

Senate Education Committee

Kat Bourque 271-3093

SB 8-FN, relative to school attendance in towns with no public schools.

Hearing Date: January 31, 2017

Time Opened: 10:31 a.m.

Time Closed: 11:14 a.m.

Members of the Committee Present: Senators Reagan, Ward, Watters and Kahn

Members of the Committee Absent : Senator Giuda

Bill Analysis : This bill allows a school district to assign a child to another public school in another school district or to an approved private school if there is no public school for the child's grade in the child's resident district. The bill also allows a school board to make a contract with a private school to provide for the education of a child who resides in a district which does not have a public school at the child's grade level.

Sponsors :

Sen. Ward

Sen. Morse

Sen. Bradley

Sen. Sanborn

Sen. Giuda

Sen. Gray

Sen. Carson

Sen. Reagan

Sen. Birdsell

Sen. Gannon

Sen. Innis

Rep. T. Wolf

Rep. Cordelli

Rep. Pitre

Rep. Grenier

Who supports the bill: Senator Carson, Senator Innis, Senator Gannon, Senator Giuda, Senator Ward, Senator Birdsell, Senator Morse, Governor Sununu, Jim Peschke (Croydon School Board), Jody Underwood (Croydon School Board), Michelle Levell, Greg Moore, Senator Sanborn, Rep. Sylvia

Who opposes the bill: Senator Hennessey, Carl Ladd (NHSAA), Barrett Christina (NHSBA), Giles Bissonnette (ACLU)

Who is neutral on the bill: Anne Edwards (Attorney General's Office)

Summary of testimony presented in support :

Senator Ward

Prime Sponsor

- This bill allows a school district to assign a child to another public school in another school district or to an approved private school if there is no public school for the child's grade in the child's resident district. This bill also allows a school board to make a contract with a private school to provide for the education of a child who resides in a district which does not have a public school at the child's grade level.
- This bill passed the House and the Senate last session but was vetoed by the

Governor.

- There has been a lot of discussion about choices and local control. Senator Ward stressed the importance of local control and choice in a child's education.
- Preventing a child from going to the best possible educational environment is not a good choice. Parents working with the school board should be able to make the best possible choice for their children.
- Senator Ward added that there are individuals present who will be able to speak to this bill.
- Senator Reagan asked if this language is the exact same as the language from last session. Senator Ward stated that it is.

Jody Underwood

- Ms. Underwood is the secretary for the Croydon school board.
- Ms. Underwood stated that this bill came about because of something that occurred in her district. Private schools are included in her district as a choice to send a student, while the state later said this was against the law.
- State has cited laws that have to do with parental responsibilities and not school board responsibilities. Laws are so unclear that it is impossible to apply. It is the responsibility for the legislature to clear this up.
- Senator Hassan vetoed this bill as Governor. This bill is the exact language that came from the committee of conference.
- The Department of Education has provided an empty guarantee of adequate education. A parent should be given the option to choose a more adequate school rather than following rules that do not give an adequate education.
- As far as diverting public money to religious schools, this bill makes no mention of religious schools. Even putting this language in the bill would not trump the state's constitution, so she does not see an issue here.
- Regarding the bill itself, it helps to add private schools to the wording in current law, RSA 194:22.
- Clarification is needed in paragraph two of this bill to make sure that it is clear that this bill does not apply to just high schools, but other grades, too.
- Senator Kahn asked if Croydon had an elementary school. Ms. Underwood stated that they have a K-4 school. There are some IEPs that send students to private schools and even those that do not deal solely with special education.
- Senator Kahn asked if Vermont or Maine restricts the kind of private school it sends students to. Ms. Underwood stated that she does not know about Maine, but that Vermont does not.

Jim Peschke

- Mr. Peschke is a member of the Croydon school board.
- Mr. Peschke asked the committee members to apply to common sense definition of adequacy and ask themselves if students are receiving an adequate education. If

not, what options are there?

- The only avenue for educational adequacy is school choice.
- True choice requires freedom and parents must be able to choose without financial disincentives.
- With education dollars locked into a single, one-size-fits-all system, it is difficult to know what education truly costs.
- Public education provided by private schools is the best option for students.
- Senator Ward asked if Mr. Peschke could speak to the way Croydon has set up their school district in sending students to private schools. Mr. Peschke stated that there is an anchor school where students will go if they do not make another choice. If the school charges the same amount or less, it is of no cost to the parent. If it is more expensive, the parent is required to pay the difference. Schools will often give incentive to students, like tuition matches, in order to try to get students to go to a certain place.
- Senator Ward stated that she had heard that the tuition for five students that Croydon was sending to a different school ended up being less. Mr. Peschke stated that this was correct and that it was significantly lower in the cost per student.

Summary of testimony presented in opposition :

Carl Ladd

New Hampshire School Administrators Association

- There are three major concerns that NHSAA believes the committee should be aware of: the payment of public money to religious schools, multi-year tuition contracts, and the lack of standards for private schools.
- Payments of public money to religious schools are strictly prohibited by the state's constitution. Previous versions of this bill excluded this, but this is not a provision of the current bill.
- Multi-year tuition contracts are given exclusive right to the school board and takes away rights of a local legislative body.
- The private schools also may not meet the standards that are equivalent in public schools, yet this law would send public dollars to these private schools.
- This bill also opens open the possibility for lawsuits in which a child or a parent may sue for inadequate education.

Barrett Christina

New Hampshire School Board Association

- NHSBA is in opposition to this bill.
- The NHSBA urges the NH legislature to oppose any efforts to subsidize private or religious schools with public dollars.
- Mr. Christina echoed the concerns expressed by Mr. Ladd.
- He added that there is no state oversight that is overseeing that the private school is providing an adequate education equivalent to a public school.
- This bill is not about school choice. School districts already have choices on where

they send students and how they use tax dollars to benefit students. This bill is about diverting public money.

- This bill is in direct conflict with RSAs 193-c and 193-e.
- Senator Kahn asked about options available for public schools regarding contracts. Mr. Christina stated that there are a variety of contracts that can be entered into by public schools. There are long-term tuition contracts that are twenty years or more and can be renegotiated. A joint agreement can be created where there is a separate school, like a high school, to which multiple districts send their students. There are also cooperative contracts where multiple towns join forces and create a school for different levels. Another example is Hooksett, who has tuition contracts with 3-4 high schools and parents may choose where their child is sent. In summary, there are multiple choices already in statute that give parents a choice in serving the individual needs of their children.

Giles Bissonnette

American Civil Liberties Union

- The ACLU opposes this bill as drafted as it would allow public funds to go to private, religious schools to subsidize funding. This would violate the state's constitution in Part I, Article 6 and in Part II Article 83.
- The ACLU's written testimony cited two court cases in which the above has been deemed to be strictly prohibited.
- Senator Kahn asked how one separates a religious school from a private school. Attorney Bissonnette stated that there is not a court definition. If the committee wanted to carve out this language, that would be possible.

Neutral Information Presented:

Anne Edwards

Attorney General's Office

- Attorney Edwards testified in from of the committee for information only.
- The New Hampshire constitution is restrictive with respect to separation of church and state regarding education.
- This bill states that the private school will be approved for attendance purposes only.
- The Department of Education's approval would not need to explain the curriculum for the educational program. This does not approve the school's curriculum or assessment system or determine the quality of education in that district.
- She added that we cannot ignore that the Supreme Court, in the Claremont case, has ruled that the legislature is responsible for defining an adequate education so that curriculum can be made.
- The legislature has established laws the outline the definition and the adequate education system that 193:e provides the majority of this information.

- Private or non-public schools are not required to follow any of the above rules and are therefore not required to provide an adequate education.
- DOE is also not required to approve the education in private schools or to guarantee adequate staffing.
- Given all of the above, in using public funds, there is no way to ensure that these funds are going to be supporting an adequate education.
- If the intent is to make this bill apply to private schools that are not going to meet a challenge to constitutionality, than it should have language that states something like “non-religious-affiliated private schools.”
- Attorney Edwards suggested that the language in SB 8 is included in RSA 194, which specifically deals with high schools. One may very well have a community that would like to take advantage of this bill at lower levels. This bill needs to enumerate that or be moved to a different statute so that it covers other grade levels. Public high school is defined in RSA 194 and is limited to public schools.
- 193:c, 193:e, and Education Rules 300 and 404 would all need to be amended for this bill to be put into law.
- Attorney Edwards added that approval for attendance does very little to ensure a quality education.
- Senator Watters stated that suppose a district sent a child to a school that may not be adequate, the student graduated and then realized that they did not have certain credits, etc. Would there be standing for a lawsuit? Attorney Edwards explained that she thinks that the student would have standing to sue the Department of Education.

Future Action: Pending