

Bill as Introduced

SB 520-FN-LOCAL - AS INTRODUCED

2010 SESSION

10-2969
04/09

SENATE BILL **520-FN-LOCAL**

AN ACT relative to school district liability for special education costs.

SPONSORS: Sen. Bragdon, Dist 11

COMMITTEE: Finance

ANALYSIS

This bill clarifies financial liability for special education and related services provided to a child by a school district in which the child does not reside.

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 Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Ten

AN ACT relative to school district liability for special education costs.

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

1 1 New Paragraph; Special Education; Liability for Expenses. Amend RSA 186-C:13 by inserting
2 after paragraph III the following new paragraph:

3 IV. When a child attends a public school operated by a school district in which the child does
4 not reside, that school district shall have no responsibility for the child under this chapter unless
5 that district is liable under paragraph I of this section or that district explicitly accepts responsibility
6 through a written agreement.

7 2 Effective Date. This act shall take effect 60 days after its passage.

LBAO
10-2969
03/15/10

SB 520-FN-LOCAL - FISCAL NOTE

AN ACT relative to school district liability for special education costs.

FISCAL IMPACT:

Due to time constraints, the Office of Legislative Budget Assistant is unable to provide a fiscal note for this bill at this time. When completed, the fiscal note will be forwarded to the Senate Clerk's Office.

Amendments

Amendment to SB 520-FN-LOCAL

1 Amend the title of the bill by replacing it with the following:

2

3 AN ACT relative to school district liability for special education costs and requiring notice
4 of a change in the school district in which a child is enrolled.
5

6 Amend RSA 186-C:13, IV as inserted by section 1 of the bill by replacing it with the following:

7

8 IV. When a parent enrolls a child in a public school operated by a school district other than
9 the school district in which the child resides, the district in which the child is enrolled shall have no
10 responsibility for the child under this chapter unless it is liable under paragraph I of this section, or
11 it explicitly accepts responsibility through a written agreement with the school district in which the
12 child resides.

13

14 Amend the bill by inserting after section 1 the following and renumbering the original section 2 to
15 read as 3:

16

17 2 New Paragraph; Change of School Assignment; Notice Required. Amend RSA 193:3 by
18 inserting after paragraph III the following new paragraph:

19

20 IV. When a parent enrolls a child in a public school operated by a school district other than
21 the school district in which the child resides, the district in which the child is enrolled shall
22 immediately notify the district in which the child resides of the name, date of birth, address, and
23 grade assignment of the child. This notification shall be made at the beginning of each school year
24 for which the child is enrolled in a school district other than the school district in which the child
resides.



2010-1092s

AMENDED ANALYSIS

This bill clarifies financial liability for special education and related services provided to a child by a school district in which the child does not reside and requires notice of a change in the school district in which the child is enrolled.

Committee Minutes

Finance Committee

Hearing Report

To: Members of the Senate
From: Sonja Caldwell
Legislative Aide
Re: SB520-FN-L - *relative to school district liability for special education costs.*

Hearing date: March 18, 2010

Members present: Sen. D'Allesandro, Sen. Janeway, Sen. Larsen, Sen. Hassan, Sen. Sgambati, Sen. Odell, Sen. Gallus

Members absent:

Sponsor(s): Sen. Bragdon, Dist 11

What the bill does: This bill clarifies financial liability for special education and related services provided to a child by a school district in which the child does not reside.

Who supports the bill: Sen. Bragdon, Dean Michener (NH School Board Assoc.)

Who opposes the bill: Michael Skibbie (Disabilities Rights Center)

Taking no position: Sarah Browning (DOE)

Summary of testimony received:

Senator Bragdon

Has amendment 1092

He said he was a little surprised that the bill was referred to Finance as it has no fiscal impact on school districts. The bill simply makes clear the rules under which school districts have been operating for years. The bill should have gone to the Education Committee.

He said recent events have caused many school districts in the state to stop accepting tuition students from other districts, other than cases where an entire school district agrees to tuition its students into another district. This thwarts the right of parents to choose the school that they think is best suited for their child.

The issue at hand is which school district is responsible for special education services when a child's parents decide to place him or her in a public school in a district other than the one in which the child resides. Existing state law seems to say that the school district in which the child resides is responsible for those services, and that is how school districts have been operating for years. The district in which the child resides is responsible.

A recent decision by a hearing officer appointed by the Department of Education, however, has caused school districts to decide to no longer accept individual tuition students. The hearing officer ruled that the receiving district was responsible. This case went to US district court where the ruling was nullified, but, school districts are still no longer accepting individual tuition students from other districts.

SB520 makes it clear in statute that the non-resident district has no responsibility for the child under the special education laws unless the district explicitly accepts that responsibility via a written agreement.

In the amendment – lines 17-24 - adds new language that says if a school district accepts a student, they have to notify the district where they reside. This was a request of DOE.

Michael Skibbie - Disabilities Rights Center

Opposed to the bill

He said the problem is complex. Federal law says every school has to educate a child regardless if they have disability. State law doesn't address the issue of tuitioning children. Financial liability moves with the child. The sponsor wants to fix it at the residency of the child, but this bill doesn't do that. This bill does not say it shall be at district of residence, it just says it shall not be at the new district. There's nothing in bill that says the district of residence is obligated to pay the bill. That's where the fight comes. The district of residence feels they shouldn't be writing a check to another district when they could be providing their own resources. We often represent people who are caught in middle. We should make sure it is certain from the beginning that someone is going to pay and that district is identifiable. He applauds the effort to nail down this issue and remove uncertainty but the best way to do that is to declare who is responsible rather than simply saying who is not. HB143 from last session is an example.

Senator Janeway asked him to provide the wording the would capture what he wants.

Dean Michener

NH School Boards Association

He supports the bill and the intent. He is willing to work with committee on changes.

There was a situation in the Exeter school district. Districts are adopting policies where they aren't accepting students. School Board Association has adopted resolution that they oppose transfer of responsibility to non-resident district students placed there by parents.

Senator D'Allesandro said historically the sending district has always been responsible for the tuition. He asked if this one case has changed the situation.

Mr. Michener said it was a hearing officers decision that assigned responsibility to the accepting district and has resulted in other issues.

Senator D'Allesandro said this is a policy situation, there are no state funds involved, and the policy is threatened because of this one hearing.

Sarah Browning

DOE

No position

She said what happened in the case is that a parent was permitted to enroll their child in a district in which they did not reside because the parent taught in the district. When the child enrolled, it appeared to be a normal healthy child. Several years into the child's schooling, they thought it needed special education and needed to be evaluated to see if it qualified for special education. The school district where they were attending said they weren't responsible. As a result of what the hearing officer heard, they said the school district took the child so they were responsible to at least do the testing.

Hearing closed

Speakers

Testimony

Senator Bragdon 3-18-10

SB 520 – Relative to School District Liability for Special Education Costs

I am a little surprised this bill was sent to Finance, rather than Education, as I believe it has no fiscal impact on school districts; as the bill simply makes very clear the rules under which school districts have been operating for years. A much better place for this bill is the Education Committee, in my opinion, but given the fiscal note and the time constraints under which we operate, that does not seem to be an option.

Recent events, including what I believe to be misapplication of state and federal special education laws, have caused many school districts in the state to stop accepting tuition students from other districts, other than cases where an entire school district agrees to tuition its students into another district. (Hooksett into Manchester, for instance). This effectively thwarts the right of parents to choose the school that, in their opinion, is best suited for their child, even when the parents are willing to pay tuition.

The issue at hand here is which school district is responsible for special education services when a child's parents decide to place him or her in a public school in a district other than the one in which the child resides. Existing state law seems to say that the school district in which the child resides is responsible for those services, and that is how school districts have been operating for years. The district in which the child resides is responsible.

A recent decision by a hearing officer appointed by the Department of Education, however, has caused school districts to decide to no longer accept individual tuition students. Though current law, RSA 186-C:13, seems to pretty clearly indicate that the "resident" school district (the one in which the child resides) is responsible for special education services, the hearing officer ruled that

the "receiving" district (the district accepting the student on a tuition basis) was responsible.

Although the U.S. District court effectively nullified the hearing officer's ruling as part of a settlement agreement for that particular case, the nullification does not amount to precedent. Thus, school districts across the state are no longer accepting individual tuition students from other districts, for fear they will end up in a protracted legal quagmire, based on the hearing officer's decision.

What SB 520 does is make it quite clear in statute that the so-called non-resident district has no responsibility for the child under the special education laws unless the district explicitly accepts that responsibility via a written agreement. Otherwise, the district in which the child resides bears the responsibility, which is the way the system has always worked and a method which is compliant with state and federal laws and rules.

Voting Sheets

Senate Finance Committee

EXECUTIVE SESSION

Bill # SB520

Hearing date: _____

Room: State House - Room 100

Executive session date: _____

Motion of: STP

VOTE: 60

Made by
Senator:

| | |
|--------------|-------------------------------------|
| D'Allesandro | <input type="checkbox"/> |
| Janeway | <input type="checkbox"/> |
| Larsen | <input type="checkbox"/> |
| Hassan | <input type="checkbox"/> |
| Sgambati | <input type="checkbox"/> |
| Odell | <input type="checkbox"/> |
| Gallus | <input checked="" type="checkbox"/> |

Seconded
by Senator:

| | |
|--------------|-------------------------------------|
| D'Allesandro | <input type="checkbox"/> |
| Janeway | <input checked="" type="checkbox"/> |
| Larsen | <input type="checkbox"/> |
| Hassan | <input type="checkbox"/> |
| Sgambati | <input type="checkbox"/> |
| Odell | <input type="checkbox"/> |
| Gallus | <input type="checkbox"/> |

| <u>Committee Member</u> | <u>Present</u> | <u>YES</u> | <u>NO</u> | <u>Reported out by</u> |
|-------------------------|--------------------------|-------------------------------------|--------------------------|------------------------|
| Senator D'Allesandro | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | |
| Senator Janeway | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | |
| Senator Larsen | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | |
| Senator Hassan | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | |
| Senator Sgambati | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | |
| Senator Odell | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | |
| Senator Gallus | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <u>Gallus</u> |

*Amendments:

NOTES:

Floor Amend

Senate Finance Committee

EXECUTIVE SESSION

Bill # ~~SB~~ SB 520

Hearing date: 3-18-10
 Executive session date: _____
 Motion of: _____

Room: State House - Room 100

VOTE: _____

Made by D'Allesandro
Senator: Janeway
 Larsen
 Hassan
 Sgambati
 Odell
 Gallus

Seconded D'Allesandro
by Senator: Janeway
 Larsen
 Hassan
 Sgambati
 Odell
 Gallus

| <u>Committee Member</u> | <u>Present</u> | <u>YES</u> | <u>NO</u> | <u>Reported out by</u> |
|-------------------------|-------------------------------------|--------------------------|--------------------------|------------------------|
| Senator D'Allesandro | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | |
| Senator Janeway | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | |
| Senator Larsen | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | |
| Senator Hassan | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | |
| Senator Sgambati | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | |
| Senator Odell | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | |
| Senator Gallus | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | |

*Amendments: _____

NOTES: _____

Committee Report

STATE OF NEW HAMPSHIRE
SENATE
REPORT OF THE COMMITTEE

Date: March 18, 2010

THE COMMITTEE ON Finance

to which was referred Senate Bill 520-FN-L

AN ACT relative to school district liability for special education costs.

Having considered the same, the committee recommends that the Bill:

OUGHT TO PASS

BY A VOTE OF: 6-0

AMENDMENT # s

Senator John T. Gallus
For the Committee

Sonja Caldwell 271-2117