

**REGULAR CALENDAR**

**March 8, 2022**

**HOUSE OF REPRESENTATIVES**

**REPORT OF COMMITTEE**

**The Majority of the Committee on Education to which  
was referred HB 1376,**

**AN ACT relative to participation in the education  
freedom accounts program by students with  
disabilities. Having considered the same, report the  
same with the following resolution: RESOLVED, that it  
is INEXPEDIENT TO LEGISLATE.**

**Rep. Deborah Hobson**

**FOR THE MAJORITY OF THE COMMITTEE**

**MAJORITY  
COMMITTEE REPORT**

Committee:	<b>Education</b>
Bill Number:	<b>HB 1376</b>
Title:	<b>relative to participation in the education freedom accounts program by students with disabilities.</b>
Date:	<b>March 8, 2022</b>
Consent Calendar:	<b>REGULAR</b>
Recommendation:	<b>INEXPEDIENT TO LEGISLATE</b>

**STATEMENT OF INTENT**

This bill seeks to alert parents to the changes in a student's individualized educational plan (IEP) should the family decide to participate in an education freedom account (EFA). Children in "approved" nonpublic schools requiring special education services are covered by the Individuals with Disabilities Education Act (IDEA) in 20 USC section 1412 using an individual service plan. Special education services that may have been offered and delivered by public schools or sending districts or local education agencies are held at the school for the child for a specified period of time in the event the child returns to their sending district, they can resume the IEP. There are already provisions in New Hampshire rules to alert families to changes to their children's IEP. Additionally, there is notice within the Education Freedom Account Application to these changes. This measure is duplicative and will cause unnecessary confusion.

Vote 10-8.

Rep. Deborah Hobson  
FOR THE MAJORITY

Original: House Clerk  
Cc: Committee Bill File

## REGULAR CALENDAR

Education

**HB 1376**, relative to participation in the education freedom accounts program by students with disabilities. **MAJORITY: INEXPEDIENT TO LEGISLATE. MINORITY: OUGHT TO PASS WITH AMENDMENT.**

Rep. Deborah Hobson for the **Majority** of Education. This bill seeks to alert parents to the changes in a student's individualized educational plan (IEP) should the family decide to participate in an education freedom account (EFA). Children in "approved" nonpublic schools requiring special education services are covered by the Individuals with Disabilities Education Act (IDEA) in 20 USC section 1412 using an individual service plan. Special education services that may have been offered and delivered by public schools or sending districts or local education agencies are held at the school for the child for a specified period of time in the event the child returns to their sending district, they can resume the IEP. There are already provisions in New Hampshire rules to alert families to changes to their children's IEP. Additionally, there is notice within the Education Freedom Account Application to these changes. This measure is duplicative and will cause unnecessary confusion. **Vote 10-8.**

Original: House Clerk

Cc: Committee Bill File

**REGULAR CALENDAR**

**March 8, 2022**

**HOUSE OF REPRESENTATIVES**

**REPORT OF COMMITTEE**

**The Minority of the Committee on Education to which  
was referred HB 1376,**

**AN ACT relative to participation in the education  
freedom accounts program by students with  
disabilities. Having considered the same, and being  
unable to agree with the Majority, report with the  
following amendment, and the recommendation that  
the bill OUGHT TO PASS WITH AMENDMENT.**

**Rep. Patricia Cornell**

**FOR THE MINORITY OF THE COMMITTEE**

**MINORITY  
COMMITTEE REPORT**

Committee:	<b>Education</b>
Bill Number:	<b>HB 1376</b>
Title:	<b>relative to participation in the education freedom accounts program by students with disabilities.</b>
Date:	<b>March 8, 2022</b>
Consent Calendar:	<b>REGULAR</b>
Recommendation:	<b>OUGHT TO PASS WITH AMENDMENT 2022-0840h</b>

**STATEMENT OF INTENT**

Warning: Vouchers/EFAs limit your student's right to a free and appropriate public education. Current law does not ensure that parents of students with disabilities that are parentally placed in a non-public elementary or secondary school using an education freedom account (EFA) are adequately informed of their rights. The minority felt that the bill with amendment corrected this and ensured that parents of students with disabilities were given an explanation of their rights under the Individuals with Disabilities Education Act (IDEA), without having to search through what can be a confusing application form. The bill was written with input from the Department of Education. It is disappointing that we could not work together to improve the information that parents of students with disabilities receive, which was the intent of the bill.

Rep. Patricia Cornell  
FOR THE MINORITY

Original: House Clerk  
Cc: Committee Bill File

## REGULAR CALENDAR

### Education

**HB 1376**, relative to participation in the education freedom accounts program by students with disabilities. **OUGHT TO PASS WITH AMENDMENT.**

Rep. Patricia Cornell for the **Minority** of Education. Warning: Vouchers/EFAs limit your student's right to a free and appropriate public education. Current law does not ensure that parents of students with disabilities that are parentally placed in a non-public elementary or secondary school using an education freedom account (EFA) are adequately informed of their rights. The minority felt that the bill with amendment corrected this and ensured that parents of students with disabilities were given an explanation of their rights under the Individuals with Disabilities Education Act (IDEA), without having to search through what can be a confusing application form. The bill was written with input from the Department of Education. It is disappointing that we could not work together to improve the information that parents of students with disabilities receive, which was the intent of the bill.

Original: House Clerk

Cc: Committee Bill File

Amendment to HB 1376

1 Amend the bill by replacing section 1 with the following:

2

3 1 Education Freedom Accounts; Responsibilities of the Scholarship Organization; Parents of  
4 Students with Disabilities. Amend RSA 194-F:4, III to read as follows:

5 III. The scholarship organization shall ensure that parents of students with disabilities,  
6 ***whose children with disabilities are enrolled in a nonpublic elementary or secondary***  
7 ***school as defined in 20 U.S.C. sections 1401(6) and 1401(27)*** receive notice that participation in  
8 the EFA program is a parental placement under 20 U.S.C. section [~~1412~~] ***1412(a)(10)(A)***,  
9 Individuals with Disabilities Education Act (IDEA), along with an explanation of the rights that  
10 parentally placed students [~~possess~~] ***have*** under IDEA and any applicable state laws. ***The***  
11 ***scholarship organization shall provide parents of students with disabilities who are not***  
12 ***enrolled in a private elementary or secondary school an explanation of the rights that such***  
13 ***students have under IDEA and any applicable state laws.***

**HOUSE COMMITTEE ON EDUCATION**

**EXECUTIVE SESSION on HB 1376**

**BILL TITLE:** relative to participation in the education freedom accounts program by students with disabilities.

**DATE:** March 8, 2022

**LOB ROOM:** 205-207

**MOTIONS:** **INEXPEDIENT TO LEGISLATE**

Moved by Rep. Hobson

Seconded by Rep. Cordelli

Vote: 10-8

**CONSENT CALENDAR: NO**

**Statement of Intent:** Refer to Committee Report

Respectfully submitted,

Rep Melissa Litchfield, Clerk

HOUSE COMMITTEE ON EDUCATION

EXECUTIVE SESSION on Bill # 1376

BILL TITLE: ...

DATE: 3/8/22

LOB ROOM:

MOTION: (Please check one box)

- OTP
- ITL
- Retain (1<sup>st</sup> year)
- Adoption of Amendment # 8
- Interim Study (2nd year)
- (if offered)

Moved by Rep. Hobson Seconded by Rep. Cardelli Vote: \_\_\_\_\_

MOTION: (Please check one box)

- OTP
- OTP/A
- ITL
- Retain (1<sup>st</sup> year)
- Adoption of Amendment # 0840
- Interim Study (2nd year)
- (if offered)

Moved by Rep. Cornell Seconded by Rep. \_\_\_\_\_ Vote: \_\_\_\_\_

MOTION: (Please check one box)

- OTP
- OTP/A
- ITL
- Retain (1<sup>st</sup> year)
- Adoption of Amendment # \_\_\_\_\_
- Interim Study (2nd year)
- (if offered)

Moved by Rep. \_\_\_\_\_ Seconded by Rep. \_\_\_\_\_ Vote: \_\_\_\_\_

MOTION: (Please check one box)

- OTP
- OTP/A
- ITL
- Retain (1<sup>st</sup> year)
- Adoption of Amendment # \_\_\_\_\_
- Interim Study (2nd year)
- (if offered)

Moved by Rep. \_\_\_\_\_ Seconded by Rep. \_\_\_\_\_ Vote: \_\_\_\_\_

CONSENT CALENDAR: \_\_\_\_\_ YES \_\_\_\_\_ NO

Minority Report?  Yes \_\_\_\_\_ No If yes, author, Rep: Cornell Motion OTP/A 0840

Respectfully submitted: Bill Nelson  
Rep. Melissa Litchfield, Clerk



2022 SESSION

Education

Bill #: ~~1352~~ <sup>1376, 1376</sup> Motion: ITL AM #: \_\_\_\_\_ Exec Session Date: 3/8/22

<u>Members</u>	<u>YEAS</u>	<u>Nays</u>	<u>NV</u>
Ladd, Rick M. Chairman	10		
Cordelli, Glenn Vice Chairman	1		
Litchfield, Melissa A. Clerk	2		
Boehm, Ralph G.	3		
Lekas, Alicia D.	4		
Moffett, Michael	5		
Hobson, Deborah L.	6		
Ford, Oliver J.	7		
Soti, Julius F.	8		
Nelson, Bill G.	9		
Myler, Mel-Walz, Mary Beth		2	
Luneau, David J.		1	
Cornell, Patricia		3	
Tanner, Linda L.		4	
Ellison, Arthur S.		5	
Mullen, Sue M.		6	
Woodcock, Stephen L.		7	
Porter, Marjorie			
A. Hall, Muriel C.		8	
<b>TOTAL VOTE:</b>	10	8	

*Notter*

*Paul Johnson*

*Berghefein*

*M. JACK*

**HOUSE COMMITTEE ON EDUCATION**

**PUBLIC HEARING on Bill # HB1376**

**BILL TITLE:** relative to participation in the education freedom accounts program by students with disabilities

**DATE:** 2/2/22

**ROOM:** 205-207

**Time Public Hearing Called to Order: 1:30 PM**

**Time Adjourned: 1:55 PM**

**Committee Members: Reps. Ladd, Cordelli, Boehm, A. Lekas, Moffett, Hobson, Ford, Soti, B. Nelson, Litchfield, Luneau, Cornell, Tanner, Ellison, Mullen, Woodcock, and Porter**

**Rep Cornell, prime sponsor,**

The bill clarifies the responsibility of a scholarship organization under the education freedom accounts program for explaining rights under the Individuals with Disabilities Education Act (IDEA).

Rep Cordelli, EFAs are not vouchers, therefore the EFA fund may be used for a whole range of options.

Response: This is just alerting parents that they are losing their rights.

Rep Cordelli, Your bill is assuming that all students will be placed in a private school.

Response: I think it is just referring to students placed in a private school.

Rep Cordelli, Do you think that language about waiving rights, when at any point a student could go back to a public school or a public charter school. So are they not actually waiving their rights? They are not waiving rights through IDEA because when they place their child in a private school they are covered under 20 U.S.C. section 1412(a)(10)(A).

Rep Mullen, Is this bill in response to parents thinking they would receive services that they did not at the private schools.

Response: Yes

Rep Cornell, Is the intent of the bill to add clarity and transparency to the EFA.

Response: Yes

Bonnie Dunham, in support of the bill, has shared further details on the bill.

Rep Cordelli, A child with an EFA is still covered under IDEA just under a different portion.

Response: It depends whether the private school is for profit or not for profit.

Rep Porter, Thank you for what you sent to us, it was very helpful.

Rep Lekas, What happens if a child is placed in another public school.

Response: The Statute is not clear, and she is unable to answer this.

Rep Luneau, Would you say that the language that has been provided here doesn't change the responsibility, but clarifies what is in current law.

Response: Yes

Rep Porter, How do you know all of this information?

Response: She is the parent of a child with a disability.

Bonnie has worked together with Rep Ladd many times.

Respectfully submitted,

Rep. Melissa Litchfield, Clerk



# House Remote Testify

## Education Committee Testify List for Bill HB1376 on 2022-02-02

Support: 33 Oppose: 8 Neutral: 0 Total to Testify: 0

Export to Excel

<u>Name</u>	<u>City, State</u> <u>Email Address</u>	<u>Title</u>	<u>Representing</u>	<u>Position</u>	<u>Testifying</u>	<u>Non-Germane</u>	<u>Signed Up</u>
Wood, Zephan	Pembroke, NH zephanw@gmail.com	A Member of the Public	Myself	Oppose	No	No	1/24/2022 11:15 PM
McGuire, Dan	Epsom, NH danmcguire@gmail.com	A Member of the Public	Myself	Oppose	No	No	1/27/2022 8:08 PM
Korzen, Lori	Berlin, NH lekorzen@hotmail.com	A Member of the Public	Myself	Oppose	No	No	1/29/2022 12:57 PM
Richardson, Daniel	Nashua, NH daniel6_22@comcast.net	A Member of the Public	Myself	Oppose	No	No	1/30/2022 8:03 AM
Nardino, Marie	Andover, NH mdnardino@gmail.com	A Member of the Public	Myself	Support	No	No	1/30/2022 7:10 PM
Stinson, Benjamin	Concord, NH benrkstinson@gmail.com	A Member of the Public	Myself	Support	No	No	1/30/2022 8:34 PM
Perencevich, Ruth	Concord, NH rperence@comcast.net	A Member of the Public	Myself	Support	No	No	1/30/2022 9:34 PM
DeWitt, Sarah	Exeter, NH brillopad9@hotmail.com	A Member of the Public	Myself	Support	No	No	1/31/2022 10:52 AM
Boyer, Judith	Chesterfield, NH jboyer4@gmail.com	A Member of the Public	Myself	Support	No	No	1/31/2022 12:00 PM
Zaenglein, Barbara	AMHERST, NH bzaenglein@gmail.com	A Member of the Public	Myself	Support	No	No	1/31/2022 3:27 PM
Zaenglein, Eric	Amherst, NH henley11@comcast.net	A Member of the Public	Myself	Support	No	No	1/31/2022 3:33 PM
Petrusewicz, Carol	Rochester, NH clmcc2befree@yahoo.com	A Member of the Public	Myself	Oppose	No	No	1/31/2022 4:08 PM
Hackmann, Kent	Andover, NH hackmann@uidaho.edu	A Member of the Public	Myself	Support	No	No	1/31/2022 4:13 PM

Corell, Elizabeth	Concord, NH Elizabeth.j.corell@gmail.com	A Member of the Public	None	Support	No	No	1/31/2022 5:00 PM
Marshall, Stephanie	Exeter, NH stephmarshall@myfairpoint.net	A Member of the Public	Myself	Support	No	No	1/31/2022 5:13 PM
Smith, Julie	Nashua, NH cantdog@comcast.net	A Member of the Public	Myself	Oppose	No	No	1/31/2022 5:44 PM
Mattlage, Linda	Concord, NH L.mattlage@gmail.com	A Member of the Public	Myself	Support	No	No	1/31/2022 7:36 PM
Clark, Denise	Milford, NH denise.m.clark03055@gmail.com	A Member of the Public	Myself	Support	No	No	1/31/2022 7:59 PM
Cook, Barbara	Canterbury, NH Bdc7@aol.com	A Member of the Public	Myself	Support	No	No	2/1/2022 7:21 AM
Doherty, David	Pembroke, NH ddoherty0845@gmail.com	A Member of the Public	Myself	Support	No	No	2/1/2022 9:23 AM
Emerson, Anne	Canterbury, NH ademerson4180@gmail.com	A Member of the Public	Myself	Support	No	No	2/1/2022 9:43 AM
Hampton, Mark	Canterbury, NH dandmhamp38@mail.com	A Member of the Public	Myself	Support	No	No	2/1/2022 9:50 AM
Lepesqueur, Paul	CANTERBURY, NH karumi.karumi@gmail.com	A Member of the Public	Myself	Support	No	No	2/1/2022 2:27 PM
Kerwin, Mary	Canterbury, NH forthemary@gmail.com	A Member of the Public	Myself	Support	No	No	2/1/2022 2:31 PM
Campbell, Karolyn	Epsom, NH kkccampbell43@yahoo.com	A Member of the Public	Myself	Support	No	No	2/1/2022 2:42 PM
cahill, Kathy	Concord, NH kathyhigginscahill@gmail.com	A Member of the Public	Myself	Support	No	No	2/1/2022 6:50 PM
Richman, Susan	Durham, NH susan7richman@gmail.com	A Member of the Public	Myself	Support	No	No	2/1/2022 9:31 PM
Richardson, Bryan	Alexandria, NH marks-dad@ipatriots.us	A Member of the Public	Myself	Oppose	No	No	2/2/2022 2:41 AM
Wilke, Mary	CONCORD, NH wilke.mary@gmail.com	A Member of the Public	Myself	Support	No	No	2/2/2022 7:27 AM
Gelsey, Giana	Madbury, NH gagelsey@gmail.com	A Member of the Public	Myself	Support	No	No	2/2/2022 7:49 AM
Hinebauch, Mel	Concord, NH melhinebauch@gmail.com	A Member of the Public	Myself	Support	No	No	2/2/2022 7:57 AM

Petrucelli, Maxine	Webster, NH maxinepet@gmail.com	A Member of the Public	Myself	Support	No	No	2/2/2022 8:12 AM
Petrucelli, Charles	Webster, NH chasmaxpet@gmail.com	A Member of the Public	Myself	Support	No	No	2/2/2022 8:14 AM
Osborne, Jason	Auburn, NH houserepoffice@leg.state.nh.us	An Elected Official	Myself	Oppose	No	No	2/2/2022 8:20 AM
Steel, Sandra	Plainfield, NH selizabethsteel@gmail.com	A Member of the Public	Myself	Support	No	No	2/2/2022 8:23 AM
Brennan, Nancy	Weare, NH burningnan14@gmail.com	A Member of the Public	Myself	Support	No	No	2/2/2022 8:30 AM
Campbell, Karen	Epsom, NH klynncampbell50@gmail.com	A Member of the Public	Myself	Support	No	No	2/2/2022 8:32 AM
Frew, Jerome	Concord, NH jerry@nhsaa.org	A Lobbyist	NHSAA	Support	No	No	2/2/2022 8:34 AM
Howes, Debrah	Bow, NH president@aft-nh.org	A Lobbyist	American Federation of Teachers - NH	Support	No	No	2/2/2022 8:36 AM
Fraysse, Mike	Epsom, NH klynncampbell50@gmail.com	A Member of the Public	Myself	Support	No	No	2/2/2022 8:38 AM
Scenna, Susan	Wilton, NH Sescen3@yahoo..com	A Member of the Public	Myself	Support	No	No	2/2/2022 10:28 AM

**Archived:** Thursday, February 3, 2022 10:59:31 AM

**From:** [hackleboropqr@gmail.com](mailto:hackleboropqr@gmail.com)

**Sent:** Tuesday, February 1, 2022 5:39:54 PM

**To:** [~House Education Committee](#)

**Subject:** Education bills

**Importance:** Normal

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I support hb1376 requiring parents being notified about waiving their children's funding. I also support hb1669 requiring the education dept. to administer the freedom account program rather than contracting it out. Please vote yes on these two measures.

Sincerely, Catherine Goegel

Sent from my Galaxy Tab® A

February 2, 2022

Representative Rick Ladd, Chair  
House Education Committee

Dear Representative Ladd and Members of the House Education Committee,

I am writing to ask you to please recommend **HB 1376, *An Act relative to participation in the education freedom accounts program by students with disabilities*** ought to pass.

While I personally have many concerns about the education freedom account program, this bill will at least alleviate the fear that parents of children with disabilities will choose to participate in the EFA program without fully understanding how that participation will impact their child's rights under the Individuals with Disabilities Education Act (IDEA).

If a parent enrolls their child with a disability who has an EFA in a public or private nonprofit elementary or secondary school that meets the definition of an elementary or secondary school [20 U.S.C. 1401(6) & (27)], the child is considered to be a parentally-placed private school child with a disability. While the child no longer has an individual right to some or all of the special education and related services that the child would receive if enrolled in a public school<sup>1</sup>, the child may receive some services from the school district in which the private school is located, through the process described in the IDEA regulations in §§300.130 – 143, Children With Disabilities Enrolled by Their Parents in Private Schools.

If on the other hand, a parent of a child with a disability who has an EFA enrolls the child in a for-profit private school or decides to home-school their child, neither of which meet the definition of an elementary or secondary school, the child is not considered to be a parentally-placed private school child with a disability and has no right to any special education or related services under the IDEA.

The equitable services requirement provides that the LEA must expend an amount proportionate to the amount of IDEA funds the LEA receives for the group of parentally-placed private school children with disabilities attending private elementary or secondary schools in the school district served by the LEA [20 U.S.C. 1412(a)(10)]. As children who are not enrolled in public or private elementary or secondary schools are not parentally-placed private school children with disabilities, the LEA does not receive any IDEA funds to serve those children, making the proportionate share calculation inapplicable. The LEA continues, however, to be responsible for all child find activities for this group of children, just as for all other children who have or who are suspected of having disabilities who reside in, or attend private elementary or secondary schools in the geographic area for which the LEA is responsible.

The distinction between a child with a disability who is and one who is not considered to be a parentally-placed private school child with a disability can be confusing, which makes it very important that the explanation (which I hope is first vetted by the NH Department of Education) provided by the scholarship organization be very clear and accurate, and that the scholarship organization and/or the NH Department of Education is available to respond to questions that parents receiving the explanation may have about how it applies to their individual situation.

I support HB 1376, and thank you in advance for your consideration of my input on this bill. I have included relevant excerpts from the IDEA statute and regulations.

Sincerely,



Bonnie A. Dunham  
16 Wren Court  
Merrimack, NH 03054  
Tel. (603) 860-5445 / Email [Bsdunham12@gmail.com](mailto:Bsdunham12@gmail.com)

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<sup>1</sup> §300.137 Equitable services determined. (a) No individual right to special education and related services. No parentally-placed private school child with a disability has an individual right to receive some or all of the special education and related services that the child would receive if enrolled in a public school.

## **20 U.S.C. 1412 – STATE ELIGIBILITY.**

(a) In General.--A State is eligible for assistance under this part for a fiscal year if the State submits a plan that provides assurances to the Secretary that the State has in effect policies and procedures to ensure that the State meets each of the following conditions:

(10) Children in private schools.--

(A) **Children enrolled in private schools by their parents.--**

(i) In general.--To the extent consistent with the number and location of **children with disabilities in the State who are enrolled by their parents in private elementary schools and secondary schools** in the school district served by a local educational agency, provision is made for the participation of those children in the program assisted or carried out under this part by providing for such children special education and related services in accordance with the following requirements, unless the Secretary has arranged for services to those children under subsection (f):

(I) Amounts to be expended for the provision of those services (including direct services to parentally placed private school children) by the local educational agency shall be equal to a proportionate amount of Federal funds made available under this part.

**Excerpts from the IDEA Statute (with emphasis added with bold, italicized, underlined text)**

## **20 U.S.C. 1401 – DEFINITIONS.**

Except as otherwise provided, in this title:

(6) Elementary school.--The term **'elementary school' means a nonprofit** institutional day or residential school, including a public elementary charter school, that provides elementary education, as determined under State law.

(27) Secondary school.--The term **'secondary school' means a nonprofit** institutional day or residential school, including a public secondary charter school, that provides secondary education, as determined under State law, except that it does not include any education beyond grade 12.

## **20 U.S.C. 1412 – STATE ELIGIBILITY.**

(a) In General.--A State is eligible for assistance under this part for a fiscal year if the State submits a plan that provides assurances to the Secretary that the State has in effect policies and procedures to ensure that the State meets each of the following conditions:

(10) Children in private schools.--

(A) **Children enrolled in private schools by their parents.--**

(i) In general.--To the extent consistent with the number and location of **children with disabilities in the State who are enrolled by their parents in private elementary schools and secondary schools** in the school district served by a local educational agency, provision is made for the participation of those children in the program assisted or carried out under this part by providing for such children special education and related services in accordance with the following requirements, unless the Secretary has arranged for services to those children under subsection (f):

(I) Amounts to be expended for the provision of those services (including direct services to parentally placed private school children) by the local educational agency shall be equal to a proportionate amount of Federal funds made available under this part.

(II) In calculating the proportionate amount of Federal funds, the local educational agency, after timely and meaningful consultation with representatives of private schools as described in clause (iii), shall conduct a thorough and complete child find process to determine the number of parentally placed children with disabilities attending private schools located in the local educational agency.

(III) Such services to parentally placed private school children with disabilities may be provided to the children on the premises of private, including religious, schools, to the extent consistent with law.

(IV) State and local funds may supplement and in no case shall supplant the proportionate amount of Federal funds required to be expended under this subparagraph.

(V) Each local educational agency shall maintain in its records and provide to the State educational agency the number of children evaluated under this subparagraph, the number of children determined to be children with disabilities under this paragraph, and the number of children served under this paragraph.

(ii) Child find requirement.--

(I) In general.--The requirements of paragraph (3) (relating to child find) shall apply with respect to children with disabilities in the State who are enrolled in private, including religious, elementary schools and secondary schools.

(II) Equitable participation.--The child find process shall be designed to ensure the equitable participation of parentally placed private school children with disabilities and an accurate count of such children.

(III) Activities.--In carrying out this clause, the local educational agency, or where applicable, the State educational agency, shall undertake activities similar to those activities undertaken for the agency's public school children.

(IV) Cost.--The cost of carrying out this clause, including individual evaluations, may not be considered in determining whether a local educational agency has met its obligations under clause (i).

(V) Completion period.--Such child find process shall be completed in a time period comparable to that for other students attending public schools in the local educational agency.

(iii) Consultation.--To ensure timely and meaningful consultation, a local educational agency, or where appropriate, a State educational agency, shall consult with private school representatives and representatives of parents of parentally placed private school children with disabilities during the design and development of special education and related services for the children, including regarding--

(I) the child find process and how parentally placed private school children suspected of having a disability can participate equitably, including how parents, teachers, and private school officials will be informed of the process;

(II) the determination of the proportionate amount of Federal funds available to serve parentally placed private school children with disabilities under this subparagraph, including the determination of how the amount was calculated;

(III) the consultation process among the local educational agency, private school officials, and representatives of parents of parentally placed private school children with disabilities, including how such process will operate throughout the school year to ensure that parentally placed private school children with disabilities identified through the child find process can meaningfully participate in special education and related services;

(IV) how, where, and by whom special education and related services will be provided for parentally placed private school children with disabilities, including a discussion of types of services, including direct services and alternate service delivery mechanisms, how such services will be apportioned if funds are insufficient to serve all children, and how and when these decisions will be made; and

(V) how, if the local educational agency disagrees with the views of the private school officials on the provision of services or the types of services, whether provided directly or through a contract, the local educational agency shall provide to the private school officials a written explanation of the reasons why the local educational agency chose not to provide services directly or through a contract.

(iv) Written affirmation.--When timely and meaningful consultation as required by clause (iii) has occurred, the local educational agency shall obtain a written affirmation signed by the representatives of participating private schools, and if such representatives do not provide such affirmation within a reasonable period of time, the local educational agency shall forward the documentation of the consultation process to the State educational agency.

(v) Compliance.--

(I) In general.--A private school official shall have the right to submit a complaint to the State educational agency that the local educational agency did not engage in consultation that was meaningful and timely, or did not give due consideration to the views of the private school official.

(II) Procedure.--If the private school official wishes to submit a complaint, the official shall provide the basis of the noncompliance with this subparagraph by the local educational agency to the State educational agency, and the local educational agency shall forward the appropriate documentation to the State educational agency. If the private school official is dissatisfied with the decision of the State educational agency, such official may submit a complaint to the Secretary by providing the basis of the noncompliance with this subparagraph by the local educational agency to the Secretary, and the State educational agency shall forward the appropriate documentation to the Secretary.

(vi) Provision of equitable services.--

(I) Directly or through contracts.--The provision of services pursuant to this subparagraph shall be provided--

(aa) by employees of a public agency; or

(bb) through contract by the public agency with an individual, association, agency, organization, or other entity.

(II) Secular, neutral, nonideological.--Special education and related services provided to parentally placed private school children with disabilities, including materials and equipment, shall be secular, neutral, and nonideological.

(vii) Public control of funds.--The control of funds used to provide special education and related services under this subparagraph, and title to materials, equipment, and property purchased with those funds, shall be in a public agency for the uses and purposes provided in this title, and a public agency shall administer the funds and property.

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## **Excerpts from the IDEA Regulations:**

### **Children With Disabilities Enrolled by Their Parents in Private Schools**

#### **§300.130 Definition of parentally-placed private school children with disabilities.**

Parentally-placed private school children with disabilities means children with disabilities enrolled by their parents in private, including religious, schools or facilities that meet the definition of elementary school in §300.13 or secondary school in §300.36, other than children with disabilities covered under §§300.145 through 300.147.

#### **§300.131 Child find for parentally-placed private school children with disabilities.**

(a) **General.** Each LEA must locate, identify, and evaluate all children with disabilities who are enrolled by their parents in private, including religious, elementary schools and secondary schools located in the school district served by the LEA, in accordance with paragraphs (b) through (e) of this section, and §§300.111 and 300.201.

(b) **Child find design.** The child find process must be designed to ensure--

(1) The equitable participation of parentally-placed private school children; and

(2) An accurate count of those children.

(c) **Activities.** In carrying out the requirements of this section, the LEA, or, if applicable, the SEA, must undertake activities similar to the activities undertaken for the agency's public school children.

(d) **Cost.** The cost of carrying out the child find requirements in this section, including individual evaluations, may not be considered in determining if an LEA has met its obligation under §300.133.

(e) **Completion period.** The child find process must be completed in a time period comparable to that for students attending public schools in the LEA consistent with §300.301.

(f) **Out-of-State children.** Each LEA in which private, including religious, elementary schools and secondary schools are located must, in carrying out the child find requirements in this section, include parentally-placed private school children who reside in a State other than the State in which the private schools that they attend are located.

#### **§300.132 Provision of services for parentally-placed private school children with disabilities--basic requirement.**

(a) **General.** To the extent consistent with the number and location of children with disabilities who are enrolled by their parents in private, including religious, elementary schools and secondary schools located in the school district served by the LEA, provision is made for the participation of those children in the program assisted or carried out under Part B of the Act by providing them with special education and related services, including direct services determined in accordance with §300.137, unless the Secretary has arranged for services to those children under the by-pass provisions in §§300.190 through 300.198.

(b) **Services plan for parentally-placed private school children with disabilities.** In accordance with paragraph (a) of this section and §§300.137 through 300.139, a services plan must be developed and implemented for each private school child with a disability who has been designated by the LEA in which the private school is located to receive special education and related services under this part.

(c) **Record keeping.** Each LEA must maintain in its records, and provide to the SEA, the following information related to parentally-placed private school children covered under §§300.130 through 300.144:

(1) The number of children evaluated;

(2) The number of children determined to be children with disabilities; and

(3) The number of children served.

#### **§300.133 Expenditures.**

(a) **Formula.** To meet the requirement of §300.132(a), each LEA must spend the following on providing special education and related services (including direct services) to parentally-placed private school children with disabilities:

(1) For children aged 3 through 21, an amount that is the same proportion of the LEA's total subgrant under section 611(f) of the Act as the number of private school children with disabilities aged 3 through 21 who are enrolled by their parents in private, including religious, elementary schools and secondary schools located in the school district served by the LEA, is to the total number of children with disabilities in its jurisdiction aged 3 through 21.

(2)(i) For children aged three through five, an amount that is the same proportion of the LEA's total subgrant under section 619(g) of the Act as the number of parentally-placed private school children with disabilities aged three through five who are enrolled by their parents in a private, including religious, elementary school located in the school district served by the LEA, is to the total number of children with disabilities in its jurisdiction aged three through five.

(ii) As described in paragraph (a)(2)(i) of this

section, children aged three through five are considered to be parentally-placed private school children with disabilities enrolled by their parents in private, including religious, elementary schools, if they are enrolled in a private school that meets the definition of elementary school in §300.13.

(3) If an LEA has not expended for equitable services all of the funds described in paragraphs (a)(1) and (a)(2) of this section by the end of the fiscal year for which Congress appropriated the funds, the LEA must obligate the remaining funds for special education and related services (including direct services) to parentally-placed private school children with disabilities during a carry-over period of one additional year.

(b) Calculating proportionate amount. In calculating the proportionate amount of Federal funds to be provided for parentally-placed private school children with disabilities, the LEA, after timely and meaningful consultation with representatives of private schools under §300.134, must conduct a thorough and complete child find process to determine the number of parentally-placed children with disabilities attending private schools located in the LEA. (See Appendix B for an example of how proportionate share is calculated).

(c) Annual count of the number of parentally-placed private school children with disabilities. (1) Each LEA must--

(i) After timely and meaningful consultation with representatives of parentally-placed private school children with disabilities (consistent with §300.134), determine the number of parentally-placed private school children with disabilities attending private schools located in the LEA; and

(ii) Ensure that the count is conducted on any date between October 1 and December 1, inclusive, of each year.

(2) The count must be used to determine the amount that the LEA must spend on providing special education and related services to parentally-placed private school children with disabilities in the next subsequent fiscal year.

(d) Supplement, not supplant. State and local funds may supplement and in no case supplant the proportionate amount of Federal funds required to be expended for parentally-placed private school children with disabilities under this part. §300.134 Consultation.

To ensure timely and meaningful consultation, an LEA, or, if appropriate, an SEA, must consult with private school representatives and representatives of parents of parentally-placed private school children with disabilities during the design and development of special education and related services for the children regarding the following:

(a) Child find. The child find process, including--

(1) How parentally-placed private school children suspected of having a disability can participate equitably; and

(2) How parents, teachers, and private school officials will be informed of the process.

(b) Proportionate share of funds. The determination of the proportionate share of Federal funds available to serve parentally-placed private school children with disabilities under §300.133(b), including the determination of how the proportionate share of those funds was calculated.

(c) Consultation process. The consultation process among the LEA, private school officials, and representatives of parents of parentally-placed private school children with disabilities, including how the process will operate throughout the school year to ensure that parentally-placed children with disabilities identified through the child find process can meaningfully participate in special education and related services.

(d) Provision of special education and related services. How, where, and by whom special education and related services will be provided for parentally-placed private school children with disabilities, including a discussion of--

(1) The types of services, including direct services and alternate service delivery mechanisms; and

(2) How special education and related services will be apportioned if funds are insufficient to serve all parentally-placed private school children; and

(3) How and when those decisions will be made;

(e) Written explanation by LEA regarding services. How, if the LEA disagrees with the views of the private school officials on the provision of services or the types of services (whether provided directly or through a contract), the LEA will provide to the private school officials a written explanation of the reasons why the LEA chose not to provide services directly or through a contract.

§300.135 Written affirmation.

(a) When timely and meaningful consultation, as required by §300.134, has occurred, the LEA must obtain a written affirmation signed by the representatives of participating private schools.

(b) If the representatives do not provide the affirmation within a reasonable period of time, the LEA must forward the documentation of the consultation process to the SEA.

§300.136 Compliance.

(a) General. A private school official has the right to submit a complaint to the SEA that the LEA--

(1) Did not engage in consultation that was meaningful and timely; or

(2) Did not give due consideration to the views of the private school official.

(b) Procedure. (1) If the private school official wishes to submit a complaint, the official must provide to the SEA the basis of the noncompliance by the LEA with the applicable private school provisions in this part; and

(2) The LEA must forward the appropriate documentation to the SEA.

(3)(i) If the private school official is dissatisfied with the decision of the SEA, the official may submit a complaint to the Secretary by providing the information on noncompliance described in paragraph (b)(1) of this section; and

(ii) The SEA must forward the appropriate documentation to the Secretary.

§300.137 Equitable services determined.

**(a) No individual right to special education and related services. No parentally-placed private school child with a disability has an individual right to receive some or all of the special education and related services that the child would receive if enrolled in a public school.**

(b) Decisions. (1) Decisions about the services that will be provided to parentally-placed private school children with disabilities under §§300.130 through 300.144 must be made in accordance with paragraph (c) of this section and §300.134(c).

(2) The LEA must make the final decisions with respect to the services to be provided to eligible parentally-placed private school children with disabilities.

(c) Services plan for each child served under §§300.130 through 300.144. If a child with a disability is enrolled in a religious or other private school by the child's parents and will receive special education or related services from an LEA, the LEA must--

(1) Initiate and conduct meetings to develop, review, and revise a services plan for the child, in accordance with §300.138(b); and

(2) Ensure that a representative of the religious or other private school attends each meeting. If the representative cannot attend, the LEA shall use other methods to ensure participation by the religious or other private school, including individual or conference telephone calls.

§300.138 Equitable services provided.

(a) General. (1) The services provided to parentally-placed private school children with disabilities must be provided by personnel meeting the same standards as personnel providing services in the public schools, except that private elementary school and secondary school teachers who are providing equitable services to parentally-placed private school children with disabilities do not have to meet the highly qualified special education teacher requirements of §300.18.

(2) Parentally-placed private school children with disabilities may receive a different amount of services than children with disabilities in public schools.

(b) Services provided in accordance with a services plan. (1) Each parentally-placed private school child with a disability who has been designated to receive services under §300.132 must have a services plan that describes the specific special education and related services that the LEA will provide to the child in light of the services that the LEA has determined, through the process described in §§300.134 and 300.137, it will make available to parentally-placed private school children with disabilities.

(2) The services plan must, to the extent appropriate--

(i) Meet the requirements of §300.320, or for a child ages three through five, meet the requirements of §300.323(b) with respect to the services provided; and

(ii) Be developed, reviewed, and revised consistent with §§300.321 through 300.324.

(c) Provision of equitable services. (1) The provision of services pursuant to this section and §§300.139 through 300.143 must be provided:

(i) By employees of a public agency; or

(ii) Through contract by the public agency with an individual, association, agency, organization, or other entity.

(2) Special education and related services provided to parentally-placed private school children with disabilities, including materials and equipment, must be secular, neutral, and nonideological.

§300.139 Location of services and transportation.

(a) Services on private school premises. Services to parentally-placed private school children with disabilities may be provided on the premises of private, including religious, schools, to the extent consistent with law.

(b) Transportation. (1) General.

(i) If necessary for the child to benefit from or participate in the services provided under this part, a parentally-placed private school child with a disability must be provided transportation--

(A) From the child's school or the child's home to a site other than the private school; and

(B) From the service site to the private school, or to the child's home, depending on the timing of the services.

(ii) LEAs are not required to provide transportation from the child's home to the private school.

(2) Cost of transportation. The cost of the transportation described in paragraph (b)(1)(i) of this section may be included in calculating whether the LEA has met the requirement of §300.133.

§300.140 Due process complaints and State complaints.

(a) Due process not applicable, except for child find. (1) Except as provided in paragraph (b) of this section, the procedures in §§300.504 through 300.519 do not apply to complaints that an LEA has failed to meet the requirements of §§300.132 through 300.139, including the provision of services indicated on the child's services plan.

(b) Child find complaints--to be filed with the LEA in which the private school is located. (1) The procedures in §§300.504 through 300.519 apply to complaints that an LEA has failed to meet the child find requirements in §300.131, including the requirements in §§300.300 through 300.311.

(2) Any due process complaint regarding the child find requirements (as described in paragraph (b)(1) of this section) must be filed with the LEA in which the private school is located and a copy must be forwarded to the SEA.

(c) State complaints. (1) Any complaint that an SEA or LEA has failed to meet the requirements in §§300.132 through 300.135 and 300.137 through 300.144 must be filed in accordance with the procedures described in §§300.151 through 300.153.

(2) A complaint filed by a private school official under §300.136(a) must be filed with the SEA in accordance with the procedures in §300.136(b).

§300.141 Requirement that funds not benefit a private school.

(a) An LEA may not use funds provided under section 611 or 619 of the Act to finance the existing level of instruction in a private school or to otherwise benefit the private school.

(b) The LEA must use funds provided under Part B of the Act to meet the special education and related services needs of parentally-placed private school children with disabilities, but not for meeting--

(1) The needs of a private school; or

(2) The general needs of the students enrolled in the private school.

§300.142 Use of personnel.

(a) Use of public school personnel. An LEA may use funds available under sections 611 and 619 of the Act to make public school personnel available in other than public facilities--

(1) To the extent necessary to provide services under §§300.130 through 300.144 for parentally-placed private school children with disabilities; and

(2) If those services are not normally provided by the private school.

(b) Use of private school personnel. An LEA may use funds available under sections 611 and 619 of the Act to pay for the services of an employee of a private school to provide services under §§300.130 through 300.144 if--

- (1) The employee performs the services outside of his or her regular hours of duty; and
- (2) The employee performs the services under public supervision and control.

§300.143 Separate classes prohibited.

An LEA may not use funds available under section 611 or 619 of the Act for classes that are organized separately on the basis of school enrollment or religion of the children if—

- (a) The classes are at the same site; and
- (b) The classes include children enrolled in public schools and children enrolled in private schools.

§300.144 Property, equipment, and supplies.

(a) A public agency must control and administer the funds used to provide special education and related services under §§300.137 through 300.139, and hold title to and administer materials, equipment, and property purchased with those funds for the uses and purposes provided in the Act.

(b) The public agency may place equipment and supplies in a private school for the period of time needed for the Part B program.

(c) The public agency must ensure that the equipment and supplies placed in a private school--

- (1) Are used only for Part B purposes; and
- (2) Can be removed from the private school without remodeling the private school facility.

(d) The public agency must remove equipment and supplies from a private school if--

- (1) The equipment and supplies are no longer needed for Part B purposes; or
- (2) Removal is necessary to avoid unauthorized use of the equipment and supplies for other than Part B purposes.

(e) No funds under Part B of the Act may be used for repairs, minor remodeling, or construction of private school facilities.

From the IDEA regulations, Analysis of Comments: Equitable services determined (§300.137)

Comment: One commenter recommended removing §300.137(a), stating it is discriminatory and that parentally placed private school children must receive the same amount of services as children with disabilities in public schools.

Discussion: Section 300.137(a) reflects the Department's longstanding policy, consistent with section 612(a)(10) of the Act, and explicitly provides that children with disabilities enrolled in private schools by their parents have no individual entitlement to receive some or all of the special education and related services they would receive if enrolled in the public schools. Under the Act, LEAs only have an obligation to provide parentally-placed private school children with disabilities an opportunity for equitable participation in the services funded with Federal Part B funds that the LEA has determined, after consultation, to make available to its population of parentally-placed private school children with disabilities. LEAs are not required to spend more than the proportionate Federal share on those services.

From the IDEA regulations, Analysis of Comments: Expenditures (§300.133)

Comment: A few commenters requested revising §300.133 to include home-schooled children with disabilities in the same category as parentally-placed private school children with disabilities.

Discussion: Whether home-schooled children with disabilities are considered parentally-placed private school children with disabilities is a matter left to State law. Children with disabilities in home schools or home day cares must be treated in the same way as other parentally-placed private school children with disabilities for purposes of Part B of the Act only if the State recognizes home schools or home day cares as private elementary schools or secondary schools.

HB 1376 - AS INTRODUCED

2022 SESSION

22-2519

10/11

HOUSE BILL            **1376**

AN ACT                relative to participation in the education freedom accounts program by students with disabilities.

SPONSORS:            Rep. Cornell, Hills. 18; Rep. Cushing, Rock. 21; Rep. Heath, Hills. 14; Rep. Mullen, Hills. 7; Rep. Ellison, Merr. 27; Rep. Porter, Hills. 1

COMMITTEE:          Education

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ANALYSIS

This bill clarifies the responsibility of a scholarship organization under the education freedom accounts program for explaining rights under the Individuals with Disabilities Education Act (IDEA).

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

STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Twenty Two*

AN ACT                    relative to participation in the education freedom accounts program by students with disabilities.

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

1            1 Education Freedom Accounts; Responsibilities of the Scholarship Organization; Parents of  
2 Students with Disabilities. Amend RSA 194-B:4, III to read as follows:

3            III. The scholarship organization shall ensure that parents of students with disabilities  
4 receive notice that participation in the EFA program is a parental placement under 20 U.S.C. section  
5 [~~1412~~] **1412(a)(10)(A)**, Individuals with Disabilities Education Act (IDEA), along with an  
6 explanation of the rights that parentally placed students possess **and waive** under IDEA and any  
7 applicable state laws.

8            2 Effective Date. This act shall take effect 60 days after its passage.