

# Bill as Introduced

SB 300 – AS INTRODUCED

2012 SESSION

12-2894  
04/09

SENATE BILL        **300**

AN ACT            relative to special education services in chartered public schools.

SPONSORS:        Sen. Carson, Dist 14; Rep. Hunt, Ches 7

COMMITTEE:      Education

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ANALYSIS

This bill requires a chartered public school to make available a free and appropriate public education to all children with disabilities by making available to the child all special education programs and services that are available to the child in the child's school district of residence.

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                         Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Twelve*

AN ACT relative to special education services in chartered public schools.

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

1 Chartered Public Schools; Funding. Amend RSA 194-B:11, III to read as follows:

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

6 (b) *A chartered public school shall make available a free and appropriate*  
7 *public education to all children with disabilities. A chartered public school shall make*  
8 *available to a child with a disability all special education programs and services which*  
9 *are available to the child in the child's resident district including, but not limited to,*  
10 *direct instruction, counseling and related services, and consultation with other*  
11 *professionals. A chartered public school shall provide special education programs and*  
12 *services in the manner which is most beneficial to the child and may enter into agreements*  
13 *with the child's resident district as needed for the provision of special education programs*  
14 *and services.*

15 (c) *The decision as to whether or not there is a reasonable availability of a free*  
16 *and appropriate public education at a chartered public school shall be made by the team*  
17 *which includes the child's parents, officials from the child's resident district, and officials*  
18 *from the chartered public school. The team shall work together to ensure that each child*  
19 *with a disability can receive the programs and services required in the child's*  
20 *individualized education program, and all related services, including but not limited to*  
21 *counseling and consultation.*

22 (d) *A chartered public school shall be considered a setting and a parental*  
23 *choice for the purpose of providing special education programs and services. A chartered*  
24 *public school shall not be considered a special education placement.*

25 2 Effective Date. This act shall take effect 60 days after its passage.

SB 300 - AS AMENDED BY THE SENATE

03/28/12 1363s

2012 SESSION

12-2894  
04/09

SENATE BILL        **300**

AN ACT            relative to special education services in chartered public schools.

SPONSORS:        Sen. Carson, Dist 14; Rep. Hunt, Ches 7

COMMITTEE:       Education

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AMENDED ANALYSIS

This bill establishes a procedure for the provision of special education and related services to a child with a disability who is enrolled in a chartered public school and requires chartered public schools to provide due process in the provision of special education and related services to children with disabilities.

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4 shall be the responsibility of the ~~[school]~~ *resident* district and shall retain all current options  
5 available to the parent and to the school district.

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

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

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

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

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

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

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

28 *(c) Consistent with Section 5210(1) of the Elementary and Secondary Education*  
29 *Act and Section 300.209 of the Individuals With Disabilities Education Act, when a parent*  
30 *enrolls a child with a disability in a chartered public school, the child and the child's*

SB 300 – AS AMENDED BY THE SENATE

- Page 2 -

1 *parents shall retain all rights under federal and state special education law, including*  
2 *the child's right to be provided with a free and appropriate public education, which*  
3 *includes all of the special education and related services included in the child's IEP. The*  
4 *child's resident district shall have the responsibility, including financial responsibility, to*  
5 *ensure the provision of the special education and related services in the child's IEP, and*  
6 *the chartered public school shall cooperate with the child's resident district in the*  
7 *provision of the child's special education and related services.*

8 2 Chartered Public Schools; Requirements. Amend RSA 194-B:8, I to read as follows:

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

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**SB 300 – AS AMENDED BY THE HOUSE**

03/28/12 1363s

15May2012... 2142

2012 SESSION

12-2894

04/09

**SENATE BILL 300**

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SPONSORS: Sen. Carson, Dist 14; Rep. Hunt, Ches 7

COMMITTEE: Education

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AN ACT relative to special education services in chartered public schools.

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

1 Chartered Public School; Funding. Amend RSA 194-B:11, III to read as follows:

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 [school] *resident* district and shall retain all current options available to the parent and to the school district.

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

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

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

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

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

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

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

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



*child's special education and related services.*

2 Chartered Public Schools; Requirements. Amend RSA 194-B:8, I to read as follows:

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.***

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

SB 300 - FINAL VERSION

03/28/12 1363s  
15May2012... 2142h

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5 available to the parent and to the school district.

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

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

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

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

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

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

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

26 (c) *Consistent with section 5210(1) of the Elementary and Secondary Education*  
27 *Act and section 300.209 of the Individuals with Disabilities Education Act, when a parent*  
28 *enrolls a child with a disability in a chartered public school, the child and the child's*  
29 *parents shall retain all rights under federal and state special education law, including*

1 *the child's right to be provided with a free and appropriate public education, which*  
2 *includes all of the special education and related services included in the child's IEP. The*  
3 *child's resident district shall have the responsibility, including financial responsibility, to*  
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11 *accordance with state and federal laws and rules.*

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# Amendments

Amendment to SB 300

1 Amend the bill by replacing all after the enacting clause with the following:

2  
3 1 Chartered Public Schools; Funding. Amend RSA 194-B:11, III to read as follows:

4 III.(a) In accordance with current department of education standards, the funding and  
5 educational decision-making process for children with disabilities attending a chartered public school  
6 shall be the responsibility of the school district *in which the child resides* and shall retain all  
7 current options available to the parent and to the school district.

8 (b) *The decision on how to provide a free and appropriate public education at a*  
9 *chartered public school shall be made by the individualized education program team,*  
10 *which shall include the child's parents, officials from the child's resident district, and*  
11 *officials from the chartered public school, when the team develops the child's*  
12 *individualized education program. If the individualized education program team has*  
13 *determined that the child cannot receive a free and appropriate public education for the*  
14 *majority of the school day in a regular class or program, and instead requires a placement*  
15 *in a special class, separate school, or other setting consisting exclusively of children with*  
16 *disabilities, and the parent disagrees and places his or her child in a chartered public*  
17 *school that does not include the educational setting determined by the individualized*  
18 *education program team, the resident district shall, in accordance with Ed 1120.05(f),*  
19 *initiate a due process hearing in order to ensure that the child is provided with a free and*  
20 *appropriate public education. The individualized education program team shall work*  
21 *together to ensure that each child with a disability can receive the programs and services*  
22 *required in the child's individualized education program, and all related services*  
23 *including, but not limited to, counseling and consultation. All programs and services*  
24 *shall be delivered utilizing any or all of the options listed below, provided that if the child*  
25 *requires transportation to or from the chartered public school before, after, or during the*  
26 *school day in order to receive special education or related services, transportation shall be*  
27 *provided by the resident district:*

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

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

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

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

3           (5) *The resident district may contract with a chartered public school to*  
4 *provide the services or any combination of subparagraphs (1)-(4).*

5           (c) *The child shall receive special education and related services at the*  
6 *chartered public school, unless the child's individualized education program team*  
7 *determines that specific services should be provided in a different setting in order to*  
8 *provide the child with a free and appropriate public education.*

9           (d) *A chartered public school shall not be considered a special education*  
10 *placement to be made by a child's individualized education program team, but as an*  
11 *educational option available to parents of children with and without disabilities.*

12           (e) *When a parent enrolls a child with a disability in a chartered public school,*  
13 *the child shall retain all rights under federal and state law to be provided with a free and*  
14 *appropriate public education, including all special education and related services*  
15 *included in his or her individualized education program. The child's resident district*  
16 *shall have the financial and administrative responsibility to ensure the provision of*  
17 *special education and related services in the child's individualized education program,*  
18 *and the chartered public school shall cooperate with the child's resident district in the*  
19 *provision of the child's special education and related services.*

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**Amendment to SB 300**  
**- Page 3 -**

2012-1102s

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6 shall be the responsibility of the ~~[school]~~ *resident* district and shall retain all current options  
7 available to the parent and to the school district.

8 *(b) When a child is enrolled by a parent in a chartered public school, the school*  
9 *board of the child's resident district shall convene a meeting of the individualized*  
10 *education program (IEP) team and shall invite a representative of the chartered public*  
11 *school to that meeting. At the meeting, the IEP team shall determine how to ensure the*  
12 *provision of a free and appropriate public education in accordance with the child's IEP.*  
13 *The child's special education and related services shall be provided using any or all of the*  
14 *methods listed below starting with the least restrictive environment. In this*  
15 *subparagraph, the chartered public school in which the child is enrolled shall be*  
16 *considered the least restrictive environment:*

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

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27 *school before, after, or during the school day in order to receive special education and*  
28 *related services as provided in the IEP, the child's resident district shall provide*  
29 *transportation for the child.*

30 *(c) Consistent with Section 5210(1) of the Elementary and Secondary Education*  
31 *Act and Section 300.209 of the Individuals With Disabilities Education Act, when a parent*  
32 *enrolls a child with a disability in a chartered public school, the child and the child's*

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2 *the child's right to be provided with a free and appropriate public education, which*  
3 *includes all of the special education and related services included in the child's IEP. The*  
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11 disability as defined in RSA 186-C. *A chartered public school shall provide due process in*  
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2012-1338s

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12 *to ensure the provision of a free and appropriate public education in accordance with the*  
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14 *or all of the methods listed below starting with the least restrictive environment. In this*  
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16 *considered the least restrictive environment:*

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

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

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

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25 *provide the services; and*

26 (6) *If the child requires transportation to and/or from the chartered public*  
27 *school before, after, or during the school day in order to receive special education and*  
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11 disability as defined in RSA 186-C. *A chartered public school shall provide due process in*  
12 *accordance with state and federal laws and rules.*

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2012-1363s

AMENDED ANALYSIS

This bill establishes a procedure for the provision of special education and related services to a child with a disability who is enrolled in a chartered public school and requires chartered public schools to provide due process in the provision of special education and related services to children with disabilities.

# Committee Minutes

**AMENDED**  
**SENATE CALENDAR NOTICE**  
**EDUCATION**

Printed: 01/27/2012 at 2:54 pm

Senator Nancy Stiles Chairman  
Senator James Forsythe V Chairman  
Senator Sharon Carson  
Senator Molly Kelly  
Senator Russell Prescott

For Use by Senate Clerk's Office ONLY	
<input type="checkbox"/>	Bill Status
<input type="checkbox"/>	Docket
<input type="checkbox"/>	Calendar
Proof: <input type="checkbox"/>	Calendar <input type="checkbox"/>
	Bill Status

**Date: January 27, 2012**

**HEARINGS**

**Tuesday**

**2/7/2012**

EDUCATION

LOB 103

1:00 PM

(Name of Committee)

(Place)

(Time)

**EXECUTIVE SESSION MAY FOLLOW**

**Comments:** This has been amended to add SB387 and SB300 has been pushed back 15 minutes.

1:00 PM SB387 allowing schools to develop policies on the distribution of literature of patriotic organizations.

1:15 PM SB300 relative to special education services in chartered public schools.

**Sponsors:**

**SB387**

Sen. Sharon Carson

Sen. John Barnes, Jr.

Rep. Robert Haefner

**SB300**

Sen. Sharon Carson

Rep. John Hunt

Michael Ciccio 271-3093

Sen. Nancy Stiles

Chairman



# Education Committee

## Hearing Report

**TO:** Members of the Senate

**FROM:** Michael Ciccio, Legislative Aide

**RE:** Hearing report on SB 300 – **relative to special education services in chartered public schools.**

**HEARING DATE:** February 7, 2012

**MEMBERS OF THE COMMITTEE PRESENT:** Senator Stiles, Forsythe, Carson, and Prescott

**MEMBERS OF THE COMMITTEE ABSENT:** Senator Kelly

**Sponsor(s):** Sen. Carson, Dist 14; Rep. Hunt, Ches 7

**What the bill does:** This bill requires a chartered public school to make available free and appropriate public education to all children with disabilities by making available to the child all special education programs and services that are available to the child in the child's school district of residence.

**Who supports the bill:** Senator Carson, Matora Fiorey, Peter Stackhouse, Eileen Liponis, Roberta Tenney, and Beth McClure.

**Who opposes the bill:** Gerald Zelin and Bonnie Dunham.

Senator Stiles opened the hearing at 1:15

- **Summary of testimony received: Senator Carson** introduced the bill and mentioned that she was not able to get an amendment done in time for the hearing.
- She asked that the committee recess the hearing after everyone spoke because the future amendment coming forward would have more information and different subjects.
- Senator Carson mentioned that the bill came from information from the Charter School Oversight Committee that school districts are not paying for the special education that is taking place in charter schools.

- She mentioned at the most recent Charter School Oversight Committee meeting they worked on this bill and there are going to be substantive changes and additions.

**Senator Stiles:** do mind sharing the subject areas that you anticipate coming forward in the amendment? **Senator Carson:** There are going to be due process and language changes. Along with issues that the Charter Schools brought forward. **Senator Stiles:** Would it be your intent to leave the responsibility to the resident district? **Senator Carson:** Yes. **Senator Forsythe:** Currently when a charter school has special education students the district public school would still get \$1,856 for special education. How does that currently work for charter schools? Does this bill change that funding mechanism? **Senator Carson.** It does not change the funding mechanism at all. The bill just specifies that the charter public schools shall work with the resident school district to address the problem.

**Gerald Zelin:** Lawyer, opposes

- He stated that approximately to 12-15 percent of all students qualify for special education (NH and nationwide)
- He mentioned it costs twice as much for a special education compared to a regular education student.
- Mr. Zelin said the average annual cost for a regular education student in a public school is around \$10,000. While the cost for a special education student is about \$20,000.
- Mr. Zelin said our special education laws at the state level are an effort to comply with the IDEA (Individuals with Disabilities Education Act).
- He mentioned that the State gets \$1,400 dollars per disabled child from the federal government. The state department keeps a portion of that money for administrative costs then distributes the remaining money to the school districts.
- Mr. Zelin said the IDEA requires that every State make a free and appropriate public education (FAPE) available to all students. That does not mean it has to be provided to all special education students. It means it just has to be available.
- He believes a parent can accept a special education that a school district offers or parents can say thank you but no thank you and chose the option to send their child to a home or private school.
- He also believes the parent can send the child to a charter school.
- He said as long as school district continues to make a FAPE available in its own public schools then the school district has fulfilled its duty under federal law.
- He said if a special education student attends a charter school that is operated by a school district then the district cannot discriminate against charter school students. The district must provide same services and funding that the district offers those students who attend the districts regular public schools.

- Mr. Zelin mentioned that NH Charter Schools are not operated by school districts but are free standing entities. Each Charter School in NH is a separate cooperation operating under a Charter that is granted by the state board of education without any local involvement.
- He said with the exception of special education all of the charter school funding in NH comes not from school districts but the state.
- He mentioned that the U.S Department of Education regulations addresses the other categories of charter schools, including a free standing entity.
- Mr. Zelin mentioned that the federal law says in those instances, the duty to make a FAPE available to a special education student at a charter school is a duty that is imposed on the State, unless the State through State law shifts responsibility to another entity but the State remains ultimately responsible.
- He said the question in NH becomes whether we are operating under the federal default or whether through state law we have superseded that federal default and have shifted the responsibility to school districts.
- He said according to the NH charter school statute the districts duty when a special education student attends a charter school is to make a FAPE available to a child in the following way-if the school district cannot provide a free and appropriate public education in its own public school then the student who is in the charter school can visit the districts public schools for part of the day.
- He believes it is the model Senator O'Hearn said the charter school statute was intended to mandate by allowing charter schools with state board approval.
- Mr. Zelin believes it is ok for a special education student attends a charter school but wants to come back the public school part time to receive the special education in the students IEP.
- He asked if a district can offer a critical program in its own public schools must they also export those services to the charter school.
- He has several concerns with forcing the district to export the services to the Charter School
- He believes it is a folly to provide FAPE at a school that it does not control. What if the charter school refuses to implement the IEP that the district developed? What if the charter school is incapable of providing an appropriate education? He has case where he is representing the New Market School District where the parent wanted the District to provide special education and related services at the charter school including all the services the district had offered to provide in its public school. This included an aide 20 hours a day (paraprofessional), a special education math class, counseling with an associate school psychologist.

- He said for the district to export those services to the charter school would be vastly more expensive than providing the services in the districts own public school.
- He said in this particular case the parent also refused consent for the charter school to communicate with the school district. The parent refused consent for the school district to observe the child at the charter school.
- He said this is an example of the problems that arise if you make a district responsible for providing an appropriate education at a school that it does not operate or control. How can a district fulfill a duty to provide a FAPE at a charter school if it doesn't know what is going on at the school?
- He said if you accept the premise that exporting services are more expensive then it is a violation of Part 1 article 28-a of the NH Constitution, which prohibits unfunded state mandate.
- He urged the committee to take the position that if a special education student attends a charter school that the district duty is to allow the child to receive special education and related services by attending the district schools part time.
- He also suggested that the committee do something to bolster that process by requiring a team meeting (which SB 300 alludes to) of school district representatives, charter school representatives , and parents; so the district is aware of how the child is doing in the charter school and can modify the special education and related services.

**Senator Forsythe:** is there any situation where exporting the special education services to the charter school could save the district school money?

**Gerald Zelin:** Yes, an example being what Senator O'Hearn said. She said there will be instances where a school district cannot provide appropriate education in its public schools and in those circumstances a charter school may be able to provide an appropriate education. She gave the following example, if the classes public school are large and a child has attention problems and the charter school classes are small then the charter school may be the only program that's appropriate and in those instances the school district should assign the child to the charter school. I would submit that also in those rare instances perhaps save the district money because the district if educating the child in its own schools might try and address the attention issues in a large class by assigning a 1-1 aide to the child, while in a charter school class that may be unnecessary. However, in his experience those instances as very rare. In the vast majority of cases exporting the services to the charter school will increase the cost. In Pennsylvania school districts have to subsidize all children at charter schools. This school system has to pay money to the Charter school and this system is referred to as a vampire system. If you make school districts responsible for funding special education at the charter school then we are getting into the vampire model and you are either going to have to raise local taxes or reduce the services to the other students who are attending the districts local public schools.

**Senator Forsythe:** Are you recommending that we give them the option to do the special education at the public school or the charter school?

**Gerald Zelin:** I recommend that you give the district the option to place a child at a charter school under the following conditions. 1) the charter school is state approved as special education program 2) the parents want the child at the charter school 3) an appropriate education is not available in the districts own school and the district believes placement at a charter school is necessary for the child to receive a free and appropriate education.

**Senator Forsythe:** you said in the list requirement that if free and appropriate education is not available at the district school but doesn't it have to be available at the district school?

**Gerald Zelin:** No, the district must make a FAPE available and in most instances school districts do that by providing services in their public schools however under state and federal law if a district can't provide a FAPE available in its own public schools then it must make an out of district placement.

**Senator Forsythe:** In your list of criteria you said the FAPE would have to not be available in order to make placement but lets say the FAPE is available but it is cheaper for the school district to provide those services at the charter school shouldn't the district be able to supply the services at the charter school?

**Gerald Zelin:** As long as the district has the choice.

**Senator Stiles:** I thought I heard you say the state receives \$1,400 from the federal government in support of special education the state also provides \$1,852 for a special education student therefore the total we are looking at is a little over \$3,000 for these students.

**Gerald Zelin:** I am glad you raised the \$1,800 dollar issue because I meant to and forgot. If you look at the statutes, it states if a student is attending a charter school all of the adequacy aid the district would normally get for that child would go to the charter school which includes 1,800 for a special education student. The statutes are very clear that money should be going to charter school not the school districts.

**Senator Stiles:** Is it currently going to them now?

**Gerald Zelin:** I raised this issue with the commissioner of education and the department recently what they have done is sent the \$1,800 dollars to school districts. If you are going to send the \$1,800 dollars to a school district when a child is attending a charter school since that \$1,800 is a subset of adequacy aid. Why are sending just a portion of adequacy aid to the school district? It seems to me that all the elements of adequacy aid should be going to one place or another. I have never gotten a straight answer to my question.

**Senator Stiles:** Would you agree that they are probably doing that because the school district is responsible for the FAPE?

**Gerald Zelin:** They say that is the rational for why they are doing it. However, if you look at the charter school statute it says that all adequacy aid under 198:40-a goes to the charter school. If you look at 198:40-a there is the basic adequacy aid which is about \$3,600 dollars per student, there is the special education adequacy aid of about \$1,800 per student, and there are the ones for the school lunch kids etc. So the department has violated the state statute. They are sending the districts a drop in the bucket to defray the costs of providing special education to the students at charter schools because the department feels the districts should be exporting services to the charter schools.

**Senator Stiles:** Where did you come up with the 20,000 cost for a special education student? **Gerald Zelin:** There have been national studies over the years that show the cost for a special education child is between 1.9 and 2.2 times the cost of a regular education child. So, from the national average of \$10,000 cost per student and you use what the national studies indicate as your multiplier then the average for a special education student would be a little over \$20,000 because the student is usually receiving both special education and regular education. **Senator Stiles:** That is a national average because we know in some cases it is much less and other cases it is tremendously more. **Gerald Zelin:** Yes. **Senator Stiles:** In your documents here do you site responsibility of the state under federal law? **Gerald Zelin:** Yes I do. On pages 3-4 of the power point hand out I describe the 3 categories of charter schools the US Department of Education recognizes in the department's special education regulations. If you go to page 4 and slide 7 it says the charter school is neither LEA that receives federal funds nor is a school that is part of an LEA. The state is responsible of ensuring an availability of a FAPE. The state may assign initial responsibility to another entity but the state retains ultimate responsibility. Now, federal law does not clarify whether the state duty of ensuring an availability of a FAPE means the state must actually provide special education at the charter school or if it is enough for the state to go back to the district school if you want FAPE. Whatever the duties are under federal law it imposes that duty on the state unless the state through state law has chosen to shift that duty. **Senator Stiles:** In your testimony you spoke about placement but many cases it's the parent's choice to send their child to a charter school and has nothing to do with placement at all. Would you have any objection to making sure the resident district and the charter school at least have communication and if it is the decision of the resident district to either hire a contractor to do that or allow the local district where the charter school is sitting to provide those services so that can go on to make sure this student doesn't lose the special education services that are necessary? **Gerald Zelin:** I would have no objections to that in fact in many instances NH school districts are already doing that. **Senator Stiles:** How can we ensure that communication would take place? **Gerald Zelin:** I think one way to do that is to take part of SB300 as it is written which requires a sit down meeting. However we do need more guidance on parliamentary procedure and who has the final say that meeting.

**Matora Fiorey:** Supports, Director at Surry Village Charter School

- She wanted to speak in favor of any legislation that came forward that will help with school districts and charter schools work together with special education particularly enforcing the fact that it really can work well for both parties.
- She said her school works with 3 SAU's in their area and they have a good working relationship with all of them.

- She said that over the years they have found out if they come to the table knowing that it is a shared responsibility between the state, school district, and the charter school to provide the special education for each student then that process and relationship goes much smoother with a better outcome for each student.
- She said they have found that all of the coming and going all day is not in the best interest for the child.
- She stated that the districts have been ok with that because they have also found out along the way that doesn't work.
- She mentioned that the cost of transportation is a lot, disrupts the school day, and prevents the child from getting a whole education.
- Ms. Fiorey said they have developed relationships where one of the districts staff members comes to the charter school or they contract charter school to contract with another individual.
- She says that all participate in special education meetings.
- She said that they have one school district now that is providing the education at there local school then child comes later to our school and we find its doing a disservice to child.
- She said it limits the amount of communication that can happen because you are not all under one roof. She mentioned that you can't make adjustments that you would normally make with every day communication.

**Peter Stackhouse:** Executive Director Great Bay E-Learning Charter School, Supports.

- He mentioned that they currently serve grades 8-12.
- He said that 35 percent of their students have IEP's and they work with 11 school districts.
- He said they have great relationships with their school districts. Those districts are providing a range of services to their students. Such as counseling, speech language, consultations
- Mr. Stackhouse mentioned that recently school districts are coming to the conclusion that they may not be responsible for providing services to the charter school.
- He mentioned they currently have one student whose district is refusing to provide those services. It has created a situation we were try to do the best to meet the student's accommodation of the IEP but are not able to provide the services that are in the document.
- Mr. Stackhouse stated that they don't seek out the students but they come to them.
- He said the students and the parents chose to apply to the charter school.
- He said when they interview the student they ask for a copy of any documentation related to special needs. They provide us with Individual Education Plans if they have them.

- He mentioned that they notify the districts when they accept a student. He said they meet with school districts in the spring related to student's services with IEP's. There is communication amongst the charter school and the district.
- Mr. Stackhouse said unfortunately the communication usually takes place after the budgetary process has already taken place.
- He said the district with the most special education students at the charter school has chosen to place special educators to be the case manager's at their school.
- He said he has never had a parent refuse to cooperate with a district. They provide the districts with information and the districts manage the cases.
- He mentioned that they don't have the financial resources to meet the needs special education student.
- He said they have students who receive services at the district school then travel back to the charter school during the day.
- Mr. Stackhouse said it is critical to minimize disruptions in the day, but they are not going to prevent a student from receiving services.

**Eileen Liponis:** Executive Director NH public charter school association:

- She said they are in support of the spirit of the bill
- She that this bill is addressing small and isolated number of instances where the district and charter schools could not provide the services because the district was not willing to work with the charter school.
- She hopes the final language would clear it up and not create any more gray areas for charter schools and districts.
- Ms. Liponis stated that most districts and charter schools have a good relationship
- She said the goal of the charter schools is to work together in providing more cutting edge innovation to our students.
- She said the charter schools don't have control over the relationship the parent has with the district.
- Ms. Liponis stated that students attend with than IEP and many of them working there way out of their IEP.
- She said if you want legislative intent of Senator O'Hearn you can contact her legislative intent. She believes the Senator is being misrepresented.

**Senator Forsythe.** Clarifying to the funding aspect because the statutes in 198:40-a say they are supposed to get three components of the funding. Is it true that the charter schools are not receiving the special education part of that funding? **Eileen Liponis:** charter schools don't receive special education portion. **Senator Forsythe:** what about free and reduced lunch

**Eileen Liponis:** The charter schools have same availability as the public district schools and currently they receive around \$1,700 per student under the old formula in which the district schools still enjoy to some extent because



of the sustainability grant. Charter schools do not so it is targeted differentiated.

**Roberta Tenney: DOE support**

- She stated that the differential amount of adequacy has to do with Charter law which says the LEA retains responsibility. Since they retain responsibility we send them the amount of money that costs.
- She said a lot of times a student didn't flourish it is not because of the school but it's often because the student needs a change.
- She stated that parents decide on the charter school and it is a parent choice
- Ms. Tenney stated they are in support of the spirit of the legislation.

**Beth McClure: Support Principle strong foundation charter school**

- She is looking for clarification the resident district maintains financial responsibility for special education.
- Ms. McClure said charter schools are small and are funded at half of the state average. Tremendous differential on cost of a regular education and special education student. She agrees with Attorney Zelin on the importance of the team participation role being clarified on the bill. The cost of special education services at districts can range from an additional 10, 20, 100 thousand dollars. She says they are not big enough to support that.
- She understands that it is not easy for resident districts to provide those funds but it is a necessity for the children.
- She hopes in any subsequent amendment's that it is clear that charter schools cannot self support special education students with \$3,200 dollars and no provision to raise any funds through property taxes.
- Ms. McClure said they don't have any other funding sources other than what they get from the state.
- 20-25 percent of their students have IEP's.
- She said 8 students have been able to be discharged from their IEP.
- She mentioned that they have run into difficulties with some districts that require additional encouragement from other sources to work with them in special education. She said some parents have had to hire advocates.
- She said unless the issue is forced they will not provide the services unless the child comes to the district.
- Ms. McClure said if a child has to travel between the charter and the district school it disrupts the day.
- She said charter schools are not allowed or want to discriminate on disability

**Bonnie Dunham: opposed.**

- She sees this as a civil rights issue. If children without disabilities have the right to go to public schools in their district or public charter schools and receive an education that works for them then children with disabilities should have that same right.

- She believes the intent is good, but she doesn't think the language is clear enough that the district of residence is district of liability.
- She would like to see section B revised. Currently it states "in the manner that is the most beneficial to the child" and that is not how the special education laws are written. She believes it should say in accordance with the child's IEP, so it is more aligned with the FAPE standard.
- She believes the process where the district of residence and the charters work together is cumbersome and believes imposing an additional meeting on parents with disabilities who may already be risking their jobs to go to meetings to ensure their children get an appropriate education may be burdensome. Instead having a representative of the charter school serve as a member of the child's IEP team would accomplish the same thing.
- She said an additional meeting was put in place then procedures would need to put in place on how, where, and what would happen if there is a disagreement.
- She believes that part D needs fine tuned
- She ultimately believes the language needs to be fine tuned.

**Gerald Zelin:** He said his quote of Senator O'Hearn is in the power point he provided and that is how he based his assertions on legislative intent.

Senator Stiles Recessed the hearing at 2:18

**Funding:** NA

**Future Action:** The hearing has been recessed until a later date

**MJC**

[file: SB300 report]

Date: Type Date you finished report

**AMENDED  
SENATE CALENDAR NOTICE  
EDUCATION**

Printed: 02/23/2012 at 8:20 am

Senator Nancy Stiles Chairman  
Senator James Forsythe V Chairman  
Senator Sharon Carson  
Senator Molly Kelly  
Senator Russell Prescott

For Use by Senate Clerk's Office ONLY	
<input type="checkbox"/>	Bill Status
<input type="checkbox"/>	Docket
<input type="checkbox"/>	Calendar
Proof: <input type="checkbox"/>	Calendar <input type="checkbox"/>
	Bill Status

**Date: February 23, 2012**

**HEARINGS**

**Tuesday**

**3/6/2012**

**EDUCATION**

**LOB 103**

**1:00 PM**

(Name of Committee)

(Place)

(Time)

**EXECUTIVE SESSION MAY FOLLOW**

**Comments:** This bill's hearing was recessed on 2/7.

1:00 PM SB300

relative to special education services in chartered public schools.

**Sponsors:**

**SB300**

Sen. Sharon Carson

Rep. John Hunt

Michael Ciccio 271-3093

Sen. Nancy Stiles

Chairman

# Education Committee

## Hearing Report

**TO:** Members of the Senate

**FROM:** Michael Ciccio, Legislative Aide

**RE:** Hearing report on SB 300 – **relative to special education services in chartered public schools.**

**HEARING DATE:** March 6, 2012

**MEMBERS OF THE COMMITTEE PRESENT:** Senators Stiles, Forsythe, Carson, Prescott and Kelly

**MEMBERS OF THE COMMITTEE ABSENT:** No One

**Sponsor(s):** Sen. Carson, Dist 14; Rep. Hunt, Ches 7

**What the bill does:** This bill requires a chartered public school to make available a free and appropriate public education to all children with disabilities by making available to the child all special education programs and services that are available to the child in the child's school district of residence.

**Who supports the bill:** Senator Carson, Bonnie Dunham, William Waters, Michael Skibbie, Roberta Tenney, Beth McClure, Santina Thibedeau, Eileen Liponis, and Patrick O'Day

**Who opposes the bill:** Jean Parsons, P. Alan Pardy, Jerry Zelin, and Mark Joyce

**Neutral:** Paula Wensley

Senator Stiles reopened the hearing at 1:06 and called on Senator Carson to introduce the bill and the new amendment.

**Summary of testimony received:**

**Senator Carson:**

- Senator Carson introduced amendment 1102s which replaces the whole bill and is compiled from several different people working together.

- Senator Carson said the amendment deals with funding, the special education portion, and a requirement for the charter schools provide due process in accordance with state and federal laws and rules.
- She believes it ties everything neatly into one amendment.

**Santina Thibedeau:** Administrator from the Bureau of Special Education:

- She believes the intent of the bill/amendment is to add clarifying language to the language that is already place.
- She said lines 8-12 add some clarification. The IEP team has always included the child's parents. The amendment will include officials from the Charter School. This can fall under the IDEA- someone knowledgeable about the child.
- She stated that lines 12-20 add clarifying language if there is a dispute. She mentioned that the administrative rules and IDEA clearly outline how and when a school and parent would go into due process.
- She said that in lines 20-23 deals with a team working together.
- She requested that line 22 end at "related services."

**Senator Stiles:** I think the reason why that language was put in there in the beginning is because we had a situation with siblings where one was in a public school and the other was not. One got the services and the other one did not. I thought you said to me that it needed to be clear in the IEP in order for that child to receive those services. Is that correct?

**Santina Thibedeau:** The situation in which you are referring to there was a death of a parent and it would then be left up to the public school to treat that child as a typical student and see if that child would need counseling. It is not the responsibility of the IEP team to determine if that child needs counseling at the death of parent, unless they felt over time that this might be affecting the child's education. **Senator Stiles:** so you feel that language should not be in there? **Santina Thibedeau:** Correct.

- She said in line 23 says "all programs." She said she is not sure what "all programs" means but it would better if you said "all special education services and all services related to a child's IEP shall be delivered utilizing."
- She mentioned that the bill adds transportation which is considered a related service. That is the decision of the IEP team about providing transportation. She says the amendment has taken that option of the IEP team to discuss that issue and seemed to have put it in deliberative services.

**Senator Carson:** I believe what it does is providing clarifying language. Because it says "provided that a child requires transportation to or from the chartered public school before, after, or during the day in order to receive special education related services." I think it makes it clear that it has to be under the IEP. **Santina Thibedeau:** Then might I suggest since this is under deliberative services that you put it in a new section as a separate item. **Senator Stiles:** Where are you suggesting that language

be put? **Santina Thibedeau:** You may want to consider the second page line 9. **Senator Carson:** Are you saying that beginning with “all programs and services” should be a new D? **Santina Thibedeau:** No, I am saying that “all special education services and related services shall be utilized by any of the following options” should be listed as a separate piece because it is not a delivery model. **Senator Stiles:** so you have a semi colon after “options listed below” and you remove the next two and half lines and you put that on line 9 on the second page. **Santina Thibedeau:** Yes

- She said if Transportation became its own section starting in page 2 line 9 that would clearly identify a definition of transportation.

**Senator Stiles:** Are you saying that should be the D or a whole new section?

**Santina Thibedeau:** A whole new section. **Senator Carson:** What then

happens to D and E? **Santina Thibedeau:** If you consider up to C as delivery of services but D does not discuss delivery of services. It goes into a new thought of placement. **Senator Stiles:** Are you suggesting that

transportation be Roman Numeral IV? **Santina Thibedeau:** Yes, it should be Roman Numeral IV, Roman Numeral V should take the place of lines 9-11 and Roman VI take the place of section E.

- She said she wanted to provide clarification in lines 23-24 where it says “A chartered public school shall provide due process.” She said this is a different type of due process than due process of a hearing.

**Senator Kelly:** What does line 6 clarify? **Santina Thibedeau:** In different situations school districts mean different things. In this case we wanted to

make sure that with Charter Schools the “district in which the child resides” is responsible. **Senator Kelly:** Which is consistent and if a child had an IEP and was going to be placed in another school. It would be the responsibility of the “district in which the child resides”. **Santina Thibedeau:** If the IEP

team chose to make that placement. **Senator Kelly:** Is this if the IEP team chooses or not? **Santina Thibedeau:** This is if it is the parent’s choice to have a child enrolled in a Charter School then it is the “district in which the child resides”. **Senator Kelly:** So it is inconsistent with the law today?

**Santina Thibedeau:** No, it is clarity. For the last seven years school districts under charter school special education purposes has always been the “district in which the child resides”. This just clearly states in the beginning

of the RSA the district in which the child resides. **Senator Kelly:** The question I have about consistency does not necessarily have to do with charter schools but it is a consistency about if a parent chooses to send their child to another school and they find out they need special services? **Santina Thibedeau:** It would depend on how that child got to that school.

**Jean Parsons:** Special Education Director from the Newmarket school district, opposed.

- She said that Santina said line 6 on page one clarifies the law.
- She said there is no current law making the public schools responsible for the anything in the charter schools.

- She stated that the Department of Education has developed the habit of "Legislation by memo."
- She said they write memos that do not pertain to RSA's, special education laws, or the IDEA.
- She is also concerned with line 6 because of FAPE (Free and appropriate public education).
- She said this legislation assumes that a school district can provide FAPE anywhere. She said if this was the case they would always provide it at the local school district.
- She stated that the Supreme Court has stated that the public school district is not responsible for providing a specific program that parent wants in just any school.
- Ms. Parsons stated that this program says that charter school parents do have the right to put a program together where they want.
- She said they have no control over the services provided in a Charter School.
- She said they could not provide some of the services in the IEP even if they wanted to.
- She stated that they had a child who was previously in their district who has autism and is non verbal. She said they were documenting progress in the child and he was beginning to use sign language. She said his whole day was special education. She said when the parent chose to have the child go to a Charter School because their other children went there it would of forced her to create an entire day at the Charter School.
- She said the Charter School agreed with her that it was inappropriate.
- She stated that Charter School felt they could not meet the child's needs no matter what. She said the child only attended the Charter School for three days.
- She stated their was no way they could of provided a FAPE in that setting.

**Senator Stiles:** Don't you think that the language starting in line 27 of the first page and ending on line 8 of the second page clarifies the scenarios that the services can be provided? **Jean Parsons:** With one exception. Suppose the FAPE cannot be provided in the public school, private school, or charter school. In an out of district placement which is mentioned on page one line 14-16. It says even if the child requires a placement special class, separate school or other setting consisting of a child of disabilities and the parent disagrees and they want to put the child in a charter school. The IEP team has already determined that they cannot provide those services in their own district. There is no way they would be able to provide those services in a Charter School. In this case we have to automatically take the parent to a hearing and this is a new burden on the schools. Everything in this bill has a dollar tag associated with it and does not fit the economies of scale.

**Senator Stiles:** Doesn't federal law require in all public schools that a FAPE to a student. **Jean Parsons:** What is not right about this is that it tells us

that we must do it in a certain way. The Federal Law says we have to offer a FAPE but the parents have the right to refuse it. This program in many ways forces us to provide a program that may not be a FAPE. **Senator Carson:** How is it not a FAPE? **Jean Parsons:** This assumes a FAPE can be provided anywhere. FAPE cannot always be provided in public schools. That is why we have flourishing special education placements. FAPE is not provided just by sending services out.

**Jerry Zelin:** opposes

- He said the federal law requires that the State and School Districts in the State make a FAPE available to every student but parents are free to decline the FAPE.
- He stated that a right to a FAPE is not that a child receives a FAPE but a child is offered a FAPE.
- He said what we are dealing with is whether we treat the parent's choice to place to a charter school as one that could unilaterally hijack resources.
- He believes that implementation of this bill will cost school districts money.
- He said when a school district has economies of scale it provides services in its own public schools. He said that is less expensive than migrating services to another school.
- Attorney Zelin said if you accept the premise that this will drive up cost then you accept the consequences of a parent placing a child at the charter school. The consequences will be the children who remain in the district school will have fewer resources available to them or you will have to raise local taxes.
- He said this bill goes beyond what federal law requires.
- He said the 1<sup>st</sup> major provision of the bill is on second page, lines 5-8.
- He said in line 7 where it says "should be provided" he believes it should say "must".
- He believes this means that special education services must be provided at the Charter School unless it is impossible for a child to receive a FAPE at the Charter School.
- He said that in lines 5-8 of the bill will require services at the Charter School even though it is more expensive.
- He believes the other major problem is on page 2, lines 15-17. This says the school district will have financial and administrative responsibility to ensure the provision of special education and related services in the child's IEP. He said this not only imposes a financial duty on the district but it also imposes a programmatic duty.
- He asked if the district has no control over the Charter School then how the District can ensure that the IEP is being fulfilled.
- He said when a district has to offer special education and related services then the magnitude of services it has to offer is what is necessary for a child to receive a free and appropriate public education.



- He said if we all agree that this is going to increase costs then why is there not a fiscal note
- He asked why anyone was not concerned whether this bill violates Part 1 article 28-a of the NH Constitution.

**Beth McClure:** Principle of Strong Foundations Charter School.

- She read a note from a parent's son who is in the third grade. "I am not smart. I also get tutored. I wish I was smart"
- Read Letter from the parent (Sandi Strupeck)

"My name is Sandi Strupeck and my son Andrew Strupeck attends Strong Foundations Charter School and is presently in sixth grade. Andrew came to SFCS in the second half of third grade. He had been attending Gilmanton School since Kindergarten, and was having much difficulty with reading and spelling. He had attended summer school, had been in Title 1 reading recovery, and had been tutored at home by a private tutor. Nothing seemed to be working. At the start of his third grade year- Andrew was tested by the school. He was determined to have dyslexia, and his IEP gave him extra time in Reading Recovery. He was struggling, became withdrawn and did not want to go to school. After researching dyslexia, I contacted the foundation in NY to find local schools that used Orton-Gillingham approach to reading. I was given the name of Strong Foundations. Fortunately, there was an opening in third grade and we were able to get Andrew in immediately.

'Phonemic awareness is the ability to identify, sequence, and manipulate individual sounds of phonemes within words.' The systematic, sequential approach that is used in the Orton-Gillingham method was just what Andrew needed. He began to read, and although it was a long struggle he is now reading at grade level. Andrew was tested again this past fall, and no longer has an IEP. Had it not been for Strong Foundations I don't know what we would have done. We could not afford a private school, and this approach used by his public school and various tutors had not worked. If this option was not available to us, I am not sure if Andrew would have made the incredible strides he has made."

- She said her school has helped discharge 8 students from special education.
- She stated they are a regular education school and they work cooperatively with the school districts to provide services.
- She stated that every charter school and school district needs to work things out with the families.
- She said she wanted to support lines 8-11. This includes the resident district, the parents, and the charter school working together on how to decide how the child should receive a free and appropriate public education.
- She said they have had an instance where the district offered a take it or leave it solution.

- She believes the transportation piece is very important because a district sometimes will not offer to transport a student and not all parents have the ability to provide transportation because of work.
- She said if the district offers a take it or leave it position; then the parents do not have much choice because mediation and due process is a financial burden on them.
- She stated that the school district does not have control on special education placements.
- She believes a child and a parent should not be denied a choice because of a disability.

**Senator Stiles:** Would you say reasonable people can resolve what is best for the child? **Beth McClure:** Yes.

**Michael Skibbie:** Disabilities Rights Center.

- He said the way his office encounters this issue is being contacted by families of children where there caught in situation where there is clear disagreement about who should be taking care of special education services at a Chartered Public School.
- He said they don't care who pays but there needs to be certainty that someone pays and it needs to be clear in every situation.
- He believes this legislation improves the clarity.
- He said he is concerned about some of the suggestions being made by opponents of the bill. It suggests to a child with a disability that it would be ok that a charter school is not available to you because you have a disability.
- He said there is not adequate funding in the charter schools to handle the cost themselves.

**Senator Kelly:** There are three situations in which I could see the bill having an impact. You could have a child who is in a school district and they go through the IEP and it is determined that a child would do really well in a chartered school. The second one is where a child is already at a Charter School and they find out that child has some special needs. The third option is a child in the school district and goes through an IEP and it is determined that the child has special needs and they come up with the plan. Then the parents say they do not like the plan and what their child to go to a charter school. To me that is where the problem is because it is not the best interest of the child. The issue is how we agree with the IEP and the best interest of the child. There is a due process, correct? **Michael Skibbie:** I think if you conceptualize it as a disagreement over the IEP I think you are right there is that process. If however, if there is agreement over what services need to be provided and the disagreement is where it takes place. Then I am not sure the due process setup takes care of that. Your three categories encompass the universe as I understand it. The first one is easy because everyone is in agreement. The second one is probably not one of those real expensive cases because it was not apparent that there was a disability until after the child left the district school. The third situation is the tough situation. Everyone knew before someone tried to exercise this choice and this family wants to

send their child to the charter school, just like their neighbor who sends their child to the charter school. Then the school says we are not budgeted for exporting services so we don't want you to exercise that choice.

**William Watters: Kingston,**

- He is a parent of a former charter school student
- He believes alternatives are important.
- He said parental and student rights should not be violated anyway.
- He said he was in favor of the language guaranteeing the right to due process.
- He believes the current law is vague and that charter schools should not be exempt from due process.
- He stated that when his families had issues with the charter school they felt they were not granted due process.
- He said that he was told that charter schools were a school of choice and if they did not like it then leave.
- He said in his case this issue was the same on multiple levels including the Director of the public charter school, the DOE, and the attorney for the school.
- He said they were told that if they don't like the law then change it.
- He asked that the committee supports lines 23-24.

**Eileen Liponis: Executive Director NH Charter School Association:**

- She said this bill was created so to provide clarity for a few districts.
- She said all the options offered in this legislation for special education services makes it much easier for reasonable people to offer the services required to fill a child's IEP.
- She said if you focus on the extreme cases where it may not be possible to fulfill the IEP then it is going to take away for opportunities for the majority.
- She said that since 2004 the state has educated 6,000 charter school students.
- She said they support the opportunity for any student in the State of NH to attend a public charter school free of charge.

**Mark Joyce: opposed**

- He said the issue of funding of special education at charter schools is a very long issue
- He said this is not about being in favor of charter schools or supportive of them
- He said he is a trustee of a charter school
- He said he is opposed to shifting of public money without local voter approval.
- He said on page 2, lines 4-8 and lines 15-20 are clearly a cost to the local community.
- He said the voters will pay for this cost they did not vote for.

- He stated that the constitution prohibits increasing the cost without funding them.
- He said the State is already not fully funding special education to the taxpayer.

**Senator Kelly:** You are talking a local district that does not have a vote. What I see is there is a child in a district with special needs. The district is going to pay for that not matter where the child goes. So what is the additional cost? **Mark Joyce:** You have heard from three prior speakers that cost might be significantly more by needing to duplicate a program on an alternative sight. This is what section C requires. **Senator Stiles:** Since you sit on a Board of Trustees on a charter school. What language would propose? **Mark Joyce:** I would eliminate C and E. I don't know if that fixes it completely but those two seem to complicate everything. **Senator Carson:** I think it would agree with you on C. I am wondering about section E because to me it is a statement of rights. When you enroll your child into a public charter school they retain all their rights. They are legally responsible to offer a FAPE but not provide, so if we struck the word provided and put the word offer that might make it more consistent.

**Mark Joyce:** I think another part of section E is the responsibility to ensure. That seems to be an organizational conflict. **Senator Carson:** Maybe with what you pointed out adding the language in conjunction with the public charter school so it is not just on the resident district. Then they would share the responsibility. **Mark Joyce:** I would have to see the full wording.

**Senator Carson:** What I am concerned about is the State providing special education services when they need it. We do this through our public schools system but charter schools are public schools. We are basically saying if you go to a public school you are covered but if you chose to go to a public charter school then that safety net may not be there for you. If a child starts out in a public school they are getting there special education services. Is that correct?

**Mark Joyce:** They get it from the State in several forms. This includes adequacy aid, catastrophic aid, and the money from the federal government.

**Senator Carson:** So if you have child in public school and parents make the decision to put their child in a public charter school. How come the dollars that have been allocated for that student go to the charter school and have them responsible? **Mark Joyce:** There is the question of how much money can be diverted of public money through parental choice. It is also not always a direct and identifiable unit cost amount per student. There is no question that the resident school district is responsible for making a FAPE. The question is do they have obligation to duplicate what they offer in another environment simply because of parental choice. Would you have to offer those same services to home schools and Private schools? When you obligate the LEA to replicate a service and increase cost. **Senator Carson:** These are not private schools. These are not home schools. The laws governing public schools would not necessarily apply to people the choice sending students to private or home schools. We need to provide services to these students who are in a public charter school. It seems discriminatory if we do not. How do

we get there? **Mark Joyce:** Since the charter schools were approved by the state then the state should become the LEA for special education purposes. They would then pay the money for special education the same way they do for attendance. The issue is does the legislature have the right to cause an unfunded increase in local taxpayers money to solve that problem.

**Senator Stiles:** If the state were to take it on that responsibility would you suggest that every charter school have its own special education director?

**Mark Joyce:** Maybe the State could be the director.

**Patrick O'Day:** support

- He said he wanted to speak on page 2, lines 20-25.
- He said he was particularly focused on that due process rights are for all families in every school.
- He said this is important because of the provision under the law RSA 194-B:3-a
- He stated that it says charter schools are exempt from state statues except where specified.
- He said a charter school could someone suspend them for 9 days and never tell anyone.
- He believes this bill closes that loop hole where you do not get due process.

**Bonnie Dunham:**

- She believes this bill protects right of people with disabilities to receive a FAPE and the ability to attend a charter school without relinquishing their right to a FAPE.
- She said she does sympathize with the cost issue
- She said there is not fiscal note because there should not be an additional cost because it just clarifies what already exists.
- Placing a child in charter school is not the same as placing child in private school.
- She believes the language that states the "district in which the child resides" is clearer.
- She stated in section B line 8 on how to provide a free and appropriate education is very important.
- She said if a parent disagrees with the IEP team then they already obliged to file for a due process hearing. This is not a new requirement but just makes it clearer.
- She stated that lines 20-21 should say "related services".
- She believes the most contentious issue with parents seems to be transportation
- She stated that a child should not be transported back and forth mid day.
- She said that people questioned what would happen if a child does not get a free and appropriate education at the charter school because they did not fulfill an IEP. She believes lines 18-19 require that they fulfill the IEP.

**Senator Carson:** On page 2, line 15 says that the child's resident district shall have the financial and administrative responsibility. What if it said in conjunction with the local charter school? So it is a partnership and they are both responsible. **Bonnie Dunham:** She believes the ending language that mentions cooperating should be cover that issue. **Senator Carson:** In that particularly section on line 19 it says "provision of the child's special education and related services." However, in line 16 it says shall have financial and administrative responsibility to ensure the provision. If you have the two entities specifically language you have to work together. Do you know if that helps or ends up hurting? **Bonnie Dunham:** I don't know if it is possible to impose monitoring requirements on a public charter schools.

**Roberta Tenney:**

- She said the memos that were developed by the department over the past 7 years are in response to the current law.
- She stated that the charters want some more teeth in the current law
- Ms. Tenney stated that the charters are R&D of public education.
- She said through their innovation they hope to find additional and successful ways of supporting different learning styles.
- She said it may save money to have a child in a charter school.
- She stated if you took the profile of 6 or 7 special education students that have been sent to out of district placement could be a cost of 300,000-400,000 dollars.
- She stated that sometimes a charter school is what a child needs.
- She said that Federal Law does allow us to delegate it to the LEA.

Senator Stiles closed the hearing 2:50

**Funding:** NA

**Action:** An executive session will be held at a later date.

**MJC**

[file: SB300-2 report]  
Date: 03/09/12

# Speakers









# Testimony

Daniel Amory\*  
David J. Becker\*  
S. Campbell Badger\*  
Michael L. Buescher\*  
Jerrol A. Crouter\*  
George T. Dilworth\*  
Jessica M. Emmons\*†  
Peter C. Febray\*  
Erin R. Feltes†  
Anthony T. Fratianne\*  
Sara S. Hellstedt\*  
Eric R. Herlan\*†  
Melissa A. Hewey\*†  
Michael E. High\*  
David M. Kallan\*  
John S. Kaminski\*  
Edward J. Kelleher\*  
Jeanne M. Kincaid\*†  
Peter D. Klein\*  
Rodney A. Lake\*  
Benjamin E. Marcus\*  
Elek A. Miller\*  
Mone T. Movestaghif†  
Michael J. Murray\*  
Robert P. Nadeau\*  
Deins J. Nathanson\*†  
Kimberly A. Pacelli\*  
Jeffrey T. Piampiano\*  
William L. Plourie\*  
Aaron M. Pratt\*†  
Harry R. Pringle\*  
Daniel J. Rose\*†  
George Royle V\*  
Gregory W. Sample\*  
David S. Sherman, Jr.\*  
Richard A. Shiny\*  
Christina R. Simpson†  
Kaighn Smith, Jr.\*  
Bruce W. Smith\*  
Richard A. Spencer\*†  
Christopher G. Stevenson\*  
E. William Stockmeyer\*†  
Amy K. Tchao\*†  
Joanne B. Tourangeau\*†  
M. Thomas Trenholm\*  
Matthew H. Upton†  
Gary D. Vogel\*  
Ronald N. Ward\*  
Thomas R. Watson\*†  
Brien D. Willing\*  
Gerald M. Zelin†

**Consultants**

Ann S. Chapman  
Policy & Labor Relations

Roger P. Kelley  
Labor Relations &  
Conflict Management

Michael J. Opuda Ph.D.  
Special Education

**Of Counsel**

Joseph L. DeLafeld III\*  
Robert L. Gips\*  
Donald A. Kopp\*  
Hugh G. E. MacMahon\*  
Herold E. Woodsum, Jr.\*

\* Admitted In Maine  
† Admitted In New Hampshire

# DrummondWoodsum

Gerald M. Zelin

gzelin@dwmlaw.com

100 International Drive, Suite 340  
Portsmouth, NH 03801

(603) 433-3317  
(603) 433-5384 Fax  
(800) 727-1941

Admitted in NH only  
[www.dwmlaw.com](http://www.dwmlaw.com)

March 20, 2012

*Via email and first class mail*

Senator Sharon Carson  
State House  
Concord, N.H. 03301

RE: Senate Bill 300 (special education at charter schools)

Dear Senator Carson:

I am writing to express my concerns regarding SB 300 as originally introduced and regarding your March 6, 2012 proposed amendment to that bill. Thank you for inviting these comments.

I have four overarching concerns regarding the bill and the proposed amendment.

1. They go beyond what federal law requires and thereby violate Part 1, Article 28-a, which prohibits new unfunded state mandates.
2. They make school districts responsible for providing a FAPE at charter schools over which they have no control, which is impractical.
3. They confer a special privilege, not equality.
4. They conflict with other New Hampshire statutes.

I elaborate on each point below.

**1. The bill and the proposed amendment go beyond what federal law requires and thereby violate Part 1, Article 28-a of the New Hampshire Constitution.**

The federal Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §§ 1400. *et seq.*, is an underfunded federal grant statute. Approximately 15 percent of all students qualify as disabled under that statute. School districts currently receive approximately \$1,500 annually in federal IDEA funds for each qualifying student. However, the amount the State and school districts receive under the IDEA is based on counts from many years ago, not on the current number of eligible students. It costs

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school districts approximately \$20,000 annually to educate each disabled student. (See enclosed "Fact Sheet.")

The IDEA requires that participating states make a "free appropriate public education" (FAPE) "available" to every qualifying student. 20 U.S.C. § 1412(a)(1)(A). A FAPE consists of special education and related services provided at no cost to the parents and in accordance with an individual education program (IEP) written by an IEP team. 20 U.S.C. § 1401(9)(D). According to the U.S. Supreme Court, the IDEA requires that participating states offer each eligible child "an" appropriate program reasonably calculated to confer some educational benefit, not the "most" appropriate program that will enable a child to reach his or her full potential. *Board of Education of Hendrick Hudson School District v. Rowley*, 458 U.S. 176 (1982).

The IDEA allows parents to spurn a FAPE. For example, parents may enroll their children in private schools, home-school them, or send them to public schools without special education.

The IDEA also allows school districts to provide special education and related services in a cost-effective manner. For example, if several deaf students live in a school district that operates multiple schools, the district may insist that all deaf students attend a single school in order to avoid the expense of hiring one interpreter for each school. *Barnett v. Fairfax County School Board*, 927 F.2d 146 (4<sup>th</sup> Cir. 1991), cert. denied, 502 U.S. 859 (1991).

The IDEA addresses only one category of charter schools. If a student with disabilities attends a charter school *operated by a school district*, the district must serve that child in the same manner as the district would serve a child with disabilities attending one of the district's other schools. 20 U.S.C. § 1413(a)(5)(A). This includes providing special education and related services "on site at the charter school," but only "to the same extent to which the local educational agency has a policy or practice of providing such services on the site of its other public schools." *Id.*

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

The U.S. Department of Education's regulations go further by addressing public charter schools, like New Hampshire's, that are not operated by school districts. According to these regulations, when a student attends such a public charter school the *State* is responsible for ensuring that all IDEA requirements are met (unless state law shifts responsibility to some other entity). 34 C.F.R. § 300.209(a), (d). However, the State probably fulfills that duty if a FAPE remains available in the resident district's schools.

In 2003, when the New Hampshire legislature enacted RSA 194-B:3-a, Senator O'Hearn described RSA 194-B:11, III as operating in a similar fashion. She explained that a charter school student would visit the district's schools to receive special education and related services,

unless the district's IEP team assigned the student to the charter school because the district could not provide a FAPE in its own public schools. *N.H. Senate Journal*, 2003, p. 1867.

SB 300 goes beyond this federal scheme in two important ways. First, it downshifts liability from the State to school districts. Second, it increases costs by compelling a school district to provide a FAPE at a charter school, even if the district could provide appropriate services at a lower cost in its own public schools.

This downshifting and increase in costs would violate Part 1, Article 28-a of the New Hampshire Constitution, which prohibits new unfunded state mandates.

One remedy would be to add the following to SB 300: "This statute shall not be construed or enforced in a way that increases a school district's costs above what it would have cost the school district to provide the child with a free appropriate public education in its own schools or, if the district's own schools are inappropriate, the out-of-district placement the school district would have selected had the child not enrolled in a chartered public school."

**2. The bill and the proposed amendment make school districts responsible for providing a FAPE at charter schools over which they have no control, which is impractical.**

It is folly to expect school districts to provide a FAPE at charter schools over which they have no control. Perhaps that is why the IDEA addresses only charter schools operated by school districts.

During the March 6, 2012 public hearing, one speaker asserted that school districts often place students with disabilities at private schools over which districts have no control. Those remarks were overly simplistic. First, school districts make out-of-district placements only when they cannot provide a FAPE in-district. Second, state law allows a district to make an out-of-district placement only at a private school that operates a state-approved special education program. RSA 186-C:5(a)(1), 186-C:10. This ensures some level of quality control. Third, when a school district makes an out-of-district placement, it selects the private school, can negotiate with the private school, and can later remove the child from the private school. SB 300 gives school districts no such control over charter schools.

In one recent case involving the Newmarket School District, parents of a disabled student insisted that the school district implement his IEP at the charter school, but refused to allow school district personnel to observe the student at the charter school or to communicate with charter school staff. When a charter school and a school district are separate entities, federal law prohibits them from exchanging information without prior written parental consent. 20 U.S.C. § 1232g(b)(1)(A). How can a school district provide a FAPE under such circumstances?

**3. The bill and the proposed amendment grant a special privilege, not equality, to a certain class of students.**

During the March 6, 2012 public hearing, some speakers argued that SB 300 and the proposed amendment simply prevent discrimination. They asserted that SB 300 and the proposed amendment would give students with disabilities the same opportunity available to students who are not disabled – the right to attend a charter school.

That argument ignores the distinction between even-handed treatment and affirmative action.

Various civil rights statutes already prohibit discrimination on the basis of disability at charter schools. For example, Section 504 of the Rehabilitation Act of 1973 bars recipients of federal funds, including charter schools, from discriminating on the basis of disability. 29 U.S.C. § 794(a).

SB 300 and the proposed amendment, in contrast, offer public funding for *special* services at charter schools. They discriminate between nondisabled charter school students and disabled charter school students, by offering full state funding for the former but not the latter. They discriminate between disabled students attending charter schools and disabled students attending school district schools, by giving only the former the right to receive services at a specific school when this would be more expensive.

Shouldn't we pause to consider whether this is the best use of scarce public resources? Wouldn't it be more sensible to spend that money on RSA 171-A, which directs the New Hampshire Department of Health and Human Services to provide assistance to adults with developmental disabilities. At the moment, school districts and the State are spending large sums on "transition services" for special education students, to prepare them for life after school. Upon exiting from special education at age 21, these same individuals then languish on waiting lists for adult services under RSA 171-A. In short, transition services prepare these students to ... sit on waiting lists! What a waste of public resources. What a disservice to those most in need.

#### **4. The bill and the proposed amendment conflict with other New Hampshire statutes.**

SB 300 and the proposed amendment are difficult to reconcile with other New Hampshire statutes.

For example, RSA 186-C:2, II and 186-C:10 require that a school district provide special education in a state-approved special education program. RSA 186-C:5, I(a) allows charter schools to seek state approval to operate special education programs, but no charter school has done so to date. These statutes would be superfluous if a school district had to provide special education at a charter school that does not operate a state-approved special education program.

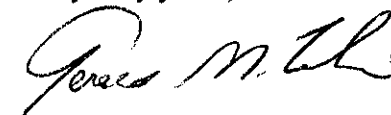
RSA 198:40-a (2011 Supp.) offers State adequacy aid to school districts. This includes an extra \$1,856 annually for each student with disabilities. RSA 198:40-a, III (2011 Supp.). According to RSA 194-B:11, I(b) (2011 Supp.), when a student attends a charter school, all

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adequacy aid under "RSA 198:40-a" is diverted from the school district to the charter school. That necessarily includes the special education "bonus" under RSA 198:40-a, III (2011 Supp.). Why divert that special education money to the charter school if the district of residence is responsible for providing special education?

Thank you again for inviting these comments and for taking the time to read them.

Very truly yours,



Gerald M. Zelin

Enclosures: Special Education Fact Sheet; technical comments on the March 6, 2012 proposed amendment

cc/enc: Senate Education Committee members (via email)

Sen. Nancy Stiles, Chair, Senate Education  
Committee (via first class mail)



## SPECIAL EDUCATION IN NEW HAMPSHIRE – SOME BASIC FACTS

By Gerald M. Zelin

Drummond Woodsum & MacMahon  
40 Pleasant Street  
Portsmouth, N.H. 03801  
Tel: (603) 433-3317  
Fax: (603) 433-5384  
E-mail: gzelin@dwmlaw.com

September 24, 2009

### 1. *What laws govern?*

Four sets of laws govern special education in New Hampshire:

- The Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §§ 1400, et seq. This federal statute was enacted in 1975, but most provisions did not take effect until 1978. The statute has been “reauthorized” and amended several times, most recently by the Individuals with Disabilities Education Improvement Act of 2004 (IDEIA).
- The U.S. Department of Education regulations implementing the IDEA, codified at 34 C.F.R. Part 300. These rules were amended in August 2006 in response to the 2004 revisions to the IDEA.
- New Hampshire’s special education statute, RSA 186-C.
- The New Hampshire Board of Education’s rules, N.H. Code of Administrative Rules Chapter Ed 1100. These rules were last rewritten in 2001 to comply with the 1997 amendments to the IDEA. In 2002, the State Board of Education further amended Ed 1128 (governing administrative due process hearings) and Ed 1132 (regarding catastrophic aid).

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

- Yes and no. It depends on how you define the term “mandate.”
- Participation in the IDEA is optional. The statute attaches strings to

federal funds. It applies only to states that apply for and receive federal IDEA funds. In this regard, the IDEA is different from many federal statutes, such as laws protecting civil rights or regulating interstate commerce, which automatically apply throughout the nation.

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

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

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

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

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

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

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

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

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

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

“The 28th annual Phi Delta Kappa/Gallup Poll of the Public’s Attitudes Toward the Public Schools . . . shows that most members of the general public think spending on special education should be

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primarily on temporary and discretionary projects, such as staff development and technology, rather than on services necessary to comply with the IDEA.

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

maintained or increased. . . . Although Phi Delta Kappa says it costs at least 100 percent more to educate a special education student than other students, only 7 percent of those polled estimated such a figure. Most respondents estimated the increase to be between 20 percent and 60 percent.”<sup>7</sup>

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

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

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

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

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

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

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

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

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

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

- If a special education student's program costs a school district more than 3.5 times the state average annual per pupil cost, the State Department of Education is supposed to reimburse the school district for 80 percent of the "excess costs" (i.e., 80 percent of the costs exceeding 3.5 times the state average per pupil cost).<sup>12</sup> For the 2007-08 school year, 3.5 times the state average annual per pupil cost is \$36,317. However, the State legislature does not always appropriate enough to reimburse school districts at the full 80 percent level.
- Thus, assuming that the State pays its full share, a school district *ultimately* funds: 1) the first \$36,317 of a student's annual program costs; and b) 20 percent of the annual program costs that exceed \$36,317.

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

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

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

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

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

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

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

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

percentages vary from school district to school district depending on socio-economic factors and other variables. For example, in Rochester, New Hampshire, 24 percent of all students qualify for special education.<sup>18</sup>

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

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

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

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

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

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

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

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

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

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

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

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

0.08 percent attend special public day schools.

2.66 percent attend private day schools.

0.15 percent attend public residential facilities.

1.36 percent attend private residential facilities.

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

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

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

- No.

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

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

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

- The IDEA requires that participating states offer every educationally disabled child a *free* appropriate public education. The term “free” means at no cost to the student’s parents.<sup>25</sup>
- Unlike many social welfare programs, the IDEA does not include a “means test.” Parents are not required to make any financial contribution, regardless of their income or wealth.

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

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

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<sup>25</sup> 20 U.S.C. § 1401(9)(A).

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

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

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

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

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

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



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

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

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

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

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

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

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

My name is William Waters and I am from Kingston, NH. I am the parent of a former charter school student. I also speak on behalf of my wife Carol, who could not be here today. My wife and I are both strong supporters of the public charter school system in NH. We feel strongly that alternatives are necessary in order to provide a good education to all of our children. However, parental and student rights should not be compromised in any way.

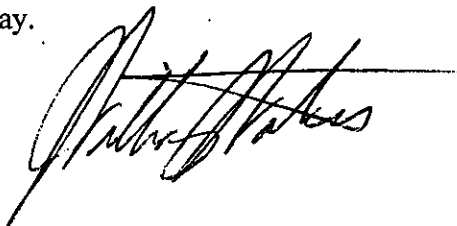
I come before you today to speak in favor of fair treatment in public charter schools and for the inclusion of language in the law guaranteeing the right to due process. The current law is vague. It must be stated clearly and unequivocally that public charter schools are not exempt from due process. When we had issues with the charter school and felt that we were not granted due process, we were told that charter schools were a school of choice and if we don't like it LEAVE. As we went through the process of trying to have our issues addressed, we were told this at multiple levels. This came from the Director of the public charter school right up to the DOE. The attorney for the school told us that public charter schools are exempt from due process and if we don't like it, change the law. That is why I am here today. Our case is now history, but there needs to be a clear directive that public charter schools are NOT exempt from due process.

We do not believe that this was the intention of the legislature when they created the public charter school law. We believe that the intent was that if a charter schools program does not fit the student's interests or learning style, then it is a parent's choice to remove the student from the public charter school. It should not be because of systemic issues in the school. And the failure to grant due process.

In closing, I ask you to endorse the amendment to SB300 which provides parents and students of public charter schools with the same rights and protections provided to those who attend traditional public schools and make it clear that public charter schools are not exempt from state law regarding due process.

Thank you for your time today.

WILLIAM WATERS  
7 RED GATE DR.  
KINGSTON, NH 03848

A handwritten signature in black ink, appearing to read "William Waters", written over a horizontal line.

3/6/2012

My name is Sandi Strzpek and my son Andrew Strzpek attends SFCS and is presently in Sixth Grade. Andrew came to SFCS in the second half of third grade. He had been attending Gilmanston School since Kindergarten, and was having much difficulty with reading and spelling. He had attended Summer School, had been in Title I reading recovery, and had been tutored at home by a private tutor. Nothing seemed to be working. At the start of his third grade year - Andrew was tested by the School. He was determined to have dyslexia, and his IEP gave him extra time in Reading Recovery. He was struggling, became withdrawn

and did not want to go to school.

After researching dyslexia, I contacted the foundation in NJ to find local schools that used the Orton-Gillingham approach to reading. I was given the name of Strong Foundations. Fortunately, there was an opening in third grade, and we were able to get Andrew in immediately.

"Phonemic awareness is the ability to identify, sequence and manipulate individual sounds or phonemes within words." The systematic, sequential approach that is used in the Orton-Gillingham method was just what Andrew needed. He began to read,

and although it has been a long struggle, he is now reading at grade level. Andrew was tested again this past fall, and no longer has an IEP.

Had it not been for Strong Foundations - I don't know what we would have done.

We could not afford a private school, and the approach used by his public school and various tutors had not worked. If this option had not been available to us, I am not sure if Andrew would have made the incredible strides he has made.

Respectfully Yours

Sandi Stimpert

I'm not  
Smart. I  
also got tired.  
I wish I was  
Smart.

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# Who's Responsible for Special Education at Charter Schools? You be the Judge!

January 20, 2012

Jerry Zelin  
Drummond Woodsum  
Portsmouth, N.H.

1

## Charter schools in New Hampshire

- RSA 194-B recognizes two categories of charter schools:
  - Schools approved by the State Board of Education with the local school district's approval.
    - *RSA 194-B:3 (enacted in 1995).*
  - Schools approved by the State Board of Education without local approval.
    - *RSA 194-B:3-a (enacted in 2003).*

2

## Relevant characteristics of New Hampshire charter schools

- They are public schools.  
– *RSA 194-B:1, III.*
- Each charter school is a free-standing corporation, independent of any school district.  
– *RSA 194-B:1, III, 194-B:5, III.*

3

## What do the US DOE's IDEA regulations say about charter schools?

- Children with disabilities attending “public charter schools,” and their parents, “retain all rights under this part.”  
– *34 C.F.R. § 300.209(a).*
- Those rights include: “that all children with disabilities have available to them a free appropriate public education.”  
– *34 C.F.R. §§ 300.1(a), 300.101(a) (emphasis added).*

4



**The federal regulations allocate responsibility based on the nature of the charter school**

1. *If the charter school is a public school "of" a local education agency (LEA).*

The school district must serve disabled children attending the charter school the same way the district serves disabled children in its other public schools.

– 34 C.F.R. § 300.209(b).

5

**The federal regulations allocate responsibility (cont'd)**

2. *If the charter school is an LEA and receives federal IDEA funds . . .*

The charter school is responsible for ensuring the availability of a FAPE, unless state law assigns responsibility to some other entity.

– 34 C.F.R. § 300.209(c).

6

## **The federal regulations allocate responsibility (cont'd)**

3. *If the charter school is neither an LEA that receives federal funds nor a school that is part of an LEA . . .*
- The State is responsible for ensuring the availability of a FAPE.
  - The State may assign “initial responsibility” to another entity, but the State retains ultimate responsibility.
- 34 C.F.R. § 300.209(d).

7

## **Where do N.H. charter schools fall under federal law?**

Into category 3.

- They are public schools.
- They are not LEAs that receive IDEA funds.
- Being corporations independent of school districts, they do not qualify as public schools that are “part of” an LEA.

8

### **The consequences of falling into category 3**

- The State is responsible for ensuring the availability of a FAPE.
- The State may assign “initial responsibility” to another entity, but the state retains ultimate responsibility.

*34 C.F.R. § 300.209(d).*

9

### **Has the state assigned initial responsibility to school districts?**

- A charter school’s application must include “specific detail” regarding the “[m]ethod 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.”
  - *RSA 194-B:3, II (n), 194-B:3-a, II (2008 Supp.).*
- So check what the charter school’s application says!

10

## Has the state assigned initial responsibility to school districts (cont'd)?

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

– *RSA 194-B:11, III (2008 Supp.) (bullets added).*

11

## What does RSA 194-B:11, III mean?

- “This bill does not attempt to reform special ed. laws. This bill would replicate the current system and the extra money remains attached to the special ed. student wherever he goes.”

– *Senator Rubens (N.H. House Educ. Comm. Minutes on SB 9, April 17, 1995, p. 2) (emphasis added).*

12

## What does RSA 194-B:11, III mean (cont'd)?

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

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

– *N.H. Senate Journal (2003), p. 1867 (emphasis added).*

13

## What do the NH Board of Ed's charter school rules say about special education?

- Not much.
- A charter school's application must address "[h]ow the school will provide for educationally disabled students."

– *Ed 318.07(b)(1)-c, 318.08(b)(1)-c.*

14

## What do the NH Board of Ed's special education rules say about charter schools?

- Not much.
- The definitions of “private school” and “private provider of special education” explicitly exclude charter schools.
  - *Ed 1102.04(k), (l).*
- The rules say nothing about who is responsible for providing or funding special education at charter schools.

15

## What does N.H.'s special ed statute say?

- The statute requires that school districts offer special education at state-approved special education programs.
  - RSA 186-C:2, II, 186-C:9, 186-C:10 (2008 Supp.).
- The statute was amended in 2008 to allow charter schools to apply for program approval.
  - RSA 186-C:5, I(a)(2008 Supp.) (effective Jan. 1, 2009).
- This implies that a school district cannot pay for special education at a charter school that does not operate a state-approved special education program.

16

## Follow the money!

- When a charter school is *created* without local approval, the State pays tuition directly to the charter school.
  - *RSA 194-B:11, I(b) (2011 Supp.)*.
- The amount the State pays is \$2,000 annually per student, plus the adequacy aid the school district of residence would ordinarily receive under RSA 198:40-a for that student. *Id.*
- Adequacy aid under RSA 198:40-a includes:
  - \$3,450 annually per student for basic adequacy aid; plus
  - additional amounts for students who fall into certain categories (including children receiving special education, students who qualify for free or low cost lunches, third graders who scored below proficient in reading on the NECAP, etc.).

17

## Follow the money!

- This additional adequacy aid includes \$1,856 annually for each special education student.
  - *RSA 198:40-a, III (2011 Supp.)*.
- Why pay that bonus special education bonus *to the charter school* if the district of residence is responsible for providing or funding special education at the charter school?

18

## Lack of notice to municipalities

- A state agency considering an application that “directly affects” a municipality must give the municipality notice and an opportunity to comment.
  - *RSA 541-A:39, I.*
- Therefore, if school districts are automatically liable for special ed at charter schools, the State Board of Education must notify affected municipalities of any application to create a charter school.
- The State Board of Education has not notified cities, towns, and school districts of charter school applications filed under RSA 194-B:3-a.

19

## A practical question

- How can a school district be responsible for ensuring that a disabled student receives a FAPE at a charter school *when the school district has no control over the charter school?*
- For example:
  - What if the charter school is very inappropriate for the child?
  - What if the charter school refuses to implement the IEP?
  - What if, due to space constraints, it is impossible to implement the IEP at the charter school?
  - What if the child fails to make appropriate progress at the charter school?

20



## **Tentative conclusions**

- The NH DOE is responsible for special ed at the charter school.
  - That’s the default under federal law and NH law does not override that default.
- The school district of residence should offer a charter school student an IEP and placement, if parents so request.
  - The school district thereby makes a FAPE “available” to the student.

21

## **Tentative conclusions (cont'd)**

- The school district of residence is not responsible for providing or funding a FAPE at the charter school unless: a) the charter school operates a state-approved special education program; and b) the school district placed the student at the charter school and parents concurred with that placement.
- A student attending a charter school may visit the district of residence’s public schools to receive services offered in the IEP.
  - This is analogous to the dual enrollment model that RSA 193:1-c establishes for students attending private schools and home education programs.

22

## **Tentative conclusions (cont'd)**

- When a district offers a FAPE in its own schools, it may nevertheless do more than the law requires.
  - It may send staff to the charter school.
  - It may pay for special education at the charter school

# Committee Report

STATE OF NEW HAMPSHIRE  
SENATE  
REPORT OF THE COMMITTEE  
FOR THE CONSENT CALENDAR

Date: March 22, 2012

THE COMMITTEE ON Education

to which was referred Senate Bill 300

AN ACT                      relative to special education services in chartered public schools.

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

**OUGHT TO PASS WITH AMENDMENT**

BY A VOTE OF:    5-0

AMENDMENT # 1363s

CONSENT CALENDAR VOTE: 5-0

Senator Sharon M. Carson for the Committee

This bill establishes a procedure for the provision of special education and related services to a child with dissability who is enrolled in a chartered public school and requires a charted public school to provide due process. Senate Bill 300 adds clarfying language to the current law to ensure a child with disabilities has access to a free and appropriate public education.

Michael Ciccio 271-3093

## New Hampshire General Court - Bill Status System

**Docket of SB300**

Docket Abbreviations

**Bill Title:** relative to special education services in chartered public schools.*Official Docket of SB300:*

<b>Date</b>	<b>Body</b>	<b>Description</b>
1/1/2012	S	<b>Introduced</b> 1/4/2012 and Referred to Education; <b>SJ 1</b> , Pg.9
1/1/2012	S	Hearing: 2/7/12, Room 103, LOB, 1:00 p.m.; <b>SC2</b>
1/27/2012	S	Hearing: === TIME CHANGE === 2/7/12, Room 103, LOB, 1:15 p.m.;
2/23/2012	S	Hearing: === RECESSED === 2/7/12, Room 103, LOB, 1:15 p.m.
2/23/2012	S	Hearing: === RECONVENE === 3/6/12, Room 103, LOB, 1:00 p.m.; <b>SC9</b>
3/22/2012	S	Committee Report: Ought to Pass with Amendment <b>#2012-1363s</b> , 3/21/12; Vote 5-0; CC; <b>SC12</b>
3/28/2012	S	Sen. Bragdon Moved to Remove SB 300 from the Consent Calendar
3/28/2012	S	Committee Amendment 1363s; AA, VV
3/28/2012	S	<b>Ought to Pass with Amendment</b> 1363s, MA, VV; OT3rdg
3/29/2012	H	Introduced and Referred to Education; <b>HJ 32</b> , PG. 1914
4/3/2012	H	Public Hearing: 4/10/2012 10:30 AM LOB 207
4/3/2012	H	Executive Session: 5/8/2012 1:00 PM LOB 207 ==TIME CHANGE (Orig 11:00 AM)==
5/9/2012	H	Committee Report: Ought to Pass with Amendment #2142h for May 15 (Vote 14-1; CC); <b>HC 37</b> , PG.2031
5/9/2012	H	Proposed Committee Amendment <b>#2012-2142h</b> ; <b>HC 37</b> , PG.2091
5/15/2012	H	Amendment #2142h Adopted, VV; <b>HJ 43</b> , PG.2283
5/15/2012	H	<b>Ought to Pass with Amendment</b> #2142h: MA VV; <b>HJ 43</b> , PG.2283
5/23/2012	S	Sen. Stiles Concurs with House Amendment #2142h; MA, VV
5/30/2012	H	Enrolled
6/5/2012	S	Enrolled (05/23/12)

NH House

NH Senate

# Other Referrals

# COMMITTEE REPORT FILE INVENTORY

X SB300 ORIGINAL REFERRAL \_\_\_\_\_ RE-REFERRAL

1. THIS INVENTORY IS TO BE SIGNED AND DATED BY THE COMMITTEE AIDE AND PLACED INSIDE THE FOLDER AS THE FIRST ITEM IN THE COMMITTEE FILE.
2. PLACE ALL DOCUMENTS IN THE FOLDER FOLLOWING THE INVENTORY IN THE ORDER LISTED.
3. THE DOCUMENTS WHICH HAVE AN "X" BESIDE THEM ARE CONFIRMED AS BEING IN THE FOLDER.
4. THE COMPLETED FILE IS THEN DELIVERED TO THE CALENDAR CLERK.

X DOCKET (Submit only the latest docket found in Bill Status)

X COMMITTEE REPORT

X CALENDAR NOTICE

X HEARING REPORT

X HANDOUTS FROM THE PUBLIC HEARING

X PREPARED TESTIMONY AND OTHER SUBMISSIONS

X SIGN-UP SHEET(S)

ALL AMENDMENTS (passed or not) CONSIDERED BY COMMITTEE:

X - AMENDMENT # 1102s      X - AMENDMENT # 1338s  
X - AMENDMENT # 1363      \_\_\_\_\_ - AMENDMENT # \_\_\_\_\_

ALL AVAILABLE VERSIONS OF THE BILL:

X AS INTRODUCED      \_\_\_\_\_ AS AMENDED BY THE HOUSE  
X FINAL VERSION      X AS AMENDED BY THE SENATE

\_\_\_\_\_ OTHER (Anything else deemed important but not listed above, such as amended fiscal notes): \_\_\_\_\_

DATE DELIVERED TO SENATE CLERK \_\_\_\_\_

*Mih Elia*

BY COMMITTEE AIDE