions concerning custody, investment, expenditure, change of purpose and audit as are reserve funds established under RSA 35:1 or 35:1–c. The legal validity of such a fund properly established shall not be affected by its designation as a "trust," "reserve," "capital reserve," or any other designation. A trust fund established for maintaining health insurance funds as set forth in paragraph III shall be exempt from the provisions of RSA 35:8.

VI. The district may authorize the acceptance of privately-donated gifts, legacies and devises to be utilized for the same purpose as a trust fund created under this section; provided, however, that such gifts, legacies or devises shall be invested and accounted for separately from, and not commingled with, amounts appropriated under paragraph I, and shall be subject to the custody and investment provisions applicable to trust funds accepted under RSA 31:31.

VII. (a) A school district that created, on or before January 1, 2012, an actuarial liability to pay other post-employment benefits (OPEB) to employees or officers after their termination of service may establish an irrevocable trust to pay those benefits. In this paragraph, the term "other post-employment benefits" means employee benefits other than pensions that are received after employment ends, and

may include such medical, disability, or other health benefits, as are covered by Statement No. 45 of the Governmental Accounting Standards Board (GASB). The term "trust" means a trust qualified under GASB Statement No. 43.

(b) Deposits to any fund under such a trust and any earnings on those deposits shall be irrevocable and shall be held in trust for the exclusive benefit of retirees and their beneficiaries in accordance with the terms of the plans or programs providing other post-employment benefits, except that funds governed by the trust may be withdrawn for other purposes only when an employer's liability owed to former officers or employees for other post-employment benefits has been satisfied or otherwise eliminated pursuant to subparagraph (d)(2). The assets of any trust created pursuant to this paragraph or in which a school district participates pursuant to this paragraph shall be exempt from taxation and execution, attachment, garnishment, or any other process. No public officer, employee, or agency shall divert, use, or authorize the use of such funds for any purpose other than as provided in law for other post-employment benefits covered by the trust and administrative expenses.

(c) The trustees of any trust created pursuant to this paragraph shall have the full power to invest, reinvest, and manage the assets of the trust. The trustees shall invest the assets of the trust with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims. The trustees shall also diversify such investments so as to minimize the risk of large losses unless under the circumstances it is clearly prudent not to do so. The trustees may engage a trust administrator, investment consultants, or other qualified professionals to assist with management and investment of the funds of the trust and may pay for these services out of the funds of the trust.

(d) The school district may withdraw money from the funds of a trust created pursuant to this paragraph only:

(1) As needed to pay other post-employment benefits owed to former officers and employees; or

(2) When all other post-employment benefits liability owed to former officers or employees of the employing entity has been satisfied or otherwise defeased.

**Source.** 1991, 329:2. 1993, 176:14, 15. 1995, 20:8, eff. June 11, 1995. 2012, 219:2, 3, eff. July 1, 2012.

### 198:20–d Reimbursement Anticipation Notes.

Notwithstanding any other provision of law to the contrary, a school district or a city with a dependent school district may incur debt in anticipation of reimbursement under RSA 186–C:18 and under RSA 198:42. The governing body, after notice and public hearing, may elect to borrow such funds and to recognize the proceeds of the borrowing as revenue for property tax rate setting purposes by providing written notification to the commissioner of the department of revenue administration stating the specific amount of borrowing to be recognized as revenue. Any borrowing under this section shall be exempt from the provisions of RSA 33, relative to debt limits.

**Source.** 1992, 238:4. 1994, 337:3. 1998, 243:2. 1999, 17:43, eff. April 29, 1999; 17:44, eff. at 12:01 a.m., July 1, 1999; 303:9, eff. at 12:02 a.m., July 1, 1999.

## Dual Enrollment Grants

### 198:21 Grants.

I. Any school district which has in operation an approved dual enrollment agreement under the provisions of RSA 193:1–a shall be granted for the first school year that such agreement is in operation the full operational costs of implementing such agreement, exclusive of any part of the cost and carrying charges of any capital improvements; and for the next succeeding school year, if such operation is then continued, ½ of such costs.

II. Application for any such grant shall be submitted by a district to the state board of education no later than the July 1 preceding the start of the school year for which it shall be applicable, provided that the board may, for good cause shown, accept any such application up to but no later than the start of the applicable school year.

III. The board shall determine what costs shall be allowed in computing the amount of any grant, and shall make payments of such grants from the funds appropriated therefor.

IV. In the event that for any year insufficient sums are available to pay grants in full as provided by this section to all qualified applying school districts the state board of education shall prorate such grants so that all such districts receive the same proportion.

V. No pupil counted by any school district for the purpose of calculating the amount of a grant to be paid pursuant to this section shall for the same school

year by the same district be counted for the purposes of grants pursuant to RSA 198:22.

**Source.** 1970, 51:2. 1999, 17:48, eff. April 29, 1999.

### Child Benefit Service Grants

**198:22 Grants.**

I. Any school district which is providing any child benefit service pursuant to the authority of RSA 189:49 and 50 shall be granted the following proportion of the costs, exclusive of any part of the cost and carrying charges of any capital improvements, of providing such service to any student who regularly attends a nonpublic school within the district for more than ½ each school day:

(a) Not more than 70 percent of such cost of any such service.

II. Application for any such grant shall be submitted by a district to the state board of education no later than the July 1 preceding the start of the school year for which it shall be applicable, provided that the board may, for good cause shown, accept any such application up to but no later than the start of the applicable school year. Payment of said grant shall be made upon submission of certified expenses prior to the end of the applicable fiscal year.

III. The board shall determine what costs shall be allowed in computing and the amount of any grant, and shall make payments of such grants from the funds appropriated therefor.

IV. In the event that for any year insufficient sums are available to pay grants in full as provided by this section to all qualified applying school districts the state board of education shall prorate such grants so that all such districts receive the same proportion thereof.

V. No pupil counted by any school for the purpose of calculating the amount of a grant to be paid pursuant to this section shall for the same school year by the same district be counted for the purpose of grants pursuant to RSA 198:21.

**Source.** 1970, 51:4. 1973, 501:2. 1999, 17:49, eff. April 29, 1999.

### Tuition for Foster Children

**198:23 Tuition Paid to School District.**

When a child has been placed in a home by the children and youth services division of the department of health and human services or by a licensed child-placing agency, the school district in which said home is located shall be entitled to the funds provided under the provisions of this subdivision.

**Source.** 1973, 277:1. 1983, 291:1, I, eff. July 1, 1985.

**198:24 Amount of Payment.**

I. Each school district shall be entitled to receive an amount not to exceed $200 per year for each foster child who attends a school in such district. If more than one school district is involved during any school year, the amount of payment to any one district will be distributed in accordance with RSA 198:26.

II. If the sums appropriated to the foster children tuition fund established by 1975, 505:1.06, 03, 03, 01, 21 is not totally expended for the purpose of paragraph I, then any amount remaining unexpended shall be divided equally between the following 2 categories: foster children placed in a program or school for persons with disabilities and foster children placed in a group home or nonprofit institution which averages 6 or more foster children annually. Each category shall be entitled to receive an equal share of this division; and, within each category, the amount so appropriated shall be distributed on a per capita basis based upon the number of children within the category.

**Source.** 1973, 277:1. 1977, 340:1. 1990, 140:2, III, eff. June 18, 1990.

**198:25 Proration.**

If, in any year, the number of children entitled to receive benefits in accordance with RSA 198:24 shall exceed the amount appropriated for such purpose, the amount shall be prorated proportionally among the districts entitled to the tuition payments. In carrying out the proration, all sums appropriated to the foster children tuition fund established by 1975, 505:1.06, 03, 03, 01, 21 which have not been expended or encumbered on August 30, 1977, shall be divided equally between foster children placed in a program or school for persons with disabilities and foster children placed in a group home or nonprofit institution which averages 6 or more foster children annually. After this division between foster home groups and disabled foster children programs, said sums shall be disbursed on a pro rata basis for each disabled foster child up to 100 percent of actual costs and on a pro rata basis for each foster child in group foster homes. In subsequent years, this same pro rata distribution shall be made of these foster children tuition funds.

**Source.** 1973, 277:1. 1977, 340:2. 1990, 140:2, III, X, eff. June 18, 1990.

**198:26 Time of Computation.**

As of June 30 in each year, the state board shall cause to be computed the amount of annual grants to be paid eligible districts in the succeeding fiscal year

as provided herein. If the foster home is located in a pre-existing district within a cooperative district, any aid paid under this subdivision shall be credited to said pre-existing district. Any available appropriation not fully distributed among the districts in the first year of any biennium may be distributed in the second year if required to meet the formula established.

**Source.** 1973, 277:1. 1977, 340:3, eff. Aug. 30, 1977.

### Foundation Aid

**198:27 to 198:33 Repealed by 1999, 17:58, IX, eff. April 29, 1999.**

### Alternative Foundation Aid

**198:34 to 198:37 Repealed by 1999, 17:58, IX, eff. April 29, 1999.**

### Adequate Education; Education Trust Fund

**198:38 Definitions.**

In this subdivision:

I. (a) "Average daily membership in attendance" or "ADMA" means the average daily membership in attendance, as defined in RSA 189:1–d, III, of pupils in kindergarten through grade 12, in the determination year. ADMA shall only include pupils who are legal residents of New Hampshire pursuant to RSA 193:12 and educated at school district expense which may include public academies or out-of-district placements. For the purpose of calculating funding for municipalities, the ADMA shall not include pupils attending chartered public schools, but shall include pupils attending a charter conversion school approved by the school district in which the pupil resides.

(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.

I–a. (a) "Average daily membership in residence" or "ADMR" means the average daily membership in residence, as defined in RSA 189:1–d, IV, of pupils in kindergarten through grade 12, in the determination year. ADMR shall only include pupils who are legal residents of New Hampshire pursuant to RSA 193:12 and educated at school district expense which may include public academies or out-of-district placements. For the purpose of calculating funding for municipalities, the ADMR shall not include pupils attending chartered public schools, but shall include pupils attending a charter conversion school approved by the school district in which the pupil resides.

(b) For the purpose of calculating ADMR, 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.

II. "Commissioner" means the commissioner of the department of education.

III. "Department" means the department of education.

IV. "Determination year" means the school year immediately preceding the school year for which aid is determined. Unless otherwise indicated, determination year data shall be used to calculate aid.

V. "Pupil receiving special education services" means a pupil with a disability as defined in RSA 186–C:2, I.

VI. "English language learner" means a pupil who has a predominant language other than English or who is educationally disadvantaged by a limited English proficiency, and who participated in the annual assessment of English language proficiency required of such pupils by the Elementary and Secondary Education Act, 20 U.S.C. section 6311 (b)(7).

VI–a. "Municipality" means a city, town, or unincorporated place.

VII. "Pupils eligible for a free or reduced-price meal" means pupils in kindergarten through grade 12 who are eligible for the federal free or reduced-price meal program. No pupil or school shall be required to participate in the federal free or reduced price meal program.

VIII. "School district" means school district as defined in RSA 194:1 and shall include cooperative school districts as defined in RSA 195:1, I.

**Source.** 1999, 17:41; 65:1; 281:12. 2002, 260:1. 2003, 241:3, 6. 2004, 200:3. 2005, 257:5. 2006, 191:3, eff. July 29, 2006. 2008, 173:4, eff. July 1, 2009. 2011, 258:10, eff. July 1, 2011. 2012, 198:1, 2, eff. July 1, 2012. 2015, 251:1, eff. Sept. 11, 2015. 2016, 8:1, eff. Mar. 16, 2016. 2019, 346:232, eff. July 1, 2019 at 12:01 a.m. 2022, 175:3, eff. July 1, 2022.

**198:39 Education Trust Fund Created and Invested.**

I. The state treasurer shall establish an education trust fund in the treasury. Moneys in such fund shall not be used for any purpose other than:

(a) To distribute adequate education grants to municipalities' school districts pursuant to RSA 198:42.

(b) To distribute grants to municipalities school districts and to approved chartered public schools pursuant to RSA 194–B:11.

(c) To distribute kindergarten grants to municipalities' and school districts pursuant to RSA 198:48–c.

(d) To provide low and moderate income homeowners property tax relief under RSA 198:56–198:61.

(e) To distribute funds to scholarship organizations approved under RSA 77–G, that administer and implement RSA 194–F.

(f) To distribute phase-out grants to school districts under RSA 194–F:10.

(g) To fund costs necessary to provide the statewide assessment program required under RSA 193–C.

(h) To fund department of education operating costs for a state student data collection and reporting system, within budgeted appropriations.

(i) To fund department of education costs for administering programs funded by the education trust fund, within budgeted appropriations, plus any additional funding authorized pursuant to paragraph III.

(j) To distribute school building aid to school districts pursuant to RSA 198:15–b.

(k) To distribute tuition and transportation funds to school districts for students attending career and technical education programs pursuant to RSA 188–E:9.

(l) To distribute special education aid to school districts pursuant to RSA 186–C:18.

(m) To distribute payments to education service providers on behalf of school districts for children with disabilities in certain court ordered placements or placements for an episode of treatment pursuant to RSA 186–C:19–b.

(n) To distribute grants for leased space to approved chartered public schools pursuant to RSA 198:15–hh.

II. The state treasurer shall deposit into the education trust fund immediately upon receipt:

(a) Funds certified to the state treasurer by the commissioner of revenue administration pursuant to RSA 77–A:20–a, relative to business profits taxes.

(b) Funds certified to the state treasurer by the commissioner of revenue administration pursuant to RSA 77–E:14, relative to business enterprise tax.

(c) Funds collected and paid over to the state treasurer by the commissioner of revenue administration pursuant to RSA 78–A:26, II, relative to the tax on motor vehicle rentals.

(d) Funds collected and paid over to the state treasurer by the department of revenue administration pursuant to RSA 78:24, relative to tobacco taxes.

(e) Funds certified to the state treasurer by the commissioner of revenue administration pursuant to RSA 78–B:13, relative to real estate transfer taxes.

(f) Funds collected and paid over to the state treasurer by the department of revenue administration pursuant to RSA 83–F:7, I, relative to the utility property tax.

(g) All moneys due the fund in accordance with RSA 284:21–j, relative to sweepstakes and the lottery.

(h) Tobacco settlement funds in the amount of $40,000,000 or, for any year in which the total tobacco settlement funds received by the state is less than $40,000,000, the total amount of tobacco settlement funds received by the state.

(i) The school portion of any revenue sharing funds distributed pursuant to RSA 31–A:4 which were apportioned to school districts in the property tax rate calculations in 1998.

(j) Funds collected and paid over to the state treasurer by the lottery commission pursuant to RSA 284:44, RSA 284:47, and RSA 287–I.

(k) Any other moneys appropriated from the general fund.

III. If required expenditures to administer programs funded by the education trust fund, pursuant to paragraph I, exceed amounts appropriated, the commissioner of education may request the fiscal committee of the general court authorize additional funding. Amounts requested under this paragraph shall be a charge to the education trust fund. For funds requested and approved, the governor is authorized to draw a warrant from any money in the treasury not otherwise appropriated.

IV. The education trust fund shall be nonlapsing. The state treasurer shall invest that part of the fund which is not needed for immediate distribution in short-term interest-bearing investments. The income from these investments shall be returned to the fund.

**Source.** 1999, 17:41; 338:8. 2004, 97:3; 200:4. 2005, 257:4, 15. 2006, 301:2. 2007, 272:2, eff. July 3, 2007. 2011, 258:9, IV, eff. July 1, 2011. 2017, 229:3, eff. July 1, 2017. 2019, 178:9, eff. Jan. 1, 2020; 215:3, eff. July 12, 2019. 2021, 91:60, 114, eff. July 1, 2021. 2023, 79:138, eff. July 1, 2023.

**198:40 Repealed by 2005, 257:22, II, eff. July 1, 2005 at 12:02 a.m.**

**198:40–a Cost of an Opportunity for an Adequate Education.**

I. For the biennium beginning July 1, 2023, the annual cost of providing the opportunity for an adequate education as defined in RSA 193–E:2–a shall be as specified in paragraph II. The department shall adjust the rates specified in this paragraph in accordance with RSA 198:40–d.

II. (a) A cost of $4,100 per pupil in the ADMR, plus differentiated aid as follows:

(b) An additional $2,300 for each pupil in the ADMR who is eligible for a free or reduced price meal anytime during the determination year; plus

(c) An additional $800 for each pupil in the ADMR who is an English language learner anytime during the determination year; plus

(d) An additional $2,100 for each pupil in the ADMR who is receiving special education services anytime during the determination year.

III. The sum total calculated under paragraph II shall be the cost of an adequate education. The department shall determine the cost of an adequate education for each municipality based on the ADMR of pupils who reside in that municipality.

**Source.** 2005, 257:6, eff. July 1, 2005 at 12:02 a.m. 2008, 173:5, eff. July 1, 2009. 2011, 258:2, eff. July 1, 2011. 2012, 198:4–6, eff. July 1, 2012. 2016, 8:2, eff. Mar. 16, 2016. 2017, 100:2, eff. Aug. 7, 2017. 2022, 175:4, eff. July 1, 2022. 2023, 79:150, eff. July 1, 2023.

**198:40–b Repealed by 2019, 346:236, I, eff. July 1, 2021.**

**198:40–c Repealed by 2019, 346:236, II, eff. July 1, 2021.**

**198:40–d Annual Adjustment.**

Beginning July 1, 2024 and every year thereafter, the department of education shall adjust the following with an increase of 2 percent annually:

I. Per pupil costs in RSA 198:40–a, II;

II. Extraordinary need grant "grant floor," "grant ceiling," "factor," and "max grant" as defined in RSA 198:40–f, II, (a)-(d); and

III. Chartered public school additional grants under RSA 194–B:11, I(b)(1)(A) and (B).

**Source.** 2008, 173:8, eff. July 1, 2011. 2011, 258:8, eff. July 1, 2011 at 12:01 a.m. 2016, 8:3, eff. Mar. 16, 2016. 2022, 175:5, eff. July 1, 2022. 2023, 79:151, eff. July 1, 2023.

**198:40–e Repealed by 2023, 79:152, eff. July 1, 2023.**

**198:40–f Extraordinary Need Grants.**

*[Paragraph I effective until July 1, 2025; see also paragraph I set out below.]*

I. In addition to aid for the cost of the opportunity for an adequate education provided under RSA 198:40–a, each year the commissioner shall calculate an extraordinary need grant for schools and provide that amount of aid to a municipality's school districts as follows:

(a) A municipality with an equalized valuation per pupil eligible to receive a free or reduced-priced meal of $1,600,000 or less shall receive $8,500 per pupil eligible to receive a free or reduced-price meal in the municipality's ADMR.

(b) A municipality with an equalized valuation per pupil eligible to receive a free or reduced-price meal between $1,600,001 and $6,599,999 shall receive a grant equal to $0.0017 for each dollar of difference between its equalized valuation per pupil eligible to receive a free or reduced-price meal and $6,600,000, per pupil eligible to receive a free or reduced-price meal in the municipality's ADMR.

(c) A municipality with an equalized valuation per pupil eligible to receive a free or reduced-price meal of $6,600,000 or more shall not receive an extraordinary need grant.

*[Paragraph I effective July 1, 2025; see also paragraph I set out above.]*

I. In addition to aid for the cost of the opportunity for an adequate education provided under RSA 198:40–a, each year the commissioner shall calculate an extraordinary need grant for schools and provide that amount of aid to a municipality's school districts as follows:

(a) A municipality with an equalized valuation per pupil eligible to receive a free or reduced-priced meal of $1,664,640 or less shall receive $11,500 per pupil eligible to receive a free or reduced-price meal in the municipality's ADMR.

(b) A municipality with an equalized valuation per pupil eligible to receive a free or reduced-price meal between $1,664,641 and $6,866,639 shall receive a grant equal to $0.00221 for each dollar of difference between its equalized valuation per pupil eligible to receive a free or reduced-price meal and $6,866,640, per pupil eligible to receive a free or reduced-price meal in the municipality's ADMR.

(c) A municipality with an equalized valuation per pupil eligible to receive a free or reduced-price meal of $6,866,640 or more shall not receive an extraordinary need grant.

*[Paragraph II effective until July 1, 2025; see also paragraph II set out below.]*

II. In this section:

(a) The $1,600,000 in equalized valuation per free or reduced-price meal pupil referenced in RSA 198:40–f, I(a) shall be called the "grant floor."

(b) The $6,600,000 in equalized valuation per free or reduced-price meal pupil referenced in RSA 198:40–f, I(b) and RSA 198:40–f, I(c) shall be called the "grant ceiling."

(c) The $0.0017 for each dollar difference between equalized valuation per pupil eligible to receive a free or reduced-price meal referenced in RSA 198:40–f, I(b) shall be called the "factor."

(d) The $8,500 per pupil eligible to receive a free or reduced-price meal referenced in RSA 198:40–f, I(a) shall be called the "max grant."

*[Paragraph II effective July 1, 2025; see also paragraph II set out above.]*

II. In this section:

(a) The $1,664,640 in equalized valuation per free or reduced-price meal pupil referenced in RSA 198:40–f, I(a) shall be called the "grant floor."

(b) The $6,866,640 in equalized valuation per free or reduced-price meal pupil referenced in RSA 198:40–f, I(b) and RSA 198:40–f, I(c) shall be called the "grant ceiling."

(c) The $0.00221 for each dollar difference between equalized valuation per pupil eligible to receive a free or reduced-price meal referenced in RSA 198:40–f, I(b) shall be called the "factor."

(d) The $11,500 per pupil eligible to receive a free or reduced-price meal referenced in RSA 198:40–f, I(a) shall be called the "max grant."

III. Extraordinary need grants shall be distributed pursuant to RSA 198:42.

IV. In this section, "equalized valuation per pupil eligible to receive a free or reduced-price meal" means a municipality's equalized valuationas determined by the department of revenue administration, that was the basis for the local tax assessment in the determination year, divided by the school district's kindergarten through grade 12 ADMR in the determination year eligible to receive a free or reduced-price meal.

**Source.** 2022, 318:1, eff. July 1, 2022. 2023, 79:153, eff. July 1, 2023; 79:154, eff. July 1, 2025.

### 198:41 Determination of Education Grants.

I. Except for municipalities where all school districts therein provide education to all of their pupils by paying tuition to other institutions, the department of education shall determine the total education grant for the municipality as follows:

(a) Add the per pupil cost of providing the opportunity for an adequate education for which each pupil is eligible pursuant to RSA 198:40–a, I–III, and from such amount;

(b) Subtract the amount of the education tax warrant to be issued by the commissioner of revenue administration for such municipality reported pursuant to RSA 76:8 for the next tax year; and

(c) Add the municipality's extraordinary need grant pursuant to RSA 198:40–f.

II. For fiscal year 2024 and fiscal year 2025, the department of education shall distribute a hold harmless grant equal to any amount in which a municipality's adequacy grant is less than 104 percent of the fiscal year 2024 preliminary estimate for the adequacy grant as of November 15, 2022. No municipality with a current adequacy grant amount that exceeds the fiscal year 2024 preliminary estimate shall receive a hold harmless grant. No hold harmless grant shall be distributed to any municipality in which the municipality's education property tax warrant pursuant to RSA 76:8 exceeds the total cost of an adequate education.

III. Beginning in fiscal year 2026, the hold harmless grant calculated under paragraph II shall decrease as a percent of the amount awarded under the following schedule:

(1) 80 percent of the calculated fiscal year 2025 hold harmless grant shall be awarded for fiscal year 2026 and fiscal year 2027.

(2) 60 percent of the calculated fiscal year 2025 hold harmless grant shall be awarded for fiscal year 2028 and fiscal year 2029.

(3) 40 percent of the calculated fiscal year 2025 hold harmless grant shall be awarded for fiscal year 2030 and fiscal year 2031.

(4) 20 percent of the calculated fiscal year 2025 hold harmless grant shall be awarded for fiscal year 2032 and fiscal year 2033.

(5) No hold harmless grant shall be awarded for fiscal year 2034 and each year thereafter.

IV. The department shall use the best available data and methods to estimate ADMR and education grants by November 15 of the year preceding the school year for which aid is determined.

V. The department shall produce a revised estimate of grants using actual determination year data for the purpose of settling municipal tax rates. A municipality's grant estimate shall not be less than 95 percent of the estimate reported pursuant to paragraph IV. The commissioner of the department of education shall provide the estimate for the current fiscal year to the commissioner of the department of revenue administration no later than October 1 of each year.

VI. When final determination year data is available, but not later than April 1, the department shall make a final determination of grant amounts. A municipality's grant estimate shall not be less than 95 percent of the estimate reported pursuant to paragraph IV. The department shall adjust the April grant disbursement required pursuant to RSA 198:42 so that the total amount disbursed for the fiscal year shall match the final grant determination.

VII. Reports of grant determinations for municipalities required pursuant to paragraphs IV- VI shall be available to the public by the date specified in paragraphs IV- VI, and the department shall make available a report for multi-town school districts and municipalities with multiple school districts. The department of education shall provide the department of revenue administration the information needed to set tax rates.

**Source.** 1999, 17:41; 338:10. 2003, 241:7. 2004, 200:8; 244:4. 2005, 257:7, 8. 2006, 6:1, 2. 2007, 270:3, eff. June 29, 2007. 2008, 173:9, eff. July 1, 2009; 173:17, I, eff. June 30, 2009; 173:17, III, eff. July 1, 2011. 2011, 258:3, eff. July 1, 2011. 2013, 4:1, eff. Mar. 18, 2013; 144:120, eff. July 1, 2013. 2015, 276:139, eff. July 1, 2015; 276:140, eff. July 1, 2017. 2016, 8:4, 5, eff. Mar. 16, 2016; 85:9, eff. July 18, 2016. 2019, 346:235, eff. July 1, 2020; 346:236, III, eff. July 1, 2021; 346:238, eff. July 1, 2019. 2021, 91:57, eff. July 1, 2021. 2022, 175:7, eff. July 1, 2022; 318:2, eff. July 1, 2022. 2023, 79:156, eff. July 1, 2023.

### 198:42 Distribution Schedule of Adequate Education Grants; Appropriation.

I. The adequate education grant determined in RSA 198:41 shall be distributed to each municipality's school district or districts from the education trust fund in 4 payments of 20 percent on September 1, 20 percent on November 1, 30 percent on January 1, and 30 percent on April 1 of each school year; provided that for a dependent school district, the grant determined in RSA 198:41 shall be distributed to the municipality, which shall appropriate and transfer the grant funds to its dependent school department.

II. For the fiscal year beginning July 1, 2005, and every fiscal year thereafter, the amount necessary to fund the grants under RSA 198:41 is hereby appropriated to the department from the education trust fund created under RSA 198:39. The governor is authorized to draw a warrant from the education trust fund to satisfy the state's obligation under this section. Such warrant for payment shall be issued regardless of the balance of funds available in the education trust fund. If the balance in the education trust fund, after the issuance of any such warrant, is less than zero, the comptroller shall transfer sufficient funds from the general fund to eliminate such deficit. The commissioner of the department of administrative services shall inform the fiscal committee and the governor and council of such balance. This reporting shall not in any way prohibit or delay the distribution of adequate education grants.

III. The department of education shall certify the amount of each grant to the state treasurer and direct the payment thereof to the school district or municipality.

**Source.** 1999, 17:41; 65:3; 303:11. 2003, 319:159. 2004, 200:9. 2005, 257:9. 2006, 301:5. 2007, 270:3, eff. June 29, 2007. 2008, 274:31, eff. July 1, 2008; 354:1, eff. Sept. 5, 2008. 2011, 224:153, eff. July 1, 2011. 2012, 198:3, eff. July 1, 2012. 2013, 144:61, eff. July 1, 2013. 2016, 8:6, eff. Mar. 16, 2016. 2017, 156:153, eff. July 1, 2017.

### 198:43 Additional Education Expenditures.

School districts are authorized to develop educational programs beyond those required for an adequate education and to raise and appropriate amounts necessary for such programs.

**Source.** 1999, 17:41. 2005, 257:15. 2007, 270:3, eff. June 29, 2007.

### 198:43–a Severability.

If any provision of RSA 198:38 through RSA 198:43 or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of RSA 198:38 through RSA 198:43 which can be given effect without the invalid provision or application, and to this end, such provisions are declared to be severable.

**Source.** 2011, 258:4, eff. July 1, 2011.

**198:44 Repealed by 2016, 8:13, II, eff. Mar. 16, 2016.**

**198:45 Submission of Data.**

The governing body of every school district, city, joint maintenance agreement, chartered public school, or approved public academy shall submit all records, data, or other information required under this subdivision in accordance with the provisions of RSA 189:28.

**Source.** 1999, 17:41. 2003, 314:3. 2005, 189:3, eff. Aug. 29, 2005. 2008, 354:1, eff. Sept. 5, 2008. 2014, 247:1, eff. Sept. 19, 2014. 2016, 8:7, eff. Mar. 16, 2016.

**198:45–a Repealed by 2003, 241:34, eff. July 1, 2004.**

## Local Control and Alternative Kindergarten Programs

**198:46 Repealed by 2011, 258:9, II, eff. July 1, 2011.**

**198:47 Repealed by 2011, 258:9, III, eff. July 1, 2011.**

**198:48 Maintenance of Local Control.**

Distributions under RSA 198:42 are based on adequate education costs determined in RSA 198:41 and are independent of how the municipalities decide to spend the distributions or other funds they may raise for education. Notwithstanding any other provision of law, nothing in this subdivision is intended in any way to limit or control how school districts operate or spend their budgets except that adequate education grants must be expended for educational purposes. Adequate education grants shall not be considered unanticipated funds under RSA 198:20–b.

**Source.** 1999, 17:41; 338:11. 2000, 201:2. 2004, 200:12. 2005, 257:19. 2007, 270:3, eff. June 29, 2007.

**198:48–a Alternative Kindergarten Programs.**

I. A school district that currently does not operate a kindergarten program within an approved public school maintained by the local district or currently does not contract with another established public kindergarten program for the education of its resident kindergarten pupils, may submit to the commissioner of the department of education a local plan for an alternative kindergarten program based upon contractual arrangements with one or more nonpublic, non-sectarian schools or facilities. An alternative kindergarten program shall be:

(a) Offered immediately preceding the other elementary grades.

(b) Designed primarily for 5-year-olds.

(c) Available at district expense to all kindergarten-aged children who reside in the district.

II. An alternative kindergarten program shall satisfy the same criteria established for public kindergarten programs in the New Hampshire standards for school approval.

III. A local plan for an alternative kindergarten program shall be approved by the school board. A local plan for an alternative kindergarten program shall be submitted to the commissioner of the department of education at times established by the commissioner.

IV. A local plan shall contain the following information:

(a) A description of the alternative kindergarten program.

(b) A list of the nonpublic, non-sectarian schools or facilities to be utilized.

(c) Evidence that the alternative kindergarten program satisfies the same criteria established for public kindergarten programs in the New Hampshire minimum standards for the approval of schools.

(d) Procedures for coordinating and articulating curriculum, instruction, and support services provided under the alternative kindergarten program with curriculum, instruction, and support services provided in the other elementary grades.

(e) An explanation of how students will be transported to and from the schools or facilities to be utilized.

V. The plan shall be reviewed by the department of education for compliance with statutory requirements.

VI. If an approved alternative kindergarten program utilizes more than one school or facility, the school board or the superintendent or other administrative officer designated by the school board may take into consideration parental preference when assigning students to schools or facilities.

VII. (a) Upon the effective date of this paragraph, and for each fiscal year through June 30, 2003, an adequate education grant of $1,200 per pupil shall be distributed to school districts, from the education trust fund created in RSA 198:39, for the education of its resident kindergarten pupils enrolled in an approved alternative kindergarten program established under this section.

(b) Once pupils enrolled in an approved alternative kindergarten program have been counted in the average daily membership in residence, school

districts shall receive, for each such pupil, an adequate education grant calculated in accordance with RSA 198:41 through RSA 198:42.

VIII. Notwithstanding the provisions of this section, alternative kindergarten programs which were approved and in effect prior to April 29, 1999 may continue to operate and shall continue to receive per pupil adequate education grant amounts in accordance with RSA 198:41 through RSA 198:42.

**Source.** 2000, 289:1. 2001, 158:36. 2005, 257:20. 2007, 270:3, eff. June 29, 2007. 2008, 384:4, eff. July 11, 2008. 2017, 63:8, eff. Aug. 1, 2017.

**198:48–b Kindergarten Adequate Education Grants.**

Notwithstanding any provision of law to the contrary:

I. A school district which operates a full-day kindergarten program in any school year in which the adequate education grant provided pursuant to RSA 198:42 does not include a count of the full-day kindergarten students, shall receive an additional adequate education grant based on the number of pupils attending kindergarten in the district as of the beginning of the school year.

II. The per pupil amount of the additional education grant provided in this section shall be 50 percent of the amount distributed under RSA 198:40–a, II(a), based on the number of pupils enrolled and present on the first day of school in the current year in a full-day kindergarten program in the district. Once pupils enrolled in an approved kindergarten program have been counted in the average daily membership, school districts shall receive, for each such pupil, an adequate education grant calculated in accordance with RSA 198:40–a, II.

III. For the fiscal year ending June 30, 2021, and every fiscal year thereafter, the amount necessary to fund the grants under this section is hereby appropriated to the department from the education trust fund established in RSA 198:39. If the balance in the education trust fund is less than zero, the governor is authorized to draw a warrant for sufficient funds to eliminate such deficit out of any money in the treasury not otherwise appropriated. The commissioner of the department of administrative services shall inform the fiscal committee and the governor and council of such balance. This reporting shall not in any way prohibit or delay the distribution of kindergarten adequate education grants.

**Source.** 2008, 384:2, eff. July 11, 2008. 2020, 38:2, eff. July 29, 2020. 2021, 91:315, eff. June 30, 2021.

**198:48–c Kindergarten Grants.**

I. (a) For fiscal year 2019, in addition to any funds received pursuant to RSA 198:40–a, in the first year that a school district or chartered public school that operates an approved full-day kindergarten program, the commissioner of the department of education shall calculate and distribute a grant of $1,100 per kindergarten pupil based on the enrollment number of eligible full-day kindergarten pupils on the first day of the school year. The superintendent, or designee, shall certify the enrollment number of kindergarten pupils to the commissioner.

(b) For fiscal year 2019, once pupils enrolled in an approved full-day kindergarten program have been counted in the school district's average daily membership in attendance as defined in RSA 198:38, I, a school district, or a chartered public school based on its kindergarten average daily membership enrollment number, shall receive, in addition to any funds received pursuant to RSA 198:40–a, an additional grant of $1,100 per kindergarten pupil attending a full-day kindergarten program. The commissioner shall certify the amount of the grant to the state treasurer and direct the payment thereof from the education trust fund established in RSA 198:39 to the school district or chartered public school.

(c) Grants shall be disbursed to a school district pursuant to the distribution schedule in RSA 198:42 and to a chartered public school pursuant to the distribution schedule in RSA 194–B:11, I(c).

(d) The amount necessary to fund the grants under this section is hereby appropriated to the department from the education trust fund. The governor is authorized to draw a warrant from the education trust fund to satisfy the state's obligation under this section.

II. A school district or chartered public school that operates an approved full-day kindergarten program for which it receives funding under this section shall permit a pupil to attend kindergarten for a half-day.

III. [Repealed.]

**Source.** 2017, 229:4, eff. July 1, 2017. 2019, 346:233, eff. July 1, 2019 at 12:01 a.m.

**198:49 Repealed by 2005, 257:22, I, eff. July 1, 2005 at 12:02 a.m.**

**Education Property Tax Hardship Relief**

**198:50 to 198:55 Repealed by 1999, 338:22, eff. July 1, 2002, and 2001, 158:82, eff. July 1, 2002.**

**Low and Moderate Income Homeowners Property Tax Relief**

**198:56 Definitions.**

In this subdivision:

I. "Commissioner" means the commissioner of the department of revenue administration.

II. "Homestead" means the dwelling owned by a claimant or, in the case of a multi-unit dwelling, the portion of the dwelling which is owned and used as the claimant's principal place of residence and the claimant's domicile for purposes of RSA 654:1. "Homestead" shall not include land and buildings taxed under RSA 79–A or land and buildings or the portion of land and buildings rented or used for commercial or industrial purposes. In this paragraph, the term "owned" includes:

(a) A vendee in possession under a land contract;

(b) One or more joint tenants or tenants in common; or

(c) A person who has equitable title, or the beneficial interest for life in the homestead.

III. "Household income" means the sum of the adjusted gross income for federal income tax purposes of the claimant and any adult member of the claimant's household who resides in the homestead for which a claim is made. "Household income" shall also include all income of any trust through which the claimant holds equitable title, or the beneficial interest for life, in the homestead.

IV. "Tax relief" means the low and moderate income homeowners property tax relief provided in this subdivision.

V. "New Hampshire household" means any person filing a federal income tax return as head of household or 2 or more adults who jointly share the benefit of the homestead. "New Hampshire household" shall not include those adults who share the homestead under a landlord-tenant relationship.

VI. "Dependent" means a person residing in a homestead who is claimed as a dependent for federal income tax purposes.

**Source.** 2001, 158:80, eff. July 1, 2002.

### 198:57 Low and Moderate Income Homeowners Property Tax Relief.

I. Pursuant to the provisions of this subdivision, eligible claimants shall be granted tax relief following the effective date of this subdivision.

II. Residents shall apply to the department of revenue administration for such tax relief.

III. An eligible tax relief claimant is a person who:

(a) Owns a homestead or interest in a homestead subject to the education tax;

(b) Resided in such homestead on April 1 of the year for which the claim is made, except such persons as are on active duty in the United States armed forces or are temporarily away from such homestead but maintain the homestead as a primary domicile; and

(c) Realizes total household income of:

(1) $37,000 or less if a single person;

(2) $47,000 or less if a married person or head of a New Hampshire household.

IV. All or a portion of an eligible tax relief claimant's state education property taxes, RSA 76:3, shall be rebated as follows:

(a) Multiply the total local assessed value of the claimant's property by the percentage of such property that qualifies as the claimant's homestead;

(b) Multiply $220,000 by the most current local equalization ratio as determined by the department of revenue administration;

(c) Multiply the lesser of the amount determined in subparagraph (a) or (b) by the education tax rate as shown on the tax bill under RSA 76:11–a;

(d) Multiply the product of the calculation in subparagraph (c) by the following percentage as applicable to determine the amount of tax relief available to the claimant:

(1) If a single person and total household income is:

(A) less than $23,100, 100 percent;

(B) $23,100 but less than $27,800, 60 percent;

(C) $27,800 but less than $32,400, 40 percent; or

(D) $32,400 but less than or equal to $37,000, 20 percent.

(2) If a head of a New Hampshire household or a married person and total household income is:

(A) less than $29,400, 100 percent;

(B) $29,400 but less than $35,300, 60 percent;

(C) $35,300 but less than $41,100, 40 percent; or

(D) $41,100 but less than or equal to $47,000, 20 percent.

(e) The amount determined by subparagraph (d) is the allowable tax relief in any year.

V. If a homestead is owned by 2 or more persons as joint tenants or tenants in common, and one or more of such joint owners do not principally reside at such homestead, tax relief applies to the proportion-

ate share of the homestead value that reflects the ownership percentage of the claimant. Only one claim may be filed for a single homestead.

VI. (a) Complete applications for state tax relief shall be filed with the department of revenue administration between May 1 and June 30 following the due date of the final tax bill as defined in RSA 76:1–a for state education property taxes.

(b) The commissioner may accept late filed, but complete, applications filed on or before November 1, under the following circumstances:

(1) The claimant satisfies the commissioner that the claimant was prevented from timely filing the application due to accident, mistake or misfortune.

(2) The claimant or other adult member of the household requested an extension of time to file his or her federal income tax return.

VII. Each claimant shall provide a copy of his or her federal income tax return and a copy of the federal income tax return for each adult member of the claimant's household for the corresponding tax period. Claimants and adult household members who were not required to file a federal tax return for the immediately prior tax period may submit an affidavit to such effect in lieu of a tax return which document shall include the affiant's social security number. A claimant or any other adult member of the household, who requested an extension to file his or federal income tax return, shall attach a copy of the federal extension to the claim. A claimant who asserts ownership in a homestead because he or she holds equitable title, or the beneficial interest for life, in the homestead shall also submit a copy of the document creating such interest and a copy of the federal tax return, if any, for the immediately prior tax period, of the trust holding legal title to the homestead. Any documents submitted shall be considered confidential, and protected under RSA 21–J:14.

VIII. The provisions of RSA 359–C shall not apply to the documents required to be submitted under this section.

**Source.** 2001, 158:80. 2004, 238:6. 2005, 257:12, 13, eff. July 1, 2005 at 12:02 a.m. 2008, 173:15, eff. July 1, 2009. 2021, 95:1, eff. Aug. 30, 2021.

### 198:58 Rulemaking; Forms; Notice.

I. The commissioner shall adopt rules, under RSA 541–A, relative to the administration of the tax relief provisions of this subdivision.

II. The commissioner shall approve and provide forms relative to the administration of this subdivision.

III. Claim forms shall include the following:

(a) Instructions on completing and filing the form;

(b) Sections for information concerning the claimant, the claimant's household, the property for which tax relief is sought, and such other information as is reasonably necessary to determine the accuracy of the claim;

(c) Instructions on appeal procedure and time limits relative to such appeals; and

(d) A place for the claimant's signature with a certification by the claimant that the claim is made in good faith and that the facts contained in the claim are true.

IV. The commissioner shall publicize notice of the tax relief provisions in a suitable manner.

**Source.** 2001, 158:80, eff. July 1, 2002.

### 198:59 Penalties; Assessment of Erroneous Claims.

I. Any person who files a claim for tax relief under this subdivision with fraudulent intent and any person who assisted in the preparation or filing of the claim or supplied information upon which the claim was prepared shall be guilty of a misdemeanor.

I–a. The commissioner shall have the authority to audit any claim for relief filed under this subdivision to determine whether the claim has been granted erroneously. Any such audit shall commence within 3 years after the claim has been granted. Any assessment made by the commissioner shall be subject to appeal in accordance with RSA 198:60, I.

II. The commissioner may assess and collect the amount of any sums granted for property tax relief relative to a fraudulent or erroneously paid claim for tax relief including interest provided under RSA 21–J:28 and an additional penalty of 25 percent for the erroneous amount of such claim or an additional penalty of the greater of 25 percent or $1,000 for a fraudulent claim.

**Source.** 2001, 158:80. 2004, 238:7, eff. June 15, 2004.

### 198:60 Appeals.

I. Whenever the commissioner refuses to grant a claimant tax relief, or after an audit, assesses an amount against the claimant for property tax relief granted including interest and applicable penalties for an erroneously paid claim, the claimant may

appeal in writing within 30 days of notice of such refusal or assessment to the board of tax and land appeals.

II. The board of tax and land appeals may reverse or affirm, in whole or in part, or modify the decision appealed from when there is an error of law or when the board finds the commissioner's action to be arbitrary or unreasonable.

**Source.** 2001, 158:80. 2004, 238:8, eff. June 15, 2004.

### 198:61 Refund of Tax Claims.

The department of revenue administration shall review a claim for tax relief filed with it and, if such claim is determined to be valid, shall certify such amount to the state treasurer within 120 days who shall pay such claims from funds in the education trust fund. Such sums are hereby appropriated and the governor is authorized to draw a warrant from the education trust fund to satisfy the state's obligation under this section. Such warrant for payment shall be issued regardless of the balance of funds available in the education trust fund. If the balance in the education trust fund, after the issuance of any such warrant, is less than zero, the commissioner of the department of revenue administration shall inform the fiscal committee and the governor and council of such balance. This reporting shall not in any way prohibit or delay the payment of valid claims. The department shall notify a claimant whose claim is rejected in whole or in part of such determination within 90 days of the department's receipt of the claim and all required documentation.

**Source.** 2001, 158:80. 2004, 238:11, eff. June 15, 2004.

### Commission to Study Fiscal Disparities Between Public School Districts

### 198:62 Repealed by 2014, 309:2, eff. Nov. 2, 2014.

## CHAPTER 199

## SCHOOLHOUSES



### Location and Building

### 199:1 Location and Construction by District.

The district may decide upon the location of its schoolhouses by vote or by a committee appointed for the purpose, provided, however, that all plans, specifications, and the selection of site for any new school buildings for any school district within the state shall be approved by the school board of the district in which it is proposed to construct such a building. The provisions of this section shall apply to all new construction and substantial renovation of public school buildings, including those constructed by grant or loans of funds from state, the federal government, or other sources. The district shall investigate feasible options in the course of deciding to renovate or replace an existing school building. In considering such options, the district shall hold at least one public hearing and shall seek input from municipal boards and departments. The district shall also review the municipality's zoning regulations and master plan in order to maximize best planning practices. For the purposes of this chapter, in addition to their usual meanings, the words "schoolhouse" and "school building" also mean educational administration building, including school administrative unit facilities.

**Source.** 1845, 224:1. RS 71:1. CS 75:1. GS 80:2. GL 88:2. PS 91:1. 1921, 85, VII:1. PL 122:1. RL 141:1. 1945, 127:1. 1947, 156:10. RSA 199:1. 1967, 449:4. 1979, 459:4, eff. Aug. 24, 1979. 2008, 289:5, eff. Aug. 26, 2008. 2010, 327:1, eff. Sept. 18, 2010.

### 199:2 Location in Cities.

The school board of cities shall have sole power to select and purchase land for schoolhouse lots. When said board has secured, by vote of the city councils, an adequate appropriation for the purchase of a specified lot at a specific price, said board may make the purchase.

**Source.** 1897, 65:1. 1921, 85, VII:2. PL 122:2. RL 141:2.

**199:3 Construction in Cities; Joint Building Committees.**

I. No schoolhouse shall be erected, altered, remodeled or changed in any city school district unless the plans have been previously submitted to the school board of that district and received its approval.

II. (a) All construction relating to schoolhouses in any city school district shall be done under the direction of a joint building committee which shall be established and chosen in equal numbers by the city council and the school board.

(b) The chairperson of a joint building committee shall be chosen by a majority vote of the committee members.

(c) Any vacancy in the committee membership shall be filled by the respective appointing authority on or before the close of the next regularly scheduled meeting of the appointing authority following the creation of the vacancy.

(d) The joint building committee shall meet monthly and at other times as the chairman deems necessary.

III. The joint building committee shall have the following duties:

(a) Oversee and decide all matters relating to any construction on schoolhouse buildings.

(b) Prepare and submit monthly status reports relating to construction progress to the city council and the school board.

(c) Prepare and submit monthly financial reports relating to the total authorized construction budget and expenditures to date to both the city council and the school board.

IV. All funds appropriated by the city council for construction of a new schoolhouse shall be administered by the appropriate joint building committee, and those funds shall be disbursed upon authorization of the committee until final acceptance of the schoolhouse by the city council.

**Source.** 1897, 65:2. 1921, 85, VII:3. PL 122:3. RL 141:3. RSA 199:3. 1993, 185:1, eff. Aug. 8, 1993.

**199:4 Transfer of Building.**

I. Upon final completion of the new schoolhouse as determined by the joint building committee, the committee shall vote to accept the building and transfer it to the care and control of the school board.

II. Whenever a schoolhouse shall no longer be needed for public school purposes, the school board shall transfer its care and control to the city.

**Source.** 1897, 65:3. 1921, 85, VII:4. PL 122:4. RL 141:4. RSA 199:4. 1993, 185:2, eff. Aug. 8, 1993.

**199:4–a Final Report; Dissolution of Joint Building Committee.**

Upon vote of the joint building committee to accept the new schoolhouse and to transfer it to the school board, the joint building committee shall remain in existence for the sole purpose of preparing and submitting a final report relating to the schoolhouse construction and related financial matters to the city council and the school board. Any funds appropriated for the schoolhouse construction which have not been expended shall be returned to the control of the municipality, subject to RSA 33:3–a. The joint building committee shall be dissolved upon the return of unexpended funds and submission of the final report.

**Source.** 1993, 185:3, eff. Aug. 8, 1993.

**199:5 Exception.**

The provisions of RSA 199:2–199:4–a shall not apply to the Union School District of Concord and to the school districts of Keene, Lebanon, and Claremont.

**Source.** 1897, 65:4. 1921, 85, VII:5. PL 122:5. RL 141:5. RSA 199:5. 1993, 185:4, eff. Aug. 8, 1993.

**199:6 Power of Committees.**

No committee shall have power to bind the district beyond the amount of money voted by it, and the district shall not be bound by any act, as a ratification of the doings of such committee, beyond their authority, unless by express vote of the district.

**Source.** GS 80:3. GL 88:3. PS 91:2. 1921, 85, VII:6. PL 122:6. RL 141:6.

**199:7 Location by Board.**

If the district does not agree upon a location for a schoolhouse, or upon a committee to locate the same, or if the same is not located by such committee within 30 days after its appointment, the school board, upon petition of 10 percent or more of the voters, shall determine the location.

**Source.** RS 71:5. CS 75:5. GS 80:5. GL 88:5. PS 91:4. 1921, 85, VII:8. 1921, 88:1. PL 122:7. RL 141:7.

**199:8 Relocation by Board.**

If 10 percent or more of the voters of a district are aggrieved by the location of a schoolhouse by the district or its committee, they may apply by petition to the school board, who shall hear the parties interested and determine the location.

**Source.** RS 71:2. CS 75:2. GS 80:4. GL 88:4. 1887, 105:7. PS 91:3. 1921, 85, VII:7. 1921, 88:1. PL 122:8. RL 141:8.

### 199:9 Relocation by State Board of Education.

If 10 percent or more of the voters of a school district are aggrieved by the location of a schoolhouse by the district or its committee, or by the school board, they may, within 10 days after the making of the location, apply by petition to the state board of education, who shall hear the parties interested and determine the location.

**Source.** 1871, 4:1. GL 88:6. 1887, 105:7. PS 91:5. 1921, 85, VII:9. 1921, 88:1. PL 122:9. RL 141:9. 2008, 289:6, eff. Aug. 26, 2008.

### 199:10 Notice of Hearing Upon Question of Location.

The chairman of the state board of education shall appoint a time and place within the district for a hearing upon every such petition, and shall give notice thereof by causing attested copies of the petition and order of notice to be posted at 2 or more public places within the district and to be given in hand to, or left at the abode of, the clerk of the district and of one of the school board, 14 days before the day of hearing.

**Source.** 1871, 4:2. GL 88:7. PS 91:6. 1921, 85, VII:10. PL 122:10. RL 141:10. 2008, 289:7, eff. Aug. 26, 2008.

### 199:11 Repealed by 2008, 289:9, I, eff. Aug. 26, 2008.

### 199:12 Hearing.

The hearing shall be closed within 60 days. The state board of education shall hear all parties interested who desire to be heard, and shall make a decision in writing and file it with the clerk of the district.

**Source.** 1871, 4:2. GL 88:7. PS 91:8. 1921, 85, VII:12. PL 122:12. RL 141:12. 2008, 289:8, eff. Aug. 26, 2008.

### 199:13 Repealed by 2008, 289:9, II, eff. Aug. 26, 2008.

### 199:14 Proceedings Pending.

The district shall take no steps to carry into effect a former location while any subsequent proceedings authorized by law for a change thereof are pending.

**Source.** 1871, 4:2. GL 88:7. PS 91:9. 1921, 85, VII:13. PL 122:14. RL 141:14.

### 199:15 New Proceedings.

The location of schoolhouses, however made, shall be conclusive for the term of 5 years, unless an appeal therefrom shall be prosecuted as provided in this chapter.

**Source.** GS 233:6. GL 43:6. PS 91:11. 1921, 85, VII:15. PL 122:15. RL 141:15.

### 199:16 Enlargement of Lot.

The school board may enlarge any existing lot used for school purposes upon such petition to it and proceedings thereon as are required to authorize it to determine the location for a schoolhouse.

**Source.** 1872, 13:3. GL 88:10. 1877, 106:1. PS 91:12. 1921, 85, VII:16. PL 122:16. RL 141:16. 1949, 146:1, eff. April 21, 1949.

### 199:17 Taking Land.

If any school district shall neglect or refuse to procure the lot of land selected for the location of a schoolhouse, or for the enlargement of an existing schoolhouse lot, as provided in this chapter, or if the owner of the land shall refuse to sell the same to the district for a reasonable price, the selectmen, upon petition to them by the school board, or by 3 or more voters of the district, shall appraise the damages occasioned to the landowner by the taking of his land. The appraisal shall be made in writing, and be filed with the clerk of the district.

**Source.** 1871, 41:1. 1872, 13:1. GL 88:11, 12. PS 91:13. 1921, 85, VII:17. PL 122:17. RL 141:17.

### 199:18 Appeal From Appraisal.

Any landowner aggrieved by such appraisal of his damages may appeal therefrom to the superior court by petition within 60 days after the appraisal is filed with the clerk of the district; and the procedure and remedies upon such appeal shall be the same as in appeals from the assessment of damages by selectmen in highway cases, except that service of papers shall be made upon the clerk of the district and one of the school board, instead of the town clerk and one of the selectmen, and except as provided in RSA 199:19.

**Source.** 1872, 13:1. GL 88:11. PS 91:14. 1921, 85, VII:18. PL 122:18. RL 141:18.

### 199:19 Payment of Damages.

Upon payment or tender of the damages awarded, the land shall vest in the district, and it may take possession of it. Such payment or tender may be made in accordance with the award of the selectmen before an appeal is taken, or while an appeal is pending, and shall have like effect. In such case if the damages are increased upon appeal the landowner shall have judgment for the excess; if decreased, the district shall have judgment for the amount of the decrease. If the result of the appeal is to change the award of damages in favor of the landowner he shall recover costs; otherwise he shall pay costs.

**Source.** RS 71:8. CS 75:8. GS 80:7. 1871, 41:2. 1872, 13:2. GL 88:11, 13. PS 91:15. 1921, 85, VII:19. PL 122:19. RL 141:19.

**199:19–a Record.**

Whenever a school district shall take land for the location of a schoolhouse or for the enlargement of an existing schoolhouse lot as provided by RSA 199:17 the school district clerk shall forward to the registry of deeds for the county for filing where said land is located a copy of the petition of the school board to the selectmen containing a description of said land, together with the name of the owner from whom the land is taken.

**Source.** 1965, 234:1, eff. Aug. 30, 1965.

**199:20 Neglect to Build, Etc.**

If a district shall refuse or neglect to build, repair, remove or fit up a schoolhouse, or shall refuse or neglect to build a schoolhouse upon or to remove it to the lot designated as aforesaid, the selectmen, upon petition of 3 or more voters of the district, after hearing the parties, may assess upon the district and collect such sums of money as may be necessary, and therewith cause such schoolhouse to be built, removed, repaired or fitted up.

**Source.** RS 71:6. CS 75:6. GS 80:8. GL 88:14. PS 91:16. 1921, 85, VII:20. PL 122:20. RL 141:20.

**Use and Manner of Construction**

**199:21 Accommodations.**

The schools of a district shall be kept in its schoolhouses, if it has suitable houses that will accommodate the scholars; if not, the school board shall provide suitable accommodations for the schools at the expense of the district.

**Source.** RS 72:7. CS 76:8. GS 80:9. GL 88:15. PS 91:17. 1921, 85, VII:21. PL 122:21. RL 141:21.

**199:22 Repealed by 2008, 289:9, III, eff. Aug. 26, 2008.**

**199:22–a Use to Feed Elderly.**

I. Any school board may operate or allow to be operated for the benefit of persons age 60 or over a meal program on school property including the use of school equipment. Such program may be operated on a profit basis and any surplus funds may be used to defray expenses or otherwise as the school board shall direct. Provided that such program shall be operated at no expense to the district and shall not interfere with the education of the students. The price charged for any meal may be based on the recipient's ability to pay as determined by the school board.

II. The use in such program of food service equipment, food, and other items which are restricted in use to the benefit of the students is not authorized by this section unless such program is granted the permission upon such conditions as the restricting federal or state authority deems necessary. In addition to any such conditions, the school board shall maintain such records as will accurately reflect the percentage of use of school property, school food service equipment, food, and other such restricted items between the geriatric program and the child nutrition program. Further, insofar as practicable, grants in aid for replacement and original equipment shall be requested on the basis of the percentage of use from both available child nutrition funds and from available geriatric program grants.

**Source.** 1973, 513:1, eff. Aug. 31, 1973.

**199:23 to 199:26 Repealed by 2008, 289:9, IV–VII, eff. Aug. 26, 2008.**

## CHAPTER 200

## HEALTH AND SANITATION

### 200:1 to 200:10 Repealed by 1971, 499:3, I, eff. Sept. 4, 1971.

### 200:11 Investigation of Sanitary Conditions.

The department of health and human services shall, upon complaint of any responsible person, investigate the sanitary conditions of any schoolhouse or building used for school purposes.

**Source.** 1915, 35:1. 1921, 85, VIII:14. PL 123:11. RL 142:11. RSA 200:11. 1983, 291:1, I. 1995, 310:181, eff. Nov. 1, 1995.

### 200:11–a Investigation of Air Quality.

I. The school principal, or designee shall annually investigate the air quality of any schoolhouse or building used for school purposes using a checklist provided by the department of education. The checklist shall be established in rules adopted by the state board of education pursuant to RSA 541–A. The purpose of the review shall be to consider physical factors that can influence the air quality within the schoolhouse or building. The review shall require a physical assessment of the facilities, not a measurement of the air quality. The checklist shall allow an evaluation of the following physical conditions that can impact air quality: general cleanliness, ventilation, moisture control, and chemical use and storage. The completed checklist shall be filed after the annual inspection with the department of education, the local school board, and the local health officer. Checklists shall remain on file for 5 years. Checklists shall be reviewed during the 5 year school approval process and shall be a factor in the approval process for a public school.

II. The department of education shall ensure that every public school in New Hampshire possesses a copy of the United States Environmental Protection Agency Tools for Schools program and shall encourage public schools to implement the program to help provide and maintain good indoor air quality in public school buildings.

III. Any school principal or designee who has conducted a good faith report under RSA 200:11–a shall be immune from civil liability.

**Source.** 2010, 319:1, eff. Jan. 1, 2011; 295:12, eff. Jan. 1, 2011 at 12:01 a.m.

### 200:11–b Water Bottle Filling Stations in Schools.

I. [Repealed.]

II. All construction or renovation of public school buildings, including any approved project under RSA 198:15–c, shall be equipped with water bottle filling stations meeting the following requirements:

(a) A water bottle filling station shall mean a water dispenser accessible to all people in compliance with the American with Disabilities Act (42 U.S.C. 12101 et seq.) that dispenses clean drinking water directly into a bottle or other drinking container.

(b) Water bottle filling stations may be touchless for sanitary reasons.

(c) Water bottle filling stations installed in public schools under this section shall:

(1) Be regularly cleaned to maintain sanitary conditions;

(2) Be maintained to ensure they function properly, including replacing filters as recommended by the manufacturers; and

(3) Dispense clean, filtered, cooled drinking water.

III. The local building inspection authority, pursuant to RSA 155–A, of school districts shall not approve the plans or specifications for a new public school building and for any addition or substantial

renovation to an existing public school building unless the plans and specifications provide for:

(a) A minimum of one water bottle filling station for every 200 people projected to occupy the building upon completion of the proposed construction.

(b) A minimum of one water bottle filling station on each floor or wing of each building.

(c) A minimum of one water bottle filling station located near cafeterias, gymnasiums, or outdoor recreation spaces and other high-traffic areas.

(d) Water bottle filling stations may be integrated into drinking fountains, at a ratio of 1 combination unit for every 200 people.

IV. Schools shall permit students to bring to school water bottles that:

(a) Are made of a material that is not easily breakable;

(b) Have lids to prevent spills; and

(c) Are filled exclusively with water.

V. The school board may enact a disciplinary policy regarding the misuse of water bottles by students or employees.

**Source.** 2022, 149:1, eff. Sept. 5, 2022. 2023, 6:1, eff. June 25, 2023.

### 200:12 Requiring Changes; Condemnation.

If the department of health and human services shall find that such schoolhouse or building is in any respect a menace, or likely to become a menace, to the health or bodily welfare of the pupils or teachers, the department shall call the attention of the local board of health to the facts; and, if after a reasonable length of time the complaint has not been attended to in a satisfactory way, the department shall either order such changes as will in their judgment make the building safe and sanitary for school purposes or condemn the same and forbid its further use.

**Source.** 1915, 35:2. 1921, 85, VIII:15. PL 123:12. RL 142:12. RSA 200:12. 1995, 310:175, 181, eff. Nov. 1, 1995.

### 200:13 Cost of Changes.

It shall be the duty of the school board of the district forthwith to make the changes ordered, and the cost of the same shall be a charge upon the district.

**Source.** 1915, 35:3. 1921, 85, VIII:16. PL 123:13. RL 142:13.

### 200:14 Assessment of Cost.

The selectmen shall assess the cost upon the ratable estate of the district in addition to money voted by the district or required by law for the support of schools. In anticipation of such assessment the school board may borrow money on the credit of the district to meet the charges incurred.

**Source.** 1915, 35:3. 1921, 85, VIII:16. PL 123:14. RL 142:14.

## Optional Provisions

### 200:15 to 200:25 Repealed by 1971, 499:3, II, eff. Sept. 4, 1971.

## School Health Services

### 200:26 Definition.

As used in this subdivision the word "child" shall mean any child who attends, or who should attend an elementary, junior high, or senior high school, and shall include any child who attends a public kindergarten or special class for disabled children which is an integral part of the local school district.

**Source.** 1971, 499:1. 1990, 140:2, X, eff. June 18, 1990.

### 200:27 School Health Services.

The local board in each school district may provide school health services to include school nurse services and school physician services to every child of school age in the district as hereinafter provided.

**Source.** 1971, 499:1, eff. Sept. 4, 1971.

### 200:27–a Consent of Parent or Legal Guardian Required.

A child's participation in any program that provides medical or dental treatment in any school setting shall require the explicit written consent of the child's parent or legal guardian.

**Source.** 2022, 110:3, eff. July 26, 2022.

### 200:28 School Physician.

Each school board may appoint one or more school physicians, legally qualified to practice medicine and currently licensed to practice in New Hampshire or immediately adjacent states, and may assign one to the schools in the district and may provide them with all proper facilities for the performance of their duties as relate to the school health program.

**Source.** 1971, 499:1, eff. Sept. 4, 1971.

### 200:29 School Nurse; Certification.

I. A superintendent may nominate and school board appoint a school nurse to function in the school health program, and provide said nurse with proper facilities and equipment. A school nurse shall be a registered professional nurse currently licensed in New Hampshire and certified by the state board of education.

II. (a) An individual shall have the following entry level requirements to be certified as a school nurse:

(1) Have completed a board of nursing approved registered nursing program at the associate's degree level or higher under RSA 326–B; and

(2) Have 3 years current experience in pediatric nursing or other related nursing areas.

(b) An applicant for certification as a school nurse shall have the skills, competencies, and knowledge in the following areas:

(1) In the area of delivery of the school nursing services, the skills and abilities to:

(A) Assess student's health or situation through analysis of data collected and synthesize comprehensive data.

(B) Identify outcomes and develop plans for individual students or situations including strategies and alternatives.

(C) Implement interventions identified in the plan of care/action, coordinating care with school employees and evaluate outcome.

(D) Consult with administration to provide health education and employ strategies to promote health, wellness, and a safe environment.

(E) Systematically evaluate the progress for the quality of practice and effectiveness toward attainment of outcomes for promoting health and a safe environment.

(2) In the area of school nursing, the applicant shall demonstrate the knowledge and ability to:

(A) Provide quality nursing practice in a school setting.

(B) Evaluate his or her nursing practices and continue professional development as required by a school district's professional development master plan.

(C) Collaborate with students, families, school staff, and others in the conduct of school nursing practices.

(D) Integrate ethical provisions and research findings into practice as a school nurse.

(3) In the area of accountability, knowledge, skills, and application in:

(A) Planning and delivering school nursing services factoring in safety, effectiveness, cost, and impact on nursing practice.

(B) Providing leadership in the profession and professional nursing practice setting.

(C) Managing school health services.

(D) Complying with professional nursing practice standards, guidelines, relevant statutes, rules, and regulations.

III. The state board of education shall adopt rules, pursuant to RSA 541–A, relative to:

(a) The application process for certification under paragraph II.

(b) Form and content of any forms required under paragraph II.

(c) Application fees for certification under paragraph II.

(d) Further rulemaking necessary for the proper administration of certification under paragraph II.

IV. All school nurses hired after August 25, 2019 holding an associate's degree in nursing shall be enrolled in a registered nurse to bachelor of science in nursing program, and shall complete such program within 6 years of the date of hire.

**Source.** 1971, 499:1, eff. Sept. 4, 1971. 2016, 285:2, eff. Aug. 20, 2016. 2019, 144:1, 2, eff. Aug. 25, 2019. 2023, 172:1, 2, eff. July 28, 2023.

### 200:30 School Dental Hygienist.

Any school board may employ for their district a dental hygienist who is a graduate of an accredited school of dental hygiene and is licensed by the state dental board. Said hygienist shall be under the supervision of a qualified dentist licensed to practice in New Hampshire.

**Source.** 1971, 499:1, eff. Sept. 4, 1971.

### 200:31 School Health Personnel.

Any school board may employ or contract for its district a licensed practical nurse (LPN) or licensed nursing assistant (LNA) who shall hold an unencumbered current license in New Hampshire, to work under the supervision of the school registered nurse in accordance with rules adopted under RSA 541–A, by the board of nursing.

**Source.** 1971, 499:1. 1997, 326:1. 2007, 41:1, eff. July 20, 2007.

### 200:32 Physical Examination of Pupils.

There shall be a complete physical examination by a licensed physician, physician assistant, or advanced practice registered nurse of each child prior to or upon first entry into the public school system and thereafter as often as deemed necessary by the local school authority. The result of the child's physical examination shall be presented to the local school officials on a form provided by the local school authorities. No physical examination shall be required of a child whose parent or guardian objects thereto in writing on the grounds that such physical examina-

tion is contrary to the child's religious tenets and teachings.

**Source.** 1971, 499:1. 1996, 277:1, eff. Aug. 9, 1996. 2009, 54:5, eff. July 21, 2009.

### 200:33 Repealed by 1996, 277:5, eff. August 9, 1996.

### 200:34 Special Examination.

Every child with a presenting problem and found to need further evaluation, after due consideration and evaluation by the appropriate school authority, shall be referred by the school physician or school administrator to the parents or guardian of said child for examination, and evaluation by an appropriate practitioner and if said parents fail or neglect to have said child so examined and fail to present the recommendations from said examiner within a reasonable period after the referral by the school to said parents, then said child may be examined by the school physician, or other qualified personnel.

**Source.** 1971, 499:1, eff. Sept. 4, 1971.

### 200:35 Reporting of Defects or Disabilities.

The parent or guardian of the child shall be informed or counseled concerning any defects or disabilities discovered and identified through observation, screening procedures or physical examinations. The school nurse may make home visits, arrange parent conferences at school or send written notices as determined pursuant to local school policy.

**Source.** 1971, 499:1, eff. Sept. 4, 1971.

### 200:36 Medical Examination of School Personnel.

All school personnel, to include but not limited to administrative, secretarial, maintenance, cafeteria and transportation personnel in each school district shall be required to have a pre-employment medical examination by a licensed physician qualified to practice medicine in at least one of the states of the United States of America. Any person who objects to all or part of any medical examination because of religious beliefs shall be exempt from said examination, except that no such exemption shall be granted if state or local authorities determine that such exemption would constitute a hazard to the health of persons exposed to the unexamined individual. The local school board shall further require additional medical examinations at specific intervals or upon the request of the local superintendent of schools during the period of employment. A written recommendation from the examining physician shall indicate that the employee is medically capable of performing his designated assignment.

**Source.** 1971, 499:1, eff. Sept. 4, 1971.

### 200:37 Medical Examination of School Bus Operators.

Notwithstanding the provisions of RSA 200:36, before employing any person as a school bus operator, the town or city governing body which pays for such transportation shall require that such person submit a certificate signed by a licensed physician setting forth the physician's findings as a result of the examination to determine the physical condition of drivers in accordance with the requirements of 49 CFR 391.41-391.49. Such certificate shall be submitted to the local governing body prior to the commencement of such employment, which shall retain a copy of such certification. Every 2 years thereafter, either prior to the commencement of the school year or prior to the reemployment of such person as a school bus operator, such governing body shall require submission of a like certificate, except that school bus operators attaining the age of 70 shall be required to undergo an annual examination and to submit a certificate annually.

**Source.** 1971, 499:1. 1992, 69:1, eff. June 19, 1992.

### 200:38 Control and Prevention of Communicable Diseases; Duties of School Nurse.

I. Each school nurse shall ensure that:

(a) All children shall be immunized prior to school entrance in accordance with RSA 141–C:20–a.

(b) [Repealed.]

(c) All children shall have a complete physical examination prior to school entrance in accordance with RSA 200:32.

II. If the provisions of paragraph I are not met, each school nurse shall be responsible for informing school administrators of the noncompliance and for assisting with meeting such requirements, unless the child is exempted under RSA 141–C:20–c.

**Source.** 1971, 499:1. 1987, 193:8. 1996, 277:2. 2001, 83:2, II, eff. Aug. 18, 2001.

### 200:39 Exclusion From School.

Whenever any student exhibits symptoms of contagion or is a hazard to himself or others, he shall be excluded from the classroom and his parents or guardians shall be notified as soon as possible.

**Source.** 1971, 499:1, eff. Sept. 4, 1971.

### 200:40 Emergency Care.

Written policies shall be adopted by the local school board for the purpose of providing immediate and adequate emergency care for students and school personnel who sustain injury or illness during school hours, or during scheduled school activities.

**Source.** 1971, 499:1, eff. Sept. 4, 1971.

### 200:40–a Administration of Oxygen by School Nurse.

A school nurse shall be permitted to administer oxygen to a pupil in a medical emergency without parental permission or a physician's order.

**Source.** 2001, 83:1, eff. Aug. 18, 2001.

### 200:40–b Glucagon Administration.

I. (a) The state board of education, after consultation with the department of health and human services, shall adopt rules pursuant to RSA 541–A for addressing incidents of hypoglycemia resulting in unconsciousness, seizure, and/or the inability to swallow in order to provide for the health and safety of children who have been medically identified as having diabetes. The rules shall provide that:

(1) A parent or legal guardian of any child may authorize a school employee, or person employed on behalf of the school in cases where there is no school nurse immediately available, to administer glucagon to a child in case of an emergency, while at school or a school sponsored activity;

(2) The glucagon shall be kept in a conspicuous place, readily available; and

(3) Glucagon administration training may be provided by a licensed physician, physician assistant, advanced practiced registered nurse, or registered nurse, however in no case shall school nurses be required to provide training; and the school administration shall allow school employees to voluntarily assist with the emergency administration of glucagon when authorized by a parent or legal guardian.

(b) No school employee shall be subject to penalty or disciplinary action for refusing to be trained in glucagon administration.

(c) A parent or legal guardian shall provide a diabetes management plan or physician's order, signed by the student's health care provider, that prescribes the care and assistance needed by the student including glucagon administration.

II. The state board of education, in conjunction with the American Diabetes Association, and the New Hampshire chapter of American Academy of Pediatrics, shall develop standards and guidelines for the training and supervision of personnel, other than the school nurse, who provide emergency medical assistance to students under this section. Such personnel shall only be authorized to provide such assistance upon successful completion of glucagon administration training.

III. No school teacher, school administrator, school health care personnel, person employed on behalf of the school, any other school personnel, nor any 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 omissions constituting gross negligence or willful or wanton conduct.

IV. Training on the administration of glucagon for school personnel, or those employed on behalf of the school, shall not be considered the delegation of nursing practice.

V. The administration of glucagon by school personnel, or those employed on behalf of the school, shall not be considered the practice of nursing.

**Source.** 2015, 20:1, eff. July 4, 2015. 2022, 215:1, eff. Aug. 16, 2022.

### 200:40–c Emergency Plans for Sports Related Injuries.

I. The local board of each school district or the governing body of each nonpublic school that includes any of the grades 4 through 12, shall establish an emergency action plan for responding to serious or potentially life-threatening sports related injuries. Each plan shall:

(a) Document the proper procedures to be followed when a student sustains a serious injury or illness while participating in school sponsored sports or other athletic activity.

(b) List the employees, team coaches, and licensed athletic trainers in each school who are trained in first aid or cardiopulmonary resuscitation.

(c) Identify the employees, team coaches, or licensed athletic trainers responsible for carrying out the emergency action plan.

(d) Identify the activity location, address, or venue for the purpose of directing emergency personnel.

(e) Identify the equipment and supplies and location thereof needed to respond to the emergency.

(f) Identify the location of any automated external defibrillators and personnel trained in the use of the automated external defibrillator.

(g) Document policies related to cooling for an exertional heat stroke victim consistent with guidelines established by the American College of Sports Medicine and the National Athletic Trainers' Association.

II. The plan shall be posted within each school and disseminated to, and coordinated with emergency medical services, fire department, and law enforcement. In addition, each school district shall adopt procedures for obtaining student-participant medical information relative to any injury or illness related to or involving any head, face, or cervical spine, cardiac injury or diagnosis, exertional heat stroke, sickle cell trait, asthma, allergies, or diabetes for each student athlete prior to engaging in activities; policies related to hydration, heat acclimatization and wet bulb globe temperature guidelines as established by the American College of Sports Medicine and the National Athletic Trainers' Association; and procedures for students to return to play after a sports or illness-related injury, which shall be kept on file by each school district and made available to the department of education and public upon request. Access, filing, and confidentiality of student-participant medical information shall be managed in accordance with the Health Insurance Portability and Accountability Act (HIPAA) and the Family Educational Rights and Privacy Act (FERPA). Each plan shall be added to the school's emergency response plan and adopted procedures shall be reviewed annually and updated as necessary.

III. The plans shall be implemented by the beginning of the first full school year after the effective date of this section.

**Source.** 2021, 210:2, Pt. III, Sec. 1, eff. Sept. 1, 2022.

### 200:41 Appropriation.

A district may raise money to carry the provisions of this subdivision into effect.

**Source.** 1971, 499:1, eff. Sept. 4, 1971.

## Pupil Use of Epinephrine Auto-Injectors

### 200:42 Possession and Use of Epinephrine Auto-Injectors Permitted.

A pupil with severe, potentially life-threatening allergies may possess and self-administer an epinephrine auto-injector if the following conditions are satisfied:

I. The pupil has the written approval of the pupil's physician and, if the pupil is a minor, the written approval of the parent or guardian. The school shall obtain the following information from the pupil's physician:

(a) The pupil's name.

(b) The name and signature of the licensed prescriber and business and emergency numbers.

(c) The name, route, and dosage of medication.

(d) The frequency and time of medication administration or assistance.

(e) The date of the order.

(f) A diagnosis and any other medical conditions requiring medications, if not a violation of confidentiality or if not contrary to the request of the parent or guardian to keep confidential.

(g) Specific recommendations for administration.

(h) Any special side effects, contraindications, and adverse reactions to be observed.

(i) The name of each required medication.

(j) Any severe adverse reactions that may occur to another pupil, for whom the epinephrine auto-injector is not prescribed, should such a pupil receive a dose of the medication.

II. The school principal or, if a school nurse is assigned to the pupil's school building, the school nurse shall receive copies of the written approvals required by paragraph I.

III. The pupil's parent or guardian shall submit written verification from the physician confirming that the pupil has the knowledge and skills to safely possess and use an epinephrine auto-injector in a school setting.

IV. If the conditions provided in this section are satisfied, the pupil may possess and use the epinephrine auto-injector at school or at any school-sponsored activity, event, or program.

V. In this section, "physician" includes any physician or health practitioner with the authority to write prescriptions.

**Source.** 2003, 50:1, eff. Aug. 15, 2003.

### 200:43 Use of Epinephrine Auto-Injector.

Immediately after using the epinephrine auto-injector during the school day, the pupil shall report to the nurse's office or principal's office to enable the nurse or another school employee to provide appropriate follow-up care.

**Source.** 2003, 50:1, eff. Aug. 15, 2003.

**200:44 Availability of Epinephrine Auto-Injector.**

The school nurse or, if a school nurse is not assigned to the school building, the school principal shall maintain for a pupil's use at least one epinephrine auto-injector, provided by the pupil, in the nurse's office or in a similarly accessible location.

**Source.** 2003, 50:1, eff. Aug. 15, 2003.

**200:44–a Anaphylaxis Training Required.**

I. (a) Designated assistive personnel shall complete an anaphylaxis training program prior to providing or administering an epinephrine auto-injector at least every 2 years following completion of the initial anaphylaxis training program. Such training shall be conducted based on resources provided by the National Association of School Nurses, the Food and Allergy Anaphylaxis Network, or the New Hampshire School Nurses' Association. Training shall be conducted online or in person and, at a minimum, shall cover:

(1) Techniques on how to recognize symptoms of severe allergic reactions, including anaphylaxis.

(2) Standards and procedures for the storage and administration of an epinephrine auto-injector.

(3) Emergency follow-up procedures.

(b) The school nurse conducting the anaphylaxis training shall maintain a list of individuals who have successfully completed the anaphylaxis training program.

II. Not later than January 1, 2017, the department of education, in consultation with the New Hampshire School Nurses' Association, shall develop and make available to all schools guidelines for the management of students with life-threatening allergies. The guidelines shall include, but not be limited to implementation of the following by a school nurse: education and training for designated unlicensed assistive personnel on the management of students with life-threatening allergies, including training related to the administration of an epinephrine auto-injector; procedures for responding to life-threatening allergic reactions; the development of individualized health care plans and allergy action plans for every student with a known life-threatening allergy; and protocols to prevent exposure to allergens. Not later than September 1, 2017, each school district, under the direction of a school nurse, shall implement a plan based on the guidelines developed pursuant to this section for the management of students with life-threatening allergies enrolled in the schools under its jurisdiction, and make such plan available to the public.

**Source.** 2016, 39:2, eff. July 2, 2016.

**200:45 Immunity.**

I. No school district, member of a school board, or school district employee shall be liable in a suit for damages as a result of any act or omission related to a pupil's use of an epinephrine auto-injector pursuant to RSA 200:43, if the provisions of RSA 200:42 have been met, unless the damages were caused by willful or wanton conduct or disregard of the criteria established in that section for the possession and self-administration of an epinephrine auto-injector by a pupil.

II. No school that possesses and makes available epinephrine auto-injectors, member of its school board, school nurse, school district employee, agents or volunteers, no health care practitioner that prescribes epinephrine auto-injectors to a school, and no person that conducts the training described in RSA 200:44–a shall be liable for damages as a result of the administration or self-administration of an epinephrine auto-injector, the failure to administer an epinephrine auto-injector, or any other act or omission related to the possession or use of an epinephrine auto-injector, unless the damages were caused by willful or wanton misconduct.

III. The administration of an epinephrine auto-injector by designated school personnel pursuant to the provisions of this subdivision shall not require licensure.

IV. This section shall not be construed to eliminate, limit, or reduce any other immunity or defense that may be available under state law.

**Source.** 2003, 50:1, eff. Aug. 15, 2003. 2016, 39:3, eff. July 2, 2016.

**Use of Asthma Medications by Pupils**

**200:46 Possession and Self-Administration of Asthma Inhalers Permitted.**

A pupil may possess and use a metered dose inhaler or a dry powder inhaler to alleviate asthmatic symptoms, or before exercise to prevent the onset of asthmatic symptoms, if the following conditions are satisfied:

I. The pupil has the written approval of the pupil's physician and, if the pupil is a minor, the written approval of the parent or guardian. The school shall obtain the following information from the pupil's physician:

(a) The pupil's name.

(b) The name and signature of the licensed prescriber and business and emergency numbers.

(c) The name, route, and dosage of medication.

(d) The frequency and time of medication administration or assistance.

(e) The date of the order.

(f) A diagnosis and any other medical conditions requiring medications, if not a violation of confidentiality or if not contrary to the request of the parent or guardian to keep confidential.

(g) Specific recommendations for administration.

(h) Any special side effects, contraindications, and adverse reactions to be observed.

(i) At least one emergency telephone number for contacting the parent or guardian.

(j) The name of each required medication.

II. The school principal or, if a school nurse is assigned to the pupil's school building, the school nurse shall receive copies of the written approvals required by paragraph I.

III. The pupil's parent or guardian shall submit written verification from the physician confirming that the pupil has the knowledge and skills to safely possess and use an asthma inhaler in a school setting.

IV. If the conditions provided in this section are satisfied, the pupil may possess and use the inhaler at school or at any school sponsored activity, event, or program.

V. In this section, "physician" includes any physician or health practitioner with the authority to write prescriptions.

**Source.** 2003, 51:3, eff. Aug. 15, 2003.

### 200:47 Immunity.

No school district, member of a school board, or school district employee shall be liable in a suit for damages as a result of any act or omission related to a pupil's use of an inhaler if the provisions of RSA 200:46 have been met, unless the damages were caused by willful or wanton conduct or disregard of the criteria established in that section for the possession and self-administration of an asthma inhaler by a pupil.

**Source.** 2003, 51:3, eff. Aug. 15, 2003.

## Air Quality in Schools

### 200:48 Air Quality in Schools.

The school board of each school district shall develop and implement a policy governing air quality issues in schools. The policy shall address methods of minimizing or eliminating emissions from buses, cars, delivery vehicles, maintenance vehicles, and other motorized vehicles used for transportation on school property taking into account the state anti-idling and clean air zone policies established by the department of environmental services.

**Source.** 2010, 100:1, eff. Jan. 1, 2011.

## Head Injury Policies for Student Sports

### 200:49 Head Injury Policies for Student Sports.

Education is the key to identification and appropriate management of all concussions. The school board of each school district shall develop guidelines and other pertinent information and forms for student sports to inform and educate coaches, student-athletes, and student-athletes' parents or guardians of the nature and risk of concussion and head injury including continuing to play after concussion or head injury. On an annual basis, a school district or school shall distribute a concussion and head injury information sheet to all student-athletes. The Brain Injury Association of New Hampshire is available to educate and assist the public with implementing and/or updating concussion management protocols.

**Source.** 2012, 234:2, eff. Aug. 17, 2012. 2014, 42:1, eff. July 26, 2014.

### 200:50 Removal of Student-Athlete.

I. A school employee coach, official, licensed athletic trainer, or health care provider who suspects that a student-athlete has sustained a concussion or head injury in a practice or game shall remove the student-athlete from play immediately.

II. A student-athlete who has been removed from play shall not return to play on the same day or until he or she is evaluated by a health care provider and receives medical clearance and written authorization from that health care provider to return to play. The student-athlete shall also present written permission from a parent or guardian to return to play.

III. No person who authorizes a student-athlete to return to play shall be liable for civil damages resulting from any act or omission in the rendering of such care, other than acts or omissions constituting gross negligence or willful or wanton misconduct.

**Source.** 2012, 234:2, eff. Aug. 17, 2012.

### 200:51 School Districts; Limitation of Liability.

An employee of a school administrative unit, school, or chartered public school, or a school volunteer,

pupil, parent, legal guardian, or employee of a company under contract to a school, school district, school administrative unit, or chartered public school, shall be immune from civil liability for good faith conduct arising from or pertaining to the injury or death of a student-athlete provided the action or inaction was in compliance with this subdivision and local school board policies relative to the management of concussions and head injuries. This limitation of liability shall extend to school-sponsored athletic activities. A school district or school may provide concussion guidelines to other organizations sponsoring athletic activities on school property, however the school district or school shall not be required to enforce compliance with such guidelines.

**Source.** 2012, 234:2, eff. Aug. 17, 2012.

### 200:52 Definitions.

As used in this subdivision:

I. "Health care provider" means a person who is licensed, certified, or otherwise statutorily authorized by the state to provide medical treatment and is trained in the evaluation and management of concussions.

II. "School property" means school property as defined in RSA 193–D:1, V.

III. "Student-athlete" means a student involved in any intramural sports program conducted outside the regular teaching day or competitive student sports program between schools in grades 4–12.

IV. "Student sports" means intramural sports programs conducted outside the regular teaching day for students in grades 4–12 or competitive athletic programs between schools for students in grades 4–12.

V. "Head injury" means injuries to the scalp, skull, or brain caused by trauma, and shall include a concussion which is the most common type of sports-related brain injury.

**Source.** 2012, 234:2, eff. Aug. 17, 2012. 2013, 19:1, eff. July 15, 2013. 2014, 42:2, eff. July 26, 2014.

## Bronchodilators, Spacers, and Nebulizers in Schools

### 200:53 Definitions.

In this subdivision:

I. "Administer" means the direct provision of a bronchodilator, spacer, or nebulizer to an individual.

II. "Asthma" means a chronic lung disease that inflames and narrows the airways. It causes recurring periods of wheezing, chest tightness, shortness of breath, and coughing. For the purpose of this subdivision, "asthma" also includes "reactive airway disease," commonly referred to as RAD.

III. "Bronchodilator" means any medication used for the quick relief of asthma symptoms that dilates the airways and is recommended by the National Heart, Lung, and Blood Institute's national asthma education and prevention program guidelines for the treatment of asthma, such bronchodilators may include an orally inhaled medication that contains a premeasured single dose of albuterol or albuterol sulfate delivered by a nebulizer (compressor device), or by a pressured metered dose inhaler used to treat respiratory distress, including, but not limited to, wheezing, shortness of breath, and difficulty breathing, or another dosage of a bronchodilator recommended in the guidelines for the treatment of asthma.

IV. "Designated unlicensed assistive personnel" means a school employee or agent of a school designated by the school nurse, who has completed the New Hampshire School Nurses' Association approved training required to provide or administer bronchodilators, spacers, or nebulizers. Designated unlicensed assistive personnel shall complete an asthma training program prior to providing or administering a bronchodilator, spacer, or nebulizer made available by the school nurse and at least annually following completion of the initial asthma training program. Such training shall be conducted by the school nurse based on resources provided by the New Hampshire School Nurses' Association, the National Association of School Nurses, and the American Lung Association. Training shall be conducted in person and at a minimum shall address techniques on how to recognize symptoms of severe respiratory distress or asthma, and standards and procedures for the storage and administration of a bronchodilator with a spacer or nebulizer. The school nurse shall maintain a current list of those individuals who have successfully completed the asthma training program.

V. "Health care practitioner" means a person who is licensed to prescribe, administer, or distribute controlled drugs.

VI. "Provide" means to supply a bronchodilator to an individual.

VII. "School" means any public or private elementary, middle, junior high, or senior high school.

VIII. "School nurse" means a registered nurse (RN) licensed by the New Hampshire board of nursing employed by a school district or a school.

IX. "Self-administration" means a student or other person's discretionary use of a bronchodilator, spacer, or nebulizer, whether provided by the student or by a school nurse or designated school personnel pursuant to this subdivision.

**Source.** 2016, 45:1, eff. July 2, 2016.

**200:54 Supply of Bronchodilators, Spacers, or Nebulizers.**

I. A school board may authorize a school nurse who is employed by the school district and for whom the board is responsible to maintain a supply of asthma-related rescue medications at the school. The nurse shall determine the quantity of medication the school should maintain.

II. To obtain asthma rescue medications for a school district, a health care practitioner may prescribe bronchodilators, spacers, or nebulizers in the name of a school district for use in asthma emergency situations.

III. A pharmacist may dispense bronchodilators, spacers, or nebulizers pursuant to a prescription issued in the name of a school. A school, under the direction of the school nurse, may maintain a supply of bronchodilators, spacers, or nebulizers for use in accordance with this subdivision.

IV. A school may enter into an agreement with a manufacturer of bronchodilators, spacers, or nebulizers, third-party suppliers of bronchodilators, spacers, or nebulizers, or health care offices to obtain bronchodilators, spacers, or nebulizers at no charge or at fair-market prices or at reduced prices. A school district may accept gifts, grants or donations from foundations, organizations, or private parties to purchase bronchodilators, spacers, or nebulizers.

V. A school that possesses and makes available a supply of bronchodilators, spacers, or nebulizers pursuant to this subdivision shall maintain an annual report summarizing the use of the bronchodilators, spacers, or nebulizers.

**Source.** 2016, 45:1, eff. July 2, 2016.

**200:55 Administration of Bronchodilator, Spacer, or Nebulizer.**

I. A school nurse and designated unlicensed assistive personnel may administer or make available to self-administer a bronchodilator, spacer, or nebulizer to a student who has been diagnosed with asthma for use in emergency or other situations as determined by the school nurse provided that:

(a) The school has on file an asthma action plan for the student which shall be filed annually and updated as necessary with the school and includes an order from the student's health care provider to provide the student with an asthma rescue inhaler, including dosage information and permission for the student to use the school's stock in the event of an emergency; and

(b) The student's parent/guardian has provided written permission to the school nurse to administer a bronchodilator, spacer, or nebulizer from the school's supply.

II. The school nurse shall notify the student's parent or legal guardian whenever a bronchodilator, spacer, or nebulizer from the emergency stockpile is administered to a student. The school nurse shall make the notification as soon as practicable in accordance with the contact information on file at the school.

**Source.** 2016, 45:1, eff. July 2, 2016.

**200:56 Department of Education Guidance Provided to Schools.**

No later than 90 days following the effective date of this section, the department of education, in consultation with the New Hampshire School Nurses' Association and the American Lung Association, shall provide guidelines to all schools for the management of students with asthma. The guidelines shall include, but not be limited to, implementation of education and training for designated unlicensed assistive personnel on the management of students with asthma, including training related to the administration of a bronchodilator with a spacer or nebulizer, and procedures for responding to life-threatening respiratory distress.

**Source.** 2016, 45:1, eff. July 2, 2016.

**200:57 Immunity.**

I. No school district, school district employee, member of a school board, school nurse, designated unlicensed assistive personnel, or agent or volunteer of a school district shall be liable in a suit for damages as a result of any act or omission related to a student's use of a bronchodilator, spacer, or nebulizer pursuant to this subdivision, except for damages caused by willful or wanton conduct or disregard of the requirements established in this subdivision.

II. The administration of a bronchodilator, spacer, or nebulizer in accordance with this subdivision shall be considered to be the administration of emergency medication in school. If delegated the task of administering a bronchodilator, spacer, or nebulizer by a school nurse, the designated unlicensed assistive

personnel shall not require licensure as a health care provider.

III. This section shall not be construed to eliminate, limit, or reduce any other immunity or defense that may be available under state law.

**Source.** 2016, 45:1, eff. July 2, 2016.

## Screening and Intervention for Dyslexia and Related Disorders

### 200:58 Definitions.

In this subdivision:

I. "Dyslexia" means a specific learning disability that is:

(a) Neurobiological in origin;

(b) Characterized by difficulties with accurate or fluent word recognition and by poor spelling and decoding abilities that typically result from a deficit in the phonological component of language; and

(c) Often unexpected in relation to other cognitive abilities and the provision of effective classroom instruction, and may include secondary consequences such as reading comprehension problems and reduced reading experience that can impede growth of vocabulary and background knowledge.

II. "Potential indicators or risk factors of dyslexia and related disorders" means indicators that include, but shall not be limited to, difficulty in acquiring language skills, inability to comprehend oral or written language, difficulty in rhyming words, difficulty in naming letters, recognizing letters, matching letters to sounds, and blending sounds when speaking and reading words, difficulty recognizing and remembering sight words, consistent transposition of number sequences, letter reversals, inversions, and substitutions, and trouble in replication of content.

III. "Related disorders" include disorders similar to or related to dyslexia, such as a phonological processing disorder, reading fluency disorder, and dysphasia.

**Source.** 2016, 262:1, eff. Aug. 14, 2016.

### 200:59 Screening and Intervention for Dyslexia and Related Disorders.

I. School districts shall screen all public school and chartered public school students, including English learners, using an evidence-based screener for the identification of potential indicators or risk factors of dyslexia and related disorders upon entry to public school. The initial screening shall be completed no later than 60 school days of a student entering public school in kindergarten through third grade. The screening shall be repeated one additional time during the current school year, and repeated at a minimum of twice yearly through third grade to monitor progress.

I–a. If any such screening determines that a student fails to meet relevant benchmarks for grade-typical development in specific foundational skills, then the school must complete a secondary assessment within 30 days to determine whether the school shall provide such student with modified, differentiated, or supplementary evidence-based reading instruction intervention or refer the student to special education for further evaluation. The school shall inform the student's parent or legal guardian of the screening results. If a special education referral is made for further evaluation, the state's required timeline shall be followed. During this time general education accommodations shall be initiated within 21 days of the initial screening, and continue until a special education determination is made.

II. The student's school district or chartered public school shall provide age-appropriate, evidence-based, intervention strategies to begin by the January 1 of the school year for any student who is identified as having characteristics that are associated with potential indicators or risk factors of dyslexia and related disorders.

III. The parent or legal guardian of any student who is identified by the public school as having characteristics that are associated with potential indicators or risk factors of dyslexia and related disorders shall be notified and provided with all screening information and findings, in addition to periodic formal screening results based on individual written intervention and support plans developed with the student's parents or legal guardian.

IV. A parent or legal guardian of any student who is identified as having characteristics that are associated with potential indicators or risk factors of dyslexia and related disorders has the right to submit the results of an independent evaluation from a licensed reading or intervention specialist trained in dyslexia and related disorders for consideration by the student's school district. A parent or legal guardian who submits an independent evaluation shall assume all fiscal responsibility for that independent evaluation.

**Source.** 2016, 262:1, eff. Aug. 14, 2016. 2023, 151:1, eff. Sept. 26, 2023.

**200:60 Reading Specialist.**

I. The commissioner of the department of education shall issue a request for proposals pursuant to RSA 21–G to secure the contract services of a reading specialist, or employ a staff member who is a reading specialist, to enable the department to provide school districts with the support and resources necessary to assist students with dyslexia and related disorders and their families. The reading specialist shall be qualified by education and experience in accordance with paragraph II and shall provide technical assistance for dyslexia and related disorders to school districts.

II. The reading specialist shall:

(a) Be trained and certified in best practice interventions and treatment models for dyslexia, with expertise in related disorders, and dysgraphia.

(b) Have a minimum of 3 years of field experience in screening, identifying, and treating dyslexia and related disorders.

(c) Be responsible for the implementation of professional awareness.

(d) Serve as the primary source of information and support for school districts to address the needs of students with dyslexia and related disorders, and dysgraphia.

III. The commissioner shall submit a report assessing the effectiveness of the reading specialist in complying with the requirements of this section, to the speaker of the house of representatives, the senate president, the chairpersons of the house and senate education committees, and the governor no later than November 1, 2018, and annually thereafter.

**Source.** 2016, 262:1, eff. Aug. 14, 2016. 2017, 156:152, eff. July 1, 2017. 2023, 47:1, eff. May 19, 2023.

**200:61 Teacher Professional Development and Training.**

I. No later than June 30, 2017, the reading specialist shall develop and make available a program to ensure all New Hampshire teachers and school administrators have access to materials to support professional awareness of best practices on:

(a) Recognition of the characteristics of dyslexia and related disorders, and dysgraphia.

(b) Evidence-based interventions and accommodations for dyslexia and related disorders, and dysgraphia.

II. The reading specialist and the council for teacher education established in RSA 190 shall collaborate to ensure that all teacher education programs offered at New Hampshire's public institutions of higher education provide explicit professional awareness of best practices on:

(a) Recognition of characteristics of dyslexia and related disorders, and dysgraphia.

(b) Evidence-based interventions and accommodations for dyslexia and related disorders, and dysgraphia.

**Source.** 2016, 262:1, eff. Aug. 14, 2016.

**200:62 Dyslexia Resource Guide.**

No later than June 30, 2017, the reading specialist shall develop and publish on the department of education's Internet website, a reading support resource guide to be used by school districts as a resource. The reading specialist shall solicit the advice of experts in the fields of dyslexia and related disorders, and dysgraphia in the development of the guide. The reading specialist shall update the guide as necessary.

**Source.** 2016, 262:1, eff. Aug. 14, 2016.

**Head Injury Policies for Students**

**200:63 Head Injuries; Return to Learning Policy and Plan.**

I. The department of education shall collaborate with the Brain Injury Association of New Hampshire to develop a concussion and traumatic brain injury return to learning policy and plan for school districts. The plan shall include a recommendation on school-based concussion and brain injury in-service training.

II. The school board of each school district shall adopt a concussion and traumatic brain injury return to learning policy school education program.

**Source.** 2020, 38:16, eff. Sept. 27, 2020.

## CHAPTER 200–A

## THE NEW ENGLAND HIGHER EDUCATION COMPACT

**200–A:1 New England Higher Education Compact.**

The governor on behalf of the State of New Hampshire is hereby authorized to execute a compact, in substantially the following form, with any one or more of the states of Connecticut, Maine, Massachusetts, Rhode Island and Providence Plantations and Vermont, and the legislature hereby signifies in advance its approval and ratification of such compact.

**NEW ENGLAND HIGHER EDUCATION COMPACT**

**Article I**

The purpose of the New England higher education compact shall be to provide greater educational opportunities and services through the establishment and maintenance of a coordinated educational program for the persons residing in the several states of New England parties to this compact with the aim of furthering higher education in the fields of medicine, dentistry, veterinary medicine, public health and in professional technical, scientific, literary and other fields.

**Article II**

There is hereby created and established a New England Board of Higher Education hereinafter known as the board which shall be an agency of each state party to the compact. The board shall be a body corporate and politic, having the powers, duties and jurisdiction herein enumerated and such other and additional powers as shall be conferred upon it by the concurrent act or acts of the compacting states. The board shall consist of 8 resident members from each compacting state, chosen in the manner and for the terms provided by law of the several states parties to this compact.

**Article III**

This compact shall become operative immediately as to those states executing it whenever any 2 or more of the states of Maine, Vermont, New Hampshire, Massachusetts, Rhode Island and Connecticut have executed it in the form which is in accordance with the laws of the respective compacting states.

**Article IV**

The board shall annually elect from its members a chairman and vice-chairman and shall appoint and at its pleasure remove or discharge said officers. It may appoint and employ an executive secretary and may employ such stenographic, clerical, technical or legal personnel as shall be necessary, and at its pleasure remove or discharge such personnel. It shall adopt a seal and suitable bylaws and shall promulgate any and all rules and regulations which may be necessary for the conduct of its business. It may maintain an office or offices within the territory of the compacting states and may meet at any time or place. Meetings shall be held at least twice each year. A majority of the members shall constitute a quorum for the transaction of business, but no action of the board imposing any obligation on any compacting state shall be binding unless a majority of the members from such compacting state shall have voted in favor thereof. Where meetings are planned to discuss matters relevant to problems of education affecting only certain of the compacting states, the board may vote to authorize special meetings of the board members of such states. The board shall keep accurate accounts of all receipts and disbursements and shall make an annual report to the governor and the legislature of each compacting state setting forth in detail the operations and transactions conducted by it pursuant to this compact, and shall make recommendations for any legislative action deemed by it advisable, including amendments to the statutes of the compacting states which may be necessary to carry out the intent and purpose of this compact. The board shall not pledge the credit of any compacting state without the consent of the legislature thereof given pursuant to the constitutional processes of said state. The board may meet any of its obligations in whole or in part with funds available to it under article VII of this compact, provided that the board takes specific action setting aside such funds prior to the incurring of any obligation to be met in whole or in part in this manner. Except where the board makes use of funds available to it under article VII hereof, the board shall not incur any obligations for salaries, office, administrative, traveling or other expenses prior to the allotment of funds by the compacting states adequate to meet the same. Each compacting state reserves the right to provide hereafter by law for the examination and audit of the accounts of the board. The board shall appoint a treasurer who may be a member of the board, and disbursements by the board shall be valid only when authorized by the board and when vouchers therefor have been signed by the executive secretary and countersigned by the treasurer. The executive secretary shall be custodian of the records of the board with authority to attest to and certify such records or copies thereof.

### Article V

The board shall have the power to: (1) Collect, correlate, and evaluate data in the fields of its interest under this compact; to publish reports, bulletins, and other documents making available the results of its research; and, in its discretion to charge fees for said reports, bulletins, and documents; (2) Enter into such contractual agreements or arrangements with any of the compacting states or agencies thereof and with educational institutions and agencies as may be required in the judgment of the board to provide adequate services and facilities in educational fields covered by this compact; provided that it shall be the policy of the board in negotiation of its agreements to serve increased numbers of students from the compacting states through arrangements with then existing institutions, whenever in the judgment of the board adequate service can be so secured in the New England region. Each of the compacting states shall contribute funds to carry out the contracts of the board on the basis of the number of students from such state for whom the board may contract. Contributions shall be at the rate determined by the board in each educational field. Except in those instances where the board by specific action allocates funds available to it under article VII hereof, it shall be the policy of the board to enter into such contracts only upon appropriation of funds by the compacting states. Any contract entered into shall be in accordance with rules and regulations promulgated by the board and in accordance with the laws of the compacting states.

### Article VI

Each state agrees that, when authorized by the legislature pursuant to its constitutional processes, it will from time to time make available to the board such funds as may be required for the expenses of the board as authorized under the terms of this compact. The contribution of each state for this purpose shall be in the proportion that its population bears to the total combined population of the states who are parties hereto as shown from time to time by the most recent official published report of the bureau of the census of the United States of America; unless the board shall adopt another basis in making its recommendation for appropriation to the compacting states.

### Article VII

The board for the purposes of this compact is hereby empowered to receive grants, devises, gifts and bequests which the board may agree to accept and administer. The board shall administer property held in accordance with special trusts, grants and bequests and shall also administer grants and devises of land and gifts or bequests of personal property made to the board for special uses and shall execute said trusts, investing the proceeds thereof in notes or bonds secured by sufficient mortgages or other securities.

### Article VIII

The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any compacting state or of the United States the validity of the remainder of this compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby; provided, that if this compact is held to be contrary to the constitution of any compacting state the compact shall remain in full force and effect as to all other compacting states.

### Article IX

This compact shall continue in force and remain binding upon a compacting state until the legislature or the governor of such state, as the laws of such state shall provide, takes action to withdraw therefrom. Such action shall not be effective until 2 years after notice thereof has been sent by the governor of the state desiring to withdraw to the governors of all other states then parties to the compact. Such withdrawal shall not relieve the withdrawing state from its obligations accruing hereunder prior to the effective date of withdrawal. Any state so withdrawing, unless reinstated, shall cease to have any claim to or ownership of any of the property held by or vested in the board or to any of the funds of the board held under the terms of the compact. Thereafter, the withdrawing state may be reinstated by application after appropriate legislation is enacted by such state, upon approval by a majority vote of the board.

### Article X

If any compacting state shall at any time default in the performance of any of its obligations assumed or imposed in accordance with the provisions of this compact, all rights and privileges and benefits conferred by this compact or agreements hereunder shall be suspended from the effective date of such default as fixed by the board. Unless such default shall be remedied within a period of 2 years following the effective date of such default, this compact may be terminated with respect to such defaulting state by affirmative vote of ¾ of the other member states.

Any such defaulting state may be reinstated by: (a) performing all acts and obligations upon which it has heretofore defaulted, and (b) application to and approval by a majority vote of the board.

**Source.** 1955, 232:1. 1981, 368:1, eff. June 23, 1981.

### 200–A:2 Effective Date.

When the governor shall have executed said compact on behalf of this state and shall have caused a verified copy to be filed with the secretary of state, and when said compact shall have been ratified by one or more of the states named in RSA 200–A:1, then said compact shall become operative and effective as between this state and such other state or states. The governor is hereby authorized and directed to take such action as may be necessary to complete the exchange of official documents as between this state and any other state ratifying said compact, and to take such steps as may be necessary to secure the consent of the congress of the United States to said compact.

**Source.** 1955, 232:2, eff. June 30, 1955.

### 200–A:3 Membership of Board.

There shall be 8 resident members from New Hampshire on the New England Board of Higher Education as provided in article II of the compact. One of such resident members shall always be the chancellor of the university system. The second resident member shall be the director of the division of educator support and higher education, department of education. The third resident member shall be the chancellor of the community college system of New Hampshire. The fourth and fifth resident members shall be citizens of the state appointed by the governor and council. The sixth resident member shall be a member of the house of representatives appointed by the speaker of the house. The seventh member shall be a member of the senate appointed by the president of the senate. The eighth resident member shall be a representative of a private college in New Hampshire appointed by the governor and council. The term of office for each of the first 3 resident members shall be concurrent with his or her term as chancellor or director. The term of office for each of the latter 5 resident members shall be for 4 years and until a successor is appointed and qualified, except that the term of any member of the general court shall terminate if such member shall cease to be a state legislator. In that case, another member shall be appointed in a like manner for the unexpired term. The term of the member representing a private college shall end if the member's association with the private college terminates. Each member of the board shall receive his or her expenses actually and necessarily incurred by the member in the performance of his or her duties as a member. In addition to their expenses, the fourth, fifth, sixth, seventh, and eighth members shall receive $15 per day compensation for time actually spent in the work as a member of the New England Board of Higher Education, provided that the total for expenses and per diem compensation for any of such 5 members shall not exceed the sum of $500 during any one fiscal year. All expenses and per diem compensation shall be audited by the commissioner of administrative services as expenses of other employees are audited and shall be a charge against any appropriation provided for this purpose.

**Source.** 1955, 232:3. 1981, 368:2. 1985, 233:4; 399:3, I. 2003, 38:1. 2007, 361:28, eff. July 17, 2007. 2011, 224:134, eff. July 1, 2011. 2018, 315:22, eff. Aug. 24, 2018.

## Payment to Outside Schools

### 200–A:4 Appropriations.

The state of New Hampshire may biennially appropriate funds for the purpose of contributing to the operational costs at colleges and universities of qualified and accepted New Hampshire residents, pursuant to regional and/or reciprocal agreements and arrangements in the educational field as executed and approved by the New England Board of Higher Education.

**Source.** 1959, 214:1, eff. July 1, 1961.

### 200–A:5 Certification to Department of Education.

The New England Board of Higher Education shall certify to the department of education, division of educator support and higher education on or before October 1 of the year preceding each legislative session the amounts needed to carry out the purposes of RSA 200–A:4 for the coming biennium. Upon such certification, the division shall include such amounts in the budget request for its division. The sums appropriated by the legislature in accordance with the provisions of this subdivision shall be a continuing appropriation and shall not lapse.

**Source.** 1959, 214:1. 1977, 600:22, I, eff. July 1, 1977. 2011, 224:135, eff. July 1, 2011. 2018, 315:23, eff. Aug. 24, 2018.

### 200–A:6 Payments From Funds.

The amount that may be or may become due to any college, university, or institution shall be payable by the state treasurer to such institution from funds appropriated for carrying out the purposes hereof upon certification by the New England Board of

Higher Education. Said board, before approving such vouchers, shall satisfy itself that such student would be unable to receive the course of instruction at any institution of public education in New Hampshire, and shall satisfy itself that the charge made by said institution is in accordance with the terms and conditions of the regional and/or reciprocal agreement in effect between the New England Board of Higher Education and the charging institution. The department of education, division of educator support and higher education shall examine and audit the accounts showing the payments made by the board under the authority of this section. In submitting the budget request made by it pursuant to the certification of the board as provided in RSA 200–A:5, the division shall forward with such request a report of such examination and audit, showing the details of such payments for the 2 fiscal years next preceding the time of said budget requests.

**Source.** 1959, 214:1. 1977, 600:22, II, eff. July 1, 1977. 2011, 224:135, eff. July 1, 2011. 2018, 315:24, eff. Aug. 24, 2018.

### 200–A:7 Qualification Requirements.

Financial assistance under this chapter shall be granted only to those New Hampshire residents who agree to repay the state for such sums as are expended in their behalf. An interest free note for repayment hereunder shall be signed and be enforceable in an action for debt. It shall not be a defense to such action that the recipient was a minor when the note was executed.

**Source.** 1972, 60:75, eff. March 27, 1972.

### 200–A:8 Enforcement.

The department of education, division of educator support and higher education is authorized to enforce the collection of accounts that become due under the loan provisions of this chapter.

**Source.** 1972, 60:75. 1977, 600:22, III, eff. July 1, 1977. 2011, 224:136, eff. July 1, 2011. 2018, 315:25, eff. Aug. 24, 2018.

### 200–A:9 Repayment of Funds by Medical Students.

The department of education, division of educator support and higher education shall prepare a note for signature of any medical student who is a recipient hereunder. The note shall be in an amount that equals the amount paid by the state treasurer for their respective enrollment. Repayment of the note shall be made in equal annual installments beginning on the anniversary date of the recipient's graduation date or termination of enrollment, whichever shall first occur, provided, however, that if the recipient continues without interruption of his or her medical education and/or his or her intern requirements said anniversary date shall be the anniversary of the date on which said continued education or internship terminates. Within a period equal to twice the number of school years of his or her respective enrollment, plus one year, all installments shall be paid in full to the division. The division shall reduce any annual installment by ½, providing the recipient has practiced medicine on a full time basis in New Hampshire during 8 of the preceding 12 months.

**Source.** 1972, 60:75. 1977, 600:22, IV, eff. July 1, 1977. 2011, 224:136, eff. July 1, 2011. 2018, 315:26, eff. Aug. 24, 2018.

### 200–A:10 Prospective Application of Repayment Provisions.

The provisions of RSA 200–A:7 and 8 shall apply only to recipients whose enrollment in medical school commenced in 1972 or any year thereafter. Any recipient under the provisions of this chapter whose enrollment in medical school commenced prior to 1972 may voluntarily make repayment to the state of all or any part of the funds paid by the state in his behalf.

**Source.** 1972, 60:75, eff. March 27, 1972.

## CHAPTER 200–B

## NEW HAMPSHIRE-VERMONT INTERSTATE SCHOOL COMPACT



### 200–B:1 Compact.

The state of New Hampshire enters into the following compact with the state of Vermont subject to the terms and conditions therein stated.

NEW HAMPSHIRE-VERMONT INTERSTATE SCHOOL COMPACT

#### Article I

#### General Provisions

A. Statement of policy. It is the purpose of this compact to increase the educational opportunities within the states of New Hampshire and Vermont by encouraging the formation of interstate school districts which will each be a natural social and economic region with adequate financial resources and a number of pupils sufficient to permit the efficient use of school facilities within the interstate district and to provide improved instruction. The state boards of education of New Hampshire and Vermont may formulate and adopt additional standards consistent with this purpose and with these standards; and the for-

mation of any interstate school district and the adoption of its articles of agreement shall be subject to the approval of both state boards as hereinafter set forth.

B. Requirement of Congressional Approval. This compact shall not become effective until approved by the United States Congress.

C. Definitions. The terms used in this compact shall be construed as follows, unless a different meaning is clearly apparent from the language or context:

a. "Interstate school district" and "interstate district" shall mean a school district composed of one or more school districts located in the state of New Hampshire associated under this compact with one or more school districts located in the state of Vermont, and may include either the elementary schools, the secondary schools, or both.

b. "Member school district" and "member district" shall mean a school district located either in New Hampshire or Vermont which is included within the boundaries of a proposed or established interstate school district. In the case of districts located in Vermont, it shall include city school districts, town school districts and incorporated school districts. Where appropriate, the term "member district clerk" shall refer to the clerk of the city in which a Vermont school district is located, the clerk of the town in which a Vermont town school district is located, or the clerk of an incorporated school district.

c. "Elementary school" shall mean a school which includes all grades from kindergarten or grade one through not less than grade 6 nor more than grade 8.

d. "Secondary school" shall mean a school which includes all grades beginning no lower than grade 7 and no higher than grade 12.

e. "Interstate board" shall refer to the board serving an interstate school district.

f. "New Hampshire board" shall refer to the New Hampshire state board of education.

g. "Vermont board" shall refer to the Vermont state board of education.

h. "Commissioner" shall refer to commissioner of education.

i. Where joint action by both state boards is required, each state board shall deliberate and vote by its own majority, but shall separately reach the same result to take the same action as the other state board.

j. The terms "professional staff personnel" and "instructional staff personnel" shall include superintendents, assistant superintendents, administrative assistants, principals, guidance counselors, special education personnel, school nurses, therapists, teachers, and other certificated personnel.

k. The term "warrant" or "warning" to mean the same for both states.

## Article II

## Procedure for Formation of an Interstate School District

A. Creation of Planning Committee. The New Hampshire and Vermont commissioners of education shall have the power, acting jointly to constitute and discharge one or more interstate school district planning committees. Each such planning committee shall consist of at least 2 voters from each of a group of 2 or more neighboring member districts. One of the representatives from each member district shall be a member of its school board, whose term on the planning committee shall be concurrent with his term as a school board member. The term of each member of a planning committee who is not also a school board member shall expire on June 30 of the third year following his appointment. The existence of any planning committee may be terminated either by vote of a majority of its members or by joint action of the commissioners. In forming and appointing members to an interstate school district planning board, the commissioners shall consider and take into account recommendations and nominations made by school boards of member districts. No member of a planning committee shall be disqualified because he is at the same time a member of another planning board or committee created under the provisions of this compact or under any other provisions of law. Any existing informal interstate school planning committee may be reconstituted as a formal planning committee in accordance with the provisions hereof, and its previous deliberations adopted and ratified by the reorganized formal planning committee. Vacancies on a planning committee shall be filled by the commissioners acting jointly.

B. Operating Procedures of Planning Committee. Each interstate school district planning committee shall meet in the first instance at the call of any member, and shall organize by the election of a chairman and clerk-treasurer, each of whom shall be a resident of a different state. Subsequent meetings may be called by either officer of the committee. The members of the committee shall serve without pay. The member districts shall appropriate money on an equal basis at each annual meeting to meet the expenses of the committee, including the cost of

publication and distribution of reports and advertising. From time to time the commissioners may add additional members and additional member districts to the committee, and may remove members and member districts from the committee. An interstate school district planning committee shall act by majority vote of its membership present and voting.

C. Duties of Interstate School District Planning Committee. It shall be the duty of an interstate school district planning committee, in consultation with the commissioners and the state departments of education: to study the advisability of establishing an interstate school district in accordance with the standards set forth in paragraph A of article I of this compact, its organization, operation and control, and the advisability of constructing, maintaining and operating a school or schools to serve the needs of such interstate district; to estimate the construction and operating costs thereof; to investigate the methods of financing such school or schools, and any other matters pertaining to the organization and operation of an interstate school district; and to submit a report or reports of its findings and recommendations to the several member districts.

D. Recommendations and Preparation of Articles of Agreement. An interstate school district planning committee may recommend that an interstate school district composed of all the member districts represented by its membership, or any specified combination of such member districts, be established. If the planning committee does recommend the establishment of an interstate school district, it shall include in its report such recommendation, and shall also prepare and include in its report proposed articles of agreement for the proposed interstate school district, which shall be signed by at least a majority of the membership of the planning committee, which set forth the following:

a. The name of the interstate school district.

b. The member districts which shall be combined to form the proposed interstate school district.

c. The number, composition, method of selection and terms of office of the interstate school board, provided that:

(1) The interstate school board shall consist of an odd number of members, not less than 5 nor more than 15;

(2) The terms of office shall not exceed 3 years;

(3) Each member district shall be entitled to elect at least one member of the interstate school board. Each member district shall either vote separately at the interstate school district meeting by the use of a distinctive ballot, or shall choose its member or members at any other election at which school officials may be chosen;

(4) The method of election shall provide for the filing of candidacies in advance of election and for the use of a printed non-partisan ballot;

(5) Subject to the foregoing, provision may be made for the election of one or more members at large.

d. The grades for which the interstate school district shall be responsible.

e. The specific properties of member districts to be acquired initially by the interstate school district and the general location of any proposed new schools to be initially established or constructed by the interstate school district.

f. The method of apportioning the operating expenses of the interstate school district among the several member districts, and the time and manner of payments of such shares.

g. The indebtedness of any member district which the interstate district is to assume.

h. The method of apportioning the capital expenses of the interstate school district among the several member districts, which need not be the same as the method of apportioning operating expenses, and the time and manner of payment of such shares. Capital expenses shall include the cost of acquiring land and buildings for school purposes; the construction, furnishing and equipping of school buildings and facilities; and the payment of the principal and interest of any indebtedness which is incurred to pay for the same.

i. The manner in which state aid, available under the laws of either New Hampshire or Vermont, shall be allocated, unless otherwise expressly provided in this compact or by the laws making such aid available.

j. The method by which the articles of agreement may be amended, which amendments may include the annexation of territory, or an increase or decrease in the number of grades for which the interstate district shall be responsible, provided that no amendment shall be effective until approved by both state boards in the same manner as required for approval of the original articles of agreement.

k. The date of operating responsibility of the proposed interstate school district and a proposed program for the assumption of operating responsi-

bility for education by the proposed interstate school district, and any school construction; which the interstate school district shall have the power to vary by vote as circumstances may require.

*l.* Any other matters, not incompatible with law, which the interstate school district planning committee may consider appropriate to include in the articles of agreement, including, without limitation:

(1) The method of allocating the cost of transportation between the interstate district and member districts;

(2) The nomination of individual school directors to serve until the first annual meeting of the interstate school district.

E. HEARINGS. If the planning committee recommends the formation of an interstate school district, it shall hold at least one public hearing on its report and the proposed articles of agreement within the proposed interstate school district in New Hampshire, and at least one public hearing thereon within the proposed interstate school district in Vermont. The planning committee shall give such notice thereof as it may determine to be reasonable, provided that such notice shall include at least one publication in a newspaper of general circulation within the proposed interstate school district not less than 15 days (not counting the date of publication and not counting the date of the hearing) before the date of the first hearing. Such hearings may be adjourned from time to time and from place to place. The planning committee may revise the proposed articles of agreement after the date of the hearings. It shall not be required to hold further hearings on the revised articles of agreement but may hold one or more further hearings after notice similar to that required for the first hearings if the planning committee in its sole discretion determines that the revisions are so substantial in nature as to require further presentation to the public before submission to the state boards of education.

F. APPROVAL BY STATE BOARDS. After the hearings a copy of the proposed articles of agreement, as revised, signed by a majority of the planning committee, shall be submitted by it to each state board. The state boards may (a) if they find that the articles of agreement are in accord with the standards set forth in this compact and in accordance with sound educational policy, approve the same as submitted, or (b) refer them back to the planning committee for further study. The planning committee may make additional revisions to the proposed articles of agreement to conform to the recommendations of the state boards. Further hearings on the proposed articles of agreement shall not be required unless ordered by the state boards in their discretion. In exercising such discretion, the state boards shall take into account whether or not the additional revisions are so substantial in nature as to require further presentation to the public. If both state boards find that the articles of agreement as further revised are in accord with the standards set forth in this compact and in accordance with sound educational policy, they shall approve the same. After approval by both state boards, each state board shall cause the articles of agreement to be submitted to the school boards of the several member districts in each state for acceptance by the member districts as provided in paragraph G of this article. At the same time, each state board shall designate the form of warrant, date, time, place, and period of voting for the special meeting of the member district to be held in accordance with paragraph G of this article.

G. ADOPTION BY MEMBER DISTRICTS. Upon receipt of written notice from the state board in its state of the approval of the articles of agreement by both state boards, the school board of each member district shall cause the articles of agreement to be filed with the member district clerk. Within 10 days after receipt of such notice, the school board shall issue its warrant for a special meeting of the member district, the warrant to be in the form, and the meeting to be held at the time and place and in the manner prescribed by the state board. No approval of the superior court shall be required for such special school district meeting in New Hampshire. Voting shall be with the use of the checklist by a ballot substantially in the following form:

"Shall the school district accept the provisions of the New Hampshire-Vermont Interstate School Compact providing for the establishment of an interstate school district, together with the school districts of _____ and _____ etc., in accordance with the provisions of the proposed articles of agreement filed with the school district (town, city or incorporated school district) clerk?"

Yes ( ) No ( )

If the articles of agreement included the nomination of individual school directors, those nominated from each member district shall be included in the ballot and voted upon, such election to become effective upon the formation of an interstate school district.

If a majority of the voters present and voting in a member district vote in the affirmative, the clerk for

such member district shall forthwith send to the state board in its state a certified copy of the warrant, certificate of posting, and minutes of the meeting of the district. If the state boards of both states find that a majority of the voters present and voting in each member district have voted in favor of the establishment of the interstate school district, they shall issue a joint certificate to that effect; and such certificate shall be conclusive evidence of the lawful organization and formation of the interstate school district as of its date of issuance.

H. RESUBMISSION. If the proposed articles of agreement are adopted by one or more of the member districts but rejected by one or more of the member districts, the state boards may resubmit them, in the same form as previously submitted, to the rejecting member districts, in which case the school boards thereof shall resubmit them to the voters in accordance with paragraph G of this article. An affirmative vote in accordance therewith shall have the same effect as though the articles of agreement had been adopted in the first instance. In the alternative, the state boards may either (a) discharge the planning committee, or (b) refer the articles of agreement back for further consideration to the same or a reconstituted planning committee, which shall have all of the powers and duties of the planning committee as originally constituted.

## ARTICLE III

## Powers of Interstate School Districts

A. POWERS. Each interstate school district shall be a body corporate and politic, with power to:

a. Acquire, construct, extend, improve, staff, operate, manage and govern public schools within its boundaries;

b. To sue and be sued, subject to the limitations of liability hereinafter set forth;

c. To have a seal and alter the same at pleasure;

d. To adopt, maintain and amend bylaws not inconsistent with this compact, and the laws of the 2 states;

e. To acquire by purchase, condemnation, lease or otherwise, real and personal property for the use of its schools;

f. To enter into contracts and incur debts;

g. To borrow money for the purposes hereinafter set forth, and to issue its bonds or notes therefor;

h. To make contracts with and accept grants and aid from the United States, the state of New Hampshire, the state of Vermont, any agency or municipality thereof, and private corporations and individuals for the construction, maintenance, reconstruction, operation and financing of its schools; and to do any and all things necessary in order to avail itself of such aid and cooperation;

i. To employ such assistants, agents, servants, and independent contractors as it shall deem necessary or desirable for its purposes; and

j. To take any other action which is necessary or appropriate in order to exercise any of the foregoing powers.

## ARTICLE IV

## District Meetings

A. GENERAL. Votes of the district shall be taken at a duly warned meeting held at any place in the district, at which all of the eligible legal voters of the member districts shall be entitled to vote, except as otherwise provided with respect to the election of directors.

B. ELIGIBILITY OF VOTERS. Any resident who would be eligible to vote at a meeting of a member district being held at the same time, shall be eligible to vote at a meeting of the interstate district. The board of civil authority in each Vermont member district and the supervisors of the checklist of each New Hampshire district shall respectively prepare a checklist of eligible voters for each meeting of the interstate district in the same manner, and they shall have all the same powers and duties with respect to eligibility of voters in their districts as for a meeting of a member district.

C. WARNING OF MEETINGS. A meeting shall be warned by a warrant addressed to the residents of the interstate school district qualified to vote in district affairs, stating the time and place of the meeting and the subject matter of the business to be acted upon. The warrant shall be signed by the clerk and by a majority of the directors. Upon written application of 10 or more voters in the district, presented to the directors or to one of them, at least 25 days before the day prescribed for an annual meeting, the directors shall insert in their warrants for such meeting any subject matter specified in such application.

D. POSTING AND PUBLICATION OF WARRANT. The directors shall cause an attested copy of the warrant to be posted at the place of meeting, and a like copy at a public place in each member district at least 20 days (not counting the date of posting and the date of

meeting) before the date of the meeting. In addition, the directors shall cause the warrant to be advertised in a newspaper of general circulation on at least one occasion, such publication to occur at least 10 days (not counting the date of publication and not counting the date of the meeting) before the date of the meeting. Although no further notice shall be required, the directors may give such further notice of the meeting as they in their discretion deem appropriate under the circumstances.

E. RETURN OF WARRANT. The warrant with a certificate thereon, verified by oath, stating the time and place when and where copies of the warrant were posted and published, shall be given to the clerk of the interstate school district at or before the time of the meeting, and shall be recorded by him in the records of the interstate school district.

F. ORGANIZATION MEETING. The commissioners, acting jointly, shall fix a time and place for a special meeting of the qualified voters within the interstate school district for the purpose of organization, and shall prepare and issue the warrant for the meeting after consultation with the interstate school district planning board and the members-elect, if any, of the interstate school board of directors. Such meeting shall be held within 60 days after the date of issuance of the certificate of formation, unless the time is further extended by the joint action of the state boards. At the organization meeting the commissioner of education of the state where the meeting is held, or his designate, shall preside in the first instance, and the following business shall be transacted:

a. A temporary moderator and a temporary clerk shall be elected from among the qualified voters who shall serve until a moderator and clerk respectively have been elected and qualified.

b. A moderator, a clerk, a treasurer, and 3 auditors shall be elected to serve until the next annual meeting and thereafter until their successors are elected and qualified. Unless previously elected, a board of school directors shall be elected to serve until their successors are elected and qualified.

c. The date for the annual meeting shall be established.

d. Provision shall be made for the payment of any organizational or other expense incurred on behalf of the district before the organization meeting, including the cost of architects, surveyors, contractors, attorneys, and educational or other consultants or experts.

e. Any other business, the subject matter of which has been included in the warrant, and which the voters would have had power to transact at an annual meeting.

G. ANNUAL MEETINGS. An annual meeting of the district shall be held between January 15 and June 1 of each year at such time as the interstate district may by vote determine. Once determined, the date of the annual meeting shall remain fixed until changed by vote of the interstate district at a subsequent annual or special meeting. At each annual meeting the following business shall be transacted:

a. Necessary officers shall be elected.

b. Money shall be appropriated for the support of the interstate district schools for the fiscal year beginning the following July 1.

c. Such other business as may properly come before the meeting.

H. SPECIAL MEETINGS. A special meeting of the district shall be held whenever, in the opinion of the directors, there is occasion therefor, or whenever written application shall have been made by 5 percent or more of the voters (based on the checklists as prepared for the last preceding meeting) setting forth the subject matter upon which such action is desired. A special meeting may appropriate money without compliance with RSA 33:8 or RSA 197:3 which would otherwise require the approval of the New Hampshire superior court.

I. CERTIFICATION OF RECORDS. The clerk of an interstate school district shall have the power to certify the record of the votes adopted at an interstate school district meeting to the respective commissioners and state boards and (where required) for filing with a secretary of state.

J. METHOD OF VOTING AT SCHOOL DISTRICT MEETINGS. Voting at meetings of interstate school districts shall take place as follows:

a. SCHOOL DIRECTORS. A separate ballot shall be prepared for each member district, listing the candidates for interstate school director to represent such member district; and any candidates for interstate school director at large; and the voters of each member district shall register on a separate ballot their choice for the office of school director or directors. In the alternative, the articles of agreement may provide for the election of school directors by one or more of the member districts at an election otherwise held for the choice of school or other municipal officers.

b. OTHER VOTES. Except as otherwise provided in the articles of agreement or this compact, with respect to all other votes (1) the voters of the interstate school district shall vote as one body irrespective of the member districts in which they are resident, and (2) a simple majority of those present and voting at any duly warned meeting shall carry the vote. Voting for officers to be elected at any meeting, other than school directors, shall be by ballot or voice, as the interstate district may determine, either in its articles of agreement or by a vote of the meeting.

## ARTICLE V

## Officers

A. OFFICERS: GENERAL. The officers of an interstate school district shall be a board of school directors, a chairman of the board, a vice-chairman of the board, a secretary of the board, a moderator, a clerk, a treasurer and 3 auditors. Except as otherwise specifically provided, they shall be eligible to take office immediately following their election; they shall serve until the next annual meeting of the interstate district and until their successors are elected and qualified. Each shall take oath for the faithful performance of his duties before the moderator, or a notary public or a justice of the peace of the state in which the oath is administered. Their compensation shall be fixed by vote of the district. No person shall be eligible to any district office unless he is a voter in the district. A custodian, schoolteacher, principal, superintendent or other employee of an interstate district acting as such shall not be eligible to hold office as a school director.

B. BOARD OF DIRECTORS.

a. HOW CHOSEN. Each member district shall be represented by at least one resident on the board of school directors of an interstate school district. A member district shall be entitled to such further representation on the interstate board of school directors as provided in the articles of agreement as amended from time to time. The articles of agreement as amended from time to time may provide for school directors at large, as above set forth. No person shall be disqualified to serve as a member of an interstate board because he is at the same time a member of the school board of a member district.

b. TERM. Interstate school directors shall be elected for terms in accordance with the articles of agreement.

c. DUTIES OF BOARD OF DIRECTORS. The board of school directors of an interstate school district shall have and exercise all of the powers of the district not reserved herein to the voters of the district.

d. ORGANIZATION. The clerk of the district shall warn a meeting of the board of school directors to be held within 10 days following the date of the annual meeting, for the purpose of organizing the board, including the election of its officers.

C. CHAIRMAN OF THE BOARD. The chairman of the board of interstate school directors shall be elected by the interstate board from among its members at its first meeting following the annual meeting. The chairman shall preside at the meetings of the board and shall perform such other duties as the board may assign to him.

D. VICE-CHAIRMAN OF THE BOARD OF DIRECTORS. The vice-chairman of the interstate board shall be elected in the same manner as the chairman. He shall represent a member district in a state other than that represented by the chairman. He shall preside in the absence of the chairman and shall perform such other duties as may be assigned to him by the interstate board.

E. SECRETARY OF THE BOARD. The secretary of the interstate board shall be elected in the same manner as the chairman. Instead of electing one of its members, the interstate board may appoint the interstate district clerk to serve as secretary of the board in addition to his other duties. The secretary of the interstate board (or the interstate district clerk, if so appointed) shall keep the minutes of its meetings, shall certify its records, and perform such other duties as may be assigned to him by the board.

F. MODERATOR. The moderator shall preside at the district meetings, regulate the business thereof, decide questions of order, and make a public declaration of every vote passed. He may prescribe rules of procedure; but such rules may be altered by the district. He may administer oaths to district officers in either state.

G. CLERK. The clerk shall keep a true record of all proceedings at each district meeting, shall certify its records, shall make an attested copy of any records of the district for any person upon request and tender of reasonable fees therefor, if so appointed, shall serve as secretary of the board of school directors, and shall perform such other duties as may be required by custom or law.

H. TREASURER. The treasurer shall have custody of all of the monies belonging to the district and shall

pay out the same only upon the order of the interstate board. He shall keep a fair and accurate account of all sums received into and paid from the interstate district treasury, and at the close of each fiscal year he shall make a report to the interstate district, giving a particular account of all receipts and payments during the year. He shall furnish to the interstate directors, statements from his books and submit his books and vouchers to them and to the district auditors for examination whenever so requested. He shall make all returns called for by laws relating to school districts. Before entering on his duties, the treasurer shall give a bond with sufficient sureties and in such sum as the directors may require. The treasurer's term of office is from July 1 to the following June 30.

I. AUDITORS. At the organization meeting of the district, 3 auditors shall be chosen, one to serve for a term of one year, one to serve for a term of 2 years, and one to serve for a term of 3 years. After the expiration of each original term, the successor shall be chosen for a 3-year term. At least one auditor shall be a resident of New Hampshire, and one auditor shall be a resident of Vermont. An interstate district may vote to employ a certified public accountant to assist the auditors in the performance of their duties. The auditors shall carefully examine the accounts of the treasurer and the directors at the close of each fiscal year, and at such other times whenever necessary, and report to the district whether the same are correctly cast and properly vouched.

J. SUPERINTENDENT. The superintendent of schools shall be selected by a majority vote of the board of school directors of the interstate district with the approval of both commissioners.

K. VACANCIES. Any vacancy among the elected officers of the district shall be filled by the interstate board until the next annual meeting of the district or other election, when a successor shall be elected to serve out the remainder of the unexpired term, if any. Until all vacancies on the interstate board are filled, the remaining members shall have full power to act.

## ARTICLE VI

## Appropriation and Apportionment of Funds

A. BUDGET. Before each annual meeting, the interstate board shall prepare a report of expenditures for the preceding fiscal year, an estimate of expenditures for the current fiscal year, and a budget for the succeeding fiscal year.

B. APPROPRIATION. The interstate board of directors shall present the budget report at the annual meeting. The interstate district shall appropriate a sum of money for the support of its schools and for the discharge of its obligations for the ensuing fiscal year.

C. APPORTIONMENT OF APPROPRIATION. Subject to the provisions of article VII hereof, the interstate board shall first apply against such appropriation any income to which the interstate district is entitled, and shall then apportion the balance among the member districts in accordance with one of the following formulas as determined by the articles of agreement as amended from time to time:

a. All of such balance to be apportioned on the basis of the ratio that the fair market value of the taxable property in each member district bears to that of the entire interstate district; or

b. All of such balance to be apportioned on the basis that the average daily resident membership for the preceding fiscal year of each member district bears to that of the average daily resident membership of the entire interstate school district; or

c. A formula based on any combination of the foregoing factors. The term "fair market value of taxable property" shall mean the last locally assessed valuation of a member district in New Hampshire, as last equalized by the New Hampshire commissioner of revenue administration.

The term "fair market value of taxable property" shall mean the equalized grand list of a Vermont member district, as determined by the Vermont department of taxes.

Such assessed valuation and grand list may be further adjusted (by elimination of certain types of taxable property from one or the other or otherwise) in accordance with the articles of agreement, in order that the fair market value of taxable property in each state shall be comparable.

"Average daily resident membership" of the interstate district in the first instance shall be the sum of the average daily resident membership of the member districts in the grades involved for the preceding fiscal year where no students were enrolled in the interstate district schools for such preceding fiscal year.

D. SHARE OF NEW HAMPSHIRE MEMBER DISTRICT. The interstate board shall certify the share of a New Hampshire member district of the total appropriation to the school board of each member district which shall add such sum to the amount appropriated by

the member district itself for the ensuing year and raise such sum in the same manner as though the appropriation had been voted at a school district meeting of the member district. The interstate district shall not set up its own capital reserve funds; but a New Hampshire member district may set up a capital reserve fund in accordance with RSA 35, to be turned over to the interstate district in payment of the New Hampshire member district's share of any anticipated obligations.

E. Share of Vermont Member District. The interstate board shall certify the share of a Vermont member district of the total appropriation to the school board of each member district which shall add such sum to the amount appropriated by the member district itself for the ensuing year and raise such sum in the same manner as though the appropriation had been voted at a school district meeting of the member district.

## Article VII
## Borrowing

A. Interstate District Indebtedness. Indebtedness of an interstate district shall be a general obligation of the district and shall also be a joint and several general obligation of each member district, except that such obligations of the district and its member district shall not be deemed indebtedness of any member district for the purposes of determining its borrowing capacity under New Hampshire or Vermont law. A member district which withdraws from an interstate district shall remain liable for indebtedness of the interstate district which is outstanding at the time of withdrawal and shall be responsible for paying its share of such indebtedness to the same extent as though it had not withdrawn.

B. Temporary Borrowing. The interstate board may authorize the borrowing of money by the interstate district (1) in anticipation of payments of operating and capital expenses by the member districts to the interstate district and (2) in anticipation of the issue of bonds or notes of the interstate district which have been authorized for the purpose of financing capital projects. Such temporary borrowing shall be evidenced by interest-bearing or discounted notes of the interstate district. The amount of notes issued in any fiscal year in anticipation of expense payments shall not exceed the amount of such payments received by the interstate district in the preceding fiscal year. Notes issued under this paragraph shall be payable within one year in the case of notes under clause (1) and 3 years in the case of notes under clause (2) from their respective dates, but the principal of and interest on notes issued for a shorter period may be renewed or paid from time to time by the issue of other notes, provided that the period from the date of an original note to the maturity of any note issued to renew or pay the same debt shall not exceed the maximum period permitted for the original loan.

C. Borrowing for Capital Projects. An interstate district may incur debt and issue its bonds or notes to finance capital projects. Such projects may consist of the acquisition or improvement of land and buildings for school purposes, the construction, reconstruction, alteration, or enlargement of school buildings and related school facilities, the acquisition of equipment of a lasting character and the payment of judgments. No interstate district may authorize indebtedness in excess of 10 percent of the total fair market value of taxable property in its member districts as defined in article VI of this compact. The primary obligation of the interstate district to pay indebtedness of member districts shall not be considered indebtedness of the interstate district for the purpose of determining its borrowing capacity under this paragraph. Bonds or notes issued under this paragraph shall mature in equal or diminishing installments of principal payable at least annually commencing no later than 2 years and ending not later than 30 years after their dates.

D. Authorization Proceedings. An interstate district shall authorize the incurring of debts to finance capital projects by a majority vote of the district passed at an annual or special district meeting. Such vote shall be taken by secret ballot after full opportunity for debate, and any such vote shall be subject to reconsideration and further action by the district at the same meeting or at an adjourned session thereof. As an alternative, an interstate district may provide in its articles of agreement that such a vote be conducted by Australian or official balloting under procedures set forth in the articles of agreement, and that such vote be subject to any method of reconsideration, if any, which the interstate district sets forth in the articles of agreement.

E. Sale of Bonds and Notes. Bonds and notes which have been authorized under this article may be issued from time to time and shall be sold at not less than par and accrued interest at public or private sale by the chairman of the school board and by the treasurer. Interstate district bonds and notes shall be signed by the said officers, except that either one of the 2 required signatures may be a facsimile. Subject to this compact and the authorizing vote, they shall be in such form, bear such rates of interest

and mature at such times as the said officers may determine. Bonds shall, but notes need not, bear the seal of the interstate district, or a facsimile of such seal. Any bonds or notes of the interstate district which are properly executed by the said officers shall be valid and binding according to their terms notwithstanding that before the delivery thereof such officers may have ceased to be officers of the interstate district.

F. PROCEEDS OF BONDS. Any accrued interest received upon delivery of bonds or notes of an interstate district shall be applied to the payment of the first interest which becomes due thereon. The other proceeds of the sale of such bonds or notes, other than temporary notes, including any premiums, may be temporarily invested by the interstate district pending their expenditure; and such proceeds, including any income derived from the temporary investment of such proceeds, shall be used to pay the costs of issuing and marketing the bonds or notes and to meet the operating expenses or capital expenses in accordance with the purposes for which the bonds or notes were issued or, by proceedings taken in the manner required for the authorization of such debt, for other purposes for which such debt could be incurred. No purchaser of any bonds or notes of an interstate district shall be responsible in any way to see to the application of the proceeds thereof.

G. STATE AID PROGRAMS. As used in this paragraph the term "initial aid" shall include New Hampshire and Vermont financial assistance with respect to a capital project, or the means of financing a capital project, which is available in connection with construction costs of a capital project or which is available at the time indebtedness is incurred to finance the project. Without limiting the generality of the foregoing definition, initial aid shall specifically include a New Hampshire state guarantee under RSA 195–C with respect to bonds or notes and Vermont construction aid under chapter 123 of 16 V.S.A. As used in this paragraph the term "long-term aid" shall include New Hampshire and Vermont financial assistance which is payable periodically in relation to capital costs incurred by an interstate district. Without limiting the generality of the foregoing definition, long-term aid shall specifically include New Hampshire school building aid under RSA 198 and Vermont school building aid under chapter 123 of Title 16 V.S.A. For the purpose of applying for, receiving and expending initial aid and long-term aid an interstate district shall be deemed a native school district by each state, subject to the following provisions. When an interstate district has appropriated money for a capital project, the amount appropriated shall be divided into a New Hampshire share and a Vermont share in accordance with the capital expense apportionment formula in the articles of agreement as though the total amount appropriated for the project was a capital expense requiring apportionment in the year the appropriation is made. New Hampshire initial aid shall be available with respect to the amount of the New Hampshire share as though it were authorized indebtedness of a New Hampshire cooperative school district. In the case of a state guarantee of interstate district bonds or notes under RSA 195–C, the interstate district shall be eligible to apply for and receive an unconditional state guarantee with respect to an amount of its bonds or notes which does not exceed 50 percent of the amount of the New Hampshire share as determined above. Vermont initial aid shall be available with respect to the amount of the Vermont share as though it were funds voted by a Vermont school district. Payments of Vermont initial aid shall be made to the interstate district, and the amount of any borrowing authorized to meet the appropriation for the capital project shall be reduced accordingly. New Hampshire and Vermont long-term aid shall be payable to the interstate district. The amounts of long-term aid in each year shall be based on the New Hampshire and Vermont shares of the amount of indebtedness of the interstate district which is payable in that year and which has been apportioned in accordance with the capital expense apportionment formula in the articles of agreement. The New Hampshire aid shall be payable at the rate of 45 percent, if there are 3 or less New Hampshire members in the interstate district, and otherwise it shall be payable as though the New Hampshire members were a New Hampshire cooperative school district. New Hampshire and Vermont long-term aid shall be deducted from the total capital expenses for the fiscal year in which the long-term aid is payable, and the balance of such expenses shall be apportioned among the member districts. Notwithstanding the foregoing provisions, New Hampshire and Vermont may at any time change their state school aid programs that are in existence when this compact takes effect and may establish new programs, and any legislation for these purposes may specify how such programs shall be applied with respect to interstate districts. Notwithstanding the foregoing, the respective amounts of New Hampshire and Vermont initial and long-term aid, with respect to a capital project of the Dresden School District for which indebtedness is authorized by a vote of the district after July 1, 1977, shall be initially determined for each year for each member

district by the manner provided in this paragraph and the aid shall be paid to the Dresden School District; however, the amount of aid for those capital projects received by the Dresden School District on account of each member district shall be used by the District to reduce the sums which would otherwise be required to be raised by taxation within that member district.

H. TAX EXEMPTION. Bonds and notes of an interstate school district shall be exempt from local property taxes in both states, and the interest or discount thereon and any profit derived from the disposition thereof shall be exempt from personal income taxes in both states.

I. Notwithstanding paragraph G of this article, initial and long-term aid may be allocated among the members of an interstate district other than the Dresden School District in the manner which is provided in the articles of agreement of that district, or if not therein provided, in the manner specified in paragraph G for all interstate districts other than the Dresden School District.

## ARTICLE VIII

## Taking Over of Existing Property

A. POWER TO ACQUIRE PROPERTY OF MEMBER DISTRICT. The articles of agreement, or an amendment thereof, may provide for the acquisition by an interstate district from a member district of all or a part of its existing plant and equipment.

B. VALUATION. The articles of agreement, or the amendment, shall provide for the determination of the value of the property to be acquired in one or more of the following ways:

a. A valuation set forth in the articles of agreement or the amendment.

b. By appraisal, in which case, one appraiser shall be appointed by each commissioner, and a third appraiser appointed by the first 2 appraisers.

C. REIMBURSEMENT TO MEMBER DISTRICT. The articles of agreement shall specify the method by which the member district shall be reimbursed by the interstate district for the property taken over, in one or more of the following ways:

a. By one lump sum, appropriated, allocated, and raised by the interstate district in the same manner as an appropriation for operating expenses.

b. In installments over a period of not more than 20 years, each of which is appropriated, allocated, and raised by the interstate district in the same manner as an appropriation for operating expenses.

c. By an agreement to assume or reimburse the member district for all principal and interest on any outstanding indebtedness originally incurred by the member district to finance the acquisition and improvement of the property, each such installment to be appropriated, allocated, and raised by the interstate district in the same manner as an appropriation for operating expenses.

The member district transferring the property shall have the same obligation to pay to the interstate district its share of the cost of such acquisition, but may offset its right to reimbursement.

## ARTICLE IX

## Amendments to Articles of Agreement

A. Amendments to the articles of agreement shall be adopted in the manner provided in the articles of agreement, and if no such provision is made in the articles of agreement then amendments shall be adopted by the affirmative vote of ⅔ of those present and voting at an interstate district meeting, except that:

a. If the amendment proposes the addition of a new member district, the amendment shall be adopted in the same manner provided for the adoption of the original articles of agreement, provided that the planning committee shall consist of all of the members of the interstate district board of directors and all of the members of the school board of the proposed new member district or districts, and provided that the amendment shall be submitted to the voters of the interstate district, the affirmative vote of ⅔ of those present and voting at an interstate district meeting being required for approval of the amendment. The articles of agreement together with the proposed amendment shall then be submitted to the voters of the proposed new member district or districts, and an affirmative vote of a simple majority of those present and voting at each district meeting shall be required for approval of the amendment.

b. No amendment to the articles of agreement may impair the rights of bond or note holders or the power of the interstate district to procure the means for their payment.

c. Amendments to the articles of agreement of the Dresden School District shall be adopted in the following manner: (1) an amendment shall be initially approved upon the affirmative vote of a simple majority of those voters of the Dresden School

District who are present and voting at a meeting called for such purpose, (2) the amendment initially approved by the voters of the Dresden School District shall become final and effective upon the expiration of 30 days after the date of that vote, unless a petition is duly filed within that 30-day period and the amendment is subsequently not approved by the voters of a member district in accordance with the procedure specified in clause (3), (3) if a petition, valid under applicable state law, is filed before the expiration of that 30-day period with the clerk of any school district which is a member of the Dresden School District, which petition requires the calling of a special meeting at that member district for the purpose of considering the approval of the amendment initially adopted by the voters of the Dresden School District, then the board of school directors of that member district shall thereupon call a special meeting of that district for that purpose, (4) if the amendment as initially approved by the voters of the Dresden School District is approved by more than 40 percent of the voters present and voting at the meeting of each member district in which a petition was filed under this section, then the amendment as initially adopted shall become final and effective upon the vote of that member district last to vote. If the amendment as initially approved by the voters of the Dresden School District is not so approved by more than 40 percent of the voters present and voting at the meeting of any one member district, then the amendment shall be null and void and of no effect.

## Article X
## Applicability of New Hampshire Laws

A. General School Laws. With respect to the operation and maintenance of any school of the district located in New Hampshire, the provisions of New Hampshire law shall apply except as otherwise provided in this compact and except that the powers and duties of the school board shall be exercised and discharged by the interstate board and the powers and duties of the school administrative unit superintendent shall be exercised and discharged by the interstate district superintendent.

B. New Hampshire State Aid. A New Hampshire school district shall be entitled to receive an amount of state aid for operating expenditures as though its share of the interstate district's expenses were the expenses of the New Hampshire member district, and as though the New Hampshire member district pupils attending the interstate school were attending a New Hampshire cooperative school district's school. The state aid shall be paid to the New Hampshire member school district to reduce the sums which would otherwise be required to be raised by taxation within the member district.

C. Continued Existence of New Hampshire Member School District. A New Hampshire member school district shall continue in existence, and shall have all of the powers and be subject to all of the obligations imposed by law and not herein delegated to the interstate district. If the interstate district incorporates only a part of the schools in the member school district, then the school board of the member school district shall continue in existence and it shall have all of the powers and be subject to all of the obligations imposed by law on it and not herein delegated to the district. However, if all of the schools in the member school district are incorporated into the interstate school district, then the member or members of the interstate board representing the member district shall have all of the powers and be subject to all of the obligations imposed by law on the members of a school board for the member district and not herein delegated to the interstate district. The New Hampshire member school district shall remain liable on its existing indebtedness; and the interstate school district shall not become liable therefor, unless the indebtedness is specifically assumed in accordance with the articles of agreement. Any trust funds or capital reserve funds and any property not taken over by the interstate district shall be retained by the New Hampshire member district and held or disposed of according to law. If all of the schools in a member district are incorporated into an interstate district, then no annual meeting of the member district shall be required unless the members of the interstate board from the member district shall determine that there is occasion for such an annual meeting.

D. Suit and Service of Process in New Hampshire. The courts of New Hampshire shall have the same jurisdiction over the district as though a New Hampshire member district were a party instead of the interstate district. The service necessary to institute suit in New Hampshire shall be made on the district by leaving a copy of the writ or other proceedings in hand or at the last and usual place of abode of one of the directors who resides in New Hampshire, and by mailing a like copy to the clerk and to one other director by certified mail with return receipt requested.

E. Employment. Each employee of an interstate district assigned to a school located in New Hamp-

shire shall be considered an employee of a New Hampshire school district for the purpose of the New Hampshire teachers retirement system, the New Hampshire state employees retirement system, the New Hampshire workers' compensation law and any other law relating to the regulation of employment or the provision of benefits for employees of New Hampshire school districts except as follows:

1. A teacher in a New Hampshire member district may elect to remain a member of the New Hampshire teachers retirement system, even though assigned to teach in an interstate school in Vermont.

2. Employees of interstate districts designated as professional or instructional staff members, as defined in article I hereof, may elect to participate in the teachers retirement system of either the state of New Hampshire or the state of Vermont but in no case will they participate in both retirement systems simultaneously.

3. It shall be the duty of the superintendent in an interstate district to: (a) advise teachers and other professional staff employees contracted for the district about the terms of the contract and the policies and procedures of the retirement systems; (b) see that each teacher or professional staff employee selects the retirement system of his choice at the time his contract is signed; (c) provide the commissioners of education in New Hampshire and in Vermont with the names and other pertinent information regarding each staff member under his jurisdiction so that each may be enrolled in the retirement system of his preference.

## Article XI

## Applicability of Vermont Laws

A. General School Laws. With respect to the operation and maintenance of any school of the district located in Vermont, the provisions of Vermont law shall apply except as otherwise provided in this compact and except that the powers and duties of the school board shall be exercised and discharged by the interstate board and the powers and duties of the union superintendent shall be exercised and discharged by the interstate district superintendent.

B. Vermont State Aid. A Vermont school district shall be entitled to receive such amount of state aid for operating expenditures as though its share of the interstate district's expenses were the expenses of the Vermont member district, and as though the Vermont member district pupils attending the interstate schools were attending a Vermont union school district's schools. Such state aid shall be paid to the Vermont member school district to reduce the sums which would otherwise be required to be raised by taxation within the member district.

C. Continued Existence of Vermont Member School District. A Vermont member school district shall continue in existence, and shall have all of the powers and be subject to all of the obligations imposed by law and not herein delegated to the interstate district. If the interstate district incorporates only a part of the schools in the member school district, then the school board of the member school district shall continue in existence and it shall have all of the powers and be subject to all of the obligations imposed by law on it and not herein delegated to the district. However, if all of the schools in the member school are incorporated into the interstate school district, then the member or members of the interstate board representing the member district shall have all of the powers and be subject to all of the obligations imposed by law on the members of a school board for the member district and not herein delegated to the interstate district. The Vermont member school district shall remain liable on its existing indebtedness; and the interstate school district shall not become liable therefor. Any trust funds and any property not taken over shall be retained by the Vermont member school district and held or disposed of according to law.

D. Suit and Service of Process in Vermont. The courts of Vermont shall have the same jurisdiction over the districts as though a Vermont member district were a party instead of the interstate district. The service necessary to institute suit in Vermont shall be made on the district by leaving a copy of the writ or other proceedings in hand or at the last and usual place of abode of one of the directors who resides in Vermont, and by mailing a like copy to the clerk and to one other director by certified mail with return receipt requested.

E. Employment. Each employee of an interstate district assigned to a school located in Vermont shall be considered an employee of a Vermont school district for the purpose of the state teachers' retirement system of Vermont, the state employees' retirement system, the Vermont workers' compensation law, and any other law relating to the regulation of employment or the provision of benefits for employees of Vermont school districts except as follows:

1. A teacher in a Vermont member district may elect to remain a member of the state teachers' retirement system of Vermont, even though as-

signed to teach in an interstate school in New Hampshire.

2. Employees of interstate districts designated as professional or instructional staff members, as defined in article I hereof, may elect to participate in the teachers' retirement system of either the state of Vermont or the state of New Hampshire but in no case will they participate in both retirement systems simultaneously.

3. It shall be the duty of the superintendent in an interstate district to: a) advise teachers and other professional staff employees contracted for the district about the terms of the contract and the policies and procedures of the retirement system; b) see that each teacher or professional staff employee selects the retirement system of his choice at the time his contract is signed; c) provide the commissioners of education in New Hampshire and in Vermont with the names and other pertinent information regarding each staff member under his jurisdiction so that each may be enrolled in the retirement system of his preference.

## Article XII

## Adoption of Compact by Dresden School District

The Dresden School District, otherwise known as the Hanover-Norwich Interstate School District, authorized by New Hampshire Laws of 1961, chapter 116, and by the laws of Vermont, is hereby authorized to adopt the provisions of this compact and to become an interstate school district within the meaning hereof, upon the following conditions and subject to the following limitations:

a. Articles of agreement shall be prepared and signed by a majority of the directors of the interstate school district.

b. The articles of agreement shall be submitted to an annual or special meeting of the Dresden district for adoption.

c. An affirmative vote of ⅔ of those present and voting shall be required for adoption.

d. Nothing contained therein, or in this compact, as it affects the Dresden School District shall affect adversely the rights of the holders of any bonds or other evidences of indebtedness then outstanding, or the rights of the district to procure the means for payment thereof previously authorized.

e. The corporate existence of the Dresden School District shall not be terminated by such adoption of articles of amendment, but shall be deemed to be so amended that it shall thereafter be governed by the terms of this compact.

## Article XIII

## Miscellaneous Provisions

A. Studies. Insofar as practicable, the studies required by the laws of both states shall be offered in an interstate school district.

B. Textbooks. Textbooks and scholar's supplies shall be provided at the expense of the interstate district for pupils attending its schools.

C. Transportation. The allocation of the cost of transportation in an interstate school district, as between the interstate district and the member districts, shall be determined by the articles of agreement.

D. Location of Schoolhouses. In any case where a new schoolhouse or other school facility is to be constructed or acquired, the interstate board shall first determine whether it shall be located in New Hampshire or in Vermont. If it is to be located in New Hampshire, RSA 199, relating to schoolhouses, shall apply. If it is to be located in Vermont, the Vermont law relating to schoolhouses shall apply.

E. Fiscal Year. The fiscal year of each interstate district shall begin on July 1 of each year and end on June 30 of the following year.

F. Immunity from Tort Liability. Notwithstanding the fact that an interstate district may derive income from operating profit, fees, rentals, and other services, it shall be immune from suit and from liability for injury to persons or property and for other torts caused by it or its agents, servants or independent contractors, except insofar as it may have undertaken such liability under RSA 281:7 relating to workmen's compensation, or RSA 507–B relating to the procurement of liability insurance by a governmental agency and except insofar as it may have undertaken such liability under 21 V.S.A. Section 621 relating to workers' compensation or 29 V.S.A. Section 1403 relating to the procurement of liability insurance by a governmental agency.

G. Administrative Agreement Between Commissioners of Education. The commissioners of education of New Hampshire and Vermont may enter into one or more administrative agreements prescribing the relationship between the interstate districts, member districts, and each of the 2 state departments of education, in which any conflicts between the 2 states in procedure, regulations, and administrative practices may be resolved.

H. AMENDMENTS. Neither state shall amend its legislation or any agreement authorized thereby without the consent of the other in such manner as to substantially adversely affect the rights of the other state or its people hereunder, or as to substantially impair the rights of the holders of any bonds or notes or other evidences of indebtedness then outstanding or the rights of an interstate school district to procure the means for payment thereof. Subject to the foregoing, any reference herein to other statutes of either state shall refer to such statute as it may be amended or revised from time to time.

I. SEPARABILITY. If any of the provisions of this compact, or legislation enabling the same, shall be held invalid or unconstitutional in relation to any of the applications thereof, such invalidity or unconstitutionality shall not affect other applications thereof or other provisions thereof; and to this end the provisions of this compact are declared to be severable.

J. Inconsistency of Language. The validity of this compact shall not be affected by any insubstantial differences in its form or language as adopted by the 2 states.

### ARTICLE XIV

### Effective Date

A. This compact shall become effective when a bill of the Vermont general assembly which incorporates the compact becomes a law in Vermont and when it is approved by the United States Congress.

**Source.** 1967, 356:1. 1973, 544:8. 1977, 396:1–3. 2001, 292:3. 2003, 150:8, eff. Jan. 1, 2004.

## CHAPTER 200–C

## VOCATIONAL REHABILITATION PROGRAMS



### 200–C:1 Federal Vocational Rehabilitation Program.

The commissioner of education, or if the commissioner of education delegates the authority in writing, the administrator of the bureau of vocational rehabilitation of the department of education, is authorized to make application to and receive funds from, to cooperate with, and to enter into any agreements with the federal government or any agency of the federal government to secure the participation of the United States government through the allotment of federal funds in the vocational rehabilitation program of this state. The bureau of vocational rehabilitation shall comply with the requirements of the applicable federal laws including the determination of eligibility for the determination of the nature and scope of, and the provision of, vocational rehabilitation services under the state plan.

**Source.** 1967, 417:1. 1986, 41:24. 1994, 379:15, eff. June 9, 1994.

### 200–C:2 Cooperative Working Agreements.

The commissioner or his delegate is authorized to make agreements between the bureau of vocational rehabilitation of the state department of education and any other agency of the state or subdivisions of the state or agency of such a subdivision, to assist in the vocational rehabilitation of persons disabled because of a physical, mental, or social disability.

**Source.** 1967, 417:1. 1990, 140:2, X. 1994, 379:21, eff. June 9, 1994.

### 200–C:3 State Matching Funds.

The federal funds anticipated under this chapter are to match state funds on the basis of a state matching share not less than the percentage estab-

lished by federal law of the total expenditure of funds provided for by the federal legislation and the approved state plan of the bureau of vocational rehabilitation. The funds made available to the bureau of vocational rehabilitation by any state agency or subdivision of the state or agency thereof in the form of use of personnel or facilities or in other ways, may be construed as state matching funds if federal laws or the regulations of the federal agency authorized such a construction.

**Source.** 1967, 417:1. 1969, 355:1. 1988, 192:1. 1994, 379:21, eff. June 9, 1994.

### 200–C:4 Expansion of Programs.

It is the intent of the general court that the vocational rehabilitation program of cooperative agreements may be expanded as additional federal funds become available. In furtherance of this intent, the commissioner of education or his delegate may expand any agreements or enter into new agreements with any other departments or agencies of the state, subdivisions of the state, or agencies of either, under this chapter, and may expand any agreements or enter into new agreements with any federal agency charged with the distribution of funds for the vocational rehabilitation program, as federal funds become available for the program.

**Source.** 1967, 417:1. 1969, 355:2, eff. Aug. 30, 1969.

### 200–C:5 Additional Personnel.

If additional federal funds become available and the additional state matching funds as they are construed under this chapter become available, and if the federal agency approves of a new program under this chapter, and on the request of the commissioner of education or his authorized delegate, the governor and council may approve additional positions beyond those authorized by RSA 200–C and 1967, 417:2 as amended for personnel to operate the programs and to fulfill the cooperative working agreements entered into by the division.

**Source.** 1967, 417:1. 1969, 355:3, eff. Aug. 30, 1969.

### 200–C:6 Repealed by 1994, 379:24, VII, eff. June 9, 1994.

### 200–C:6–a Recovery of Costs; Right of Action.

*[RSA 200–C:6–a repealed by 2023, 137:1, effective January 1, 2024.]*

I. Whenever any person who has received services provided under this chapter shall receive a settlement or an award from a liable third person or party, including workers' compensation and social security disability benefits, and such settlement or award is related to the disability under which the person became eligible for such services, the person shall repay the cost of such services to the extent that the amount of the settlement or award makes repayment possible. No attorneys' fees shall be deducted from the amount due the state from such award or settlement.

II. Amounts repaid under paragraph I shall be payable to the bureau of vocational rehabilitation of the department of education and shall be administered as follows:

(a) If the settlement or award occurs within the same fiscal year as the receipt of any portion of services furnished, the recovered amount proportionate to the cost of services provided for such fiscal year shall be credited to the division; and

(b) If the settlement or award occurs after the fiscal year in which receipt of any portion of services furnished takes place, that part of the cost of services recovered pursuant to this section which was federally funded shall be returned to the federal government in an amount proportionate to the cost of services provided for such previous fiscal year, while the remaining state-funded part of such cost shall remain with the division.

III. The state shall have a right of action over amounts due pursuant to paragraph I.

**Source.** 1990, 131:2. 1994, 379:21, eff. June 9, 1994.

## Telecommunications Equipment Program

### 200–C:7 Repealed by 2021, 210:2, Pt. I, Sec. 1, I, eff. Oct. 9, 2021.

### 200–C:8 Rulemaking Authority.

The board of education shall adopt rules, under RSA 541–A, relative to the provision of vocational rehabilitation services.

**Source.** 1985, 322:1. 1994, 379:23, eff. June 9, 1994. 2021, 210:2, Pt. I, Sec. 2, eff. Oct. 9, 2021.

## Workers' Personal Care Assistance Program

### 200–C:9 Repealed by 2021, 210:2, Pt. I, Sec. 1, II, eff. Oct. 9, 2021.

### 200–C:10 Repealed by 2021, 210:2, Pt. I, Sec. 1, III, eff. Oct. 9, 2021.

### 200–C:11 Repealed by 2021, 210:2, Pt. I, Sec. 1, IV, eff. Oct. 9, 2021.

### 200–C:12 Repealed by 2021, 210:2, Pt. I, Sec. 1, V, eff. Oct. 9, 2021.

**200–C:13 Repealed by 2021, 210:2, Pt. I, Sec. 1, VI, eff. Oct. 9, 2021.**

**200–C:14 Repealed by 2010, 368:1(19), eff. Dec. 31, 2010.**

**200–C:15 Repealed by 2021, 210:2, Pt. I, Sec. 1, VII, eff. Oct. 9, 2021.**

**Equipment Depository**

**200–C:16 Equipment Depository.**

There is hereby established an equipment depository within the bureau of vocational rehabilitation to purchase adaptive equipment to enable disabled persons to become gainfully employed by the state and any subdivision thereof. The bureau shall determine the equipment to be purchased, subject to the approval of governor and council. The purchases shall be limited to equipment which provides reasonable, and not extraordinary, accommodations to the needs of the disabled, such as telephone adapters, adjustable desks, and other like equipment. The bureau shall have authority to reissue equipment returned to the depository and to dispose of any equipment that is no longer useful.

**Source.** 1986, 171:3. 1990, 140:2, X. 1994, 379:21. 2003, 174:13, eff. July 1, 2003.

**200–C:17 Repealed by 2002, 254:5, VIII, eff. July 1, 2002.**

**Program for the Deaf and Hard of Hearing**

**200–C:18 Program for the Deaf and Hard of Hearing.**

There is established a program for the deaf and hard of hearing within the bureau of vocational rehabilitation which shall be administered by a coordinator designated by the administrator, bureau of vocational rehabilitation.

**Source.** 1989, 51:1. 1994, 379:21, eff. June 9, 1994.

**200–C:19 Functions.**

The program established under this chapter shall:

I. Provide leadership and direction in the area of serving persons with hearing impairment.

II. Review, update and implement the state plan for the deaf and hard of hearing and ensure it is an integral part of the operation of the department of education.

III. [Repealed.]

IV. Provide administrative support upon request of the board of licensure of interpreters for the deaf, deafblind, and hard of hearing established in RSA 326–I. Such support may include the operation of a state screening for New Hampshire interpreters.

V. Collect data on the needs of the deaf or hard of hearing community and investigate resources to meet those needs.

VI. Provide technical assistance to state and private agencies requesting such assistance in order to ensure accessibility for the deaf or hard of hearing.

VII. Assist in development of legislation affecting deaf or hard of hearing people in the state as approved by the state board of education.

VIII. Work with the New Hampshire registry of interpreters for the deaf, the New Hampshire Association of the Deaf, Self-Help for the Hard of Hearing, and any other consumer group interested in hearing loss, as needed, to ensure quality of services for the deaf or hard of hearing.

IX. Serve as an information and referral source for the state on the subject of hearing impairment.

**Source.** 1989, 51:1. 2001, 232:2, eff. July 1, 2001. 2018, 275:3, eff. Aug. 17, 2018. 2021, 86:2, eff. Jan. 1, 2022; 210:1, VIII, pt. I, eff. Oct. 9, 2021.

**200–C:20 Rulemaking Authority.**

The board of education, shall adopt rules, pursuant to RSA 541–A, to implement the program for the deaf and hard of hearing.

**Source.** 1989, 51:1. 1994, 379:23, eff. June 9, 1994.

**200–C:20–a National Level and State Level Examination Fee; Revolving Fund Established.**

I. Interpreters seeking to be licensed under RSA 326–I who are required to be examined by the department of education shall be charged a fee for the national level or state level examination by the department of education, as appropriate. The state board of education shall establish, pursuant to RSA 541–A, a fee schedule for such purpose. The administrator, bureau of vocational rehabilitation, shall assess and collect such fees.

II. The administrator, bureau of vocational rehabilitation, shall establish a revolving fund into which shall be deposited fees collected under paragraph I. The revolving fund shall be nonlapsing. The commissioner of education, with approval of the governor and council, is authorized to use moneys from the revolving fund for the purposes of funding the program as provided in this subdivision.

**Source.** 1990, 131:3. 1994, 379:21. 2001, 232:3, eff. July 1, 2001.

### Supported Employment Program

#### 200–C:21 Supported Employment Program.

There is established a supported employment program within the bureau of vocational rehabilitation which shall train eligible persons with disabilities in their employment situations by providing appropriate support services.

**Source.** 1989, 145:1. 1990, 140:2, IV. 1994, 379:21, eff. June 9, 1994.

#### 200–C:22 Services.

Services provided by the supported employment program shall include, but not be limited to, the following:

I. Providing vocational rehabilitation programs administered by the bureau of vocational rehabilitation.

II. Providing ongoing job support services, either at the job site or in another location, which are directly related to maintaining employment.

**Source.** 1989, 145:1. 1994, 379:21, eff. June 9, 1994.

#### 200–C:23 Rulemaking.

The board of education, shall adopt rules, pursuant to RSA 541–A, to implement the supported employment program.

**Source.** 1989, 145:1. 1994, 379:23, eff. June 9, 1994.

### Independent Living Program

#### 200–C:24 Independent Living Program.

There is established an independent living program within the bureau of vocational rehabilitation which is intended to assist eligible persons with disabilities in increasing their independence.

**Source.** 1989, 145:1. 1990, 140:2, IV. 1994, 379:21, eff. June 9, 1994.

#### 200–C:25 Services.

Services provided by the independent living program shall include, but not be limited to, the following:

I. Providing vocational rehabilitation programs administered by the bureau of vocational rehabilitation.

II. Establishing, improving, or maintaining independent living centers.

III. Providing services to the elderly blind for the purpose of increasing independence.

**Source.** 1989, 145:1. 1994, 379:21, eff. June 9, 1994.

#### 200–C:26 Rulemaking.

The board of education shall adopt rules, pursuant to RSA 541–A, to implement the independent living program.

**Source.** 1989, 145:1. 1994, 379:23, eff. June 9, 1994.

## CHAPTER 200–D

## STATE SCHOLARSHIP PROGRAM

[Repealed by 1981, 66:1, eff. April 3, 1981.]

## CHAPTER 200–E

## INTERSTATE AGREEMENT ON QUALIFICATION OF EDUCATIONAL PERSONNEL



#### 200–E:1 Agreement.

The Interstate Agreement on Qualification of Educational Personnel is hereby enacted into law and entered into with all jurisdiction legally joining therein, in the form substantially as follows:

### Article I

### Purpose, Findings, and Policy

1. The States party to this Agreement, desiring by common action to improve their respective school systems by utilizing the teacher or other professional educational person wherever educated, declare that it is the policy of each of them, on the basis of cooperation with one another, to take advantage of the preparation and experience of such persons wherever gained, thereby serving the best interests of society, of education, and of the teaching profession. It is the purpose of this Agreement to provide for the development and execution of such programs of cooperation as will facilitate the movement of teachers and other professional educational personnel among the States party to it, and to authorize specific interstate educational personnel contracts to achieve that end.

2. The party States find that included in the large movement of population among all sections of the nation are many qualified educational personnel who move for family and other personal reasons but who are hindered in using their professional skill and experience in their new locations. Variations from State to State in requirements for qualifying educational personnel discourage such personnel from taking the steps necessary to qualify in other States. As a consequence, a significant number of profession-

ally prepared and experienced educators is lost to our school systems. Facilitating the employment of qualified educational personnel, without reference to their States of origin, can increase the available educational resources. Participation in this Compact can increase the availability of educational manpower.

## Article II
## Definitions

As used in this Agreement and contracts made pursuant to it, unless the context clearly requires otherwise:

1. "Educational personnel" means persons who must meet requirements pursuant to State law as a condition of employment in educational programs.

2. "Designated State official" means the education official of a State selected by that State to negotiate and enter into, on behalf of his State, contracts pursuant to this Agreement.

3. "Accept", or any variant thereof, means to recognize and give effect to one or more determinations of another State relating to the qualifications of educational personnel in lieu of making or requiring a like determination that would otherwise be required by or pursuant to the laws of a receiving State.

4. "State" means a State, territory, or possession of the United States; the District of Columbia; or the Commonwealth of Puerto Rico.

5. "Originating State" means a State (and the subdivisions thereof, if any) whose determination that certain educational personnel are qualified to be employed for specific duties in schools is acceptable in accordance with the terms of a contract made pursuant to Article III.

6. "Receiving State" means a State (and the subdivisions thereof) which accept educational personnel in accordance with the terms of a contract made pursuant to Article III.

## Article III
## Interstate Educational Personnel Contracts

1. The designated State official of a party State may make one or more contracts on behalf of his State with one or more other party States providing for the acceptance of educational personnel. Any such contract for the period of its duration shall be applicable to and binding on the States whose designated state officials enter into it, and the subdivisions of those States, with the same force and effect as if incorporated in this Agreement. A designated state official may enter into a contract pursuant to this Article only with States in which he finds that there are programs of education, certification standards or other acceptable qualifications that assure preparation or qualification of educational personnel on a basis sufficiently comparable, even though not identical to that prevailing in his own State.

2. Any such contract shall provide for:

(a) Its duration.

(b) The criteria to be applied by an originating State in qualifying educational personnel for acceptance by a receiving State.

(c) Such waivers, substitutions, and conditional acceptances as shall aid the practical effectuation of the contract without sacrifice of basic educational standards.

(d) Any other necessary matters.

3. No contract made pursuant to this Agreement shall be for a term longer than 5 years but any such contract may be renewed for like or lesser periods.

4. Any contract dealing with acceptance of educational personnel on the basis of their having completed an educational program shall specify the earliest date or dates on which originating state approval of the program or programs involved can have occurred. No contract made pursuant to this Agreement shall require acceptance by a receiving State of any persons qualified because of successful completion of a program prior to January 1, 1954.

5. The certification or other acceptance of a person who has been accepted pursuant to the terms of a contract shall not be revoked or otherwise impaired because the contract has expired or been terminated. However, any certificate or other qualifying document may be revoked or suspended on any ground which would be sufficient for revocation or suspension of a certificate or other qualifying document initially granted or approved in the receiving State.

6. A contract committee composed of the designated state officials of the contracting States or their representatives shall keep the contract under continuous review, study means of improving its administration, and report no less frequently than once a year to the heads of the appropriate education agencies of the contracting States.

## Article IV
## Approved and Accepted Programs

1. Nothing in this Agreement shall be construed to repeal or otherwise modify any law or regulation of a party State relating to the approval of programs of educational preparation having effect solely on the

qualification of educational personnel within that State.

2. To the extent that contracts made pursuant to this Agreement deal with the educational requirements for the proper qualification of educational personnel, acceptance of a program of educational preparation shall be in accordance with such procedures and requirements as may be provided in the applicable contract.

**Article V**

**Interstate Cooperation**

The party States agree that:

1. They will, so far as practicable, prefer the making of multilateral contracts pursuant to Article III of this Agreement.

2. They will facilitate and strengthen cooperation in interstate certification and other elements of educational personnel qualification and for this purpose shall cooperate with agencies, organizations, and associations interested in certification and other elements of educational personnel qualification.

**Article VI**

**Agreement Evaluation**

The designated state officials of any party States may meet from time to time as a group to evaluate progress under the Agreement, and to formulate recommendations for changes.

**Article VII**

**Other Arrangements**

Nothing in this Agreement shall be construed to prevent or inhibit other arrangements or practices of any party State or States to facilitate the interchange of educational personnel.

**Article VIII**

**Effect and Withdrawal**

1. This Agreement shall become effective when enacted into law by 2 States. Thereafter it shall become effective as to any State upon its enactment of this Agreement.

2. Any party State may withdraw from this Agreement by enacting a statute repealing the same, but no such withdrawal shall take effect until one year after the Governor of the withdrawing State has given notice in writing of the withdrawal to the Governors of all other party States.

3. No withdrawal shall relieve the withdrawing State of any obligation imposed upon it by a contract to which it is a party. The duration of contracts and the methods and conditions of withdrawal therefrom shall be those specified in their terms.

**Article IX**

**Construction and Severability**

This Agreement shall be liberally construed so as to effectuate the purposes thereof. The provisions of this Agreement shall be severable and if any phrase, clause, sentence, or provision of this Agreement is declared to be contrary to the constitution of any State or of the United States, or the application thereof to any Government, agency, person, or circumstance is held invalid, the validity of the remainder of this Agreement and the applicability thereof to any Government, agency, person, or circumstance shall not be affected thereby. If this Agreement shall be held contrary to the constitution of any State participating therein, the Agreement shall remain in full force and effect as to the State affected as to all severable matters.

**Source.** 1969, 103:1, eff. June 24, 1969.

### 200–E:2 Designated State Official.

The "designated State official" for this State shall be the commissioner of education. The commissioner shall enter into contracts pursuant to Article III of the Agreement only with the approval of the specific text thereof by the state board of education.

**Source.** 1969, 103:1, eff. June 24, 1969.

### 200–E:3 Filing of Contracts.

True copies of all contracts made on behalf of this State pursuant to the Agreement shall be kept on file in the department of education and in the office of the Secretary of State. The department of education shall publish all such contracts in convenient form.

**Source.** 1969, 103:1, eff. June 24, 1969.

## CHAPTER 200–F

## NEW HAMPSHIRE-MAINE INTERSTATE SCHOOL COMPACT



### 200–F:1 Compact.

The state of New Hampshire enters into the following compact with the state of Maine subject to the terms and conditions therein stated.

## New Hampshire-Maine Interstate School Compact

### Article I

### General Provisions

A. STATEMENT OF POLICY. It is the purpose of this compact to increase the educational opportunities within the states of New Hampshire and Maine by encouraging the formation of interstate school districts which will each be a natural social and economic region with adequate financial resources and a number of pupils sufficient to permit the efficient use of school facilities within the interstate district and to provide improved instruction. The state boards of education of New Hampshire and Maine may formulate and adopt additional standards consistent with this purpose and with these standards; and the formation of any interstate school district and the adoption of its articles of agreement shall be subject to the approval of both state boards as set forth.

B. REQUIREMENT OF CONGRESSIONAL APPROVAL. This compact shall not become effective until approved by the United States Congress.

C. DEFINITIONS. The terms used in this compact shall be construed as follows, unless a different meaning is clearly apparent from the language or context:

a. COMMISSIONER. "Commissioner" shall refer to Commissioner of Education.

b. ELEMENTARY SCHOOL. "Elementary school" shall mean a school which includes all grades from kindergarten or grade one through not less than grade 6 nor more than grade 8.

c. INTERSTATE BOARD. "Interstate board" shall refer to the board serving an interstate school district.

d. INTERSTATE SCHOOL DISTRICT. "Interstate school district" and "interstate district" shall mean a school district composed of one or more school districts located in the State of Maine associated under this compact with one or more school districts located in the state of New Hampshire and may include either the elementary schools, the secondary schools, or both.

e. JOINT ACTION. "Joint action" where joint action by both state boards is required, each state board shall deliberate and vote by its own majority, but shall separately reach the same result or take the same action as the other state board.

f. MAINE BOARD. "Maine Board" shall refer to the Maine State Board of Education.

g. MEMBER SCHOOL DISTRICT. "Member school district" and "member district" shall mean a school administrative unit located either in Maine or New Hampshire which is included within the boundaries of a proposed or established interstate school district.

h. NEW HAMPSHIRE BOARD. "New Hampshire board" shall refer to the New Hampshire State Board of Education.

i. PROFESSIONAL STAFF PERSONNEL. "Professional staff personnel" and "instructional staff personnel" shall include superintendents, assistant superintendents, administrative assistants, principals, guidance counselors, special educational personnel, school nurses, therapists, teachers, and other certificated personnel.

j. SECONDARY SCHOOL. "Secondary school" shall mean a school which includes all grades beginning no lower than grade 7 and no higher than grade 12.

k. WARRANT. "Warrant" or "warning" to mean the same for both states.

### Article II

### Procedure for Formation of an Interstate School District

A. CREATION OF PLANNING COMMITTEE. The New Hampshire and Maine commissioners of education shall have the power, acting jointly, to constitute and discharge one or more interstate school district planning committees. Each such planning committee shall consist of at least 2 voters from each of a group of 2 or more neighboring member districts. One of the representatives from each member district shall be a member of its school board, whose term on the planning committee shall be concurrent with his term as a school board member. The term of each member of a planning committee who is not also a school board member shall expire on June 30 of the third year following his appointment. The existence of any planning committee may be terminated either by vote of a majority of its members or by joint action of the commissioners. In forming and appointing members to an interstate school district planning board, the commissioners shall consider and take into account recommendations and nominations made by school boards of member districts. No member of a planning committee shall be disqualified because he is at the same time a member of another planning board or committee created under this compact or under any other provisions of law. Any existing informal interstate school planning committee may be reconstituted as a formal planning committee in accordance with the provisions hereof, and its previous deliberations adopted and ratified by the reorganized formal planning committee. Vacancies on a planning com-

mittee shall be filled by the commissioners acting jointly.

B. Operating Procedures of Planning Committee. Each interstate school district planning committee shall meet in the first instance at the call of any member, and shall organize by the election of a chairman and clerk-treasurer, each of whom shall be a resident of a different state. Subsequent meetings may be called by either officer of the committee. The members of the committee shall serve without pay. The member districts shall appropriate money on an equal basis at each annual meeting to meet the expenses of the committee, including the cost of publication and distribution of reports and advertising. From time to time the commissioners may add additional members and additional member districts to the committee, and may remove members and member districts from the committee. An interstate school district planning committee shall act by majority vote of its membership present and voting.

C. Duties of Interstate School District Planning Committee. It shall be the duty of an interstate school district planning committee, in consultation with the commissioners and the state departments of education: to study the advisability of establishing an interstate school district in accordance with the standards set forth in paragraph A, its organization, operation and control, and the advisability of constructing, maintaining and operating a school or schools to serve the needs of such interstate district; to estimate the construction and operating costs thereof; to investigate the methods of financing such school or schools, and any other matters pertaining to the organization and operation of an interstate school district; and to submit a report or reports of its findings and recommendations to the several member districts.

D. Recommendations and Preparation of Articles of Agreement. An interstate school district planning committee may recommend that an interstate school district composed of all the member districts represented by its membership, or any specified combination of such member districts, be established. If the planning committee does recommend the establishment of an interstate school district, it shall include in its report such recommendation, and shall prepare and include in its report proposed articles of agreement for the proposed interstate school district, which shall be signed by at least a majority of the membership of the planning committee, which set forth the following:

a. The name of the interstate school district.

b. The member districts which shall be combined to form the proposed interstate school district.

c. The number, composition, method of selection and terms of office of the interstate school board, provided that:

(1) The interstate school board shall consist of an odd number of members, not less than 5 nor more than 15;

(2) The terms of office shall not exceed 3 years;

(3) Each member district shall be entitled to elect at least one member of the interstate school board. Each member district shall either vote separately at the interstate school district meeting by the use of a distinctive ballot, or shall chose its member or members at any other election at which school officials may be chosen;

(4) The method of election shall provide for the filing of candidacies in advance of election and for the use of a printed nonpartisan ballot;

(5) Subject to the foregoing, provision may be made for the election of one or more members at large.

d. The grades for which the interstate school district shall be responsible.

e. The specific properties of member districts to be acquired initially by the interstate school district and the general location of any proposed new schools to be initially established or constructed by the interstate school district.

f. The method of apportioning the operating expenses of the interstate school district among the several member districts, and the time and manner of payments of such shares.

g. The indebtedness of any member district which the interstate district is to assume.

h. The method of apportioning the capital expenses of the interstate school district among the several member districts, which need not be the same as the method of apportioning operating expenses, and the time and manner of payment of such shares. Capital expenses shall include the cost of acquiring land and buildings for school purposes; the construction, furnishing and equipping of school buildings and facilities; and the payment of the principal and interest of any indebtedness which is incurred to pay for the same.

i. The manner in which state aid, available under the laws of either New Hampshire or Maine, shall be allocated, unless otherwise expressly pro-

vided in this compact or by the laws making such aid available.

j. The method by which the articles of agreement may be amended, which amendments may include the annexation of territory, or an increase or decrease in the number of grades for which the interstate district shall be responsible, provided that no amendment shall be effective until approved by both state boards in the same manner as required for approval of the original articles of agreement.

k. The date of operating responsibility of the proposed interstate school district and a proposed program for the assumption of operating responsibility for education by the proposed interstate school district, and any school construction; which the interstate school district shall have the power to vary by vote as circumstances may require.

*l.* Any other matters, not incompatible with law, which the interstate school district planning committee may consider appropriate to include in the articles of agreement, including, without limitation:

(1) The method of allocating the cost of transportation between the interstate district and member districts;

(2) The nomination of individual school directors to serve until the first annual meeting of the interstate school district.

E. HEARINGS. If the planning committee recommends the formation of an interstate school district, it shall hold at least one public hearing on its report and the proposed articles of agreement within the proposed interstate school district in Maine, and at least one public hearing thereon within the proposed interstate school district in New Hampshire. The planning committee shall give such notice thereof as it may determine to be reasonable, provided that such notice shall include at least one publication in a newspaper of general circulation within the proposed interstate school district not less than 15 days, not counting the date of publication and not counting the date of the hearing, before the date of the first hearing. Such hearings may be adjourned from time to time and from place to place. The planning committee may revise the proposed articles of agreement after the date of the hearings. It shall not be required to hold further hearings on the revised articles of agreement but may hold one or more further hearings after notice similar to that required for the first hearings if the planning committee in its sole discretion determines that the revisions are so substantial in nature as to require further presentation to the public before submission to the state boards of education.

F. APPROVAL BY STATE BOARDS. After the hearings a copy of the proposed articles of agreement, as revised, signed by a majority of the planning committee, shall be submitted by it to each state board. The state boards may if they find that the articles of agreement are in accord with the standards set forth in this compact and in accordance with sound educational policy, approve the same as submitted, or refer them back to the planning committee for further study. The planning committee may make additional revisions to the proposed articles of agreement to conform to the recommendations of the state boards. Further hearings on the proposed articles of agreement shall not be required unless ordered by the state boards in their discretion. In exercising such discretion, the state boards shall take into account whether or not the additional revisions are so substantial in nature as to require further presentation to the public. If both state boards find that the articles of agreement as further revised are in accord with the standards set forth in this compact and in accordance with sound educational policy, they shall approve the same. After approval by both state boards, each state board shall cause the articles of agreement to be submitted to the school boards of the several member districts in each state for acceptance by the member districts as provided in paragraph G. At the same time, each state board shall designate the form of warrant, date, time, place, and period of voting for the special meeting of the member district to be held in accordance with paragraph G.

G. ADOPTION BY MEMBER DISTRICTS. Upon receipt of written notice from the state board in its state of the approval of the articles of agreement by both state boards, the school board of each member district shall cause the articles of agreement to be filed with the member district clerk. Within 10 days after receipt of such notice, the school board shall issue its warrant for a special meeting of the member district, the warrant to be in the form, and the meeting to be held at the time and place and in the manner prescribed by the state board. No approval of the superior court shall be required for such special school district meeting in New Hampshire. Voting shall be with the use of a checklist by a ballot substantially in the following form:

"Shall the school district accept the provisions of the New Hampshire-Maine Interstate School Compact providing for the establishment of an interstate school district, together with the

school districts of _____ and _____, etc., in accordance with the proposed articles of agreement filed with the school district (town, city or incorporated school district) clerk?"

Yes ( ) No ( )

If the articles of agreement included the nomination of individual school directors, those nominated from each member district shall be included in the ballot and voted upon, such election to become effective upon the formation of an interstate school district.

If a majority of the voters present and voting in a member district vote in the affirmative, the clerk for such member district shall forthwith send to the state board in its state a certified copy of the warrant, certificate of posting, and minutes of the meeting of the district. If the state boards of both states find that a majority of the voters present and voting in each member district have voted in favor of the establishment of the interstate school district, they shall issue a joint certificate to that effect; and such certificate shall be conclusive evidence of the lawful organization and formation of the interstate school district as of its date of issuance.

H. RESUBMISSION. If the proposed articles of agreement are adopted by one or more of the member districts but rejected by one or more of the member districts, the state boards may resubmit them, in the same form as previously submitted, to the rejecting member districts, in which case the school boards thereof shall resubmit them to the voters in accordance with paragraph G. An affirmative vote in accordance therewith shall have the same effect as though the articles of agreement had been adopted in the first instance. In the alternative, the state boards may either discharge the planning committee, or refer the articles of agreement back for further consideration to the same or a reconstituted planning committee, which shall have all the powers and duties as the planning committee as originally constituted.

## Article III
## Powers of Interstate School District

A. POWERS. Each interstate school district shall be a body corporate and politic, with power to:

a. Acquire, construct, extend, improve, staff, operate, manage and govern public schools within its boundaries;

b. Sue and be sued, subject to the limitations of liability hereinafter set forth;

c. Have a seal and alter the same at pleasure;

d. Adopt, maintain and amend bylaws not inconsistent with this compact, and the laws of the 2 states;

e. Acquire by purchase, condemnation, lease or otherwise, real and personal property for the use of its schools;

f. Enter into contracts and incur debts;

g. Borrow money for the purposes set forth, and to issue its bonds or notes therefor;

h. Make contracts with and accept grants and aid from the United States, the State of Maine, the State of New Hampshire, any agency or municipality thereof, and private corporations and individuals for the construction, maintenance, reconstruction, operation and financing of its schools; and to do any and all things necessary in order to avail itself of such aid and cooperation;

i. Employ such assistants, agents, servants and independent contractors as it shall deem necessary or desirable for its purposes; and

j. Take any other action which is necessary or appropriate in order to exercise any of the foregoing powers.

## Article IV
## District Meetings

A. GENERAL. Votes of the district shall be taken at a duly warned meeting held at any place in the district, at which all of the eligible legal voters of the member districts shall be entitled to vote, except as otherwise provided with respect to the election of directors.

B. ELIGIBILITY OF VOTERS. Any resident who would be eligible to vote at a meeting of a member district being held at the same time shall be eligible to vote at a meeting of the interstate district. The town clerks in each Maine member district and the supervisors of the checklist of each New Hampshire district shall respectively prepare a checklist of eligible voters for each meeting of the interstate district in the same manner, and they shall have all the same powers and duties with respect to eligibility of voters in their districts as for a meeting of a member district.

C. WARNING OF MEETINGS. A meeting shall be warned by a warrant addressed to the residents of the interstate school district qualified to vote in district affairs, stating the time and place of the meeting and the subject matter of the business to be acted upon. The warrant shall be signed by the clerk and

by a majority of the directors. Upon written application of 10 or more voters in the district, presented to the directors or to one of them, at least 25 days before the day prescribed for an annual meeting, the directors shall insert in their warrant for such meeting any subject matter specified in such application.

D. Posting and Publication of Warrant. The directors shall cause an attested copy of the warrant to be posted at the place of meeting, and a like copy at a public place in each member district at least 20 days, not counting the date of posting and the date of meeting, before the date of the meeting. In addition, the directors shall cause the warrant to be advertised in a newspaper of general circulation on at least one occasion, such publication to occur at least 10 days, not counting the date of publication and not counting the date of the meeting, before the date of the meeting. Although no further notice shall be required, the directors may give such further notice of the meeting as they in their discretion deem appropriate under the circumstances.

E. Return of Warrant. The warrant with a certificate thereon, verified by oath, stating the time and place when and where copies of the warrant were posted and published, shall be given to the clerk of the interstate school district at or before the time of the meeting, and shall be recorded by him in the records of the interstate school district.

F. Organization Meeting. The commissioners, acting jointly, shall fix a time and place for a special meeting of the qualified voters within the interstate school district for the purpose of organization, and shall prepare and issue the warrant for the meeting after consultation with the interstate school district planning board and the members-elect, if any, of the interstate school board of directors. Such meeting shall be held within 60 days after the date of issuance of the certificate of formation, unless the time is further extended by the joint action of the state boards. At the organization meeting the commissioner of education of the state where the meeting is held, or his designate, shall preside in the first instance, and the following business shall be transacted:

a. A temporary moderator and a temporary clerk shall be elected from among the qualified voters who shall serve until a moderator and clerk respectively have been elected and qualified.

b. A moderator, clerk, a treasurer and 3 auditors shall be elected to serve until the next annual meeting and thereafter until their successors are elected and qualified. Unless previously elected, a board of school directors shall be elected to serve until their successors are elected and qualified.

c. The date for the annual meeting shall be established.

d. Provision shall be made for the payment of any organizational or other expense incurred on behalf of the district before the organization meeting, including the cost of architects, surveyors, contractors, attorneys, and educational or other consultants or experts.

e. Any other business, the subject matter of which has been included in the warrant, and which the voters would have had power to transact at any annual meeting.

G. Annual Meetings. An annual meeting of the district shall be held between January 15 and June 1 of each year at such time as the interstate district may by vote determine. Once determined, the date of the annual meeting shall remain fixed until changed by vote of the interstate district at a subsequent annual or special meeting. At each annual meeting the following business shall be transacted:

a. Necessary officers shall be elected.

b. Money shall be appropriated for the support of the interstate district schools for the fiscal year beginning the following July 1.

c. Such other business as may properly come before the meeting.

H. Special Meetings. A special meeting of the district shall be held whenever, in the opinion of the directors, there is occasion therefor, or whenever written application shall have been made by 5 percent or more of the voters based on the checklists as prepared for the last preceding meeting, setting forth the subject matter upon which such action is desired. A special meeting may appropriate money without compliance with RSA 33:8 or RSA 197:3 which would otherwise require the approval of the New Hampshire superior court.

I. Certification of Records. The clerk of an interstate school district shall have the power to certify the record of the votes adopted at an interstate school district meeting to the respective commissioners and state boards and, where required, for filing with a secretary of state.

J. Method of Voting at School District Meetings. Voting at meetings of interstate school districts shall take place as follows:

a. School directors. A separate ballot shall be prepared for each member district, listing the candidates for interstate school director to repre-

sent such member district; and any candidates for interstate school director at large; and the voters of each member district shall register on a separate ballot their choice for the office of school director or directors. In the alternative, the articles of agreement may provide for the election of school directors by one or more of the member districts at an election otherwise held for the choice of school or other municipal officers.

b. OTHER VOTES. Except as otherwise provided in the articles of agreement or this compact, with respect to all other votes, the voters of the interstate school district shall vote as one body irrespective of the member districts in which they are resident, and a simple majority of those present and voting at any duly warned meeting shall carry the vote. Voting for officers to be elected at any meeting, other than school directors, shall be by ballot or voice, as the interstate district may determine, either in its articles of agreement or by a vote of the meeting.

## Article V
## Officers

A. OFFICERS; GENERAL. The officers of an interstate school district shall be a board of school directors, a chairman of the board, a vice-chairman of the board, a secretary of the board, a moderator, a clerk, a treasurer and 3 auditors. Except as otherwise specifically provided, they shall be eligible to take office immediately following their election; they shall serve until the next annual meeting of the interstate district and until their successors are elected and qualified. Each shall take oath for the faithful performance of his duties before the moderator, or a notary public or a justice of the peace of the state in which the oath is administered. Their compensation shall be fixed by vote of the district. No person shall be eligible to any district office unless he is a voter in the district. A custodian, school teacher, principal, superintendent or other employee of an interstate district acting as such shall not be eligible to hold office as a school director.

B. BOARD OF DIRECTORS.

a. HOW CHOSEN. Each member district shall be represented by at least one resident on the board of school directors of an interstate school district. A member district shall be entitled to such further representation on the interstate board of school directors as provided in the articles of agreement as amended from time to time. The articles of agreement as amended from time to time may provide for school directors at large, as set forth. No person shall be disqualified to serve as a member of an interstate board because he is at the same time a member of the school board of a member district.

b. TERM. Interstate school directors shall be elected for terms in accordance with the articles of agreement.

c. DUTIES OF BOARD OF DIRECTORS. The board of school directors of an interstate school district shall have and exercise all of the powers of the district not reserved herein to the voters of the district.

d. ORGANIZATION. The clerk of the district shall warn a meeting of the board of school directors to be held within 10 days following the date of the annual meeting, for the purpose of organizing the board, including the election of its officers.

C. CHAIRMAN OF THE BOARD. The chairman of the board of interstate school directors shall be elected by the interstate board from among its members at its first meeting following the annual meeting. The chairman shall preside at the meetings of the board and shall perform such other duties as the board may assign to him.

D. VICE-CHAIRMAN OF THE BOARD OF DIRECTORS. The vice-chairman of the interstate board shall be elected in the same manner as the chairman. He shall represent a member district in a state other than that represented by the chairman. He shall preside in the absence of the chairman and shall perform such other duties as may be assigned to him by the interstate board.

E. SECRETARY OF THE BOARD. The secretary of the interstate board shall be elected in the same manner as the chairman. Instead of electing one of its members, the interstate board may appoint the interstate district clerk to serve as secretary of the board in addition to his other duties. The secretary of the interstate board, or the interstate district clerk, if so appointed, shall keep the minutes of its meetings, shall certify its records, and perform such other duties as may be assigned to him by the board.

F. MODERATOR. The moderator shall preside at the district meetings, regulate the business thereof, decide questions of order, and make a public declaration of every vote passed. He may prescribe rules of procedure; but such rules may be altered by the district. He may administer oaths to district officers in either state.

G. CLERK. The clerk shall keep a true record of all proceedings at each district meeting, shall certify its records, shall make an attested copy of any rec-

ords of the district for any person upon request and tender of reasonable fees therefor, if so appointed, shall serve as secretary of the board of school directors, and shall perform such other duties as may be required by custom or law.

H. TREASURER. The treasurer shall have custody of all of the monies belonging to the district and shall pay out the same only upon the order of the interstate board. He shall keep a fair and accurate account of all sums received into and paid from the interstate district treasury, and at the close of each fiscal year he shall make a report to the interstate district, giving a particular account of all receipts and payments during the year. He shall furnish to the interstate directors, statements from his books and submit his books and vouchers to them and to the district auditors for examination whenever so requested. He shall make all returns called for by laws relating to school districts. Before entering on his duties, the treasurer shall give a bond with sufficient sureties and in such sum as the directors may require. The treasurer's term of office is from July 1 to the following June 30.

I. AUDITORS. At the organization meeting of the district, 3 auditors shall be chosen, one to serve for a term of one year, one to serve for a term of 2 years and one to serve for a term of 3 years. After the expiration of each original term, the successor shall be chosen for a 3 year term. At least one auditor shall be a resident of Maine, and one auditor shall be a resident of New Hampshire. An interstate district may vote to employ a certified public accountant to assist the auditors in the performance of their duties. The auditors shall carefully examine the accounts of the treasurer and the directors at the close of each fiscal year, and at such other times whenever necessary, and report to the district whether the same are correctly cast and properly vouched.

J. SUPERINTENDENT. The superintendent of schools shall be selected by a majority vote of the board of school directors of the interstate district with the approval of both commissioners.

K. VACANCIES. Any vacancy among the elected officers of the district shall be filled by the interstate board until the next annual meeting of the district or other election, when a successor shall be elected to serve out the remainder of the unexpired term, if any. Until all vacancies on the interstate board are filled, the remaining members shall have full power to act.

## Article VI

## Appropriation and Apportionment of Funds

A. BUDGET. Before each annual meeting, the interstate board shall prepare a report of expenditures for the preceding fiscal year, an estimate of expenditures for the current fiscal year, and a budget for the succeeding fiscal year.

B. APPROPRIATION. The interstate board of directors shall present the budget report at the annual meeting. The interstate district shall appropriate a sum of money for the support of its schools and for the discharge of its obligations for the ensuing fiscal year.

C. APPORTIONMENT OF APPROPRIATION. Subject to the provisions of article VII, the interstate board shall first apply against such appropriation any income to which the interstate district is entitled, and shall then apportion the balance among the member districts in accordance with one of the following formulas as determined by the articles of agreement as amended from time to time.

a. All of such balance to be apportioned on the basis of the ratio that the fair market value of the taxable property in each member district bears to that of the entire interstate district; or

b. All of such balance to be apportioned on the basis that the average daily resident membership for the preceding fiscal year of each member district bears to that of the average daily resident membership of the entire interstate school district; or

c. A formula based on any combination of the foregoing factors. The term "fair market value of taxable property" shall mean the last locally assessed valuation of a member district in New Hampshire, as last equalized by the New Hampshire commissioner of revenue administration.

The term "fair market value of taxable property" shall mean the equalized grand list of a Maine member district, as determined by the Maine Bureau of Taxation.

Such assessed valuation and grand list may be further adjusted by elimination of certain types of taxable property from one or the other or otherwise, in accordance with the articles of agreement, in order that the fair market value of taxable property in each state shall be comparable.

"Average daily resident membership" of the interstate district in the first instance shall be the sum of the average daily resident membership of the member districts in the grades involved for the

preceding fiscal year where no students were enrolled in the interstate district schools for such preceding fiscal year.

D. Share of New Hampshire Member District. The interstate board shall certify the share of a New Hampshire member district of the total appropriation to the school board of each member district which shall add such sum to the amount appropriated by the member district itself for the ensuing year and raise such sum in the same manner as though the appropriation had been voted at a school district meeting of the member district. The interstate district shall not set up its own capital reserve funds; but a New Hampshire member district may set up a capital reserve fund in accordance with RSA 35, to be turned over to the interstate district in payment of the New Hampshire member district's share of any anticipated obligations.

E. Share of Maine Member District. The interstate board shall certify the share of a Maine member district of the total appropriation to the school board of each member district which shall add such sum to the amount appropriated by the member district itself for the ensuing year and raise such sum in the same manner as though the appropriation had been voted at a school district meeting of the member district.

## Article VII
## Borrowing

A. Interstate District Indebtedness. Indebtedness of an interstate district shall be a general obligation of the district and shall be a joint and several general obligation of each member district, except that such obligations of the district and its member districts shall not be deemed indebtedness of any member district for the purposes of determining its borrowing capacity under Maine or New Hampshire law. A member district which withdraws from an interstate district shall remain liable for indebtedness of the interstate district which is outstanding at the time of withdrawal and shall be responsible for paying its share of such indebtedness to the same extent as though it had not withdrawn.

B. Temporary Borrowing. The interstate board may authorize the borrowing of money by the interstate district (1) in anticipation of payments of operating and capital expenses by the member districts to the interstate district and (2) in anticipation of the issue of bonds or notes of interstate district which have been authorized for the purpose of financing capital projects. Such temporary borrowing shall be evidenced by interest bearing or discounted notes of the interstate district. The amount of notes issued in any fiscal year in anticipation of expense payments shall not exceed the amount of such payments received by the interstate district in the preceding fiscal year. Notes issued under this paragraph shall be payable within one year in the case of notes under clause (1) and 3 years in the case of notes under clause (2) from their respective dates, but the principal of and interest on notes issued for a shorter period may be renewed or paid from time to time by the issue of other notes, provided that the period from the date of an original note to the maturity of any note issued to renew or pay the same debt shall not exceed the maximum period permitted for the original loan.

C. Borrowing for Capital Projects. An interstate district may incur debt and issue its bonds or notes to finance capital projects. Such projects may consist of the acquisition or improvement of land and buildings for school purposes, the construction, reconstruction, alteration or enlargement of school buildings and related school facilities, the acquisition of equipment of a lasting character and the payment of judgments. No interstate district may authorize indebtedness in excess of 10 percent of the total fair market value of taxable property in its member districts as defined in article VI. The primary obligation of the interstate district to pay indebtedness of member districts shall not be considered indebtedness of the interstate district for the purpose of determining its borrowing capacity under this paragraph. Bonds or notes issued under this paragraph shall mature in equal or diminishing installments of principal payable at least annually commencing no later than 2 years and ending not later than 30 years after their dates.

D. Authorization. An interstate district shall authorize the incurring of debts to finance capital projects by a majority vote of the district passed at an annual or special district meeting. Such vote shall be taken by secret ballot after full opportunity for debate, and any such vote shall be subject to reconsideration and further action by the district at the same meeting or at an adjourned session thereof.

E. Sale of Bonds and Notes. Bonds and notes which have been authorized under this article may be issued from time to time and shall be sold at not less than par and accrued interest at public or private sale by the chairman of the school board and by the treasurer. Interstate district bonds and notes shall be signed by the said officers, except that either one of the 2 required signatures may be a facsimile.

Subject to this compact and the authorizing vote, they shall be in such form, bear such rates of interest and mature at such times as the said officers may determine. Bonds shall, but notes need not, bear the seal of the interstate district, or a facsimile of such seal. Any bonds or notes of the interstate district which are properly executed by the said officers shall be valid and binding according to their terms notwithstanding that before the delivery thereof such officers may have ceased to be officers of the interstate district.

F. Proceeds of Bonds. Any accrued interest received upon delivery of bonds or notes of an interstate district shall be applied to the payment of the first interest which becomes due thereon. The other proceeds of the sale of such bonds or notes, other than temporary notes, including any premiums, may be temporarily invested by the interstate district pending their expenditure; and such proceeds, including any income derived from the temporary investment of such proceeds, shall be used to pay the costs of issuing and marketing the bonds or notes and to meet the operating expenses or capital expenses in accordance with the purposes for which the bonds or notes were issued or, by proceedings taken in the manner required for the authorization of such debt, for other purposes for which such debt could be incurred. No purchaser of any bonds or notes of an interstate district shall be responsible in any way to see to the application of the proceeds thereof.

G. State Aid Programs. As used in this paragraph the term "initial aid" shall include New Hampshire and Maine financial assistance with respect to a capital project, or the means of financing a capital project, which is available in connection with construction costs of a capital project or which is available at the time indebtedness is incurred to finance the project. Without limiting the generality of the foregoing definition, initial aid shall specifically include a New Hampshire state guarantee under RSA 195–C with respect to bonds or notes and Maine construction aid under section 3457. As used in this paragraph the term "long-term aid" shall include New Hampshire and Maine financial assistance which is payable periodically in relation to capital costs incurred by an interstate district. Without limiting the generality of the foregoing definition, long-term aid shall specifically include New Hampshire school building aid under RSA 198 and Maine school building aid under section 3457. For the purpose of applying for, receiving and expending initial aid and long-term aid an interstate district shall be deemed a native school district by each state, subject to the following provisions. When an interstate district has appropriated money for a capital project, the amount appropriated shall be divided into a Maine share and a New Hampshire share in accordance with the capital expense apportionment formula in the articles of agreement as though the total amount appropriated for the project was a capital expense requiring apportionment in the year the appropriation is made. New Hampshire initial aid shall be available with respect to the amount of the New Hampshire share as though it were authorized indebtedness of a New Hampshire cooperative school district. In the case of a state guarantee of interstate district bonds or notes under RSA 195–C, the interstate district shall be eligible to apply for and receive an unconditional state guarantee with respect to an amount of its bonds or notes which does not exceed 50 percent of the amount of the New Hampshire share as determined above. Maine aid shall be available with respect to the amount of the Maine share as though it were funds voted by a Maine school district. Payments of Maine aid shall be made to the interstate district, and the amount of any borrowing authorized to meet the appropriation for the capital project shall be reduced accordingly. New Hampshire and Maine long-term aid shall be payable to the interstate district. The amounts of long-term aid in each year shall be based on the New Hampshire and Maine shares of the amount of indebtedness of the interstate district which is payable in that year and which has been apportioned in accordance with the capital expense apportionment formula in the articles of agreement. The New Hampshire aid shall be payable at the rate of 45 percent if there are 3 or less New Hampshire members in the interstate district, and otherwise it shall be payable as though the New Hampshire members were a New Hampshire cooperative school district. New Hampshire and Maine long-term aid shall be deducted from the total capital expenses for the fiscal year in which the long-term aid is payable, and the balance of such expenses shall be apportioned among the member districts. Notwithstanding the foregoing provisions, New Hampshire and Maine may at any time change their state school aid programs that are in existence when this compact takes effect and may establish new programs, and any legislation for these purposes may specify how such programs shall be applied with respect to interstate districts.

H. Tax Exemption. Bonds and notes of an interstate school district shall be exempt from local property taxes in both states, and the interest or discount thereon and any profit derived from the disposition

thereof shall be exempt from personal income taxes in both states.

### Article VIII
### Taking Over of Existing Property

A. POWER TO ACQUIRE PROPERTY OF MEMBER DISTRICT. The articles of agreement, or an amendment thereof, may provide for the acquisition by an interstate district from a member district of all or a part of its existing plant and equipment.

B. VALUATION. The articles of agreement, or the amendment, shall provide for the determination of the value of the property to be acquired in one or more of the following ways:

a. A valuation set forth in the articles of agreement or the amendment.

b. By appraisal, in which case, one appraiser shall be appointed by each commissioner, and a third appraiser appointed by the first 2 appraisers.

C. REIMBURSEMENT TO MEMBER DISTRICT. The articles of agreement shall specify the method by which the member district shall be reimbursed by the interstate district for the property taken over, in one or more of the following ways:

a. By one lump sum, appropriated, allocated and raised by the interstate district in the same manner as an appropriation for operating expenses.

b. In installments over a period of not more than 20 years, each of which is appropriated, allocated and raised by the interstate district in the same manner as an appropriation for operating expenses.

c. By an agreement to assume or reimburse the member district for all principal and interest on any outstanding indebtedness originally incurred by the member district to finance the acquisition and improvement of the property, each such installment to be appropriated, allocated and raised by the interstate district in the same manner as an appropriation for operating expenses.

The member district transferring the property shall have the same obligation to pay to the interstate district its share of the cost of such acquisition, but may offset its right to reimbursement.

### Article IX
### Amendments to Articles of Agreement

A. Amendments to the articles of agreement may be adopted in the same manner provided for the adoption of the original articles of agreement, except that:

a. Unless the amendment calls for the addition of a new member district, the functions of the planning committee shall be carried out by the interstate district board of directors.

b. If the amendment proposes the addition of a new member district, the planning committee shall consist of all the members of the interstate board and all of the members of the school board of the proposed new member district or districts. In such case the amendment shall be submitted to the voters at an interstate district meeting, at which an affirmative vote of ⅔ of those present and voting shall be required. The articles of agreement together with the proposed amendment shall be submitted to the voters of the proposed new member district at a meeting thereof, at which a simple majority of those present and voting shall be required.

c. In all cases an amendment may be adopted on the part of an interstate district upon the affirmative vote of voters thereof at a meeting voting as one body. Except where the amendment proposes the admission of a new member district, a simple majority of those present and voting shall be required for adoption.

d. No amendment to the articles of agreement may impair the rights of bond or note holders or the power of the interstate district to procure the means for their payment.

### Article X
### Applicability of New Hampshire Laws

A. GENERAL SCHOOL LAWS. With respect to the operation and maintenance of any school of the district located in New Hampshire, New Hampshire law shall apply except as otherwise provided in this compact and except that the powers and duties of the school board shall be exercised and discharged by the interstate board and the powers and duties of the school administrative unit superintendent shall be exercised and discharged by the interstate district superintendent.

B. NEW HAMPSHIRE STATE AID. A New Hampshire school district shall be entitled to receive an amount of state aid for operating expenditures as though its share of the interstate district's expenses were the expenses of the New Hampshire member district, and as though the New Hampshire member district pupils attending the interstate school were attending a New Hampshire cooperative school district's school. The state aid shall be paid to the New Hampshire member school district to reduce the

sums which would otherwise be required to be raised by taxation within the member district.

C. CONTINUED EXISTENCE OF NEW HAMPSHIRE MEMBER SCHOOL DISTRICT. A New Hampshire member school district shall continue in existence, and shall have all of the powers and be subject to all of the obligations imposed by law and not herein delegated to the interstate district. If the interstate district incorporates only a part of the schools in the member school district, then the school board of the member school district shall continue in existence and it shall have all of the powers and be subject to all of the obligations imposed by law on it and not herein delegated to the district. However, if all of the schools in the member school district are incorporated into the interstate school district, then the member or members of the interstate board representing the member district shall have all of the powers and be subject to all of the obligations imposed by law on the members of a school board for the member district and not herein delegated to the interstate district. The New Hampshire member school district shall remain liable on its existing indebtedness; and the interstate school district shall not become liable therefor, unless the indebtedness is specifically assumed in accordance with the articles of agreement. Any trust funds or capital reserve funds and any property not taken over by the interstate district shall be retained by the New Hampshire member district and held or disposed of according to law. If all of the schools in a member district are incorporated into an interstate district, then no annual meeting of the member district shall be required unless the members of the interstate board from the member district shall determine that there is occasion for such an annual meeting.

D. SUIT AND SERVICE OF PROCESS IN NEW HAMPSHIRE. The courts of New Hampshire shall have the same jurisdiction over the district as though a New Hampshire member district were a party instead of the interstate district. The service necessary to institute suit in New Hampshire shall be made on the district by leaving a copy of the writ or other proceedings in hand or at the last and usual place of abode of one of the directors who resides in New Hampshire, and by mailing a like copy to the clerk and to one other director by certified mail with return receipt requested.

E. EMPLOYMENT. Each employee of an interstate district assigned to a school located in New Hampshire shall be considered an employee of a New Hampshire school district for the purpose of the New Hampshire teachers retirement system, the New Hampshire state employees retirement system, the New Hampshire workers' compensation law and any other law relating to the regulation of employment or the provision of benefits for employees of New Hampshire school districts except as follows:

a. A teacher in a New Hampshire member district may elect to remain a member of the New Hampshire retirement system, even though assigned to teach in an interstate school in Maine.

b. Employees of interstate districts designated as professional or instructional staff members, as defined in article I, may elect to participate in the teachers retirement system of either the State of New Hampshire or the State of Maine but in no case will they participate in both retirement systems simultaneously.

c. It shall be the duty of the superintendent in an interstate district to:

(1) advise teachers and other professional staff employees contracted for the district about the terms of the contract and the policies and procedures of the retirement systems;

(2) see that each teacher or professional staff employee selects the retirement system of his choice at the time his contract is signed;

(3) provide the commissioners of education in New Hampshire and in Maine with the names and other pertinent information regarding each staff member under his jurisdiction so that each may be enrolled in the retirement system of his preference.

## Article XI

## Applicability of Maine Laws

A. GENERAL SCHOOL LAWS. With respect to the operation and maintenance of any school of the district located in Maine, the provisions of Maine law shall apply except as otherwise provided in this compact and except that the powers and duties of the school board shall be exercised and discharged by the interstate board and the powers and duties of the superintendent shall be exercised and discharged by the interstate district superintendent.

B. MAINE STATE AID. A Maine school district shall be entitled to receive such amount of state aid for operating expenditures as though its share of the interstate district's expenses were the expenses of the Maine member district, and as though the Maine member district pupils attending the interstate schools were attending a Maine unit. Such state aid shall be paid to the Maine member school district to

reduce the sums which would otherwise be required to be raised by taxation within the member district.

C. CONTINUED EXISTENCE OF MAINE SCHOOL DISTRICTS. A Maine school district shall continue in existence, and shall have all of the powers and be subject to all of the obligations imposed by law and not herein delegated to the interstate district. If the interstate district incorporates only a part of the schools in the member school district, then the school board of the member school districts shall continue in existence and it shall have all of the powers and be subject to all of the obligations imposed by law on it and not herein delegated to the district. However, if all of the schools in the member school district are incorporated into the interstate school district, then the member or members of the interstate board representing the member district shall have all of the powers and be subject to all of the obligations imposed by law on the members of a school board for the member district and not herein delegated to the interstate district. The Maine member school district shall remain liable on its existing indebtedness; and the interstate school district shall not become liable therefor. Any trust funds and any property not taken over shall be retained by the Maine member school district and held or disposed of according to law.

D. SUIT AND SERVICE OF PROCESS IN MAINE. The courts of Maine shall have the same jurisdiction over the districts as though a Maine member district were a party instead of the interstate district. The service necessary to institute suit in Maine shall be made on the district by leaving a copy of the writ or other proceedings in hand or at the last and usual place of abode of one of the directors who resides in Maine, and by mailing a like copy to the clerk and to one other director by certified mail with return receipt requested.

E. EMPLOYMENT. Each employee of an interstate district assigned to a school located in Maine shall be considered an employee of a Maine school district for the purpose of the state retirement system, the Maine workers' compensation law, and any other laws relating to the regulation of employment or the provision of benefits for employees of Maine school districts except as follows:

a. A teacher in a Maine member district may elect to remain a member of the state retirement system of Maine, even though assigned to teach in an interstate school in New Hampshire.

b. Employees of interstate districts designated as professional or instructional staff members, as defined in article I, may elect to participate in the state retirement system of the State of Maine or the teachers retirement system of the State of New Hampshire but in no case will they participate in both retirement systems simultaneously.

c. It shall be the duty of the superintendent in an interstate district to:

(1) advise teachers and other professional staff employees contracted for the district about the terms of the contract and the policies and procedures of the retirement system;

(2) see that each teacher or professional staff employee selects the retirement system of his choice at the time his contract is signed;

(3) provide the commissioners of education in New Hampshire and in Maine with the names and other pertinent information regarding each staff member under his jurisdiction so that each may be enrolled in the retirement system of his preference.

## Article XII
## Miscellaneous Provisions

A. STUDIES. Insofar as practicable, the studies required by the laws of both states shall be offered in an interstate school district.

B. TEXTBOOKS. Textbooks and scholar's supplies shall be provided at the expense of the interstate district for pupils attending its schools.

C. TRANSPORTATION. The allocation of the cost of transportation in an interstate school district, as between the interstate district and the member districts, shall be determined by the articles of agreement.

D. LOCATION OF SCHOOLHOUSES. In any case where a new schoolhouse or other school facility is to be constructed or acquired, the interstate board shall first determine whether it shall be located in New Hampshire or in Maine. If it is to be located in New Hampshire, RSA 199, relating to schoolhouses, shall apply. If it is to be located in Maine, the Maine law relating to schoolhouses shall apply.

E. FISCAL YEAR. The fiscal year of each interstate district shall begin on July 1 of each year and end on June 30 of the following year.

F. IMMUNITY FROM TORT LIABILITY. Notwithstanding the fact that an interstate district may derive income from operating profit, fees, rentals, and other services, it shall be immune from suit and from liability for injury to persons or property and for other torts caused by it or its agents, servants or

independent contractors, except insofar as it may have liability under RSA 281–A, relating to workers' compensation or may have undertaken such liability under RSA 507–B relating to the procurement of liability insurance by a governmental agency and except insofar as it may have undertaken such liability under Maine laws relating to workers' compensation or Maine laws relating to the procurement of liability insurance by a governmental agency.

G. ADMINISTRATIVE AGREEMENT BETWEEN COMMISSIONERS OF EDUCATION. The commissioners of education of New Hampshire and Maine may enter into one or more administrative agreements prescribing the relationship between the interstate districts, member districts, and each of the 2 state departments of education, in which any conflicts between the 2 states in procedure, regulations, and administrative practices may be resolved.

H. AMENDMENTS. Neither state shall amend its legislation or any agreement authorized thereby without the consent of the other in such manner as to substantially adversely affect the rights of the other state or its people hereunder, or as to substantially impair the rights of the holders of any bonds or notes or other evidences of indebtedness then outstanding or the rights of an interstate school district to procure the means for payment thereof. Subject to the foregoing, any reference herein to other statutes of either state shall refer to such statute as it may be amended or revised from time to time.

I. SEPARABILITY. If any of the provisions of this compact, or legislation enabling the same, shall be held invalid or unconstitutional in relation to any of the applications thereof, such invalidity or unconstitutionality shall not affect other applications thereof or other provisions thereof; and to this end the provisions of this compact are declared to be severable.

J. INCONSISTENCY OF LANGUAGE. The validity of this compact shall not be affected by any insubstantial differences in its form or language as adopted by the 2 states.

### Article XIII

### Effective Date

A. This compact shall become effective when a bill of the Maine general assembly which incorporates the compact becomes a law in Maine and when it is approved by the United States Congress.

**Source.** 1969, 250:1. 1973, 544:8. 1994, 158:16. 2003, 150:9, eff. Jan. 1, 2004.

## CHAPTER 200–G

## COMPACT FOR EDUCATION



### 200–G:1 Compact Ratified.

The general court of this state hereby ratifies the following compact to become effective at such time as the legislative bodies of at least 10 eligible party jurisdictions also ratify it.

### Compact for Education Preamble

WHEREAS, the proper education of all citizens is one of the most important responsibilities of the states to preserve a free and open society in the United States; and,

WHEREAS, the increasing demands of our whole national life for improving and expanding educational services require a broad exchange of research data and information concerning the problems and practices of education; and,

WHEREAS, there is a vital need for strengthening the voices of the states in the formulation of alternative nationwide educational policies,

The states affirm the need for close and continuing consultation among our several states on all matters of education, and do hereby establish this compact for education.

### Article I. Purpose and Policy

A. It is the purpose of this compact to:

1. Establish and maintain close cooperation and understanding among executive, legislative, professional educational and lay leadership on a nationwide basis at the state and local levels.

2. Provide a forum for the discussion, development, crystallization and recommendation of public policy alternatives in the field of education.

3. Provide a clearing house of information on matters relating to educational problems and how they are being met in different places throughout the nation, so that the executive and legislative branches of state government and of local communities may have ready access to the experience and record of the entire country, and so that both lay and professional groups in the field of education may have additional avenues for the sharing of experience and the interchange of ideas in the formation of public policy in education.

4. Facilitate the improvement of state and local educational systems so that all of them will be able to meet adequate and desirable goals in a society which requires continuous qualitative and quantitative advance in educational opportunities, methods and facilities.

B. It is the policy of this compact to encourage and promote local and state initiative in the development, maintenance, improvement and administration of educational systems and institutions in a manner which will accord with the needs and advantages of diversity among localities and states.

C. The party states recognize that each of them has an interest in the quality and quantity of education furnished in each of the other states, as well as in the excellence of its own educational systems and institutions, because of the highly mobile character of individuals within the nation, and because the products and services contributing to the health, welfare and economic advancement of each state are supplied in significant part by persons educated in other states.

### Article II. State Defined

As used in this compact, "state" means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

### Article III. The Commission

A. The Educational Commission of the States, hereinafter called "the commission", is hereby established. The commission shall consist of 7 members representing each party state. One of such members shall be the governor; 2 shall be members of the state legislature selected by its respective houses and serving in such manner as the legislature may determine; and 4 shall be appointed by and serve at the pleasure of the governor, unless the laws of the state otherwise provide. If the laws of a state prevent legislators from serving on the commission, 6 members shall be appointed by and serve at the pleasure of the governor, unless the laws of the state otherwise provide. In addition to any other principles or requirements which a state may establish for the appointment and service of its members of the commission, the guiding principle for the composition of the membership on the commission from each party state shall be that the members representing such state shall, by virtue of their training, experience, knowledge or affiliations be in a position collectively to reflect broadly the interests of the state government, higher education, the state education system, local education, lay and professional, public and nonpublic educational leadership. Of those appointees, one shall be the head of a state agency or institution, designated by the governor, having responsibility for one or more programs of public education. In addition to the members of the commission representing the party states, there may be not to exceed 10 nonvoting commissioners selected by the steering committee for terms of one year. Such commissioners shall represent leading national organizations of professional educators or persons concerned with educational administration.

B. The members of the commission shall be entitled to one vote each on the commission. No action of the commission shall be binding unless taken at a meeting at which a majority of the total number of votes on the commission are cast in favor thereof. Action of the commission shall be only at a meeting at which a majority of the commissioners are present. The commission shall meet at least once a year. In its bylaws, and subject to such directions and limitations as may be contained therein, the commission may delegate the exercise of any of its powers to the steering committee or the executive director, except for the power to approve budgets or requests for appropriations, the power to make policy recommendations pursuant to Article IV and adoption of the annual report pursuant to Article III, J.

C. The commission shall have a seal.

D. The commission shall elect annually, from among its members, a chairman, who shall be a governor, a vice chairman and a treasurer. The commission shall provide for the appointment of an executive director. Such executive director shall serve at the pleasure of the commission, and together with the treasurer and such other personnel as the commission may deem appropriate shall be bonded in such amount as the commission shall determine. The executive director shall be secretary.

E. Irrespective of the civil service, personnel or other merit system laws of any of the party states, the executive director subject to the approval of the steering committee shall appoint, remove or discharge such personnel as may be necessary for the performance of the functions of the commission, and shall fix the duties and compensation of such personnel. The commission in its bylaws shall provide for the personnel policies and programs of the commission.

F. The commission may borrow, accept or contract for the services of personnel from any party jurisdiction, the United States, or any subdivision or

agency of the aforementioned governments, or from any agency of 2 or more of the party jurisdictions or their subdivisions.

G. The commission may accept for any of its purposes and functions under this compact any and all donations, and grants of money, equipment, supplies, materials and services, conditional or otherwise, from any state, the United States, or any other governmental agency, or from any person, firm, association, foundation, or corporation, and may receive, utilize and dispose of the same. Any donation or grant accepted by the commission pursuant to this paragraph or services borrowed pursuant to paragraph F of this Article shall be reported in the annual report of the commission. Such report shall include the nature, amount and conditions, if any, of the donation, grant, or services borrowed, and the identity of the donor or lender.

H. The commission may establish and maintain such facilities as may be necessary for the transacting of its business. The commission may acquire, hold, and convey real and personal property and any interest therein.

I. The commission shall adopt bylaws for the conduct of its business and shall have the power to amend and rescind these bylaws. The commission shall publish its bylaws in convenient form and shall file a copy thereof and a copy of any amendment thereto, with the appropriate agency or officer in each of the party states.

J. The commission annually shall make to the governor and legislature of each party state a report covering the activities of the commission for the preceding year. The commission may make such additional reports as it may deem desirable.

### Article IV. Powers

In addition to authority conferred on the commission by other provisions of the compact, the commission shall have authority to:

1. Collect, correlate, analyze and interpret information and data concerning educational needs and resources.

2. Encourage and foster research in all aspects of education, but with special reference to the desirable scope of instruction, organization, administration, and instructional methods and standards employed or suitable for employment in public educational systems.

3. Develop proposals for adequate financing of education as a whole and at each of its many levels.

4. Conduct or participate in research of the types referred to in this Article in any instance where the commission finds that such research is necessary for the advancement of the purposes and policies of this compact, utilizing fully the resources of national associations, regional compact organizations for higher education, and other agencies and institutions, both public and private.

5. Formulate suggested policies and plans for the improvement of public education as a whole, or for any segment thereof, and make recommendations with respect thereto available to the appropriate governmental units, agencies and public officials.

6. Do such other things as may be necessary or incidental to the administration of any of its authority or functions pursuant to this compact.

### Article V. Cooperation With Federal Government

A. If the laws of the United States specifically so provide, or if administrative provisions made therefor within the federal government, the United States may be represented on the commission by not to exceed 10 representatives. Any such representative or representatives of the United States shall be appointed and serve in such manner as may be provided by or pursuant to federal law, and may be drawn from any one or more branches of the federal government, but no such representative shall have a vote on the commission.

B. The commission may provide information and make recommendations to any executive or legislative agency or officer of the federal government concerning the common educational policies of the states, and may advise with any such agencies or officers concerning any matter of mutual interest.

### Article VI. Committees

A. To assist in the expeditious conduct of its business when the full commission is not meeting, the commission shall elect a steering committee of 30 members which, subject to the provisions of this compact and consistent with the policies of the commission, shall be constituted and function as provided in the bylaws of the commission. One-third of the voting membership of the steering committee shall consist of governors, and the remainder shall consist of other members of the commission. A federal representative on the commission may serve with the steering committee, but without vote. The voting members of the steering committee shall serve for terms of 2 years, except that members elected to the

first steering committee of the commission shall be elected as follows: 15 for one year and 15 for 2 years. The chairman, vice chairman, and treasurer of the commission shall be members of the steering committee and, anything in this paragraph to the contrary notwithstanding, shall serve during their continuance in these offices. Vacancies in the steering committee shall not affect its authority to act, but the commission at its next regularly ensuing meeting following the occurrence of any vacancy shall fill it for the unexpired term. No person shall serve more than 2 terms as a member of the steering committee: provided that service for a partial term of one year or less shall not be counted toward the 2 term limitation.

B. The commission may establish advisory and technical committees composed of state, local, and federal officials, and private persons to advise it with respect to any one or more of its functions. Any advisory or technical committee may, on request of the states concerned, be established to consider any matter of special concern to 2 or more of the party states.

C. The commission may establish such additional committees as its bylaws may provide.

### Article VII. Finance

A. The commission shall advise the governor or designated officer or officers of each party state of its budget and estimated expenditures for such period as may be required by the laws of that party state. Each of the commission's budgets of estimated expenditures shall contain specific recommendations of the amount or amounts to be appropriated by each of the party states.

B. The total amount of appropriation requests under any budget shall be apportioned among the party states. In making such apportionment, the commission shall devise and employ a formula which takes equitable account of the populations and per capita income levels of the party states.

C. The commission shall not pledge the credit of any party states. The commission may meet any of its obligations in whole or in part with funds available to it pursuant to Article III, G of this compact, provided that the commission takes specific action setting aside such funds prior to incurring an obligation to be met in whole or in part in such manner. Except where the commission makes use of funds available to it pursuant to Article III, G thereof, the commission shall not incur any obligation prior to the allotment of funds by the party states adequate to meet the same.

D. The commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the commission shall be subject to the audit and accounting procedures established by its bylaws. However, all receipts and disbursements of funds handled by the commission shall be audited yearly by a qualified public accountant, and the report of the audit shall be included in and become part of the annual reports of the commission.

E. The accounts of the commission shall be open at any reasonable time for inspection by duly constituted officers of the party states and by any persons authorized by the commission.

F. Nothing contained herein shall be construed to prevent commission compliance with laws relating to audit or inspection of accounts by or on behalf of any government contributing to the support of the commission.

### Article VIII. Eligible Parties Entry Into and Withdrawal

A. This compact shall have as eligible parties all states, territories, and possessions of the United States, the District of Columbia, and the Commonwealth of Puerto Rico. In respect of any such jurisdiction not having a governor, the term "governor", as used in this compact, shall mean the closest equivalent official of such jurisdiction.

B. Any state or other eligible jurisdiction may enter into this compact and it shall become binding thereon when it has adopted the same; provided that in order to enter into initial effect, adoption by at least 10 eligible party jurisdictions shall be required.

C. Adoption of the compact may be either by enactment thereof or by adherence thereto by the governor; provided that in the absence of enactment, adherence by the governor shall be sufficient to make his state a party only until December 31, 1967. During any period when a state is participating in this compact through gubernatorial action, the governor shall appoint those persons who, in addition to himself, shall serve as the members of the commission from his state, and shall provide to the commission an equitable share of the financial support of the commission from any source available to him.

D. Except for a withdrawal effective on December 31, 1967 in accordance with paragraph C of this Article, any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until one year after the governor of the withdrawing state has given notice in writing of the withdrawal to the

governors of all other party states. No withdrawal shall affect any liability already incurred by or chargeable to a party state prior to the time of such withdrawal.

**Article IX. Construction and Severability**

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any state or of the United States, or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating therein, the compact shall remain in full force and effect as to the state affected as to all severable matter.

**Source.** 1970, 25:1, eff. July 1, 1970.

### 200–G:2 Members of the Educational Commission of the States.

Of the members of the educational commission from this state, the speaker of the house of representatives shall appoint one such member from the membership of the house and the president of the senate shall appoint one such member from the membership of the senate. Said legislative members of the commission shall serve for a term of 2 years each.

**Source.** 1970, 25:1, eff. July 1, 1970.

### 200–G:3 Copies to be Sent.

The secretary of state shall send authenticated copies of this chapter to the governor of each eligible jurisdiction.

**Source.** 1970, 25:1, eff. July 1, 1970.

## CHAPTER 200–H

## MEDICAL EDUCATION LOAN PROGRAM

[Repealed by 1979, 353:1, eff. July 1, 1979.]

## CHAPTER 200–I

## VETERINARY/MEDICAL EDUCATION LOAN PROGRAM

[Repealed by 2006, 28:10, II, eff. July 1, 2006.]

## CHAPTER 200–J

## VETERINARY/MEDICAL/OPTOMETRIC EDUCATION PROGRAM

[Repealed by 2011, 224:125, X, eff. July 1, 2011.]

## CHAPTER 200–K

## OPTOMETRIC EDUCATION PROGRAM

[Repealed by 1981, 235:3, eff. Aug. 10, 1981.]

## CHAPTER 200–L

## INTERSTATE AGREEMENT ON QUALIFICATION OF EDUCATIONAL PERSONNEL (NORTHEASTERN STATES)



### 200–L:1 Administration Authorized.

The commissioner of education shall execute all documents and perform all other acts necessary to enter into and carry out the provisions of the interstate agreement on qualification of educational personnel as provided in this chapter.

**Source.** 1990, 42:1, eff. May 22, 1990.

### 200–L:2 Agreement.

This contract is entered into and shall be in force in accordance with its terms and is between and among the following states party to the "Interstate Agreement on Qualification of Educational Personnel" which have subscribed hereto as evidenced by an attached signature page properly executed by the appropriate officials of the states involved: Connecticut, Maine, Massachusetts, New Hampshire, New York, Rhode Island, and Vermont. In each instance, such a signature page shall specifically identify this contract in such manner as to make clear that the signatures thereon represent and constitute execution of this contract. The states entering into this contract hereby covenant and agree as follows:

Article 1. Consideration and Authority. The consideration for this contract is the mutual implementation of the policy and purpose set forth in the interstate agreement on qualification of educational personnel and the benefits flowing therefrom as declared in the said interstate agreement. The authority for the making of this contract is the interstate agreement on qualification of educational personnel, as enacted by each of the contracting states, and the applicable statutes of each such state in implementation of the agreement.

Article 2. Incorporation of Interstate Agreement and Definitions.

(a) This contract is pursuant to and in implementation of the interstate agreement on qualification of educational personnel. All provisions of that agreement shall govern, to the extent that they apply to the subject matter of this contract, whether or not such provisions are specifically set forth or referred to herein.

(b) As used in this contract:

1. "Designated state official" means the education official of a state selected by that state to negotiate and enter into, on behalf of his/her state, contracts pursuant to the interstate agreement.

2. "State" means the states of Connecticut, Maine, Massachusetts, New Hampshire, New York, Rhode Island, and Vermont.

3. "School support professional" means any person other than a teacher or school administrator, as defined below, on either the state or local level who is required by law to hold a certificate/license based on the minimum of a baccalaureate degree in order to be employed in a professional capacity in a school system.

4. "School administrator" means a school professional required by law to hold a certificate/license whose primary duties involve the development, supervision, or internal management of a school, school system or school program rather than the furnishing of direct instructional or other services to pupils.

5. "Teacher" means a school professional required by law to hold a certificate/license whose primary function is to provide instruction to students at the preschool or kindergarten level, or in any one or more grades from grade 1 to grade 12, inclusive.

Article 3. Interstate Acceptance; Northeast Regional Credential. Any teacher, school administrator, or school support professional who holds an initial or advanced certificate/license issued by a state party to this contract, which certificate/license is still in force and which has been classified as comparable pursuant to Article 4 of this contract, shall be eligible for a northeast regional credential. The northeast regional credential shall be issued upon request by the state which has issued the state certificate/license and in accordance with the administrative procedures and payment of fee established by unanimous agreement of the designated state officials. Such credential will allow the individual to perform those professional duties allowed by the comparable state certificate/license in any school system within any state which is a party to this contract. The northeast regional credential shall be valid for 24 months from the date of issuance and shall be non-renewable. Each state may designate a period of time, not to exceed 24 months, during which an individual may be employed in that state while possessing a northeast regional credential. No northeast regional credential issued pursuant to the terms of this contract shall be revoked or otherwise impaired because the contract has expired or been terminated.

Article 4. Comparability of Certificates/Licenses. The designated state officials shall determine by unanimous agreement which certificates/licenses are comparable for the purposes of this contract. Such determination of comparability is set forth in an appendix which is attached to and made a part of this contract. The designated state officials or their representatives shall meet at least annually to consider whether the list of comparable certificates/licenses should be revised. Any revisions shall be made by amendment to this contract as set forth in Article 7.

Article 5. Suspension and Revocation. Revocation or suspension of an individual's certificate/license imposed by the issuing state shall automatically result in the imposition of the same penalty with respect to the northeast regional credential held by that individual. The state in which the individual is employed under the northeast regional credential may revoke or suspend the northeast regional credential on any ground which would be sufficient for revocation or suspension of a certificate/license initially granted by that state and in accordance with its procedural due process.

Article 6. Construction and Severability. This contract shall be liberally construed so as to effectuate the purposes thereof. The provisions of this contract shall be severable and if any phrase, clause, sentence, or provision of this contract is declared to be contrary to the constitution of any of the party states or of the United States, or the application thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this agreement and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this contract shall be held contrary to the constitution of any state participating therein, the contract shall remain in full force and effect as to the state affected as to all severable matters.

Article 7. Amendment of Contract. In addition to those responsibilities in Article 4, the designated

state officials or their representatives may evaluate the effectiveness of the northeast regional credential and may recommend amendments to this contract. Any provisions of this contract may be amended upon unanimous agreement of the designated state officials.

Article 8. Term. This contract shall be for a term to commence on April 1, 1990, and shall terminate on March 31, 1995. It may be renewed for successive periods of 5 years. Withdrawal, except withdrawal by failure to renew, may be on one year's written notice to the designated state officials and central state recordkeeping agencies of the other party states.

**Source.** 1990, 42:1, eff. May 22, 1990.

### 200–L:3 Designated State Official.

The "designated state official" as provided in Article 2 for this state shall be the commissioner of education.

**Source.** 1990, 42:1, eff. May 22, 1990.

## CHAPTER 200–M

## CART PROVIDER AND SIGN LANGUAGE INTERPRETER NET TUITION REPAYMENT PROGRAM



### 200–M:1 Definitions.

In this chapter:

I. "CART provider" means a person who provides computer-aided, realtime translation of spoken language into English text by using a stenotype machine, notebook computer, and real time software to display the spoken text on a computer monitor, or other display device for individuals who are deaf or hard of hearing.

II. "Net tuition" means tuition costs for postsecondary school education that was directed toward the completion of a degree or certificate in judicial reporting, broadcast captioning, real time transcription, or sign language interpretation, or any other degree or certificate that the department of education, division of workforce innovation deems acceptable for purposes of CART provider and sign language interpreter net tuition repayment.

III. "Sign language interpreter" means a person who provides American Sign-Language based interpreting, which is the process of conveying information between American Sign Language and English.

**Source.** 2009, 207:1, eff. July 15, 2009. 2011, 224:137, eff. July 1, 2011. 2018, 315:27, eff. Aug. 24, 2018. 2019, 118:2, eff. July 1, 2019.

### 200–M:2 CART Provider and Sign Language Interpreter Net Tuition Repayment Program Established.

The department of education, division of workforce innovation shall administer a program for the promotion, acquisition, and retention of CART providers and sign language interpreters in the state.

**Source.** 2009, 207:1, eff. July 15, 2009. 2011, 224:138, eff. July 1, 2011. 2018, 315:28, eff. Aug. 24, 2018. 2019, 118:3, eff. July 1, 2019.

### 200–M:3 Application; Repayment.

An individual who has completed eligible CART or sign language interpreter training in accordance with rules adopted pursuant to RSA 200–M:5, including internships and residencies, and agrees to work as a CART provider or a sign language interpreter in this state, may apply to the department of education, division of workforce innovation for repayment under the CART provider and sign language interpreter net tuition repayment program and become eligible to be reimbursed up to 100 percent of his or her qualifying tuition not to exceed the cost of 4 years of in-state tuition at the university of New Hampshire, during a 5-year period of working as a CART provider or sign language interpreter. A 10 percent net tuition repayment shall be made upon completion of the first year of employment in this state, with an additional 10 percent made after the second year of work, an additional 20 percent after the third year of work, an additional 30 percent after the fourth year of work, and an additional 30 percent after the fifth year of work.

**Source.** 2009, 207:1, eff. July 15, 2009. 2011, 224:138, eff. July 1, 2011. 2018, 315:29, eff. Aug. 24, 2018. 2019, 118:3, eff. July 1, 2019.

### 200–M:4 Repealed by 2017, 195:17, eff. Sept. 3, 2017.

### 200–M:4–a CART Provider and Sign Language Interpreter Net Tuition Repayment Fund.

There is hereby established a fund to be known as the CART provider and sign language interpreter net tuition repayment fund. The fund shall include any sums appropriated for such purpose. In addition, the department of education, division of workforce inno-

vation may accept public sector and private sector grants, gifts, or donations of any kind for the purpose of funding the provisions of this chapter. The moneys in this fund shall be nonlapsing and shall be continually appropriated to the department of education. The fund may be expended by the department of education to accomplish the purposes of this chapter.

**Source.** 2019, 118:1, eff. July 1, 2019.

### 200–M:5 Administration; Rulemaking.

The department of education, division of workforce innovation shall adopt rules, pursuant to RSA 541–A, relative to procedures, eligibility, and qualifications for applicants, qualifying educational costs, criteria for terms of service by a CART provider and/or sign language interpreter, procedures for repayment of net tuition costs, and the administration of the program by the department of education, division of workforce innovation. The commissioner of the department of education shall annually report to the general court on the effectiveness of this program.

**Source.** 2009, 207:1, eff. July 15, 2009. 2011, 224:140, eff. July 1, 2011. 2018, 315:30, eff. Aug. 24, 2018. 2019, 118:4, eff. July 1, 2019.

## CHAPTER 200–N

## EPINEPHRINE ADMINISTRATION IN POSTSECONDARY EDUCATIONAL INSTITUTIONS AND INDEPENDENT SCHOOLS



### 200–N:1 Definitions.

In this chapter:

I. "Anaphylaxis" means a rapidly progressing, life-threatening allergic reaction that can occur following exposure to certain allergens, most commonly, but not limited to, foods, insect stings, medications, and latex. Signs and symptoms of anaphylaxis include, but are not limited to, difficulty breathing, coughing, throat clearing, altered heart rhythms, hives, redness or blotches on the skin, nausea and vomiting, low blood pressure, shock, and loss of consciousness. Failure to treat these symptoms promptly, with epinephrine, may result in serious consequences up to and including death.

II. "Independent school" means a school which is governed by a board of trustees or other officials who are not publicly elected. An independent school shall not include a chartered public school established pursuant to RSA 194–B, but shall include a private school as provided in Ed 401.01(d).

III. "Licensed campus medical professional" means any of the following individuals who are employed by or have contracted with a postsecondary educational institution or an independent school and are designated by the postsecondary educational institution or independent school to serve in such a capacity:

(a) A physician licensed under RSA 329.

(b) A physician assistant licensed under RSA 328–D.

(c) An advanced practice registered nurse or registered nurse who is licensed under RSA 326–B.

IV. "Member of the campus community" means an individual who is a student, faculty member, or staff member of a postsecondary educational institution or an independent school.

V. "Trained designee" means a member of the campus community trained by a licensed campus medical professional in the emergency administration of auto-injectable epinephrine.

**Source.** 2015, 45:1, eff. July 17, 2015. 2016, 42:1, eff. July 2, 2016.

### 200–N:2 Emergency Administration of Epinephrine; Policies and Guidelines.

I. A postsecondary educational institution or independent school accredited to operate in this state may develop a policy in accordance with this chapter and guidelines issued under RSA 200–N:4 for the emergency administration of auto-injectable epinephrine to a member of the campus community for anaphylaxis when a licensed campus medical professional is not available.

II. Such policy shall include:

(a) Permission for a trained designee to do the following:

(1) Administer auto-injectable epinephrine to a member of the campus community for anaphylaxis when a licensed campus medical professional is unavailable.

(2) When responsible for the safety of at least one member of the campus community, carry in a secure but accessible location a supply of auto-injectable epinephrine that is prescribed under a standing protocol from a health care provider who is licensed in New Hampshire and whose

scope of practice includes the prescribing of medication.

(b) Provisions that a licensed campus medical professional has responsibility for training designees in the following:

(1) The administration of auto-injectable epinephrine.

(2) Identification of an anaphylactic reaction and indications for when to use epinephrine.

III. Each postsecondary educational institution and independent school that develops a policy under this chapter shall designate a licensed campus medical professional.

IV. A licensed campus medical professional may:

(a) Establish and administer a standardized training protocol for the emergency administration of epinephrine by trained designees.

(b) Ensure that trained designees have satisfactorily completed the training protocol.

(c) Obtain a supply of auto-injectable epinephrine under a standing protocol from a physician licensed under RSA 329.

(d) Control distribution to trained designees of auto-injectable epinephrine.

**Source.** 2015, 45:1, eff. July 17, 2015. 2016, 42:1, eff. July 2, 2016.

### 200–N:3 Requirements for Trained Designees.

An individual shall comply with the following requirements in order to act as a trained designee:

I. Be at least 18 years of age.

II. Have or reasonably expect to have, responsibility for at least one other member of the campus community as a result of the individual's employment.

III. Have satisfactorily completed the standardized training protocol established and administered by a licensed campus medical professional in accordance with guidelines developed under RSA 200–N:4.

**Source.** 2015, 45:1, eff. July 17, 2015.

### 200–N:4 Department of Health and Human Services Guidelines.

The commissioner of the department of health and human services shall establish guidelines for the development of a policy by a postsecondary educational institution or an independent school for the emergency administration of epinephrine to a member of the campus community for anaphylaxis when a licensed campus medical professional is not available. The guidelines shall address issues including, but not limited to, the responsibilities of the postsecondary educational institution or independent school, the licensed campus medical professional, and the trained designee for the emergency administration of epinephrine. The commissioner shall disseminate the guidelines to the president of each postsecondary educational institution or head of an independent school.

**Source.** 2015, 45:1, eff. July 17, 2015. 2016, 42:1, eff. July 2, 2016.

### 200–N:5 Storage of Epinephrine.

I. A postsecondary educational institution or independent school may fill a prescription for auto-injectable epinephrine and store the auto-injectable epinephrine on the campus if a licensed health care provider whose scope of practice includes the prescribing of medication writes the prescription for auto-injectable epinephrine for the postsecondary educational institution or independent school.

II. The postsecondary educational institution or independent school shall store the auto-injectable epinephrine in an unlocked safe location in which only postsecondary educational institution or independent school personnel have access.

III. A health care provider who is licensed in this state and whose scope of practice includes the prescribing of medication may write a prescription, drug order, or protocol for auto-injectable epinephrine for the postsecondary educational institution or independent school.

IV. A pharmacist licensed under RSA 318 may dispense a valid prescription, drug order, or protocol for auto-injectable epinephrine issued in the name of a postsecondary educational institution or an independent school.

**Source.** 2015, 45:1, eff. July 17, 2015. 2016, 42:1, eff. July 2, 2016.

### 200–N:6 Immunity From Civil Liability.

I. A licensed campus medical professional who acts in accordance with this chapter shall not be liable for civil damages for any act or omission committed in accordance with this chapter unless the act or omission constitutes gross negligence or willful misconduct.

II. A trained designee who administers auto-injectable epinephrine in accordance with this chapter shall not be liable for civil damages resulting from the administration of auto-injectable epinephrine under this chapter unless the act or omission constitutes gross negligence or willful misconduct.

III. A licensed health care provider who writes a prescription, drug order, or protocol under this chapter is not liable for civil damages resulting from the administration of auto-injectable epinephrine under

this chapter unless the act or omission constitutes gross negligence or willful misconduct.

IV. A licensed pharmacy, whether with a physical presence or doing business though mail order, that fulfills a prescription, drug order, or protocol under this chapter is not liable for civil damages resulting from the administration of auto-injectable epinephrine under this chapter unless the act or omission constitutes gross negligence or willful misconduct.

**Source.** 2015, 45:1, eff. July 17, 2015.

### 200–N:7 Applicability.

Nothing in this chapter shall be construed to:

I. Permit a trained designee to perform the duties or fill the position of a licensed campus medical professional.

II. Prohibit the administration of a pre-filled auto-injector of epinephrine by a person acting under a lawful prescription.

III. Prevent a licensed health care provider from acting within the individual's scope of practice in administering auto-injectable epinephrine.

IV. Establish a standard of care under which a postsecondary educational institution or an independent school would have a duty to employ or contract with a licensed campus medical professional or to establish guidelines for the emergency administration of epinephrine. Except as set forth in RSA 200–N:6, a postsecondary educational institution or an independent school shall not be held liable for any act or omission related to the availability or nonavailability of epinephrine for emergency administration on campus.

**Source.** 2015, 45:1, eff. July 17, 2015. 2016, 42:1, eff. July 2, 2016.

## CHAPTER 200–O

## COMPUTER SCIENCE EDUCATOR PROGRAM



### 200–O:1 Purpose.

The purpose of this chapter is to promote broader computer science education in New Hampshire with the goal of preparing more students for employment opportunities in this field and to establish the administrator of computer science education and STEM within the department of education.

**Source.** 2023, 79:80, eff. July 1, 2023.

### 200–O:2 Definitions.

In this chapter:

I. "Computer science administrator" refers to the computer science and STEM administrator established in RSA 21–N:13.

II. "Eligible industry recognized credential" or "IRC" refers to those industry recognized credentials in computer science or related fields that are approved by the computer science administrator to expand computer science education for participation in the below funds.

III. "Full time or equivalent" refers to the amount of time an individual engages in instruction in a New Hampshire education program, which shall be considered full-time or equivalent if it includes instruction of not less than 4 one-credit classes per semester or instruction of no less than 80 students over the course of a semester.

**Source.** 2023, 79:80, eff. July 1, 2023.

### 200–O:3 Computer Science Professional Development.

I. The department shall determine, in coordination with the computer science administrator to expand computer science education, industry recognized credentials eligible for reimbursement and the amount of reimbursement. Any such reimbursements shall be based on the successful attainment of an eligible IRC.

II. The department of education shall create an application process, which it shall publish on or before 6 months from the effective date of this act, for New Hampshire certified educators to seek reimbursement for all or a portion of the cost of obtaining an eligible industry recognized credentials in the field of computer science. The process shall include a list of eligible industry recognized credentials and the amount of reimbursement for successful attainment.

**Source.** 2023, 79:80, eff. July 1, 2023.

### 200–O:4 Computer Science Educator Credential.

I. The department of education shall adopt through rulemaking pursuant to RSA 541–A, a computer science educator credential that permits individuals holding eligible industry recognized credentials to receive a New Hampshire certified educator credential in the area of computer science. Such individuals shall be qualified to teach in approved New Hampshire education programs.

II. Individuals teaching full time, or the equivalent, in an approved New Hampshire computer science education program shall be eligible for a $5,000

bonus for the first year of teaching, and $2,500 each year for the next 2 years of teaching. Only completed years of teaching shall be eligible and there shall be no proration for partial years.

**Source.** 2023, 79:80, eff. July 1, 2023.

### 200–O:5 Experiential Robotics Platform (XRP).

As part of the STEM initiative for New Hampshire schools, experiential robotics platform, 5,500 robotics kits shall be made available for all New Hampshire classrooms for grades 6–12. The program shall consist of standards-based curriculum and hands-on resources, designed to facilitate competency-based learning in the classroom.

**Source.** 2023, 79:80, eff. July 1, 2023.